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THE CHARTERED ACCOUNTANT

JOURNAL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

ACCOUNTING PROFESSION AND MSME BOOST TO INDIAN ECONOMY

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MSME Boost to Indian Economy

The Indian economy is not only one of the fastest growing large economy but also one of the most expansive and accommodating economies across the length and breadth of the globe. It derives its glory and prestige on account of multiple facets, but what certainly sets it apart is its ability to cater to a population as vast as that of India. In times of a crisis much like the global pandemic that has not just uprooted households and stripped people off their livelihoods but has taken lives, the burden on the Indian economy is exponentially more. Such afflicting circumstances breed economic instability and trigger a call for immediate action. The Government has taken a series of steps to resurrect otherwise resilient Indian economy back to growth trajectory. In the process, a lot of emphasis has been put on Micro, Small & Medium Enterprises (MSMEs), the sector that accounts for approximately 45% of manufacturing output, over 40% of exports and over 28% of gross domestic product of India.

Micro, Small & Medium Enterprises (MSMEs) contribute significantly in the economic and social development of the country by fostering entrepreneurship and generating largest employment opportunities at comparatively lower capital cost, next only to agriculture. Government is committed to supporting this critically important sector for better credit flow, technology upgradation, ease of doing business and market access.

Economic Survey 2019-20

With the changing landscape of global trade, the role of the Indian MSMEs goes beyond producing low cost products. They can provide value adding services and goods to the Global Supply chain. This will help India to leapfrog its position in world trade. The MSMEs not only unlock the Indian entrepreneurial spirit but also help materialise our ambitious dream of being dollar 5 dollar trillion economy.

A plethora of steps have been announced by the government amid lockdown that include collateral free automatic loans for business, subordinate debt and equity infusion through fund of funds. Apart from finance a key challenge remains marketing of produce. Bringing better e-market place for MSMEs, the government had introduced in recent past MSME Global Mart Portal with enhanced and multiple online payment options and simultaneously provide services of online registration, web store management and customer support. With several trade reforms and liberalisation policies seeing light of day Indian MSMEs can surely help the Made in India goods penetrate to every nook and corner of the world.

MSMEs occupy a very significant share of our industrial market and can be relied on to generate employment, especially during the time of adversity prevailing in the country. Indian MSMEs can not just be credited to harness the pool of young and fresh talent of India but also consistently contribute to National GDP and growth over the years. At a shaky point of time that prevails today, an investment in the MSME sector is an all-encompassing investment towards Indian development. After all, it will not just be responsible for setting off manufacturing, but can also be depended on for boosting employment and kickstarting the economic growth once again and lead the cycle for exports.

There is a symbiotic relation between the members of Indian accounting profession, the Chartered Accountants and MSMEs. Small & Medium Practitioners (SMPs) play a significant role in providing business advisory services to the SMEs in Indian Economy. A significant portion of Chartered Accountants operate as SMPs and are geographically spread throughout the country in the places where MSMEs operate. The business and Regulatory environment within which MSMEs operate is constantly evolving and thus they need professional help for various compliances besides the business advisory services. Per se, audit is probably the most pertinent issue but there are other big and small issues in strategy and marketing where Chartered Accountants can offer professional help. Accounting Professionals are in a strong position to extend their expertise to satisfy the needs of MSMEs.

-Editorial Board ICAI: Partner in Nation Building

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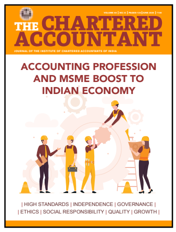

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From the President

CA. Atul Kumar Gupta
President, ICAI

My dear Professional Colleagues,

"Strength does not come from winning. Your struggles develop strengths. When you go through hardships and decide not to surrender, that is strength".

Today, in the midst of seventy first year of standing, the respectable position Chartered Accountants carry is not by sheer chance but through a concerted process and efforts of setting high standards; may it be disclosure, assurance, ethics or skill development. ICAI has gained distinctive position amongst peer professions on account of committed virtues of independence, integrity and excellence. The fast paced professional environment continues to change and expect consistent re-skilling. *"We have to strive harder to attain excellence in every sphere of our activities. Then only we shall be able to take advantage of the exciting possibilities and the opportunities which the future holds forth for our profession"* **said ICAI Past President, CA. A.C. Chakrabortti.** The present challenging times should not be a deterrent and we as a profession need to come out stronger to be a role model in society. Both the Institute and the members need to realign themselves and innovate to face the emerging realities to maintain the competitive edge achieved by the profession over a period of more than seven decades.

Next Generation KPIs

Our position should not give a flavour of elitism, rather I believe the time has come to bring ICAI eco-system to next level of "WOW experience". Progressive organisations world over believe their existence in providing *wow experience* to stakeholders. All of us will agree that in the recent past during COVID-19 Pandemic coupled with lockdown, two important initiatives; namely self-service portal and digital learning hub acted as vibrant vehicle for delivery of better and timely services to members and students. Through these services, we not only assured paper less communication for our members and students but also acted as catalyst for skill development. Today, more than 3 lakh members and equal number of students are enjoying the uninterrupted services and e-learning through these two initiatives which could be a case study for students of management. Still, as change is the only constant, we ought to deliver, institutional experiences, beyond expectations, to all stakeholders. We have no option to deliver beyond expectations, to all stakeholders. ICAI has initiated the next generation KPIs in its services to the Members and Students may it be on TAT or qualitative; taking delivery to WOW level. Reducing the time lag between examination and results by 15-20 days, 100% digitisation of answer books evaluation process, and reverification result within 7 days of application by students are among the few KPIs being recently developed.

Indian Economy and MSME – Role of SMP

According to World Economic Outlook, April, 2020 released by International Monetary Fund – *"the COVID-19 pandemic is inflicting high and rising human costs worldwide, and the necessary* *protection measures are severely impacting economic activity. As a result of the pandemic, the global economy is projected to contract sharply by 3 percent in 2020, much worse than during the 2008-09 financial crisis. In a baseline scenario – which assumes that the pandemic fades in the second half of 2020 and containment efforts can be gradually unwound – the global economy is projected to grow by 5.8 percent in 2021 as economic activity normalizes, helped by policy support."* The global economic outlook for the current year is subdued on account of the pandemic that has led economies to face situation of deacceleration of growth or recession. The Indian economy that has been performing quite well with one of the highest growth rates in the recent past is no exception to the economic fallout of this medical catastrophe. Our government has taken a series of steps to sail through the difficult times providing financial and non-financial stimulus package for survival in immediate term and growth subsequently. The stimulus is in the form of direct cash benefits, moratorium on loan payments, relaxation on taxation front and so on. Efforts are being made to have *Atmanirbhar Bharat* (Self-Reliant India) with focus on five pillars – Economy, Infrastructure, System, Vibrant Demography and Demand. Packages are announced across sectors to drive India towards self-reliance comprehensively targets, cottage industry, MSMEs, labourers, middle class, industries, among others.

With the spread of Indian economy and employment generation capabilities, the Micro, Small and Medium Enterprises (MSMEs) are considered to be the backbone of the national economic structure. The sector is rightfully being seen as growth booster, providing resilience to ward off global economic adversities on account of Pandemic. MSMEs employ more than 11 crore people with GDP share of about 29 per cent and is a major constituent to achieve a target of having $ 5 trillion Indian Economy. The major measures announced for the sector include; Change in definition of MSMEs while removing distinction between Manufacturing and Services, Investment limits revised upwardly with new criterion of turnover added. ₹ 3 lakh crores collateral free automatic loans for businesses along with 20,000 crore subordinate debt and 50,000 crore equity infusion has been launched. For boost to make in India project, even global tender has been disallowed up to ₹ 200 crores.

ICAI with more than 3,10,000 members can facilitate the efforts of government in building new India. A substantial portion of Chartered Accountants are spread across the country and practising as Small and Medium Professionals (SMPs). The accounting profession has deep reach and connect to the MSMEs sector as SMPs are the trusted financial advisor of MSMEs providing variety of services including project financing, due diligence, working capital management, asset management, export promotions advices, budgetary forecasts, financial modelling, besides regular accounting, auditing and taxation activities. Our SMPs can play a key role by providing financial and strategic consultancy to MSMEs. They can help the MSMEs to overcome the financial challenges, augment resources and be judicious in expenditure by becoming mentors. Besides this, ICAI is also developing the **MSME Continuity Checklist** and other innovative suggestions for providing due impetus to this very important sector of the society.

Making New India – Atmanirbhar Bharat

Dear Colleagues, you may recall that in previous communication I have informed you that ICAI is working on *Nine Mantras* with an objective of boosting economic revival in the post Covid-19 scenario including Invest on Make in India. In this direction, we through our Strategy, Perspective Planning and Monitoring Committee organised a webcast on the theme "Making of New India" wherein key speakers namely Shri Nitin Gadkari, Hon'ble Minister for Micro, Small and Medium Enterprises, and Road Transport & Highways, Government of India addressed the Members on the challenges and issues in Covid-19 and post Covid-19 era.

From the President

The Hon'ble Minister provided inspiring inputs in the areas of Make in India highlighting the need to attract investments by good policy and increase productivity by innovation and technology. He suggested sectoral developments, improve sustainability and emphasized the need to have self-sufficiency, increase in exports and reduction in imports as a boost to Indian economy. Your ICAI being always stood with various initiatives of Government, this time working on the various innovative thoughts around *Nine Mantras*.

Shri Shripad Yeso Naik, Hon'ble Minister of State for AYUSH (Independent Charge) & Minister of State for Defence, Government of India also addressed the Members on the efforts taken by Government in combatting the Covid-19 pandemic and the important role played by the Members of the profession.

Draft Valuers Bill, 2020

Valuation as a profession is a nascent area that holds significant potential for Chartered Accountants. The Ministry of Corporate Affairs (MCA) had constituted a Committee of Experts to examine the need for an institutional framework to regulate the profession. On the basis of the Committee's recommendation, a Draft Valuers Bill, 2020 was drafted proposing to establish a National Institute of Valuers and released for public comments. ICAI has also been a member of the committee and has participated in the detailed deliberations undertaken by the Committee. The Institute is the harbinger of establishing best financial reporting and auditing practices in India. Today our corporate world is stood at par with the any other global counterpart boosting investor's confidence in Indian systems and processes. Considering the effective role played by the ICAI in establishing best accounting, auditioning, governance and ethical practices in India hitherto, we placed a suggestion before government to consider ICAI Valuation Standards 2018 to be recognised as the Indian Valuation Standards in line with Accounting and Auditing Standards.

Guidance on Accounting for Expenditure on Corporate Social Responsibility

Corporate Social Responsibility is a concept that aims to contribute to societal goals of a philanthropic, activist, or charitable nature by engaging in or supporting volunteering or ethically-oriented practices. While once it was possible to describe CSR as an internal organisational policy or a corporate ethic strategy, that time has passed as various international laws have been developed and various organisations have used their authority to push it beyond individual or even industry-wide initiatives. While it has been considered a form of corporate self-regulation for some time, over the last decade or so it has moved considerably from voluntary decisions at the level of individual organisations, to mandatory schemes at regional, national and international levels. Understanding the way CSR can play a very important role in achieving Sustainable Development Goals (SDG 2030), the ICAI has brought out a research based Technical publication on Accounting for Expenditure on Corporate Social Responsibility Activities, to provide detailed guidance on the accounting aspects of CSR spends and its presentation in the Financial Statement. The publication will be useful for the accounting treatment of CSR expenditure and will also cover the position after the proposed amendments made to Section 135 by Companies (Amendment) Ordinance 2020, treatment for donations made in kind and treatment of excess expenditure than that specified under law. In view of the pandemic situation and recent spurt in the CSR expenditure by the Corporate world, this publication would be a handy tool for suitably recognising the CSR expenditure. At the same time, we have also issued an advisory to be used by Independent Practitioner's while reporting on Utilisation of Funds for CSR Requirements. Both these publications are need of the hour and yet another contribution by the ICAI in line with its continuous endeavours to serve the societal needs.

From the President

Audit Considerations amid COVID-19

The present pandemic confronting the economies across the globe has consequential impact on preparation of financial statements and audits thereof. The economic impacts of the pandemic are far reaching and may go even beyond the current financial year. Under the given circumstances, the auditor has to consider planning and performing alternative audit procedures appropriate in the circumstances in order to obtain sufficient appropriate audit evidence to form an opinion on the financial statements. To facilitate this the ICAI has released a series of documents related to Audit Considerations amid COVID-19. These relate to Auditor's Reporting, Going Concern, Physical Inventory Verification and Subsequent Events. It is needless to mention that Standards on Auditing (SAs) have to be complied with; and alternative audit procedures, wherever required, may be planned and performed to maintain the quality of audit.

A Boost to ICAI Disciplinary mechanism

ICAI has a robust disciplinary mechanism that derives strength from the provisions of the Chartered Accountants Act, 1949 and supports furtherance of excellence in the domain of Chartered Accountancy profession. Simultaneously, the Institute has remained at the technological forefront by using tools of Information Technology for process automation and knowledge dissemination. In line with the growing use of technology a need was felt for digitisation of disciplinary function as well. The digitisation of the entire disciplinary mechanism is a mammoth task in itself keeping in view of its voluminous and complex nature of work. After successful implementation of e-hearing during this Council Year, we have taken one more step in the direction of digitisation by developing a separate portal **(https://disc.icai.org)** specifically for disciplinary mechanism, wherein all pertinent information is readily available like the procedure to file complaint (physically or through e-filing), Cause List, Orders passed by the Disciplinary Committee, Committee compositions, details of meeting(s), amongst others for the benefit of various stakeholders. I am sure the portal would be a feather in disciplinary mechanism of ICAI and will take eco-system of governance to next level.

In continuation of regulatory mechanism which pave the way to act as a facilitator first then as a regulator in new economic environment, we have recently approved revised Statement of Peer Review to bring it more in line with the changing times catering to the overall objective of enhancing the quality of services rendered by our members and at the same time meeting the expectation of external stakeholders. Similarly, we are augmenting the processes and resources with our Financial Reporting Review Board with a view to enhance our capacity and to achieve a target to complete the review of financial statement of all listed companies beyond a threshold limit in a band of pre-targeted period. I sincerely hope with all these constant efforts we will further able to consolidate our position as robust regulatory body in India.

In the backdrop of rising awareness level about the precautions, improved healthcare facilities and concerns about the economy, it is satisfying to note that the government has announced relaxation in a phased manner, with regard to lockdown norms. With movement resumed by reinstating public transport, albeit in a restricted manner, economy will gradually start moving and we all are also back in offices although with much changed environment and circumstances. I am sure that you will use this little freedom responsibly and continue to abide by the guidelines imposed by the government as well as judiciously adhere to the precautions prescribed to prevent the spread of COVID-19. In fact the true test of our tenacity has begun now when we need to impose self-regulations amidst further moderation in norms.

Best wishes. Stay Safe and Healthy.

CA. Atul Kumar Gupta
President, ICAI
New Delhi, June 1, 2020

ICAI in Action

Relaxations for the Companies and LLPs

In order to support and enable Companies and Limited Liability Partnerships (LLPs) in India to focus on taking necessary measures to address the COVID-19 threat, including the economic disruptions caused by it, the Ministry of Corporate Affairs has given several relaxations and Special measured have been provided to reduce their compliance burden and other risks. The Ministry of Corporate Affairs has introduced the "Companies Fresh Start Scheme, 2020" and revised the "LLP Settlement Scheme, 2020". ICAI being closely working with MCA, is happy to note that the Schemes, apart from giving longer timelines for corporates to comply with various filing requirements under the Companies Act 2013 and LLP Act, 2008, significantly reduce the related financial burden on them, especially for those with long standing defaults, thereby giving them an opportunity to make a "fresh start". The key point of both the schemes is a one-time waiver of additional filing fees for delayed filings by the companies or LLPs with the Registrar of Companies during the currency of the Schemes, i.e. during the period starting from 1st April, 2020 and ending on 30th September, 2020.

In this regard, ICAI has issued FAQs on the Companies Fresh Start Scheme and LLP Settlement Scheme, 2020 (Original and Modified) for the benefit of its members and other stakeholders to give them clarification on the Schemes and issues. For complete details interested members may see the announcement hosted at https://www.icai.org/new_post.html?post_id=16534.

Direct Tax representation submitted to the Government

As a partner in Nation Building and in the interest of overall business climate, ICAI makes various representations to the Government. In this regard, submission of Inputs of the ICAI regarding issue of guidelines for section 206C and section 194-O of the Income-tax Act, 1961 has been made. Another representation to the has also been made to request CBDT to consider waiving off first installment of advance tax due on 15.06.2020.

Extensions in the validity of Peer Review Certificate

In the wake of COVID -19 spurt and the extension of nation wise lockdown as well as partial reliefs granted by various State Governments in phased manner, members are facing hardships in getting the Peer Review Process completed. Accordingly, the Peer Review Board had in March, 2020 granted reliefs to Practice Units. In view of continued situation extensions were further granted as specified in the announcement hosted on https://resource.cdn.icai.org/59761prb48614.pdf. In these extensions in the validity of the Peer Review Certificate have been made.

Organising Virtual CPE Meetings by CPE POUs

Amid lockdown, ICAI is taken several steps to provide learning opportunities to the members. Members are increasingly using Digital Learning Hub to quench their thirst for knowledge. ICAI has also released guidelines for organisation of Virtual CPE Meeting by CPE POUs for grant of Structured CPE Hours. These meetings may be organized by Central Committees, Foreign Chapters, Regional Councils, Branches, CPE Study Circles, CMI&B Study Circles for grant of Structured CPE Hours. The details of the guidelines and the procedure to be adopted is available at https://www.icai.org/post.html?post_id=16516.

