

## Special

## Why does ICC hate to pay taxes



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In an innocuous sounding Press Note issued on 31st March the Government announced that the Union Cabinet has approved a proposal for exempting the International Cricket Council (or ICC) under section 10(39) of the Income Tax Act 1961 in respect of income arising in India from the ICC World Cup, 2011 to the subsidiaries of the ICC where the contractual obligation to bear the income-tax liability is on these entities. This was estimated to cause tax relief of Rs. 45 crore. Explaining the background the Press Note said that in 2005, the Cabinet had approved amendment to the Income Tax Act to grant exemption to residents and non-residents in respect of income arising from an international sporting event conducted in India. It said similar exemption was granted to ICC for the Champions Trophy 2006.

Section 10 (39) of Income Tax Act was introduced in 2005 to empower the Central Government to grant exemption to income arising from any international sporting event held in India, to the person or persons notified by in the Official Gazette, if such event is approved by the international body regulating that sport; it has participation of more than two countries; and the event is notified by the Central Government in Official Gazette.

It appears that a request was made by ICC for granting exemption under this Section to World Cup matches in India on ground of promotion of cricket and furthering of relations with participating countries. In its application the ICC estimated total revenue from sponsorship, telecast rights and advertising rights at 328 million USD and total costs at 127 million USD, leaving an estimated surplus of 201 million USD. Sixty per cent of the surplus i.e. 121 million USD, was estimated to be from matches in India. It is therefore not clear as to how financial implication of the decision has been estimated at Rs 45 crore. As per press reports sourced to Finance Ministry officials, the total receipts of the ICC from World Cup events is estimated at Rs 1,476 crore, while the cost for organising the event is estimated at Rs 571 crore. Therefore, by both estimates the tax relief would be upwards of Rs 350 crore.

"Taxes are the price we pay for a civilized society," said the legendary judge Justice Oliver Wendell Holmes, Jr. It seems International Cricket Council, the global organisation controlling international cricket and key policy decisions relating to cricket, does not have much faith in this time honoured maxim.

Now, for those innocent of the affairs of ICC, it is a private company registered in the British Virgin Island - yes that's right the notorious tax haven known by its initials BVI. It has 104 members, i.e. the national cricket bodies of member countries, like BCCI (Board for Control of Cricket in India). Its mission is to provide service to its members and stakeholders, and to optimise its commercial rights for the benefit of its members. In other words it is no charitable organisation. Its declared values include - Openness, honesty and integrity. It inter-alia claims that it works to the highest ethical standards; that it is fair, just and utterly impartial; and that it provides outstanding service to its stakeholders.

The latest audited annual report of ICC for 2009 claims that ICC undertakes no transactions. Wonder of wonders then how does ICC manage its onerous responsibilities to the world of cricket. Well, it does that through five wholly owned subsidiaries located strategically across the globe. The Audit report also tells us that total paid up capital of ICC and its five subsidiaries put together is ONE US Dollar - yes that's right it is all of one US Dollar - that too held as one single bearer share.

The first wholly owned subsidiary of ICC is the ICC Development (International) Limited (or IDI) incorporated in British Virgin Islands in 1993 with its Registered office at Craigmuir Chambers, Road Town, Tortola, BVI. It is inter-alia responsible for managing commercial rights to cricket events and providing administration services to ICC.

## Special- Archives

**GOVT SHOWS TAX LARGESSE ON ICC**



On 31st March 2011, the Government exempted the International Cricket Council (or ICC) under section 10(39) of the Income Tax Act 1961 in respect of income arising in India from the ICC World Cup, 2011 to the subsidiaries of the ICC where the contractual obligation to bear the income-tax liability is on these entities.

**It's not just Rs. 45 crore but Rs. 350 crore**

This was estimated to cause tax relief of Rs. 45 crore, but it's several times the amount. As per press reports sourced to Finance Ministry officials, the total receipts of the ICC from World Cup events is estimated at Rs 1,476 crore, while the cost for organising the event is estimated at Rs 571 crore. Therefore, by both estimates the tax relief would be upwards of Rs 350 crore.