Extension of time period for commencement of Practical Training

Some of the students who wanted to commence their Practical Training on or before 31st May, 2020 to appear in November, 2022 Final examinations were not able to commence their Practical Training within the stipulated date on account of extension of lock-down in the country due to COVID-19. For benefit of such students, as a one-time measure Students are allowed to commence their Practical Training on or before 31st July, 2020 and complete Orientation Course and IT Training on or before 31st October, 2020 to be allowed to appear in their Final examination to be held in November, 2022. ■

Know Your Ethics

Q. Whether a member not in practice can use any other description?

A. A member not in practice may use, as per the provisions of Section 7 of the Chartered Accountant Act, 1949, the designation of "chartered accountant". However, if he chooses to use the designation of "chartered accountant", he shall not use any other description, whether in addition, or in substitution thereof.

However, such a member is not prohibited from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other Institute of Accountancy, whether in India or elsewhere, as may be recognised in this behalf by the Council, or any other qualification that he may possess.

Q. Can a Chartered Accountant in practice share his fees with the Government in respect of Government Audit?

A. The Institute came across certain Circulars/ Orders issued by the Registrar of various State Co-operative Societies wherein it has been mentioned that certain amount of audit fee is payable to the concerned State Govt. and the auditor has to deposit a percentage of his audit fee in the State Treasury by a prescribed challan within a prescribed time of the receipt of Audit fee. In view of the above, the Council considered the issue and while noting that the Government is asking auditors to deposit such percentage of their audit fee for recovering the administrative and other expenses incurred in the process, the Council decided that as such there is no bar in the Code of Ethics to accept such assignment wherein a percentage of professional fees is deducted by the Government to meet the administrative and other expenditure.

Q. What is the procedure to be followed for transfer of goodwill of Firm of chartered accountants?

A. The following procedure is to be followed for transfer of goodwill of Firm of chartered accountants:-

1. An application in writing should be forwarded by a member, holding Certificate of Practice intimating his intention to purchase goodwill.
2. The application should be made within 1 year from the date of death of the member.
3. The application should be sent along with the following details:-
   a. "Death Certificate" of the deceased member; and
   b. (i) A draft sale deed for sale/transfer of goodwill entered into between the legal heir/s of the deceased and the member intending to purchase goodwill.

   (ii) The sale of goodwill deed must be very

Follow us on: www.esb.icai.org | esb@icai.in | @BoardEthical clear as to the amount of consideration and payment thereof in one or more installment(s) to be paid within a specified period. The consideration should not be contingent upon future profits.

4. Documents, such as, succession certificate or will, Legal Heir Certificate or an affidavit sworn by all legal heir/s stating that there is/are no other legal heir to the deceased member.
5. Legal heir, in this context, means spouse, child/ children and parents.
6. If the agreement is entered into by one of the legal heirs, 'No Objection' from the other legal heirs, except those minor, are also required to be submitted. In case of minor, 'No Objection' is to be obtained from the guardian.
7. The member intending to purchase the goodwill should give an advertisement about his intention to purchase such goodwill, and the advertisement should spell out that anyone having objection thereto should send the objection directly to the respective Regional Office/ Decentralised office (address of which shall be indicated in the advertisement). A copy of the advertisement so published should be sent by the intending purchaser to the concerned Regional Office/ Decentralised office.
8. Within 30 days of the receipt of the approval, for transfer of goodwill, Form '18' is required to be filed by the member purchasing the goodwill.

Q. Can the goodwill of a proprietary firm of Chartered Accountant, after his death be sold/transferred to another eligible member of the Institute?

A. Yes, the Council of the Institute considered the issue whether the goodwill of a proprietary firm of Chartered Accountant can be sold /transferred to another eligible member of the Institute, after the death of the proprietor concerned and came to the view that the same is permissible. Accordingly, the Council passed the following resolution with a view to mitigate the hardship generally faced by the families after the death of such proprietors, subject to following conditions:

(a) in respect of cases where the death of the proprietor concerned occurred on or after 30.8.1998. Provided such a sale is completed/effected in all respects and the Institute's permission to practice in deceased's proprietary firm name is sought within a year of the death of such proprietor concerned. In respect of these cases, the name of the proprietary firm concerned would be kept in abeyance (i.e. not removed on receipt of information about the death of the proprietor as is being done at present) only up to a period of one year from the death of proprietor concerned as aforesaid.

(b) in respect of cases where the death of the proprietor concerned occurred on or after 30.8.1998 and there existed a dispute as to the legal heir of the deceased proprietor.

Provided the information as to the existence of the dispute is received by the Institute within a year of the death of the proprietor concerned. In respect of these cases, the name of proprietary firm concerned shall be kept in abeyance till one year from the date of settlement of dispute.

(c) in respect of cases where the death of the proprietor concerned had occurred on or before 29th August, 1998 (irrespective of the time lag between the date of death of the proprietor concerned and the date of sale/transfer of goodwill completed/to be completed). Provided such a sale/transfer is completed/effected and the Institute's permission to practice in the deceased's proprietary firm name is sought for by 28th August, 1999 and also further provided that the firm name concerned is still available with the Institute. It may be noted that the sale of goodwill of a Chartered Accountancy Firm is not allowed except as stated above.

Q. Whether a member in practice can provide equity research service, and publish retail research report?

A. A member in practice may be an equity research adviser, but he cannot publish retail report as it would amount to other business or occupation, which is not permissible in view of the provisions of Clause (11) of Part-I of First schedule to the Chartered Accountant Act, 1949.

Q. Whether a member holding Certificate of practice will be deemed to be in practice even if he is not serving any clients?

A. Yes, a member is deemed to be in practice, not only when he is actually engaged in the practice of accountancy, but also when he offers to render accountancy services, whether or not he in fact does so.

Presentation of Gain or Loss on account of Mark to Market Valuation of the Derivative Contracts resulting from Movements in Exchange Rates and Interest Rates of the Underlying Currencies

A. Facts of the Case

1. A public limited company (hereinafter referred to as 'the company'), which is a wholly owned subsidiary of a listed government company, is in the business of exploration and production of oil and gas and other hydrocarbon related activities outside India.

2. The company operates overseas projects directly and/or through subsidiaries, by participation in various joint arrangements and investment in associates. Globally, E&P business is carried out by way of joint arrangements or investments in form of subsidiaries/ associates. In accordance with the requirement of Ministry of Corporate Affairs (MCA) Notification dated 16th February 2015, the company has been following Indian Accounting Standards (Ind ASs) w.e.f. 1st April 2016 (Transition Date 1st April 2015). The functional currency of the company is assessed as US Dollars (USD) in accordance with the provisions of Ind ASs. The company presents its financial statements in its presentation currency which is Indian National Rupee (INR).

3. In order to finance its overseas operations, the company arranges external commercial borrowings including but not limited to debentures and bonds denominated in external currencies. The company currently has (i) Euro (EUR) denominated bonds, (ii) Indian Rupee (INR) denominated debentures and (iii) Japanese Yen (JPY) denominated long term bank loan besides bonds and debentures in the company's functional currency i.e. USD.

4. The said borrowings denominated in external currencies involve, inter alia, exchange risk and interest rate risk. In order to hedge such risks, the company enters into various derivative contracts, e.g. interest rate swaps and forward & option contracts. The company measures these financial instruments at fair value through profit or loss (FVTPL) in accordance with Indian Accounting Standard (Ind AS) 109 'Financial Instruments'. Any gain/loss arising on such valuation is recognised in the statement of profit and loss as per paragraph 20(a) of Ind AS 107 'Financial Instrument: Disclosures'.

5. During financial year (F.Y.) 2017-18, the company has entered into forward contracts covering Euro 199.50 Million and option contracts covering Euro 35 Million in respect of its Euro bonds. Further, the company has also entered into interest rate swap arrangement, swapping the coupon and principal amount of its INR denominated debentures into USD.

6. As mandated by Ind AS 109 and Ind AS 107, the company measured its derivative contracts at FVTPL by recognising net gain/loss in the statement of profit and loss. The said mark to market gain/loss was disclosed under 'Finance Cost' in the notes to the statement of profit and loss as a separate line item with heading *'Net loss (gain) on fair value of derivative contracts mandatorily measured at fair value through profit or loss.'*

7. During the course of government audit, it was highlighted by the Comptroller and Auditor General of India (C&AG) team that the net gain/loss arising on account of mark to market valuation of the derivatives is required to be classified under 'Other Income' as suggested in paragraph 9.2 of the Guidance Note on Division II - Ind AS Schedule III to the Companies Act, 2013 (hereinafter referred to as the 'Schedule

III Guidance Note'[1]), issued by the Institute of Chartered Accountants of India (ICAI).

8. The derivative contracts, mentioned in paragraph 5 above, are entered for the sole purpose of hedging the company's cash flows against volatility in underlying exchange rates of foreign currencies in which borrowings are denominated and the company's functional currency. Further, the periodic gains/losses on such derivative contracts are a result of mark to market valuation which essentially reflect the movement in exchange rates of underlying currencies.

9. The querist has stated that the foreign exchange fluctuation on restatement of foreign currency borrowings in functional currency at each period end is considered to be part of finance cost in accordance with paragraph 6 of Ind AS 23, 'Borrowings Costs'. Further, the movement in mark to market valuation of derivative contracts will always be inversely related to the movement in foreign exchange fluctuations on restatement of foreign currency borrowings as these derivative contracts are entered specifically to hedge the company against such currency fluctuations. Accordingly, to understand the actual impact of foreign exchange fluctuations on long term foreign currency borrowings, both of these amounts need to be seen in conjunction. The net impact of the gain/loss due to foreign exchange fluctuation on restatement of foreign currency borrowings and loss/gain on mark to market valuation of derivative contracts taken against these borrowings is, in substance, the true impact of foreign exchange fluctuation on long term borrowings in the company's financial statements.

10. According to the querist, it will be pertinent to mention that paragraph 9.5.5 (D) of the Schedule III Guidance Note (pre-revised) states that "Foreign exchange differences arising on foreign currency borrowings shall be disclosed under finance cost." Thus, the intent of the paragraph mentioned above is to classify the costs of the borrowings associated with the exchange risk as finance costs. As explained in paragraph 9 above, the gain/loss on mark to market valuation of derivative contracts is intricately linked with the foreign exchange fluctuations on foreign currency borrowings and the sole purpose of entering into such derivative contracts is to cover the exchange and interest rate risks and manage the finance costs. Therefore, in financial statements, it is also classified under finance costs. This will enable the readers of the financial statements to correlate the interplay of finance costs incurred due to the external borrowings and the gain/loss on valuation of financial instruments executed to hedge the risks associated with the said external borrowings. It presents a comprehensive picture with respect to costs associated with the foreign currency borrowings (i.e. interest cost and foreign exchange fluctuations) and activities relating to covering the risks associated (i.e. gain/loss on derivative contracts) which may not be the case when the foreign currency fluctuations and gain/loss on derivatives are shown separately.

11. Therefore, according to the considered opinion of the querist, though the form of the net gain/loss on fair value measurement of derivative contracts may be of other income/ other expense, but in substance, the said gain/ loss is incurred to control the foreign exchange fluctuations included in finance costs and has a direct bearing thereon. In view of the same, it may be considered appropriate that the net gain/loss arising from fair valuation of derivative contracts is classified as a separate line item under the 'finance costs' so as to enable the readers of financial statements to correlate the offsetting effect of the said gain/ loss on the gain/loss due to foreign exchange fluctuations on long term foreign currency borrowings.

B. Query

12. In view of the above facts, the opinion of the Expert Advisory Committee of the Institute of

[1] The Guidance Note on Division II – Ind AS Schedule III to the Companies Act, 2013 was initially issued by the ICAI in July 2017; however, the same has been subsequently revised in July 2019.

Chartered Accountants of India is sought on the appropriate presentation of the net gain/ loss arising on account of the measurement of derivative instruments through FVTPL, i.e., whether:

(i) the presentation of the gain/loss on mark to market valuation of derivative contracts taken to hedge the currency fluctuations on long term foreign currency borrowings by the company as a separate line item under 'finance cost' is appropriate; or

(ii) the presentation as suggested in paragraph 7 above is to be followed.

C. Points considered by the Committee

13. The Committee notes that the basic issue raised by the querist relates to presentation of gain or loss on account of mark to market valuation of the derivative contracts, which, according to the querist, are solely taken to hedge the exchange and interest rate risks on the foreign currency borrowings. The Committee has, therefore, considered only this issue and has not examined any other issue that may arise from the Facts of the Case, such as, accounting for such derivative contracts, the assessment of the functional currency of the company, the adjustment in interest costs arising on account of foreign exchange gains and losses on foreign currency borrowings as per paragraph 6(e) of Ind AS 23, 'Borrowing Costs', presentation of the derivative instruments and the foreign currency borrowings in the balance sheet, etc. Further, the Committee presumes that the company has not opted for applying hedge accounting under Ind AS 109 and has measured the derivative contracts at fair value through profit and loss. Incidentally the Committee notes from the Facts of the Case that foreign exchange fluctuation on restatement of foreign currency borrowings in functional currency at each period end is considered to be part of finance cost by the company. In this regard, the Committee wishes to point out that not all exchange differences arising from foreign currency borrowings can be considered as finance cost or borrowing cost. The company should consider the requirements of paragraphs 6(e) and 6A of Ind AS 23 with regard to the extent of exchange differences required to be treated as borrowing costs. The Committee further notes that the foreign currency external commercial borrowings are measured by the querist at amortised cost using effective interest method under Ind AS 109, 'Financial Instruments'.

14. The Committee notes that paragraph 20 of Ind AS 107, Financial Instruments: Disclosures, states, inter alia, as follows:

"An entity shall disclose the following items of income, expense, gains or losses either in the statement of profit and loss or in the notes:

(a) net gains or net losses on:

(i) financial assets or financial liabilities measured at fair value through profit or loss, showing separately those on financial assets or financial liabilities designated as such upon initial recognition or subsequently in accordance with paragraph 6.7.1 of Ind AS 109, and those on financial assets or financial liabilities that are mandatorily measured at fair value through profit or loss in accordance with Ind AS 109 (eg financial liabilities that meet the definition of held for trading in Ind AS 109). For financial liabilities designated as at fair value through profit or loss, an entity shall show separately the amount of gain or loss recognised in other comprehensive income and the amount recognised in profit or loss.

...

(b) total interest revenue and total interest expense (calculated using the effective interest method) for financial assets that are measured at amortised cost or that are measured at fair value through other comprehensive income in accordance with paragraph 4.1.2A of Ind AS 109 (showing these amounts separately); or financial liabilities that are not measured at fair value through profit or loss."

From the above, the Committee notes that while Ind AS 107 requires disclosure of net gains or net losses on financial assets or financial liabilities measured at fair value through profit or loss either in the statement of profit and loss or in the Notes, it does not prescribe the line item within which the net gains or net losses should be presented. Paragraph 20(b) of Ind AS 107, requires separate disclosure of total interest expense (calculated using the effective interest method) for financial liabilities that are not measured at fair value through profit or loss (i.e. measured at amortised cost) either in the statement of profit and loss or in the notes. Further, paragraph 82 of Ind AS 1, 'Presentation of Financial Statements' while requires presentation of finance costs as a separate line item, it does not elaborate further as to what constitutes finance costs.

15. The Committee also notes that paragraphs 32, 33 and 35 of Ind AS 1, 'Presentation of Financial Statements' state as follows:

"32 An entity shall not offset assets and liabilities or income and expenses, unless required or permitted by an Ind AS.

33 An entity reports separately both assets and liabilities, and income and expenses. Offsetting in the statement of profit and loss or balance sheet, except when offsetting reflects the substance of the transaction or other event, detracts from the ability of users both to understand the transactions, other events and conditions that have occurred and to assess the entity's future cash flows. Measuring assets net of valuation allowances—for example, obsolescence allowances on inventories and doubtful debts allowances on receivables—is not offsetting."

"35 In addition, an entity presents on a net basis gains and losses arising from a group of similar transactions, for example, foreign exchange gains and losses or gains and losses arising on financial instruments held for trading. However, an entity presents such gains and losses separately if they are material."

From the above, the Committee notes that Ind AS 1 states that income and expenses should not be offset unless required or permitted by another standard. This is because offsetting detracts from the ability of users to understand fully the transactions, other events and conditions that have occurred and to assess the entity's future cash flows. The only exception to this is where the offsetting reflects the substance of the transaction or other event. Paragraph 35 of Ind AS 1 explains that gains and losses arising from groups of similar transactions should be reported on a net basis. The individual transactions should, however, be reported separately if they are material. Whilst Ind AS 32 prescribes when financial assets and liabilities should be offset in the balance sheet, it contains no guidance on when related income and expenses should be offset. In the context of offsetting of income and expenses, Ind AS 109 states the following:

"B6.6.13 If items are hedged together as a group in a cash flow hedge, they might affect different line items in the statement of profit and loss. The presentation of hedging gains or losses in that statement depends on the group of items.

B6.6.14 If the group of items does not have any offsetting risk positions (for example, a group of foreign currency expenses that affect different line items in the statement of profit and loss that are hedged for foreign currency risk) then the reclassified hedging instrument gains or losses shall be apportioned to the line items affected by the hedged items. This apportionment shall be done on a systematic and rational basis and shall not result in the grossing up of the net gains or losses arising from a single hedging instrument."

These requirements imply that gains and losses from hedging instruments in hedging relationships would be presented in the same line item that is affected by the hedged item (at least to the extent the hedge is effective) rather than being shown separately, although this is not explicitly stated in Ind AS 109. Although the querist has not applied hedge accounting, the Committee is of the view that this presentation principle would be relevant.

16. The Committee also notes that paragraph B3 of Ind AS 107 states as follows:

"B3 An entity decides, in the light of its circumstances, how much detail it provides to satisfy the requirements of this Ind AS, how much emphasis it places on different aspects of the requirements and how it aggregates information to display the overall picture without combining information with different characteristics. It is necessary to strike a balance between overburdening financial statements with excessive detail that may not assist users of financial statements and obscuring important information as a result of too much aggregation. For example, an entity shall not obscure important information by including it among a large amount of insignificant detail. Similarly, an entity shall not disclose information that is so aggregated that it obscures important differences between individual transactions or associated risks."

From the above, the Committee notes that as per the requirements of B3, an entity should decide, in the light of its own circumstances, how to aggregate the information to display the overall picture without combining information with different characteristics. Accordingly, while aggregating information for disclosure purposes, it is necessary to consider the characteristics of the item(s) being aggregated with the characteristics of the head under which that item is being aggregated. In this context, the Committee notes paragraph B5 of Ind AS 107 as follows:

"B5 Paragraph 21 requires disclosure of the measurement basis (or bases) used in preparing the financial statements and the other accounting policies used that are relevant to an understanding of the financial statements. For financial instruments, such disclosure may include:

…

(e) how net gains or net losses on each category of financial instrument are determined (see paragraph 20(a)), for example, whether the net gains or net losses on items at fair value through profit or loss include interest or dividend income."

From the above, the Committee notes that Ind AS 107 allows interest income to be presented under net gains/losses on financial instrument for disclosure purposes. The Committee further notes that interest (time value of money) is considered as one of the component in determination of fair value of financial instruments. Further as per Ind AS 23, 'Borrowing Costs', a portion of exchange differences (which is also one of the components of fair value of a foreign currency derivative or financial instrument) is considered as borrowing cost/finance cost to the extent that they are regarded as an adjustment to interest costs. Thus, drawing an analogy, the Committee is of the view that the gain/loss on fair valuation of a foreign currency derivative or financial instrument may include elements having the characteristics of 'finance costs'.

17. The Committee further notes that Note 3 of General Instructions for Preparation of Statement of Profit and loss in Part II of Division II of Schedule III to the Companies Act, 2013 requires disclosure of 'finance costs' to be bifurcated into 'Exchange differences regarded as an adjustment to borrowing costs' and 'Other borrowing costs' and paragraph 9.5.5 of the Schedule III- Guidance Note (Revised July, 2019 Edition) that deals with 'Finance Costs', provides as follows:

"D) Other borrowing costs

Other borrowing costs would include commitment charges, loan processing charges, guarantee charges, loan facilitation charges, discounts/premium on borrowings, *other ancillary costs incurred in connection with borrowings*, or amortization of such costs, etc. …"

(Emphasis supplied by the Committee.)

From the above, the Committee notes that as per the above-reproduced requirements of paragraph 9.5.5 of the Guidance Note, foreign exchange differences relating to foreign currency borrowings or other ancillary costs incurred in connection with borrowings can be presented under 'finance costs'. Accordingly, the Committee is of the view that in the extant case, considering the overall objective of hedging interest rate risk as well as exchange rate risk (and not solely the exchange rate risk) and the nature of derivatives/financial instruments, the gain/loss on fair valuation of the financial instruments is of the nature of ancillary cost incurred in connection with borrowings and therefore, it may not be inappropriate to present and disclose the same under 'other borrowing cost' under the head 'Finance Costs'. However, as per the requirements of paragraph 20(a) and 20(b) of Ind AS 107, separate disclosure of the net gain or loss on the said derivative contracts and the interest expense on the foreign currency external commercial borrowings (being financial liabilities not measured at fair value through profit or loss) should be made within the 'Finance costs' schedule in the financial statements. Further, as per the requirements of paragraph 21 of Ind AS 107, a disclosure in respect of the same should be given by the company in its significant accounting policies.

D. Opinion

18. On the basis of above, the Committee is of the opinion that, as discussed in paragraphs 14 to 17 above, it may not be inappropriate to present and disclose the net gain or net losses arising on fair valuation of the derivative contracts/financial instruments in the extant case, entered into to hedge the foreign currency external commercial borrowings, as 'other borrowing cost' under the head 'Finance costs'. However, as per the requirements of paragraph 20(a) and 20(b) of Ind AS 107, separate disclosure of the net gain or loss on the said derivative contracts and the interest expense on the foreign currency external commercial borrowings (being financial liabilities not measured at fair value through profit or loss) should be made within the 'Finance costs' schedule in the financial statements. Further, as per the requirements of paragraph 21 of Ind AS 107, a disclosure in respect of the same should be given by the company in its significant accounting policies.

1.	The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
2.	The Opinion is based on the facts supplied and in the specific circumstances of the querist. The Committee finalised the Opinion on August 07, 2019. The Opinion must, therefore, be read in the light of any amendments and/or other developments subsequent to the issuance of Opinion by the Committee.
3.	The Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in thirty six volumes. A CD of Compendium of Opinions containing thirty six volumes has also been released by the Committee. These are available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur.
4.	Recent opinions of the Committee are available on the website of the Institute under the head 'Resources'.
5.	Opinions can be obtained from EAC as per its Advisory Service Rules which are available on the website of the ICAI, under the head 'Resources'. For further information, write to eac@icai.in . ■

Micro, Small and Medium Enterprise : A Crucial Sector for Economy

Micro, Small and Medium Enterprise (MSME) Sector is a very important sector of any economy including that of Indian economy. As per Annual Report of Ministry of MSME 2017-18 there is a vast network of about 63.38 million Micro, Small and Medium Enterprises in India. The sector contributes about 45% to manufacturing output, more than 40% of exports, over 28% of the GDP while creating employment for about 111 million people. MSMEs were first defined under Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) which was enacted on October 02, 2006. Before enactment of MSMED Act Small Scale Industries were covered under Industrial Development and Regulation Act, 1951. Read on to know more…

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Both Manufacturing and Service Sectors are covered under MSMED Act. They are defined under Section 7 of the MSMED Act based on the investment in the Plant and Machinery and Equipment respectively. The Micro Small and Medium Enterprises have been defined as under:

Description	Manufacturing Sector	Service Sector
Classification	Investment in Plant & Machinery	Investment in Equipment
Micro Enterprises	Upto ₹ 25 Lakh	Upto ₹ 10 Lakhs
Small Enterprises	Above ₹ 25 Lakh & upto ₹ 5 Crore	Above ₹ 10 Lakhs & upto ₹ 2 Crores
Medium Enterprises	Above ₹ 5 Crore & upto ₹ 10 Crore	Above ₹ 2 Crores & upto ₹ 5 Crores

> To support Self-Reliant India and Make in India, global tenders will not be allowed upto ₹ 200 crores under government procurement.

It is important to understand and note that Traders are not covered under MSMED Act. There were two demand from different corners of the stakeholders that the threshold limit of the investment should be increased as the same was fixed as old as in 2006 and the definition criteria should be changed to turnover based in place of investment in plant and machinery/ equipment.

Recently our Hon'ble Finance Minister Smt Nirmala Sitharam has announced the change in the definition of MSMEs satisfying the demand of all stakeholders. According to the new definition the MSMEs will be classified based on the combination of investment in plant & machinery and the turnover of the enterprise. Another proposed change is that now there will be common criteria for both manufacturing and service sector. The new definition, though not yet notified till writing of this article, is proposed as under:

Till now the registration of MSME which is called Udyog Aadhaar is based on the self-deceleration, which may now be linked to the GST. The MSME registration is not a mandatory registration to start and run any business under these categories. The same is evident from the statistics that wherein as per recent U K Sinha Committee there is vast network of about 63.38 million enterprises, only about 96 lacs enterprises have obtained Udyog Aadhaar registrations so far.

Six major schemes announced by the Ministry of Finance, Government of India for MSMEs under Special economic and comprehensive package of ₹ 20 lakh crores are as under:

- Guaranteed Emergency Credit Line wherein all MSMEs with outstanding credit of upto ₹ 25 crore in the category of less than or equal to 60 days past due as on 29.02.2020 and annual turnover of up to ₹ 100 crore are eligible to get upto 20% of their entire fund based outstanding as on 29.02.2020,
- Upto ₹ 20,000 crore subordinate debt to functional stressed or NPA MSMEs, which will be infused as equity of the promoters in the business making them eligible even for more debt under debt equity norm,
- Corpus of ₹ 10,000 crore fund of funds to growth potential and viable MSMEs marching towards listing on main board of stock exchange enabling them ₹ 50,000 crore equity infusion,
- Change in the definition of MSMEs, encouraging them to grow faster without any fear of losing the benefits available to MSMEs,
- To support *Self-Reliant India* and *Make in India,* global tenders will not be allowed upto ₹ 200 crores under government procurement,
- All receivables of MSMEs from government and CPSEs shall be released within 45 days. According to an estimate these are in the range of 5.50 lakh crore which will support the liquidity of MSMEs in a big way.

There are number of benefits and schemes available to the MSMEs under various ministries and Reserve Bank of India. Most of these schemes and benefits are for Micro and Small enterprises only and are not available to Medium Enterprises. To take the benefit of any of the scheme, Udyog Aadhaar registration is mandatory.

Some important benefits of Udyog Aadhaar registration under MSMED Act are as under:

- MSEs are eligible to get upto ₹ 200 lakh loan without any collateral security under Credit Guarantee Trust Fund Scheme for Micro and Small Enterprises.
- Micro Small and Medium Enterprise Development Act, 2006 provides protection to MSEs against the Delayed Payments to them. A buyer from any MSE is required to make the payment on or before the agreed date of payment or within 45 days from the day they had accepted the goods and/or

services from MSEs. If the buyer delays the payment for more than 45 days after accepting the products or services, then the buyer has to pay monthly compound interest at the rate of three times the bank rate notified by the Reserve Bank of India. Ministry of Corporate Affairs has also introduced form MSME-1 to support this.

- The Public Procurement Policy mandated every central ministry/department/ PSU to procure minimum 25% of the total annual purchases / services from MSEs, with sub targets from SC/ST and Women MSEs. Free tender documents and exemption from earnest money to registered MSEs is also allowed.
- MSEs quoting price within price band L1 + 15%, when L1 is from someone other than MSE, shall be allowed to supply at L1 subject to lowering of price by MSEs to L1.
- Financial assistance is provided for Trademark, geographical indication, domestic and foreign patents.
- TReDS platform has been created for facilitating the financing / discounting of trade receivables of MSMEs. These receivables can be due from large corporate, Government Departments and PSUs.
- One-time restructuring has been allowed by RBI for MSME accounts having exposure upto ₹ 25 crore who were in default but 'standard asset' as on January 1, 2020, without degrading their asset classification.
- Capital subsidy of 15% up to a maximum cap of ₹ 15 lakh i.e., maximum investment in approved machinery upto ₹ 1.00 crore to MSE units under Credit Linked Capital Subsidy Scheme.
- A maximum amount of ₹ 20 crore assistance for various components such as Common Facility Centers, Infrastructure Development, Flatted Factory Complex, Marketing Hubs / Exhibition Centers under Micro and Small Enterprises - Cluster Development Program.
- Through ZED assessment under zero defect zero effect, MSMEs can reduce wastages substantially, increase productivity, expand their market, become vendors to CPSUs, have more IPRs, develop new products and processes etc. Subsidy of 80% to Micro, 60% to small and 50% to medium enterprises of the certification fees is provided.
- Financial assistance to MSMEs is provided under International Cooperation Scheme of Ministry of MSME to reimburse air-fare, stall charges etc for participation in international exhibitions, trade fairs and buyer-seller meets in foreign countries.

> Most of these schemes and benefits are for Micro and Small enterprises only and are not available to Medium Enterprises. To take the benefit of any of the scheme, Udyog Aadhaar registration is mandatory.

> If the buyer delays the payment for more than 45 days after accepting the products or services, then the buyer has to pay monthly compound interest at the rate of three times the bank rate notified by the Reserve Bank of India

There are many subsidy schemes for MSMEs under different Ministries like Ministry of Food Processing Industries, National Horticulture Board and Ministry of Textiles. Different relaxations have been given to the MSMEs and small businesses under Insolvency and Bankruptcy Code, 2016, GST, and Ministry of Corporate Affairs considering their role in the growth of the country.

All manufacturers and service providers including professionals should consider getting themselves registered under Udyog Aadhaar free of cost. For registering please visit: at https://udyogaadhaar.gov.in.■

Enabling Growth of Micro Small and Medium Enterprises

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India is a blessed at the moment to have immense capital in form of availability of Manpower, growing infrastructure and offers much more on the table. It shall not be an exaggeration to say that World outside is willing and able to sow the seeds for future growth, more so, internal consumption in India remains strong when compared with other countries in the same genre. One of the main beneficiaries to both internal consumption and external growth remains the MSME sector. Read on to know more…

As per Government estimates, it employs 25% of the total working population and contributes roughly 30% to the GDP of the Country. Latest Government estimates reveal that MSME is moving on strong foothold to employ around 40% of the country's working population and is poised to contribute 50% to the GDP in coming 5 years. Yet at the same, there is growing vulnerability of the companies and entrepreneurs' within the MSME, not primarily because of ongoing COVID-19 crisis, although it appears to be a catalyst, but because of inherent structural challenges that engulf the MSME sector.

Experts and Industry Unions are pushing for a solution from the Government to ease monetary policies and make availability of funds at a cheap rate so that MSMEs can sail through. Would seeking financial relief from Government be good enough? Counting on such measures will not make the sector free from its inherent structural challenges as could be seen in case of some of such high leveraged sectors. Some of the important structural challenges, faced by MSMEs, to be addressed are:

Lack of Financial Literacy:

Most of MSMEs, if not all, either are individual/proprietor driven or are operated and managed by the promoters who also happen to be directors of the Company(ies). Largely, either first generation or second generation entrepreneur's sit at the helm of the affairs having little or no knowledge on financial aspects of the business, for them finance – simply put is a peripheral function or merely a cost center and not as important as other business functions. Little do they know that with elongated receivable cycles, low margins, uncontrolled overheads, they often resort to increased borrowing as the only way out; literally unware of the debt trap that they are heading into. When working capital fall short to address the business needs due to ill managed inventory controls and receivable cycles, they often resort to term loans (including LAP) to bridge the gap between the working capital cycle; leading to asset-liability mismatch given the interest rate yields for the longer term borrowings. The result is liquidity crunch that often percolates to solvency issues.

As per RBI publication as on September 2018, ₹ 14.3 lakh crore was credit outstanding to MSME sector, out of the same the NPAs were staggering 38%. On ground, the current situation appears to be grimmer. It is experienced that MSMEs are financially not well equipped to hire experts, and consultants, this is where the banking partners' should

When working capital fall short to address the business needs due to ill managed inventory controls and receivable cycles, they often resort to term loans (including LAP) to bridge the gap between the working capital cycle; leading to asset-liability mismatch given the interest rate yields for the longer term borrowings. The result is liquidity crunch that often percolates to solvency issues.

pitch in and regularly hold meetings to understand the financial challenges faced by the businesses and the reasons for increase in borrowings.

Low levels of Capital Invested in business:

A survey done by MSME Ministry in 2017 deciphered the average debt-equity ratio of MSME at 4:1, varying to a great degree within, depending upon the size and stage of an enterprise as well as sector in which it operates. Heavy reliance on debt capital or high leveraging (both formal and informal) makes MSME dependent upon the external finance to survive and operate. With little value addition, low margins, asset-liability mismatch, the MSMEs become the most vulnerable in challenging times. As a result, banks' are more skeptical to lend fearing deteriorating asset quality. Therefore, it is of utmost importance that business cycles are regularly monitored and a higher threshold of promoter capital be introduced. Norms acceptable to large enterprises cannot be made applicable to MSMEs, obviously, this step shall not go well in short term but in long run the results will be astounding, to say at least.

Diminished Corporate/ Professional Structure:

It will not be unusual to say that most of MSMEs (prior to change in definition) are nothing more than the glorified proprietorship (95.98% of the MSMEs were proprietary concerns – Annual Report MSME 2018-19), wherein the owner is also the manager or the owner is the one who is at the helm of the affairs i.e. largely one man driven organizations, the other family members are also part of the management with little or no say in business/ managerial operations, i.e. namesake managers. In such organizations, the control is often transferred by pedigree and not by the value addition. View this inherent structural challenge along-with the limited financial resources and crunched bottom line, the result is disastrous in terms of retaining talent. What this invariably promotes, is the "yes" man culture; therefore the professionals are hard to attract and if attracted, hard to retain.

> Inadequate investment in research and development initiatives remains a structural challenge within the sector. The solution lies in adopting disciplined approach towards business and structuring the organisation in such a manner that strict financial and managerial control persist.

The solution to this challenge lies within, as the owners will have open up in defining the roles and responsibilities in a more coherent manner so as to benefit holistically. They have to understand the hiring and retaining talent is the life blood for business to survive and grow and it is not expenditure rather an investment in business.

Low level of Research and Development:

The work flow to MSME is largely governed by the multinational companies, having finance and market dominance at their disposal. Often, these multinationals dominate on the every aspect of business, say design, the production process, work flow, raw material procurement, vendor management and much more; leaving negligible headroom for the MSME owners to put in their brains behind the business thereby killing their entrepreneurial instincts. Well, there's no dispute that the volumes are high and hence the sector remains occupied and at times pressed for more work. While the occupancy remains high, the margins continue to remain wafer thin as every business aspect is dominated. The result is cut in research and development expense turning MSMEs primarily into job-workers, thereby jeopardising the future growth prospects. The situation becomes more challenged with crisis like the current, wherein the sector is unable to withstand the pressure owing to low margin and inability to move up the value chain. Inadequate investment in research and development initiatives remains a structural challenge within the sector. The solution lies in adopting disciplined approach towards business and structuring the organisation in such a manner that strict financial and managerial control persist.