**Who is ICC?**

ICC is not a charitable organisation. It's a private company registered in the British Virgin Island - a notorious tax haven known by its initials BVI. Audited financial statements of ICC and its subsidiaries for 2009 show that it conducted Twenty 20 World Cup and Champions Trophy in 2009. The net income of the group for 2009 was USD 8,47,65,000 i.e. 8.47 crore dollars.

**Subsidiaries of ICC**

ICC has five wholly owned subsidiaries located in tax havens spread across the world. Its total paid up capital of ICC and its five subsidiaries put together is ONE US Dollar - yes that's right it is all of one US Dollar - that too held as one single bearer share.

ICC Development (International) Limited (or IDI) incorporated in British Virgin Islands in 1993 with its Registered office at Cragmuir Chambers, Road Town, Tonda, BVI. It is responsible for managing commercial rights to cricket events and providing administrative services to ICC.	International Cricket Council FZ-LLC was incorporated United Arab Emirates in May 2005 with registered office at Dubai Media City. Its mandate is to provide administrative support services to the Group.	ICC (Events) Limited (or IEL) was incorporated in Cyprus in May 2004 with Registered Office at Sentinel Bldg, Nicosia. Its main business is to exploit certain commercial rights of IDI.	IDI Mauritius Limited was incorporated in Mauritius in April 2009 "to exploit certain commercial rights of IDI". Its registered office is at Les Jamalacs Bldg, Vieux Conseil Street, Port Louis.	IDI Hungary KFT was incorporated in Hungary in May 2009 again "to exploit certain commercial rights of IDI". The company has its Registered Office at Hermina ut 17, Budapest.
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These subsidiaries in BVI, Dubai, Cyprus, Mauritius and Hungary are located in non-cricket playing countries to exploit certain commercial rights of IDI. These all locations are tax havens as per OECD norms

**A loot of taxpayers Money**

A pure commercial venture operating through tax havens to evade tax dues has been conferred special largesse in the nature of tax give-aways and that too on specious grounds of promoting sports and fostering international relations.

**It's not a coincidence**

Finance Bill 2011 has introduced a new provision (Section 94A) to counter transactions with parties in notified tax havens. This enables the tax authorities to treat such transactions as transactions between Associated Enterprises and invoke Transfer Pricing Rules.

The second wholly owned subsidiary of ICC called International Cricket Council FZ-LLC was incorporated United Arab Emirates in May 2005 with registered office at Dubai Media City. Its mandate is to provide administrative support services to the Group.

A third subsidiary called ICC (Events) Limited (or IEL) was incorporated in Cyprus in May 2004 with Registered Office at Sentinel Bldg, Nicosia. Its main business as given in the audit report is "to exploit certain commercial rights of IDI". Yet another subsidiary of ICC called IDI Mauritius Limited was incorporated in Mauritius in April 2009 "to exploit certain commercial rights of IDI". Its registered office is at Les Jamalacs Bldg, Vieux Conseil Street, Port Louis.

A fifth wholly owned subsidiary is IDI Hungary KFT was incorporated in Hungary in May 2009 again "to exploit certain commercial rights of IDI". The company has its Registered Office at Hermina ut 17, Budapest.

Weary readers will perhaps appreciate that the ICC has not set up these subsidiaries in BVI, Dubai, Cyprus, Mauritius and Hungary to promote cricket in these non-cricket playing countries but to exploit certain commercial rights of IDI. The only thing common in these distant places across the globe is that they all qualify to be rated as Secrecy Jurisdictions (commonly called tax havens) according to established criteria of international bodies like OECD.

Audited financial statements of ICC and its subsidiaries for 2009 show that it conducted Twenty 20 World Cup and Champions Trophy in 2009. The net income of the group for 2009 was USD 8,47,65,000 i.e. 8.47 crore dollars. Out of this ICC paid 7.05 crore USD to its members and allocated 77,06,000 USD for Cricket Development Program. In other words 90% of its income was distributed to its members. The net cash balance available with ICC group as on 31.12.2009 was USD 8,35,40,000. Its capital and reserves was 27.9 million USD. The audit report shows that total income tax paid by the group worldwide was 37000 USD on an income of 8.47 crore USD.