Conclusion:

The challenges are mix bag with some capable of being solved from outside, while others require more balance approach from within. Whereas Government policy and assistance can help MSMEs survive or withstand the turbulence, as the current one. The longer term and more viable solution lie in understanding the inherent and structural challenges and solve them in more creditable ways. The sector has to come to the terms with the fact, that support from outside shall not be indefinitely and infinitely available and thus value creation or moving up the value chain remains the only available option to steer through unforeseen and uncertain times. In medium term, Government will have to hand hold the sector and organisations within to make them more self-sustainable, they have to arrange for more skill generation programs. To strengthen this sector, Government has to formulate the schemes for the even longer term solutions rather than providing relief as and when the needs arise. ■

Recent Direct Tax Benefits Provided to MSMEs

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The whole world is under the grip of the COVID-19 pandemic. In India too, lockdowns are the most preferred way to contain the pandemic spread, as currently there is no vaccine. However, lockdown has its own costs to the economy. Although, India is now trying to ease restrictions, there is a lot of distance to be covered. One of the most affected sectors of the economy due to COVID-19 and lockdowns are the businesses and among them is MSME sector. MSME sector needs encouragement in the form of policy changes to come out of the prevailing challenges. Government has already amended the statutory definitions so that more and more businesses can claim the benefits available to the MSME sector. The article talks about the recent reliefs provided by the government to MSME sector on direct tax front. Read on ...

I. Relief provided vide Press Release dated 24.03.2020/31.03.2020 {by issuance of Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020}

The first tranche of relief measures was announced on 24.03.2020 by the Hon'ble Finance Minister. Later on, to provide statutory backing, Finance Ministry issued Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020.

The following relief measures are provided:

A) Due dates for issue of notice, intimation, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents and timelimit for completion of proceedings by the authority and any compliance by the taxpayer including investment in saving instruments or investments for roll over benefit of capital gains under Income Tax Act, Wealth Tax Act, Prohibition of Benami Property Transaction Act, Black Money Act, STT law, CTT Law, Equalization Levy law, Vivad Se Vishwas law where the time limit is expiring between 20th March 2020 to 29th June 2020 extended to 30th June 2020.

> To mitigate the hardships of small taxpayers, CBDT decided that if a person had submitted valid Forms 15G and 15H to the Banks or other institutions for F.Y. 2019-20, then these Forms would be valid up to 30.06.2020. This will safeguard the small tax-payers against TDS where there is no tax liability (Order passed on 03.04.2020).

B) Extension of last date of filing of original as well as revised income-tax returns for the FY 2018-19 (AY 2019-20) to 30th June, 2020.

C) Extension of Aadhaar-PAN linking date to 30th June, 2020.

D) The date for making various investment/ payment for claiming deduction under Chapter-VIA-B of Income-tax Act which includes Section 80C (LIC, PPF, NSC etc.), 80D (Mediclaim), 80G (Donations), etc. extended to 30th June, 2020. Hence the investment/payment can be made up to 30.06.2020 for claiming the deduction under these sections for FY 2019-20.

E) The date for making investment/construction/ purchase for claiming roll over benefit/deduction in respect of capital gains under sections 54 to 54GB of the Income-tax Act, 1961 extended to 30th June 2020. Therefore, the investment/ construction/ purchase made up to 30.06.2020 shall be eligible for claiming deduction from capital gains arising during FY 2019-20.

F) The date for commencement of operation for the SEZ units for claiming deduction under deduction 10AA of the Income-tax Act extended to 30.06.2020 for the units which received necessary approval by 31.03.2020.

G) The date for passing of order or issuance of notice by the authorities under various direct taxes& Benami Law extended to 30.06.2020.

H) Reduced rate of interest of 9% to be charged for non-payment of Income-tax (e.g. advance tax, TDS, TCS) Equalization Levy, Securities Transaction Tax (STT), Commodities Transaction Tax (CTT) which are due for payment from 20.03.2020 to 29.06.2020 if they are paid by 30.06.2020. Further, no penalty/ prosecution to be initiated for these non-payments.

I) Under Vivad se Vishwas Scheme, the date was extended up to 30.06.2020. However, it was later on extended to 31.12.2020 vide Press Release dated 13.05.2020 . In other words, the date for making payment without additional amount under the "Vivad Se Vishwas" scheme extended to 31 December, 2020.

II. CBDT issued orders u/s 119 of the Income-tax Act,1961 to mitigate hardships to taxpayers arising out of compliance of TDS/TCS provisions vide Press Release, dated 04-04-2020

The CBDT issued various directions/clarifications by exercise of its power u/s 119. Further, vide F. No. 275/25/2020-IT(B) dated 09.04.2020, the CBDT issued certain clarifications on matters received from stakeholders arising out of Orders issued u/s 119 dated 31.03.2020 and 03.04.2020.

The relief in brief are as under:

All the assessees who have filed application for lower or nil deduction of TDS/TCS for F.Y. 2020-21 and whose applications are pending for disposal as on date and they have been issued such certificates for F.Y. 2019-20, then, such certificates would be applicable till 30.06.2020 of F.Y. 2020-21 or disposal of their applications by the AOs, whichever is earlier, in respect of the transaction and the deductor or collector if any, for whom the certificate was issued for F.Y. 2019-20. In cases where the assessees could not apply for issue of lower or nil deduction of TDS/TCS in the TRACES Portal for the F.Y. 2020-21, but were having the certificates for F.Y. 2019-20, such certificates will be applicable till 30.06.2020 of F.Y. 2020-21. However, they need to apply at the earliest giving details of the transactions and the Deductor/Collector to the TDS/TCS Assessing Officer as per procedure prescribed. Further, on payments to Non-residents (including foreign companies) having Permanent Establishment in India, where the above applications are pending, tax on payments made will be deducted at the subsidised rate of 10% including surcharge and cess, on such payments till 30.06.2020 of F.Y. 2020-21, or disposal of their applications, whichever is earlier (Order passed on 31.03.2020).

In case of pending applications for lower/nil rate of TDS/TCS for F.Y. 2019-20, the CBDT has directed AOs to dispose of the applications through a liberal procedure by 27.04.2020, so that the taxpayers may not have to pay extra tax which may cause liquidity issues to them (Order passed on 03.04.2020).

To mitigate the hardships of small taxpayers, CBDT decided that if a person had submitted valid Forms 15G and 15H to the Banks or other institutions for F.Y. 2019-20, then these Forms would be valid up to 30.06.2020. This will safeguard the small tax-payers against TDS where there is no tax liability (Order passed on 03.04.2020).

Further, vide F. No. 275/25/2020-IT(B) dated 09.04.2020 , the CBDT issued certain clarifications on matters received from stakeholders arising out of above referred Orders issued under section 119 dated 31.03.2020 and 03.04.2020.

Thereafter, the Hon'ble Finance Minister announced on 13.05.2020 that the pending income tax refunds to charitable trusts and non-corporate businesses and professions including proprietorship, partnership and LLPs and cooperatives shall be issued immediately.

III. Issue of pending Income Tax refunds in various tranches

With a view to provide immediate relief to the business entities and individuals, Government in April 2020 decided to issue all the pending income-tax refunds up to ₹ 5 lakh immediately.

Thereafter, the Hon'ble Finance Minister announced on 13.05.2020 that the pending income tax refunds to charitable trusts and non-corporate businesses and professions including proprietorship, partnership and LLPs and cooperatives shall be issued immediately.

IV. New procedure for registration, approval, etc. of certain entities deferred to 01.10.2020 vide Press Release, dated 09-05-2020

In view of the unprecedented humanitarian and economic crisis, the CBDT decided that the implementation of new procedure for approval/registration/notification of certain entities shall be deferred to 01.10.2020.

V. Latest announcements by the Hon'ble Finance Minister vide Press Release dated 13.05.2020

- *Reduction in Rates of 'Tax Deduction at Source' and 'Tax Collected at Source"* - The TDS rates for all non-salaried payment to residents, and tax collected at source rate reduced by 25 percent of the specified rates for the remaining period of FY 20-21.This provided liquidity to the tune of ₹ 50,000 Crore.
- The due date of all Income Tax Returns for Assessment Year 2020-21 extended to 30 November, 2020. Similarly, tax audit due date extended to 31st October 2020.

As is clear from above measures, government is doing its best to strengthen the MSME sector. Further relief measures to the sector are expected considering current conditions. Even though the lockdown is eased, it appears that each one of us will have to adapt to the lifestyle changes necessary to keep ourselves safe from this global pandemic. Getting used to the new normal in the times of COVID-19 will be the way of life in the near future.

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GST Relief Measures for SMEs on Account of COVID-19: Analysis and Way Forward

The pandemic of Covid-19 and the resultant lockdown across globe including in India has hit the SMEs badly because of severe disruption to trading of goods, services, complete ban on movement of persons, weak cash flows, etc. Major reasons for SME sector being one of the worst hit sectors is its unorganised nature and dependence upon day to day work and on daily wagers. Read on...

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Introduction:

1. Small & Medium Enterprises **(SMEs)** are the backbone of our industrial structure as they provide a variety of non-traditional, low technology products, and are also engaged in the processing, preserving, manufacturing & service activities and play a vital role in balanced and sustainable economic growth. The contribution of SMEs to the Indian economy in terms of employment generation, reducing regional imbalances, promoting inter-sectorial linkages, magnifying exports and fostering equitable economic growth potential has been quite marvellous. Therefore, SME in a developing country like India occupy a special place in the industrial sector.

Relief measures adopted by the Government of India in view of pandemic crisis:

2. The Government of India in order to fight against the pandemic and to aid MSMEs in its fight issued various relief measures like tax reliefs, refunds, relaxation by regulatory authorities like RBI, financial help, extension of statutory limitations, etc. However, for the present, we shall be concentrating on the various steps in respect of Indirect taxes including GST.

Indirect tax Reliefs:

3. Immediately after the lockdown, the Government of India announced various measures including issuance of Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020. The said ordinance provides following reliefs in respect of indirect taxes:

A. Last date of furnishing of the Central Excise returns due in March, April and May 2020 has been extended to 30th June,2020.

B. Wherever the last date for completion or compliances like completion of any proceedings, issuance of any order, filing of appeal, reply or application, etc., under the Central Excise/ Customs/ Service tax, is from 20th March 2020 to 29th June 2020, the same has been extended to 30th June 2020.

C. The date for making payment to avail of the benefit under Sabka Vishwas Legal Dispute Resolution Scheme 2019 has been extended to 30th June 2020 thus giving more time to taxpayers to get their disputes resolved.

Relief measures under GST:

4. CBIC has issued various relief measures relating to statutory and regulatory compliance matters under various provisions of GST Law. A brief analysis of the Notifications 30/2020 to 36/2020 dated 03.04.2020 issued in this regard, are summarised hereunder:

A. GSTR-3B – Relief from Interest payable on delay payment of tax and Waiver of Late fee payable on delay in filing of return under Section 47 of CGST/SGST Act

S.No	Tax period	Relief / Waiver from Interest & Late Fees	Date on or before which return has to be filed to avail the relief/ waiver*
Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year			
1.	Feb-20	Interest From due date (20.03.2020) to 04.04.2020 = Nil From 05.04.2020 to 24.06.2020 = @ 9% Late Fee -Waived off	24.06.2020
2.	Mar-20	Interest From due date (20.04.2020) to 05.05.2020 =Nil From 06.05.2020 24.06.2020 = @ 9% Late Fee -Waived off	24.06.2020
3.	Apr-20	Interest From due date (20.05.2020) to 04.06.2020 = Nil From 05.06.2020 to 24.06.2020 = @ 9% Late Fee -Waived off	24.06.2020
Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to rupees five crores in the preceding financial year			
4.	Feb-20	Interest- Nil Late Fee -Waived off	29.06.2020
5.	Mar-20	Interest- Nil Late Fee -Waived off	29.06.2020
6.	Apr-20	Interest- Nil Late Fee -Waived off	30.06.2020
Taxpayers having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year			
7.	Feb-20	Interest- Nil Late Fee -Waived off	30.06.2020
8.	Mar-20	Interest- Nil Late Fee -Waived off	03.07.2020
9.	Apr-20	Interest- Nil Late Fee -Waived off	06.07.2020
* If return is filed after such specified dates - Interest shall be payable @ 18% from due date till date of filing of return and no waiver of late fee shall be available.			

B. Extension of Due Date for filing GSTR-3B for the month of May' 2020

S.No	Tax period	Due Date for filing GSTR-3B	States
Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year			
1.	May-20	27.06.2020	All States
Taxpayers having an aggregate turnover of upto rupees 5 crores in the preceding financial year			
2.	May-20	12.07.2020	Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep
3.	May-20	14.07.2020	Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi

C. GSTR-1 –Waiver from Late fee payable on delay in filing of return under Section 47 of CGST/ SGST Ac

S. No	Tax period	Waiver from Late Fees	Date on or before which return has to be filed to avail the waiver*
1.	Mar-20	Late Fee -Waived off	30.06.2020
2.	Apr-20	Late Fee -Waived offq	30.06.2020
3.	May-20	Late Fee -Waived off	30.06.2020
4.	Quarter Ending 31.03.2020	Late Fee -Waived off	30.06.2020

* If return is filed after such specified dates - No waiver of late fee shall be available.

D. Extension of Due Date to 30.06.2020 of following type of returns, which are due during the period from 20.03.2020 to 29.06.2020

a. S. 39(3) – Return for Tax Deducted at Source u/s 51

b. S. 39 (4) – Return for Input Service Distributor

c. S. 39 (5) – Non-Resident Taxable Person

E. E-way Bill- E-way Bills generated whose period of validity expires during the period 20th day of March, 2020 to 15th day of April, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 30th day of April, 2020.

F. Restriction of Input Tax Credit under rule 36(4) for February to August 2020

i. The restriction laid in sub-rule (4) of Rule 36 relating to maximum 10% of eligible ITC that can be claimed by registered person in respect of invoices, debit notes etc. which have not been uploaded by supplier.

ii. The said condition shall apply cumulatively for the months of February, March, April, May, June, July and August, 2020 and accordingly, the return in FORM GSTR-3B for the tax period of September, 2020 shall be furnished with cumulative adjustment of input tax credit for the said months in accordance with the condition under rule 36(4).

G. Extension of time limit for certain compliances

i. Where any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period **from the 20th day of March, 2020 to the 29th day of June, 2020,** and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be **extended upto the 30th**

day of June, 2020, including for the purposes of-

a. The above extension is inclusive of completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal; or

b. filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the CGST, IGST, UTGST Acts.

Exclusions from above extension: The above extension referred to para G above however, shall not apply for compliance of following provisions-

a. Chapter IV – pertains to time and value of supply

b. Section 10(3) – Lapse of composition scheme if aggregate turnover exceeds limit

Section 25 – Procedure for Registration

Section 27 – Special provisions relating to Casual Taxable Person and Non Resident Taxable Person

Section 31 – Issue of Invoice

Section 37 – Furnishing details of outward supplies (GSTR-1)

Section 47 – Levy of Late Fee

Section 50 – Interest on delayed payment of tax

Section 69 – Power to arrest

Section 90 – Liability of partners of firm to pay tax

Section 122 – Penalty for certain offences

Section 129 – Detention, seizure and release of goods and conveyances in transit

c. Section 39 - Furnishing of returns, except returns under:

i. S. 39(3) – Return for Tax Deducted at Source u/s 51

ii. S. 39 (4) – Return for Input Service Distributor

iii. S. 39 (5) – Non-Resident Taxable Person

d. Section 68 in so far as e-way bill is concerned - Inspection of goods in movement

e. Rules made under the provisions specified at clause (a) to (d) above

H. Specific clarification for measures taken for taxpayers who are required to collect tax at source under section 52

i. The said class of taxpayers has been allowed to furnish the statement specified in section 52, for the months of March, 2020 to May, 2020 on or before the 30th June, 2020.

I. Extension of time limits under composition scheme

i. A registered person opting to pay tax under composition levy (section 10) for the financial year 2020-21 shall electronically file an intimation in FORM GST CMP-02, duly signed or verified through electronic verification code, on the common portal, on or before 30th June, 2020 and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 upto 31st July, 2020.

ii. Due date to furnish statement of self-assessed tax by composition dealer in **Form CMP-08** for the quarter ending 31st March, 2020, is extended to 07th July, 2020.

iii. Due date to furnish return in **Form GSTR-4** Financial Year ending 31st March, 2020, is extended to 15th July, 2020.

J. Refunds: - Ministry of Finance by way of a press note dated 08.04.2020 informed that they have decided to issue all pending GST and Customs refund. CBIC has also issued a circular in this regard.

Suggested way forward under the GST regime:

5. As can be seen from above, Government has taken lot of initiatives for ameliorating the situation of the businesses especially the SMEs to strengthen them in their fight against the situation posed by the Covid-19 pandemic. However, still much needs to be done regarding the same. Considering the nature of Pandemic, the Government needs to much more. It can

hardly be over-emphasised that Covid-19 has created an exceptional situation, and exception situation warrant exceptional solution. We therefore suggest the following immediate steps so that the position of SMEs can be strengthened:

A. Procedures to be eased:

a. Efficient and professional GSTN

Procedural difficulties have made GST a challenging task, instead of being a good and simple tax. Even though structurally GST has been well accepted by the industry, its implementation has been with quite a few glitches. Goods & Services Tax Network (GSTN) is purely service providing entity and is only a platform for the management of everything related to Goods and Services Tax throughout India. However, there have been occasions when GSTN has not worked properly, and the sufferer has been mainly SMEs sector since it does not have the best of the professional help and has resource constraints. Few illustrations of such challenges on the GSTN are as follows:

(i) The Central Goods and Services Tax (Amendment) Act, 2018, amended Section 34 of the CGST Act w.e.f. 01.02.2019, and allowed registered persons to issue consolidated credit/debit notes in respect of multiple invoices issued in a Financial Year. However, till date the said amendment has not been incorporated in the portal and the Portal does not allow the registered person to issue consolidated credit/debit notes in respect of multiple invoices in a financial year. This is clear defiance of law by the GSTN, which is only a portal to implement the law.

(ii) The Government vide Circular No. 135/05/2020, in pursuance to the direction of the Hon'ble Delhi High Court in W.P(C) No. 627 of 2019, removed the restriction of not allowing to club two Financial Years for the purpose of filing refund application. However, till date it has not been incorporated on the GSTN Portal.

Our Suggestions for making SMEs more efficient so that they can cope with the current threat posed by Covid-19 is that GSTN must be made fully accountable to complete the tasks entrusted to them. Further, GSTN can be made a professional organisation with experts of tax, law, accounting and technology manning it, so that it acts like a service provider which is the purpose for which it is set up under the GST Act.

b. Simplified quarterly GST Return

The need of the hour is simplified quarterly GST Return. The one proposed by the Government is highly complicated and would increase the already heightened compliance burden.

B. Export Related Issues:

Exports help to increase the GDP, contribute towards foreign exchange and are vital for employment generation. However, under GST, the exports have been badly affected. In many cases, despite the recipient of the supply being a person situated outside India, the supplies are charged to GST leading to export of taxes making Indian exports uncompetitive. Further, even when the exports are zero-rated, the procedures for granting of export benefits are such that there are delays and much needed liquidity is not available to the said businesses.

We are highlighting herein below the various such issues which need immediate attention of the Government.

(i) For the purpose of refund on exports the Government has capped value of zero-rated supplies at 1.5 times the value of similar goods supplied in the domestic territory by the same or similar supplier. The restriction or the capping does not have any rational and is loss of earning in Foreign Exchange for India.

For Example: Items like Pashmina Shawl/ Alphonso Mango/ Spices etc. are priced far more in the international market in comparison to Indian Domestic Market.

1 kg of Alfonso in season, can fetch 3-4 Pound foreign exchange when sold in the International Market which is almost ₹ 300-350/Kg. However, in domestic market this price would

be anywhere between ₹ 100-150/ Kg. Putting a cap of 1.5 times, would restrict the pricing to of the mango be around 2 Pounds. Therefore, the capping is without any rationale and should be removed.

(ii) Raw materials used in the manufacturing of product for export should be zerorated, as they were in the pre-GST regime. Since the exporters have to buy the GST paid inputs, input services, and capital goods, the need for working capital requirement has increased manifold in comparison to the pre-GST regime.

(iii) Provision of determination for Place of Service should be eased and only criteria for same should be receipt of foreign exchange. By having extremely complicated rules for determining place of supply, it is not only difficult for the SMEs, but more importantly in many cases they are actually providing services to the recipients outside India, which do not qualify as exports. In such cases despite earning foreign exchange they end up paying GST. This makes Indian suppliers uncompetitive in the international market.

(iv) The newly inserted Rule 96B which provides for the recovery of refund of unutilised ITC or integrated tax paid on exports of goods where exports proceeds are not realized within the period allowed under the Foreign Exchange Management Act, 1999, should be removed. In such times, when the exporters are taking extra risks and in many cases are unable to receive payments from buyers, to also subject them to pay back GST, is making things more difficult for them.

(v) There are huge delays in issuing of refund of unutilised ITC, and in not more than 5% cases provisional refunds are granted. It is important to note that GST law mandates issuance of 90% of refund on provisional basis to exporters within 7 days. It is suggested that Government should mandate the Authorities to issue provisional refunds within 7 days of issue of Acknowledgment unless the officer has any specific grounds of not issuing provisional refunds, and which he should record in writing.

(vi) The government should also constantly monitor the problem of exporters and check whether refunds are not being issued for administrative excesses.

C. Measures to improve liquidity

Current crisis requires that immediate steps be taken to improve the utilisation of the existing resources and to improve liquidity of the businesses. Following are our suggestions in this regard:

(i) Inverted Duty Structure in government and infrastructure projects should be removed.

(ii) In order to utilize the capacity of Special Economic Zone Units which are unable to utilize capacity of exports, all of them should be allowed to sell in India without the payment of custom duty.

(iii) Credit should be allowed without matching with suppliers' returns.

(iv) Service Sector should be allowed to pay tax on cash basis.

(v) Until the tax payment is to be made on invoice basis and not on receipt basis, the requirement for the buyer to reverse credit if he has not paid invoice value to the supplier within 180 days should be removed.

(vi) Time limit for availment of ITC should be removed.

Conclusion:

6. SMEs are the lifeblood of Indian economy especially from point of view of employment generation, entrepreneurship and equitable distribution of wealth. Much has been done by the Government for them to cope with the present crisis. It is good that the policy makers are focussing on the SMEs. However, the need of the hour is that the problems faced by the SMEs especially of liquidity and arduous procedural requirements must be continuously understood and pragmatic solutions be provided to meet these challenges. It is important that government continuously monitors whether the policy has been implemented and whether it is giving the desired results. This will help in making improvements in overall implementation of GST in the country. ■

Broadening the Scope of Equalization Levy

The first significant step taken by India to address the tax challenges arising out of digitalisation of economy was in 2016, through the introduction of Equalization Levy (EL) in the Finance Act with effect from 1st June 2016. The EL was levied at the rate of 6% on the amount of consideration for 'specified services' received or receivable by a non-resident not having a Permanent Establishment (PE) in India, from a resident in India who carried out business or profession, or from a non-resident having a PE in India. Essentially, this was a B2B levy. Read on to know more…

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The term 'Specified services' was defined as follows:

- Online advertisement
- Any provision for digital advertising space or any facility/ service for the purpose of online advertisement
- Any other service which may be notified later by the central government

Amended Finance Bill 2020 Broadened the Ambit of EL

The Amended Finance Bill 2020 expanded the imposition of EL, to cover foreign e-commerce operators. This came as a surprise to many as the provision was not proposed in the Union Budget when it was presented by Finance Minister on February 1.There were hence no discussions or deliberations on this change, with the stake holders.

The expanded provisions provide that effective April 1, 2020, EL shall be charged at the rate of 2% of the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it:

(i) to a person resident in India; or

(ii) to a non-resident in the specified circumstances; or

(iii) to a person who buys such goods or services or both using internet protocol address located in India.

The term "specified circumstances" has been defined to mean:

(i) sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement though internet protocol address located in India; and

(ii) sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India;

It has further been provided that the EL shall not be charged:

(i) where the e-commerce operator making or providing or facilitating e-commerce supply or

There are challenges in terms of nexus, data and characterisation of income, which in turn lead to double non taxation and shifting of profits by MNCs to low tax jurisdictions.

services has a PE in India and such e-commerce supply or services is effectively connected with such PE;

(ii) where the EL is leviable @6% ; or

(iii) sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than INR 20 million during the previous year.

The EL, shall be paid by every e-commerce operator to the credit of the Central Government in the following manner:

Quarter ending	Due date of payment
30th June	7th July
30th September	7th October
31st December	7th January
31st March	31st March

Under these newly inserted provisions the e-commerce operator has been defined as follows:

"e-commerce operator" means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both;

"e-commerce supply or services" has been defined to mean:

(i) online sale of goods owned by the e-commerce operator; or

(ii) online provision of services provided by the e-commerce operator; or

(iii) online sale of goods or provision of services or both, facilitated by the e-commerce operator; or

(iv) any combination of activities listed in clause (i), (ii) or clause (iii) above.

The OECD Connect

Concept of EL can be traced to the OECD and G20 led BEPS project, where it was part of BEPS Action Pan 1, which deals with the tax challenges of the Digital Economy. As we all know, historically the tax systems have centred around taxation based on physical presence test and have not been able to keep pace with the new digital businesses and newer ways of doing existing business. There are challenges in terms of nexus, data and characterisation of income, which in turn lead to double non taxation and shifting of profits by MNCs to low tax jurisdictions.

The OECD BEPS Action Plan 1 Report released in 2015, had recommended that countries could use EL in their domestic laws as additional safeguards against BEPS, provided they respect existing treaty obligations, or in their bilateral tax treaties.

Practical Challenges / Clarifications Required

This expansion of EL has posed several challenges, namely:

a) Unlike EL in case of advertisement and related services, compliance obligation in this case is on the e-commerce operator (non-resident), who is required to deposit the EL so collected on a quarterly basis and also file an annual return. This has given very little time to the e- commerce operators for planning their tax compliances or changing the ERP systems to incorporate this change.

b) There are different operating models used by e-commerce operators:

- One such model is a pure play commission based model, wherein the e-commerce operator provides its platform to the ultimate sellers and buyers. In this model, the buyer pays purchase price to the seller while the e- commerce operator gets the commission for the platform used. In such a case, the EL should ideally be on the commission amounts.
- The other model is where the e-commerce operator sells in its own name as if the goods are part of its stock/inventory. Here the EL should be on the transaction value. Accordingly, the amounts on which EL

Unlike EL in case of advertisement and related services, compliance obligation in this case is on the e-commerce operator (non-resident), who is required to deposit the EL so collected on a quarterly basis and also file an annual return.

should be levied require clarity.

c) Another issue being, whether the EL should be imposed on the net amounts i.e. net of sales return; given the flexibility in the business models of e-commerce players to return the goods if customer is unhappy with the product or for any defects.

d) There also could be legal challenges from the perspective of extra-territoriality as the provision also covers non-resident to non-resident transactions, which uses India data.

There also could be legal challenges from the perspective of extra-territoriality as the provision also covers non-resident to non-resident transactions, which uses India data.

e) As EL is not part of income tax, non residents may not get credit for it in their country of residence or home country.

Conclusion

To conclude, though the intent of the government is to garner additional revenue by tapping the digital business which is otherwise escaping tax net in India, the issues created due to the hasty implementation, could fuel uncertainty and unnecessary litigation and should be quickly addressed.■

Reference

ACCOUNTANT'S BROWSER

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should be levied require clarity.

c) Another issue being, whether the EL should be imposed on the net amounts i.e. net of sales return; given the flexibility in the business models of e-commerce players to return the goods if customer is unhappy with the product or for any defects.

d) There also could be legal challenges from the perspective of extra-territoriality as the provision also covers non-resident to non-resident transactions, which uses India data.

There also could be legal challenges from the perspective of extra-territoriality as the provision also covers non-resident to non-resident transactions, which uses India data.

e) As EL is not part of income tax, non residents may not get credit for it in their country of residence or home country.

Conclusion

To conclude, though the intent of the government is to garner additional revenue by tapping the digital business which is otherwise escaping tax net in India, the issues created due to the hasty implementation, could fuel uncertainty and unnecessary litigation and should be quickly addressed.■

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Conciliation: An Ideal Mechanism for Dispute Resolution


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Whether it be sluggish, complicated and atrociously expensive court litigation or a never-ending redundancy of prominent arbitration mechanism, the role being played by these modes in the delivery of justice does not seems to bring any positive change. Considering the said shortcomings of traditional system of dispute resolution, Conciliation is considered to be one such mechanism which does not actually involve adversarial method, still able to settle the dispute in a most efficient manner. Accordingly, this paper attempts to explore the veiled benefits of undervalued Conciliation mechanism so as to highlight and acknowledge its hidden worth. Read on to know more…

Introduction

The adjudicatory mechanism ensures the victory of one party under the dispute and the opposite side is left to criticise and explore the available legal recourses to further contest. Thus, the said adversarial mechanism (arbitration and court litigation) are just adding to the woes of the litigants. Judiciary was formed to adjudicate the disputes between the parties so that justice can prevail, however, the same judicial bodies have always been blamed to be costly, sluggish and prejudiced. Accusing the Arbitration law, the Hon'ble Supreme *Court in Guru Nanak Foundation vs. Rattan Singh & Sons*[1], once observed "the way in which the proceedings under the Act are conducted and without an exception challenged in the courts, has made lawyers laugh and legal philosophers weep."

The need of the hour is to identify a mechanism which could cut down the cost and time of dispute resolution process and ensure finality without even compromising on the business interest of the parties. The answer is definitely the undervalued Conciliation. Despite having statutory recognition and potential to resolve commercial disputes in a most efficient way,

[1] *AIR 1981 SC 2075*

Most of the progressive organisations have included Conciliation mechanism for the settlement of commercial disputes in their contracts/ tenders as a first step of dispute resolution. Upon failure of Conciliation, the parties can seek further recourse.

unfortunately, Conciliation mechanism has not been given adequate recognition till date. Conciliation is still a voluntary process wherein the Conciliator has not been given authority to impose a solution on the parties to the dispute.

Accordingly, this paper attempts to analyse the worth of Conciliation mechanism, which could enable the parties to resolve their disputes and still not blamed to be corrupted with the system, with a hope that by the time we conclude, we will be definitely able to acknowledge the significance of Conciliation as an ideal mode of dispute resolution.

Meaning and Significance of Conciliation

As per the Arbitration and Conciliation Act, 1996 (the "Act"), Conciliation is a statutorily recognised mode of ADR (Alternate Dispute Resolution) and one of the best features of Conciliation is that one can resort to Conciliation even if the litigation is pending before the court or in arbitration. Conciliation involves a procedure of resolution for the dispute in question between the parties with the assistance of a neutral third person, known as Conciliator, who helps the parties to reach a settlement between them.

Conciliation proceedings begins when the other party accepts the invitation to conciliate in writing and in case any party rejects to conciliate the dispute, there will be no Conciliation proceedings.[2] Thus, it is not binding on the parties to adopt Conciliation for the settlement of their disputes and even the Conciliation proceedings can be terminated by any party by simply serving a written declaration to the other party and to the Conciliator (if appointed).[3] During the Conciliation proceedings, the parties may be required to submit brief written statement, documents and evidences before the Conciliator with a copy to the other party.[4] Conciliator has the role to assist the parties to reach an amicable settlement so as to resolve their dispute. Such mutual settlement drawn on agreeable terms & conditions between the parties finalises as a Settlement Agreement. The Settlement Agreement once entered by the parties becomes binding and the Act acknowledges it to be equivalent to Arbitral Award[5].

The genesis of Conciliation law in India is linked to the General Assembly of the United Nations, which recommended the UNCITRAL Conciliation Rules, 1980. Thereafter, the Indian Parliament realises that it is pertinent to enact legislation relating to conciliation, ultimately giving birth to Part III of the Act, which is completely dedicated to the Conciliation mechanism.

As stated above, the Conciliation mechanism under the Act is voluntary and not binding on the parties to the dispute. Only the Settlement Agreement, once executed, is binding on the parties. Conciliation mechanism has also been recognised under the Industrial Disputes Act, proceedings under the Industrial Disputes Act, 1947 for the settlement of disputes between the employer and the workmen. However, there is a striking difference in the mechanism provided under both the acts (i.e. Arbitration and Conciliation Act, 1996 and the Industrial Disputes Act, 1947), wherein the Conciliation proceedings under the Industrial Disputes Act, 1947 is mandatory under certain circumstances (Conciliation Officer to hold immediate conciliation where a notice under section 22 in case of public utility services is received).[6]

Most of the progressive organisations have included Conciliation mechanism for the settlement of commercial disputes in their contracts/ tenders as a first step of dispute resolution. Upon failure of Conciliation, the parties can seek further recourse.

Conciliation mechanism has lots of striking features which

[2] *S. 62(2) and (3), Arbitration and Conciliation Act, 1996*
[3] *S. 76, Arbitration and Conciliation Act, 1996*
[4] *S. 65, Arbitration and Conciliation Act, 1996*
[5] *S. 74, Arbitration and Conciliation Act, 1996*
[6] *Rule 9, Industrial Disputes (Central) Rules, 1957*

the adversarial modes fails to provide. Such features are explained below while distinguishing them with the adversarial modes.

S.No.	Features	Adversarial Mode	Conciliation
1.	Costs Effective	Court fee/ Arbitrator's fee and advocate's fees accounts for huge expenses.	No involvement of advocate and even conciliator's fee is nominal.
2.	Simple procedure	Procedure turns out to be much lengthier and complex as even in arbitrations, parties generally insist on evidences, expert witnesses, etc.	Simple onefold procedure without much complexity.
3.	Time efficient	As per the Amended Act of 2015 and 2019, it is time bound however, extensions are being granted by courts and hardly being concluded on time.	No duration of time specified, still settles the matters quickly as does not require complex evidences and detailed pleadings and arguments.
4.	Promotes Settlement	Minimal possibilities of settlement.	With the professional expertise of the conciliators and assistance of the parties there exists maximum possibilities of settlement.
5.	Tailored Proceedings	Not possible in courts, as courts are already overburdened with huge pendency, however, to some extent it is possible to have convenient dates in arbitration but due to dearth of professional arbitrators, the available lot is also handling large number of cases making them difficult to accommodate convenient dates.	Conciliation is highly flexible and party centric mode, therefore, parties have large control over the proceedings.
6.	Expert	Not possible as in courts, the matters are divided amongst the available judges irrespective of their personal expertise and parties have no control over the same. In arbitration, being an adversarial mode, the preference of the parties always remains to appoint retired judges and not to appoint someone with sound technical or commercial knowledge[7].	Persons with requisite technical and commercial knowledge are mostly appointed as Conciliators for better understanding of the commercial/ technical issues involved in the dispute.
9.	Finality	Subject to appeal/ challenge as prescribed under the law.	Conciliation/ Settlement Agreement duly signed between the parties ensures finality/ conclusion of the dispute.