International Cricket is no more a mere sport. It is entertainment business riding on a variety of other businesses. Information in public domain indicates that ICC had assigned sponsorship and staging rights of World Cup matches to its other subsidiaries, which in turn sold sponsorship rights and media transmission rights to various commercial partners, mostly based outside India. Annual report of ICC for 2009 says that World Cup will form the main focus of commercial partners during 2011, for which Ogilvy & Mather have been selected as the Official Advertising and Media Agency. It goes on to say that this event will help its commercial partners to get returns on investment for the revenues that they provide to ICC. The commercial partners of ICC include ESPN-STAR Sports, Reliance Mobile,

PepsiCo, Emirates Airlines, Hero Honda, LG, Reebok, Yahoo, Licensing-in-Motion (Licensing and Merchandising Partner), Cricket Logistics, (Travel Agent and Tours provider) Getty

Images (Photographic Services Provider) and Sportsbrand (Producer for ICC's weekly television show). It is therefore obvious that ICC is structured as an entirely commercial cash-rich private monopoly enterprise operating at global level, through a web of subsidiaries located in select tax havens, for the benefit of its members. Together with its commercial partners it has devised numerous innovative and novel ways of creating and milking the mix of media hype, gullibility and neo-jingoism accompanying the noble game of cricket in the Indian sub-continent.

Yet there can be little objection to a commercial enterprise devising newer methods of making more money so long as it is not at the cost of public exchequer and so long as it remains within the four corners of law. The problem arises when such a pure commercial venture operating through tax havens to evade tax dues, is conferred special largesse in the nature of tax give-aways and that too on specious grounds of promoting sports and fostering international relations. It is in this context that the curious phrase "in respect of income arising in India from the ICC World Cup, 2011 to the subsidiaries of the ICC where the contractual obligation to bear the income-tax liability is on these entities" occurring in the Press Note demands attention. Although one is not privy to the commercial agreements that ICC subsidiaries have entered with their commercial partners it is logical to assume that these will be for earning revenues in lieu of the rights conferred by ICC and its subsidiaries on their commercial partners. Therefore logically there need not be any contractual obligation on ICC or its subsidiaries to bear tax liability. What appears more likely is that the need to obtain tax exemption has arisen from the concern that since ICC is conducting the tournament in India through an Indian entity i.e. the BCCI and the foreign commercial partners like ESPN-Star Sports can be held to have provided services in India (at least for the matches held in India) tax authorities may take a view that part of income of the commercial partners is arising from sources in India and is therefore taxable in India. Therefore, not only ICC and its five subsidiaries based in tax havens but the foreign commercial partners appear to be the real beneficiaries of the tax largesse, which in any event is many times more than the reported amount of Rs 45 crore.

It is also no coincidence that Finance Bill 2011 has introduced a new provision (Section 94A) to counter transactions with parties in notified tax havens. This enables the tax authorities to treat such transactions as transactions between Associated Enterprises and invoke Transfer Pricing Rules.

To top the matters this largesse has been granted at a time when the financial shenanigans of IPL, a sub-committee of BCCI, and its 'Commissioner' are under investigations by the Tamil Nadu Police, the Income Tax department, the Enforcement Directorate and the Standing Committee of Parliament on Finance. The nation has also heard in dismay that ICC preferred to deposit the original (perpetual) World cup trophy in customs warehouse rather than pay customs duty of 22 lakh rupees. This only illustrates how the ICC hates to pay taxes.

Therefore, the exemption granted by the Government to ICC, besides being ethically indefensible, is a callous misuse of public money.

**The writer has served as Member, Central Board of Direct Taxes, Government of India. He is winner of PM's Award for Excellence in Public administration.**



Rating: **0.0** out of votes cast

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