How Conciliation has an edge over adversarial modes

Conciliation entails a dispute resolution mechanism which is entirely dependent on the will of the parties who agree to abide by the terms of the settlement agreement drawn by the conciliator. It is a voluntary and non-binding process which provides flexibility to the conciliator in adopting the procedure of conciliation.[8] Additionally, dispute resolution

[7] *Corporate Attitudes & Practices towards Arbitration in India. (2013, May). Retrieved April 25, 2020, from https://www.pwc.in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towards-arbitration-in-india.pdf*

8 *Conciliation, Retrieved April 24, 2020, from https://www.dispute-resolution-hamburg.com/conciliation/what-is-conciliation/*

through conciliation can be sought by the parties at any stage of the dispute i.e. during pendency before a court or even after an arbitral award has been passed. Furthermore, in order to avoid making the conciliation mechanism complex, rules of evidence and Civil Procedure Code, 1908 is not applicable to conciliation proceedings.[9] Apart from these features, conciliation also tends to be a cost effective and time-saving mode of dispute resolution which provides finality to the dispute and helps in maintaining business relations between the parties.[10] These advantages have been discussed in detail below:

(i) Cost Efficient

Cost-effectiveness is one of the main concerns of disputing parties while opting for a particular mode of dispute resolution. Increasing costs have made justice costlier and seemingly inaccessible for a large majority of people. Those who are economically unsound are severely affected by it. Notably, the importance of expeditious and cheaper mode of dispute resolution has been recognised in the 240th Law Commission of India report, wherein it remarked that mounting costs and delay in dispute resolution shakes the confidence of ordinary citizens in the justice dispensation system.[11]

Owing to the low judge-population ratio, lack of proper infrastructure, delaying tactics used by advocates, the time spent in resolution of dispute through court litigation has been on a constant increase, thereby, also increasing the costs involved in the process. In court litigation, parties need to pay court fees and fees of advocates (sometimes senior advocates too, if required) till the time an appropriate decree is passed by the court. The costs involved also include the miscellaneous costs involved in travel expenses of the parties and witnesses involved in the particular case. Given the time taken for resolution of disputes in courts, these costs build up over time and make the dispute resolution process costlier.

Similarly, in arbitration, huge expenditure is involved in arbitrator's fee, venue charges, advocate's fee etc. Furthermore, the award passed by the arbitrator can be subject to challenge under S.34 and thereafter an appeal under S.37 of the Act and Art. 136 of the Constitution of India (Special Leave Petition). Since challenge and appeal matters are taken up by the courts, the costs involved in each of these stages becomes exponentially high, due to the delay factors observed in an ordinary court litigation. Thus, the costs involved in arbitration gets increased manifold by the time the matter is finally settled between the parties. It is important to note that the Law Commission of India, in its 246th report, had also recommended for reduction of fees charged by arbitrators and suggested for a model fee structure for arbitrators.[12] Though, the 2015 amendment to the Act introduced a model fee structure, it has been held to be suggestive by judicial interpretation. For instance, the Delhi High Court in *Paschimanchal Vidyut Vitran Nigam Limited v. M/S IL&FS Engineering & Construction Company Limited,*[13] has held that the fee schedule mentioned in fourth schedule of the Act is merely suggestive in nature.[14] In this case, since the parties had not approached the court for appointment of arbitrator, the court had no jurisdiction over the fee schedule agreed between the parties regarding fee to be paid to the arbitrator. Hence, circumstances may arise in certain arbitration cases (i.e. cases where parties agree to go for ad-hoc arbitration without appointing the arbitrator

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9 *S. 66, Arbitration and Conciliation Act, 1996.*

10 *Conciliation in India: An Overview, Retrieved April 24, 2020, from http://psalegal.com/wp-content/uploads/2017/01/DisputeResolutionBulletin-IssueVII08092010070309PM.pdf*

11 *Law Commission of India, Report No. 240, Costs in Civil Litigation, May 2012, Retrieved April 24, 2020, from http://lawcommissionofindia.nic.in/reports/report240.pdf*

12 *Law Commission of India, Report No. 246, Amendment to Arbitration and Conciliation Act, 1996, August 2014, Retrieved April 25, 2020, from http://lawcommissionofindia.nic.in/reports/Report246.pdf*

13 *2018 SCC OnLine Del 10831.*

14 *Paschimanchal Vidyut Vitran Nigam Limited v. M/S IL&FS Engineering & Construction Company Limited, 2018 SCC OnLine Del 10831*

> As opposed to arbitration, in conciliation, the decision is not imposed upon the parties and the parties themselves agree that they would not undertake any other legal recourse in the future regarding the dispute settled by the settlement agreement.

under S.11) where parties are not bound by fourth schedule of the Act and thereby are liable to pay more under those circumstances.[15] This issue has not been rectified even through the latest amendment of 2019. This defeats the objective behind opting for arbitration, as it fails when it turns out to be no better than court litigation in term of costs.

On the contrary, it has been observed that conciliation proves to be a cheaper mode of dispute resolution when compared to arbitration and court litigation. The parties to conciliation are free to agree on the procedure to be followed during conciliation proceedings. It entails a process wherein the grievances of parties are heard by the conciliator who in turn helps the parties in reaching an amicable settlement. It has been observed that., in conciliation, the costs involved in conciliator's fee is comparatively lower and there is no advocate fee involved. Furthermore, settlement agreement has the same status as that of an arbitral award.[16] Hence, the burden of costs is lower on parties when compared with the adversarial modes of dispute resolution, thereby making conciliation a cost-effective mode of dispute resolution.

(ii) Conclusive Nature of Conciliation

Conclusive determination of dispute is an indispensable element of justice delivery system. It is essential in the interest of public good that there should be an end to litigation. The everlasting nature of dispute resolution vexes the parties to dispute and thereby defeats the main objective behind increasing litigant satisfaction and confidence in the justice delivery system. The elaborate procedure of appeals and procedural hurdles, makes it difficult for the parties to bring an end to the dispute.[17] In any developed legal system, it is essential that the parties are saved from being vexed by the same issues for a longer period of time. Inconclusiveness of decisions makes the whole process of justice dispensation futile.

Appellate process has been provided by the courts so as to prevent miscarriage of justice by resolving the errors in the judgement, however, in reality, it has also led to frivolous filing of appeals. As observed in court litigation, the multiple forums of appeal available to the litigants, happens to delay the timely disposal of cases and prevents the dispute from getting settled finally. Frivolous filing of appeals has led to never ending court litigations. Frequent adjournments taken during the course of court litigation and especially during the trial stage also jeopardises the progress of the court litigation which hampers the finality of the dispute.

Arbitration is often touted as a faster mode of dispute resolution. However, when observed practically, provisions with respect of challenging an award and appeals defeats the purpose of providing finality to the dispute. The restricted grounds for challenge mentioned under S.34 (after the 2015 amendment), highlight the jurisprudence behind arbitration that aimed to make arbitration process efficient and binding in nature. Even though the parties agree to be bound by the decision of the arbitrator, rarely is it seen that the award passed by the arbitrator is not challenged by the parties and readily complied. Thus, arbitration still stays short of providing finality to the dispute.

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15 *Deshmukh, Indranil, Arbitrator fees in India-In a fix, Retrieved April 25, 2020, from https://www.mondaq.com/india/arbitration-dispute-resolution/852318/arbitrator-fees-in-india-in-a-fix*

16 *S. 74, Arbitration and Conciliation Act, 1996.*

17 *Jephi, Madonna, Conciliation: An Effective Mode of ADR Mechanism, Retrieved April 25, 2020, from https://lawtimesjournal.in/conciliation-an-effective-mode-of-adr-mechanism/*

In contrast, conciliation, by adopting a consensual mode of dispute resolution, prevents the parties from remaining unsatisfied by the decision.[18] Thus, this feature As opposed to arbitration, in conciliation, the decision is not imposed upon the parties and the parties themselves agree that they would not undertake any other legal recourse in the future regarding the dispute settled by the settlement agreement of conciliation provides conclusiveness and finality to the dispute arising between the parties and thus helps them at arriving at a resolution in a timely manner.

(iii) Mode of Rapid Dispute Resolution

Conciliation process can be initiated at any stage of the dispute, whether it is yet to be initiated or pending before the court/ arbitration or even after pronouncement of the decision/ award. One of the reasons that this quality is attached with Conciliation is that it resolves the disputes expeditiously. Disputes that are not resolved quickly tend to fester and become more difficult to settle in the future. The expression "justice delayed is justice denied" reflects the actual reality. Interests or rights of both Parties are at stake and both Parties to the dispute suffer when conflicts could not be resolved quickly. As the time elapses, memories may get fade, witnesses may cease to exist and critical evidences may get missing. Therefore, quick result is always preferred.

In Alternate Disputes Resolution, the parties are aware of the facts at hand and therefore, resort to Arbitration. Another pitfall is the scope for collateral proceedings being raised in the courts under the provisions of the Act at the initial stages themselves under Sections 8, 9 or 11 of the Act. Section 27 of the Act also paves the way for the parties to approach the Court for assistance in taking evidence. Even after the grant or refusal of interim relief by the Arbitrator under Section 17, parties are entitled to move the judicial forum for challenge thereby enlarging the scope for further litigation. Keeping such shortcomings in the said mode of Alternative Disputes Resolution, it will have to be held that it may not be fully suitable for all types of litigations and the litigants in general.[19]

The Hon'ble Delhi High Court judgement in the case of *Rakesh Kumar v. Cideas Investment India Pvt. Ltd.*[20] dealt with the issue of delay in arbitration matters. In this case, it took nearly 15 years to conclude an Arbitration proceeding. Understanding the need for a rapid dispute settlement mechanism, an effort has been made through the Arbitration & Conciliation (Amendment) Act, 2015 by incorporating Section 29A in the Act, which provides for stricter timelines for making the award in the matter. However, considering the impracticability of the imposed timelines for the conclusion of the arbitration matters, an amendment has been made by 2019 Amendment Act which made the said timeline effective from the date of completion of pleadings, thereby, increasing another six months.

It is righty stated that "Arbitration is better than litigation, Conciliation is better than arbitration, and the prevention of legal disputes better then conciliation"[21]. As opposed to other forms of dispute resolution (litigation/ arbitration), Conciliation process is very fast paced. The matter is settled at the threshold of the dispute, avoiding protracted litigation efforts at the courts. As conciliation can be scheduled at an early stage in the dispute, a settlement can be reached more quickly than in litigation/arbitration. Parties save time by cutting back on futile exercises such as traveling to court/ venue, getting into legal

18 *Chatterjee, Raka, Settlement Agreements Qua Arbitral Awards, Retrieved April 25, 2020, from https://www.mondaq.com/india/arbitration-dispute-resolution/629242/settlement-agreements-qua-arbitral-awards*

19 *Remembrance. (n.d.). Retrieved April 24, 2020 at 15:30 hrs. from https://www.indialawjournal.org/article-6.php*

20 *MANU/DE/4280/2015*

21 *Roy Chawdhary and Saharay, Arbitration 36 (Eastern Law House, Calcutta, 1979)*

Agreeably, it can be concluded by saying that it is time to appreciate the utility and usefulness of Conciliation and henceforth take necessary measures to disseminate, advocate, encourage, popularise and optimally utilise Conciliation as an effective ADR mechanism.

processes wherein the steps for proceedings are very strictly defined. Settlement of dispute in a peaceful manner is always welcomed by all the civilizations. An undoubted advantage of conciliation is the ability to get speedy access to a process that may produce a satisfactory outcome for the parties in a short span of time.

(iv) Maintains Cordial Relationships between Parties

At times, resorting to the adversarial mechanism for resolution of the dispute, it ruptures the relationship between the parties. Especially for commercial organizations litigation, where one Party wins the dispute at the other Party's expense. The business relations between organizations and their stakeholders may turn sour as their important dealers, vendors, customers, agents, etc. may stop dealing with them after the outcome of the dispute. Therefore, the goal should be to create a mutually beneficial association with all its stakeholders and thus for resolution of disputes, the organization adapts a process which creates a win-win situation for both. Conciliation enhances the prospect of the disputing parties to continue their business relationship during and even after the proceedings as it fosters long term relationships.

Courtrooms have often been compared to battlefields or playing fields. The adversarial system by which legal disputes are settled promotes the idea that legal controversies are battles or contests to be fought and won using all available resources. An adjudicatory dispute resolution by means of litigation invariably leads to bitterness, hostility and enmity between the parties to the lis, as the losing Party may continue to nurture a grievance against the winning Party. The gloating by the successful party also aggravates the situation. In a civilized society, parties are expected to accept the decision of court with grace, but in reality, it seldom happens.

Conciliation enhances the prospect of the disputing parties to continue their business relationship during and even after the proceedings as it fosters long term relationships.

Conclusion

It can be affirmably concluded that the inclusion of Conciliation as the mode of Alternate Dispute Resolution in the Act is certainly a significant step for encouraging parties to opt for it and with no ambiguity it can be stated that Conciliation holds great potential providing a lasting resolution to the dispute in question.

Further, for benefitting and safeguarding the commercial relationships of the parties in dispute and considering the efforts, time and money involved, Conciliation draws out to be the most efficient form of dispute resolution with various reasons, starting from the status of the Settlement Agreement signed between the parties and its acknowledgement equivalent to an Arbitral Award.

It is also noticeable that the tailored Conciliation process in no manner embolden the participation of legal counsel during the proceedings, making it completely flexible. Conciliation, if used to its core best, holds significantly large advantages as an ADR mechanism. However, unfortunately in reality, Conciliation is not being utilized to its full potential and possibilities by the parties in dispute.

Agreeably, it can be concluded by saying that it is time to appreciate the utility and usefulness of Conciliation and henceforth take necessary measures to disseminate, advocate, encourage, popularise and optimally utilise Conciliation as an effective ADR mechanism. ■

Corporate Business Sickness – Causes, Revival and Survival

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Corporate Businesses are setup to operate and live a long life. They are not setup to die at their infancy stage, shortly after their incorporation. However, during their life span, they often and frequently face multi-facet problems of both mild and serious nature. Many times, some of such problems happen to be so serious that they even threaten the very survival of the business. The basic four ingredients on which business survival rests are Profits, Growth, Financial Stability and Liquidity. Currently, even during the last decade, since 2008 onwards of the slowdown of Global Economy, many Corporate Businesses have closed and wound up. Hence, it is now high time to think deeply and probe the probable reason for giving rise to such said business conditions. Read on to know more…

Businesses are setup to operate and live a long life. They are not setup to die at their infancy stage, shortly after their incorporation. However, during their life span they often and frequently face multi-facet problems of both mild and serious nature. Many times, some of such problems happen to be so serious that they even threaten the very survival of business. The basic four ingredients on which business survival rests are Profits, Growth, Financial Stability and Liquidity. Currently, even during past twelve years since 2008 onwards of slowdown of global economy, many businesses have either closed and wound up, or are at the verge of closed down and in order to survive they had to retrench a substantial number of employees from their employment, resulting in a mass unemployment. Such retrenchment has also resulted in dissatisfaction among the employees in general. It has happened so, even when these businesses are availing the services of talented MBA Graduates of renowned Global Business Schools. Hence, it is now high time to think deeply and probe the probable causes giving rise to such said business conditions. This article seeks to identify such causes and suggest remedial actions.

Causes of Business Sickness and Remedies

Business sickness is the result of cumulative effect of several factors which are generally co-related and interlinked to each other. While most of such factors are of Monetary nature, some of them are of Perceptional, Macro-Economic, Socio-Environmental nature. The Monetary and the Perceptional causes are mainly internal and can be controlled by Corporate Management. The Macroeconomic, Socio-environmental causes are mainly external over which corporate management has practically no control.

A. INTERNAL CAUSES

1. Monetary Causes

(i) Adversity in profits

By adversity in profit, we mean continuous fall in profit over the period of time as a result of which the positive profits continue falling and over the period, turned into loses. Fall in profit is caused either by a fall in revenue or an increase in cost and expenses or cumulatively both of them. For ascertaining the precise and proximate causes of adversity in profits, resulting from afall in revenue or increase in cost, a comparative in-depth and detailed analysis of revenue and cost is vital.

Profits can be improved (and loses curtailed) by

- augmenting the generation of revenues from sales, services and other activities, and
- controlling and curtailing the related cost and expenses.

The revenues can be augmented by

- value addition of product and services through improving product quality and product use and betterment of services rendered.
- Effective marketing efforts such as marketing several individual products as a single product package, providing attractive incentives to the customers, and concentrating on high value items.
- Concentrating on high Profit-Volume Contribution Ratio products and services.

The Cost can be controlled and curtailed by

- Efficient and effective inventory control.
- Reduction/ minimization of production cycle time span.
- Linking wages/salaries with productivity.
- Elimination of non-viable discretionary costs.
- Standard costing and budgetary control.
- Elimination of high cost / low PV contribution ratio products and services.

From the above exposition, it is evident that analysis, planning and management of profit, requires basic and understanding of three main subjects/spheres of management studies, namely Production Management, Marketing Management and Financial Accounting. The control of costs and betterment of product quality fall primarily within the ambit and scope of production operation management. The augmentation of revenue through value addition and pricing policy/mechanism is primarily a subject matter of Marketing Management. The techniques for analysis and evaluation of costs and revenues mainly form part of Financial Accounting subject. It is also important to realize and understand that these three subjects are not totally mutually exclusive and independent but are even interlinked with each other. For instance, Inventory Control which is an important factor in Profit Management, is a subject which is taught in detail in Production/Operations Management, and also in Cost Accounting and Management Accounting branches of Accounting subjects. Though it is not taught in Marketing Management but in our view, Inventory Control of marketable (Finished) goods/trading goods is a topic/subject which should form part of Marketing Management. It should also be realised and understood that as the investment in Inventories, forms a substantial portion of Working Capital, and it also ropes in the 'Subject' of Financial Management as well. Thus, management of profit involves and requires an in-depth, integrated and inter-disciplinary understanding of Production / Operation, Marketing, Finance and Accounting subjects.

(ii) Decline in growth

Growth in common parlance means the increase, augmentation or development of a substance. In the context of a business, it means an increase in its activity base and it is measured in terms of augmentation or increase in quantity and monitory value of trading activity, physical assets and owner's capital. Growth and profit are co-related. Generally, there is a positive correlation between them. Profit yields positive growth while loss yields negative growth. However, in some cases there may also be a negative correlation between them and even a decline in growth, despite an increase in profits. It can be so when a product yielding loses is eliminated from the trading activity as a result of which the overall profit will increase but the sales volume will decline, and yet despite a decline in sales volume the physical assets and the owner's capital will increase, consequent to increase in profit.

Growth of business is primarily the result of Product Market Matrix. A business can attain growth through:

- Product Diversification – may be done by adding new products and expending the product's base. The new products may be introduced and marketed in existing markets areas or in new markets areas or in both, and either along with existing products or independently.
- Market Expansion – may be done by venturing into and developing new market areas for marketing its existing and new products.
- Intensive Marketing – may be done by undertaking intensive marketing efforts for the marketing of existing products in existing markets.

It can be realised from the above exposition that growth is mainly the result of marketing efforts. However, to the extent it is attributable to products diversification which involves the production of new goods, it also ropes in the production/operations activities. It is also vital to realise that the overall growth should be a balanced growth – it should not be confined to quantitative growth or monitory growth alone in-isolation of each other, but the concentration should always be on attaining a balanced growth, both in quantity and monitory terms cumulatively.

It is also vital to realise that the overall growth should be a balanced growth – it should not be confined to quantitative growth or monitory growth alone in-isolation of each other, but the concentration should always be on attaining a balanced growth, both in quantity and monitory terms cumulatively.

(iii) Shaking Financial Stability

Financial stability is akin to and depends on financial soundness. A business corporate is considered to be financially sound if aggregate realisable value of all its Assets is greater than the aggregate value of all Liabilities payable by it. For the survival of a business, its financial

> From this, it can also be realised that maintenance of financial stability is mainly dependent on sound financial decisions and requires an in-depth, integrated and co-related understanding of Financial Management.

stability is as important and vital, as are its profits and growth. Financial stability depends substantially on the soundness of investment decisions. In some cases, a business corporate may not be financially stable and sound, despite its positive profits and growth, which may be due to its unsound investments and as a result of which the realizable value of its Assets may fall short of the aggregate value of Liabilities payable by it. If such short fall exceeds value of owner's equity, it is indicative of its financial insolvency, which may even result in closer or winding up of the business entity itself. It is thus important to take care and ensure that its investments are financially sound and that their realizable value is greater than their investment/book value. To ensure this, the business corporate should consider the following factors:

- Make provision for such excess of the book value of assets over its market value, by creating a reserve or provision in the books of accounts.
- If any long-term investment has been financed from short term working capital fund, then substitute/ re-arrange such short-term financing, by long term financing arrangement.

Sometimes Financial Stability may shake because of fluctuating market conditions in respect of specific investments in which the business funds are invested in context of present macro-economic conditions, the investment in real property and corporate equity shares may be considered as falling in this category. However, the depressive market conditions in some sectors of the economy are not long lasting and they do revive and recover over the period of time. And therefore, they may be considered as of temporary nature, and to meet such odd situations, it is advisable that the Business Corporate should arrange additional funds to meet the probable contingencies instead of liquidity in the assets, to the extent possible. From this, it can also be realized that maintenance of financial stability is mainly dependent on sound financial decisions and requires an in-depth, integrated and co-related understanding of Financial Management.

> Maintenance of adequate liquidity therefore, requires an in-depth integrated and inter related understanding of these spheres of Management.

(iv) Liquidity Crunch

For the survival of a business, adequacy of liquidity is also as vital as other factors namely profits, growth and financial stability. Substantially it is even more vital. Lack or crunch of liquidity may even cause a serious threat to business which may even lead to closure and winding up of business entity itself, despite its positive Profitability, Growth and Financial Stability. Liquidity refers to and means quickness in the conversion of short-term current assets and investments into cash. For adequate liquidity, it should be ensured that:

- There is no unnecessary heavy investment in trading stock.
- The aggregate amount payable to trade creditors does not exceed the aggregate amount recoverable from trade debtors.

- Period of credit allowed to trade debtors for payment, is shorter, than the period of credit obtained from trade creditors for making the payment.
- Reasonable unutilised bank overdraft limit is maintained, for meeting the business contingencies.
- The short-term investments are encashed on due/ maturity dates, without any lapse or failure.
- Invest the surplus cash funds/bank balance (over and above the extent require to meet the payment obligations), in short period deposits/ investments, in order to generate additional income.
- Restrict the withdrawals of business funds, for non-business personal purposes.

From the above exposition, it is clear that financial liquidity substantially depends on efficient management of working capital, which is primarily a topical subject of financial management. At the same time, it also involves and ropes in other spheres of management, particularly production, marketing and accounting. Generally, the substantial part of the working capital remains invested in inventories which in turn bear an impact on trade debtors and trade creditors. As has also been stated earlier, Inventory Management is a topical subject which relates to and is considered in different spheres of management particularly Production / Operations, Marketing, Accounting and even Finance as well. Maintenance of adequate liquidity therefore, requires an in-depth integrated and inter related understanding of these spheres of Management.

2. Perceptional Causes

(i) Erosion in satisfaction of stake holders

For the smooth working of business operation and its survival, satisfaction of its various stake holders is essential. Its main stake holders include Employees, Finance Lenders (Banks and Financial Institutions) and Customers. If any of the stake holders particularly the Employees, the Finance Lenders (Banks and Financial Institutions) or the Customers is not satisfied with the operation of the business corporate, that may even pose a serious threat to the survival of business entity itself. Unsatisfied Employees may even leave for employment elsewhere, which will adversely affect the normal production and other business activities. The dissatisfied loan Creditors may start pressing for the repayment of their loan amounts which might create an adverse effect on liquidity. Dissatisfaction amongst Customers may result in substantial declined in demand for its products and services, which may in turn have an adverse effect on Profits and Growth. Hence, it is vital for business corporate that all of its stake holders remain adequately satisfied with its operation. It requires identification of the causes for that dissatisfaction and undertaking of suitable remedial action, to regain their satisfaction.

B. EXTERNAL CAUSES

1. The Macro-Economic Causes

Besides the above stated internal causes, the surrounding macro-economic environment within which the business corporate operates also bears substantial impact – favorable or unfavorable on working operations of a business corporate. Such macroeconomic environmental factors are external, over which the business corporate has practically no control. Some such macro-economic factors are:

(i) Slowdown of Global Economy

The slowdown of global economy during recent past since 2008 which has resulted in fall in demand, which in turn has resulted in an increase in the cost of products, fall in stock turnover ratio and declined in profit – so much so, that many business corporates have reported the bottom-line profit in red.

(ii) ***National Financial Policy and Regulations***

Pressure by financial institutions for prepayment and recovery of their outstanding loans, in order to improve their own financial positions – but which has adversely affected the financial stability and liquidity of the business corporate.

(iii) ***Fluctuations in Stock Markets***

Sharp fall in market values of equity shares and other securities tradable at stock exchanges – which may also adversely affect the financial stability and liquidity of the business corporate. It may also reduce the net worth of the business entities, which in turn may result in financial instability, which may further lose the confidence of the supplier's trade creditors and investors.

2. The Socio-Environmental Causes

The State/Government Policy is also an important factor which bears a significant impact on growth of a business. The State provides stimulus to and exerts control over business corporate through its policy measures, some of which are:

(i) ***Labour policy***

The States have legislated many Acts to protect and safeguards the interest of workers. These Acts aim at promoting the welfare of the workers. However, these Acts have not simultaneously imposed duties on the workers which have developed a tendency among them to pursue their rights and neglecting their duties, which has generally become a heavy burden for the business entities, particularly during their infancy stage.

(ii) ***Taxation policy***

Taxation policy of the State is an important mechanism for directing and promoting the development and growth in desired and selected geographical areas and of selected industries on the one hand and to discourage the growth of anti-social businesses by imposing curbs and heavy tax burden on the other hand.

(iii) ***Pricing Policy and control***

Price control through Maximum Retail Price (MRP) and Minimum Support Price (MSP) measures is another important mechanism of the State, for directing and promoting the development and growth of sectorial businesses.

Conclusion

When a business corporate starts facing hindrances and obstacles in carrying out its normal business operations, it is a signal of the beginning of its sickness. In such situation, the business corporate should not wait for their automatic removal but should proceed to take the advice of independent professional business consultants to diagnose and identify the causes of such hindrances and obstacles and should start taking steps, as per his advice, as corrective treatment of and recovery, from such business sickness. ■

Indian Industries in Times of nCOV-19 Crisis

The fate of Indian economy in the midst of nCov-19 is still unpredictable. The pandemic crisis has disrupted the key sectors in manufacturing, service industries and financial industries. Indian industries are facing intricacy in their survival and going through their toughest phase. Loss of income, unbearable fixed nature expenses & disruption in supply chain break the backbone of Indian industries. Even though, the Government's fiscal and monetary policies are acting as a ventilator for the industries but final fate will come only after the end of this epidemic. Read on...

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Introduction

CORONA virus, a zoonotic, originated in Wuhan, China has the repercussion of more than $2tn on the global economy. More than 190 countries are infected by this virus. India, having the second highest population in the world, has more than *1500 people infected from COVID-19 and death toll exceeds 30 till the last day of March 2020* and number is still increasing.

Lockdown of almost all industries due to this outbreak has resulted in major economic disruption over the globe. Impact of Corona on the Indian economy is estimated to be $120 billion. India has taken various steps like the financial benefit to poor through Jan Dhan accounts, 3 months moratorium on loan, infusion of ₹ 3.74 lacs Crore liquidity and many more to mitigate the negative effects of the virus and revive the sluggish economic growth. Government is planning for a second economic relief package to alleviate financial stress. The future depends on the depth of COVID-19, it's spread and duration. Its impact on Indian industries is uncertain until the end of the epidemic.

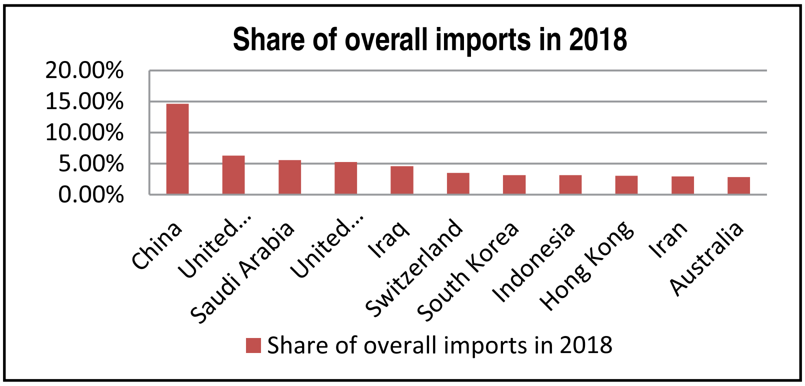
Paper is mainly based on secondary data, published report of Govt organisation, international Institutions, researchers etc.

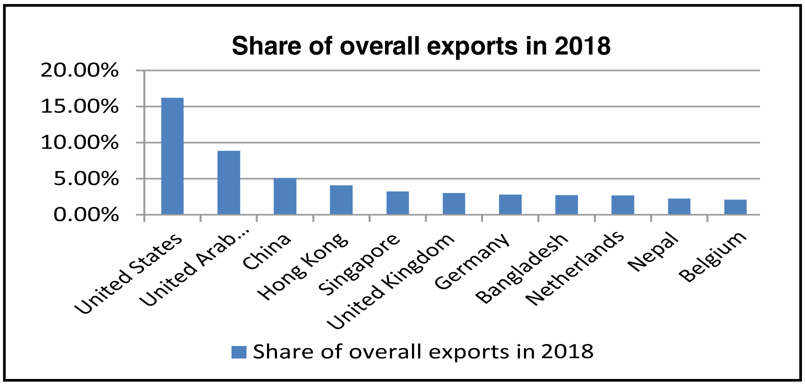
Objective and Purpose

The purpose of this paper is (1) to analyze the effect of COVID-19 on Indian industries, organized and unorganised markets, service sectors, export and import and on others and (2) to discuss the various tools used by the government to tackle the problem. We have tried to summarise the impact of COVID on certain critical manufacturing and service industries.

Impact on Indian Economy

COVID-19 was initially a public health threat but now it is an economic threat also. It is affecting the economies of all developed and developing nations. India is in the top 15 most-affected countries due to disruption in manufacturing activity all over the world. Impact of Corona on the Indian Economy, which is estimated around $120 billion, can be assessed based on three factors: Demand, Supply and Finance. Disruption in the demand and supply can be felt both externally and internally in the Indian Market. Demand reduces due to declining in income and fear of contagion. Non-availability of medicines, treatment procedures and delay in development of vaccines has created fear among the people. People are spending their saving only on essential items. This causes an overall decline in demand. On the other hand, situations like lockdown or non availability of resources, hit the manufacturing activity causing a bottleneck in the supply chain. The difference in demand & supply wipes out the liquidity from the market, which deteriorates the economic condition of India.





[1]

India, after Globalisation, is an open economy and shares 2.1% of the global export and 2.6% of the global import. It can be understood from the above graphs, India's major importers are China, US, Saudi, Iraq & UAE and major exporters are US, UAE, China and others. All these are stuck in the outbreak and fighting for the suppression of corona. Lockdown in most of these countries halts all the trade activities among the nations. India, which is depending on import for most of the production activity on these countries, is heading towards economic disruption. Only from China, India import is around 14.5% and export is 5% in 2018 approximately. A glimpse of sectoral impact to date can be analyzed.

Pharmaceutical Industry (Bitter Pills due to the shortage of key ingredients)

India ranks tenth globally in terms of value and third in terms of volume in pharma

Indian drug industry depends on Chinese import for approximately 70% of its API (Active Pharmaceutical Ingredient) and KSM (Key Starting Material) for key antibiotics, vitamins and other essential medicines like paracetamol, aspirin, metformin, amoxycillin. Lockdown led to the hike of 60-70% in the cost of APIs. The Department of Pharmaceuticals (DoP) with the collective steps of country's drug regulatory authority (DRA) & Central Drugs Standard Control Organization (CDSCO) is trying to control the situation by taking steps like the ban on the export of essential medicines and API. This has resulted in the outperformance of healthcare indices in BSE & NSE.

[1] *https://en.wikipedia.org/wiki/List_of_the_largest_trading_partners_of_India*

Industry Specific

Auto Sector (Crippled Cars due to unavailability of parts)

Contribution to Indian GDP may slip to 6% from 7.5%

Lockdown costs $2billion to Indian auto sector. In the first 3 months of 2020, there is a reduction of 10% in the revenue with more than 7.5 lakhs unsold units. TATA motors followed by Maruti, Mahindra, Ford, and Hyundai have shutted their plants as a preventive measure. In Electronic vehicle segment, China controls 75% of battery manufacturing capacity and plays a dominant role in its supply chain. This epidemic might enhance the cost of production of the vehicle and interrupt the production & supply of the electronic vehicle. However, Govt extends a helping hand by extending the validity of vehicle documents like fitness, driving license, permits, registration or other mentioned in the motor vehicle act expiring on or after 1st February 2020 till 30th June 2020.

Electronics & Durables Sector (Short Circuit in the Connections)

More than 14 lakhs Electronic retail store, 50 lacs employment &business worth of ₹ 4.75 lakhs Crore

India is the second-largest market for mobile phone and consumer durables. It imports 40% of demand as finished goods and for the rest demand, it imports raw material like Circuits, electronic chips and plastic material from China and assembles finished goods in the local market. Corona Outbreak disrupted these supplies severely. Now even though china has started its production again, the workers are hesitating in using the imported material due to threat of corona virus. Lockdown of markets curtails the demand of consumer durables. Experts anticipate a reduction of 20% in the business of this sector.

Solar Power Sectors (Cloudy & Rainy Days)

Expected to produce 80k MW energy in 2020 and 1 lac MW in 2022 in India

China, controlling 70% of market share, is the largest producer and supplier of Solar modules, frames & junction boxes used in solar projects. These account for around 60% of the cost of the project. The outbreak and lockdown in half of the world brunt the supplies of these modules, causing a decline in the supply of final goods and delaying in the deadline of ongoing projects. As per the survey conducted by Mercom India Research, 83% of participants expect a reduction of 20-30% in revenue due to this outbreak & lockdown. Indian government declares COVID-19 a force majeure situation for project developers who miss their deadlines.

Textile & Apparels (Broken Knit)

Textile & Apparel Industry earns $40 billion forex and generates more than 1 Crore employment

India is among the leading exporters of Apparels and textile raw material to the European Countries & US Market. The severe impact of COVID-19 in these countries leads to cancelling or deferring the ongoing orders. India already has a price disadvantage as countries like Bangladesh, Pakistan, Vietnam, and Indonesia are providing better material at a cheaper rate. Lockdown and slowdown in the Indian economy may hamper Indian textile international and domestic market by ₹ 1 lakh crore. The study done by CMAI (Clothing Manufacturers Association of India) estimates more than 40% drop of demand after the lockdown. Member of CMAI looks forward to wage subsidy and working capital support to cushion the fall of industries.

Agriculture Industry (Unwanted Monsoon Days)

India $14 billion Poultry market become shut under the fear of CORONA

COVID-19 has led to decrease in the export of agrarian product by 1.6%. Uneven monsoon and lockdown incident double the adverse impact of COVID-19. Untimely heavy rainfall damages the standing Rabi crops of farmers. The fear of virus and lockdown led the farmland labors to flee for their home. Non-movement of the perishable vegetables & fruits deteriorated the stock. Other Sectors like poultry, Fisheries, Meat sectors are facing the challenges due to the spread of rumors like they are the carrier of Corona. To safeguards the agrarian economy, government enhance the crop loan repayment period till May 2020 and extended a benefit of 2% interest subvention to banks and 3 % to farmers as prompt repayment incentive up to 31st May, 2020 for all crop loans up to ₹ 3 lacs which have become due or are becoming due between 1st March, 2020 and 31st May, 2020.

IT Industry (Virus in the System)

Generate 40 lacs jobs and Export contribution of $137 billion

The extended lockdown and quarantine in India restrict the movement of people and delay in on-site delivery of services. It has impacted the large discretionary spending of clients as it rattled several industries. Due to its severity many existing and ongoing project are not delivered on time and new projects are also declining all over the world. Cyber security is another issue in work from home program. Corporations are not prepared with work from home drafts like the limit of access of data, authorisation or other controls. This may raise an issue of client's data security. In the midst of this, Department of telecommunication (DoT) has provided some relaxation in WFH terms & conditions to facilitate the continuous service.

Tourism & Aviation (Quarantine causing lot of turbulence)

Govt. suspended all international flight till 14 April 2020

As per data shared by Government, around 585 international flights are cancelled by March 6. Aviation industry met with a deadly wave of cancellation of domestic and international flight's tickets. Travellers will be hesitating in using flights for domestic travel too even after the lockdown. There is a reduction of 67% of Foreign Tourist and 40% in domestic tourist in India in the first two months of this outbreak and now it is worsen more. Tourism and Aviation industries generated more than 26 million jobs and contribute 9% in Indian GDP which is now declining at a very high pace. According to industry chamber CII, this is one of the worst crises ever to hit the Indian tourism industry impacting all its geographical segments - inbound, outbound and domestic, almost all tourism verticals - leisure, adventure, heritage, MICE, cruise, corporate and niche segments

Hospitality Sector (Love for Home & Food)

Decline in occupancy rate in hotels by 20% and price by 15%

Trade, tourism & travel industry directly impacts the Hospitality industry. Lack of tourist, the lockdown of industries and fear of travel will causes deep fall the revenue graphs. ICRA estimates a downfall of 30-40% in occupancy rate and planning to revise room rate in the near future is inevitable. A major problem in the sustenance of this industry is non-operational expenses (Fixed Expenses) like rents, salary or others. The expected loss in the hospitality industry is approximately $4 billion but the major loss is borne by the employees across all sectors. Hotel owners are thinking of steep salary cuts at top, senior and middle management tier.

Cargo (Export-Import) & Transportation Service (Wheels get Square in Shape)

Contribute $200 billion in economy & Generate employment more than 4 Crore

The logistic services are directly dependent on manufacturing activity. Worldwide lockdown and closure of major ports hinder the cargo movement all over the world. In transit, goods are not allowed to be unloaded. Rail & road transport of non-essential goods is also barred. This creates chaos among the local transporter due to a decline in their income to handle the cost. Government of India issued direction for the closure of all Seaports, Airports, Land Ports, Rail & River ports to prevent the spread of outbreak. However, there is no restriction on the movement of ships carrying essential goods.

India had faced several outbreaks in past 3 decades like HIV in 1984, Nipah in 2001, SARS in 2002, H1N1 in 2009, Zika in 2018 and now Corona in 2020. However, this new epidemic, novel coronavirus, instils both fear and anxiety due to its rapid spread rate, high mortality rate, lack of medicines and vaccines and lack of information about its behaviour. Moreover, several developed countries like the US, European countries are not able to develop

tools to tackle this exponential contagion.

Conclusion with recommendation

Corona virus impact on the Indian Economy is very harsh. It has disrupted the key sectors in manufacturing, service industries and financial industries. According to a latest Economy Forecast, there are chances that India will enter into a recession cycle with the remaining world if Covid-19 persists for more time. Indian Government & RBI measures act as an antitode in this situation. But many rating agencies cut down the growth estimates of Indian Economy as follows -

Agency	GDP Estimate for fiscal 2021	Change from earlier estimate
OECD	5.1%	-1.1 %
Moody's	5.4%	-0.1%
Fitch	5.4%	-0.5%

Indian Government has deployed the forces for the successful implementation of lockdown. The government is providing essential ration, temporary housing facility, benefits to farmers for the sustainability of the economy. The government prohibited the entry of foreigners in the Indian Border and has tried to bring back the Indian people stuck in other countries. Government has used the Jan Dhan Bank account as a tool to provide direct financial benefits to the poor people. Government issues the important guidelines related to lockdown, for marriages ceremony, for cremation and on other important subjects to make people understand better.

RBI has provided financial benefits like moratorium period for NPA declaration in loans, insertion of liquidity of ₹ 374000 Crore in the market, reduction in repo rate by 75bps to 4.40%, reduction in Cash Reserve Ratio to 3% etc. RBI has allowed 2% interest subvention to the bank and 3% to the farmers on prompt repayment incentive up to 31st May, 2020 for all crop loans up to ₹ 3 lakhs which have become due or have become due between 1st March, 2020 and 31st May, 2020.

Given such scenarios, the government must plan for the collaborative efforts of medical and technical institutions to develop tools and techniques. The technical sector should be calibrated with the health sector. To reduce panic among the citizens, government should run awareness drives against rumours and fake news about the outbreak through messages, videos and other tools. With the help of non-profit organisations, government may try to provide facilities in the backward area of countries. Government must categorise goods in three categories: essential, sub - essential and non-essential. This will help in early stimulation of the economy.

After the end of Corona Chapter, government must engulf in developing high-end health equipment and devote more of its budgets in health facilities. A permanent task force should be formed to encounter such situation in its early days. Government must include in the school curriculum subjects, as a part of disaster management, that impart knowledge on how to prevent and mitigate the risks of such pandemics. ■

Global Automobile Industry and the Future Outlook

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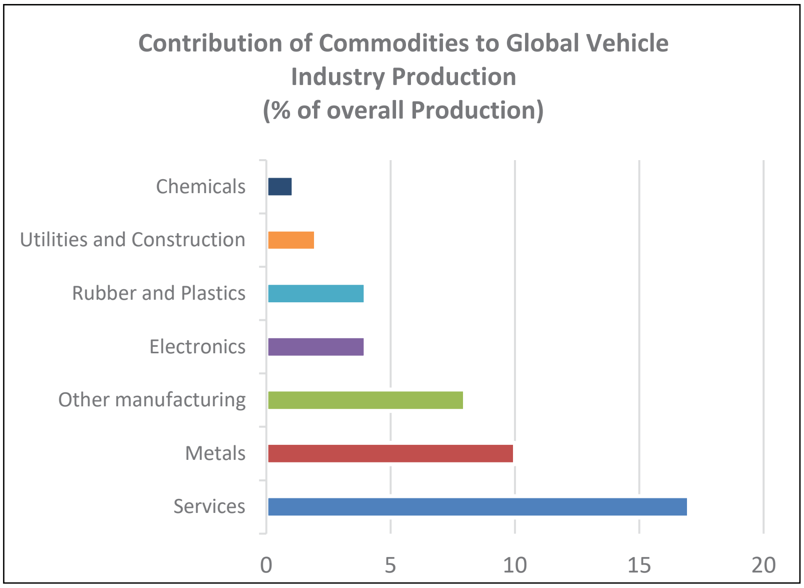
It is hard to escape the influence of the automobile industry in the global economy. The impact of the auto market goes deep, with long supply chains and large consumption of raw materials like steel, iron, aluminium, plastic, glass, carpeting, textiles, computer chips, rubber and much more. In factuality, the automobile industry is home to millions of jobs. The automobile industry is a major consumer of commodities. To know more about the global automobile industry, read on...

According to statistics, about half of the world consumption of oil, rubber, about 1/4 of the glass output, and 1/6 of the steel output is accounted for by the automobile industry. In the economy of developed countries, growth in the automotive industry by 1% causes a GDP growth of 1.5%. The indirect impact of the automotive industry on GDP is

strengthened through related industries, provided by orders from the automotive industry. The chart stated under (based on IMF Data) reflects the contribution of automobile industry to the various sectors



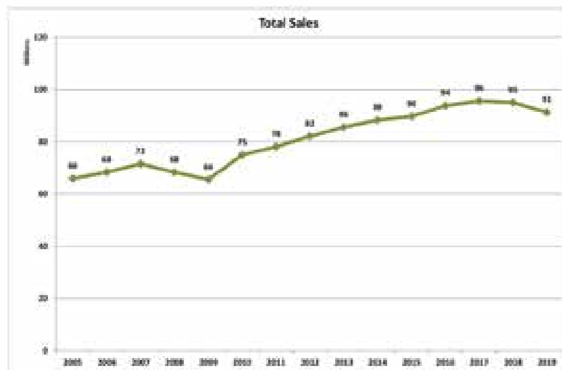
Before starting with the causes of the slowdown in Automobile Sector, let us emphasise on the contribution of Automobile sector to GDP and Employment globally:

S. No	Country	Contribution to GDP	Remarks on Employment
1	USA	3-3.5% to Overall GDP (As per Centre for Automotive Research)	The industry directly employs over 0.87 Million People and Indirectly employs 7.2 Million People
2.	India	7.5% to Overall GDP & 49% of manufacturing GDP.	The Indian Automobile sector employs 37 million people directly and indirectly.
3.	China	5% of Overall GDP	The total number of civilian passenger vehicles owned in China increased from 17.35 million to 123.27 million from 2004 to 2014
4.	Germany	5% of Overall GDP.	The industry directly employs over 0.81 Million People and Indirectly employs 1.8 Million People.
5.	Japan	5.6% of Overall GDP with	The industry directly employs over 0.803 Million People and Indirectly employs 5.5 Million People.
6.	South Korea	4% of Overall GDP	The industry directly employs over 0.32 Million People and Indirectly employs 1.83 Million People.

Source: As per International Organisation of Automobile Manufacturers

It is always believed that like MACD indicators (where the early rally or plunge in stock is estimated as a lead indicator), Automobile sector growth or slump has worked as a lead indicator of growth and slump in the economy.

The chart below reflects the real picture of the Automobile sector globally:



Source: As per International Organisation of Automobile Manufacturers

From the above chart, it is visible that the Automobiles sales numbers peaked in the first quarter of 2007 and the second quarter reflected as a lead indicator of the slump in the economy. Similarly, in mid of 2017, sales were at peak. Thanks to China which safeguarded the numbers from 2010 to 2017. From mid of 2017, a sharp downfall is visible in the charts which indicated the slump in economies. However, the market got stretched longer till the end of December 2019.

The production statistics for 2019 with YOY % increase or decrease is as under:

Production Statistics

Country	Cars	Commercial vehicles	Total	% change
China	21360193	4360472	25720665	-7,5
Germany	4661328	0	4661328	-9
India	3623335	892682	4516017	-12,2
Japan	8328756	1355542	9684298	-0,5
South Korea	3612587	338030	3950617	-1,9
USA	2512780	8367239	10880019	-3.7

Source: As per International Organisation of Automobile Manufacturers

Main Cause of Slump in Sales of Automobiles Globally

(1) Plunging Demand

Trade tensions between the US and China since 2018 shacked confidence of China. Although the Chinese economy was slowing down but the trade tensions accentuated it. Some of the big giants reported poor performance since 2018 on account of poor Chinese demand. Similarly, Ford had also pulled plans to sell a Chinese made Ford Vehicle in the US due to the impact of Trade Tariffs. Further due to Brexit, investment in UK Car industry has fallen massively as British car plants rely heavily on components imported from the EU, while most of the cars produced are exported to the European mainland. Due to no deal, Brexit in previous years resulted in a massive plunge in demand on account of uncertainties in the form of tariffs.

(2) Emission Issues & Taxation Concern

In Europe, air quality and Taxation changes have led to the big slump in diesel sales resulted in a substantial plunge in new car registration in Europe since 2018. Introduction of new CO2 emission standards makes it much more expensive to manufacture a car. From 2021 manufacturers will face big fines in the European Union if their fleet break agreed emissions limit. It is believed that carmakers will have to add on an average 1000 Euro to comply with those standards. This has shaken the confidence of the consumer to buy cars in Europe.

Further, the tax hike in Japan has also resulted in a decline in sales of Auto sales after three years.

(3) Shift of Ownership

The emergence of technologies like Ola, Uber, Meru, etc has radically changed the mindset of users from owning a car to taking car on rent with a reasonable rate. The cost of travel per mile has slashed due to the emergence of such a model which made ownership of car less appealing.

The traditional car companies are fighting to stay relevant as technology giants Waymo dive into this market. These models appeared as a boon to the industry when massive demand was created by these unicorns. But after a certain time, it has resulted into a bane for the automobile industry.

Further, if driverless cars go mainstream over the next few years then many people will opt to share or rent rather than owning a vehicle.

The fear of such model has forced companies like Ford or Volkswagen to investigate ways on electric and autonomous vehicles. Similarly, Honda invested $2.75 Billion in rival General Motors driverless unit with a view to launching a fleet of unmanned taxis.

(4) Headwinds from China

The Chinese Auto sales saw 20 consecutive months on month decline. China's deleveraging program has tightened credit for prospective buyers, and a slowing economy has hurt consumer sentiments. The Central Government subsidies for Electric Vehicles were slashed by 45% to 60% and subsidies for Electric vehicles with a range of less than 250 miles were eliminated altogether. Further for clean Blue-sky policies, the new emission regulations i.e. China 6 standards kicked in from 01.07.2019. This has resulted into an increase in the cost of vehicles resulting in lower sales. As pointed in point no. (1), the trade war was having a significant adverse impact on consumer sentiments and was one of the key reasons for plunging automobile sales.

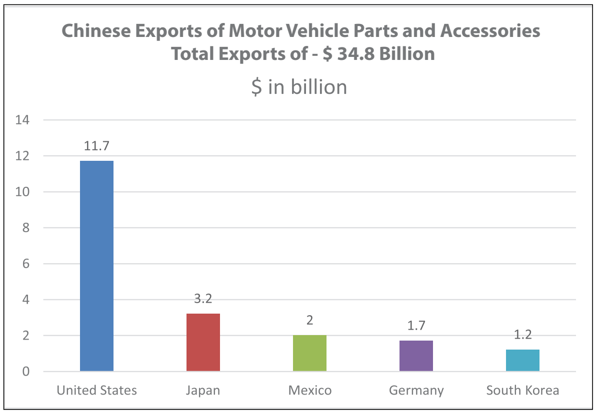
(5) Electric vehicle

In order to reduce the level of emission, the automobile industry is making a shift from the legacy of the fuel-based vehicle to an electric vehicle. The industry is going to sell more electric vehicle, but there are many obstacles in the way. Global sales of battery based electric cars surged to peak at 1.3 Million units registering massive 73% growth in 2018 but it's just a fraction of overall 86 Millions car sold in 2018. Now, this graph is declining and electric car sales are reducing.

But with the introduction of this electric vehicle concept, the intended buyers are in real dilemma of owning a car. On one side they intend to buy those electric cars but refrain themselves on account of cost. On other side, they don't see value in buying those fuel-based cars.

(6) COVID 19 impact

As the COVID-19 crisis drags on, the pandemic's economic impact is very much visible on the vulnerable automobile industry. The automotive sector is among the industries, most exposed to the negative impact of the virus. Previously due to prolonged lockdown in china, Chinese production suffered a significant hit which has resulted in production outages to many manufacturers around the world who rely on Chinese parts. And now with an extended lockdown globally (Excluding China), the automobile industry in China is also suffering from lack of global demand. China is among the world's largest suppliers of car parts, exporting motor vehicle parts and accessories worth $34.8 billion in 2018, according to the UN's Comtrade database.



Further with lack of sales from Global market due to lockdown, the major giants like Ford Motors, Tata Motors etc will see a massive downgrade in ratings which will result in expensive borrowing costs. With a lack of cash flows on account of negligible sale will result in a risk of going concern for these companies.

Scenario of the Indian Automobile Industry

The industry is one of India's biggest, considering it employs some 35 million people, directly or indirectly, and contributes more than 7% to the country's GDP.

Before telling the real scenario of the Indian Automobile Industry, we must emphasise on change in cost per KM from 2012 to 2019 from the following data:

Cost of Ownership of Car				
Particulars	**2012**		**2013**	
	Diesel	**Petrol**	**Diesel**	**Petrol**
Car Cost (Swift Dzire)	5,80,000	4,79,000		
Parking Charges in a flat (Assuming Delhi average flat-Purchase Once paid will be forever)	3,00,000	3,00,000		
Repayment though Principal	61,337	50,610	67,494	55,633
Insurance	10,271	8,482	9,757	8,058
Maintenance Cost (Service Cost)	20,000	10,000	22,000	11,000
(Assuming 2 Service in a year and later on Increase in Maintenance Cost)				
Depreciation in value (15% in WDV)	87,000	71,850	73,950	61,073
Fuel Running Cost	19,130	36,316	22,411	40,152
(Assuming 20 KM a day)				
Depreciation of Flat Parking Cost (10% wdv)	30,000	30,000	27,000	27,000
Registration Charges	23,950	29,000	-	-
Interest on Car Loan (9.5% Interest on Loan with Reduction in Interest on account of principal repayment)	52,489	43,350	46,398	38,327
Penalty on violation (Assuming 2 Fines a year)	1,000	1,000	1,000	1,000
	3,05,177	2,80,608	2,70,011	2,42,242
Running Cost per Litre	31	28	27	24

Cost of Ownership of Car				
Particulars	**2014**		**2015**	
	Diesel	**Petrol**	**Diesel**	**Petrol**
Car Cost (Swift Dzire)				
Parking Charges in a flat (Assuming Delhi average flat-Purchase Once paid will be forever)				
Repayment though Principal	74,193	61,154	81,557	67,224
Insurance	9,269	7,655	8,806	7,272
Maintenance Cost (Service Cost)	24,200	12,100	26,620	13,310
(Assuming 2 Service in a year and later on Increase in Maintenance Cost)				
Depreciation in value (15% in WDV)	62,858	51,912	53,429	44,125
Fuel Running Cost	27,837	37,696	23,839	38,478
(Assuming 20 KM a day)				
Depreciation of Flat Parking Cost (10% wdv)	24,300	24,300	21,870	21,870
Registration Charges	-	-	-	-
Interest on Car Loan (9.5% Interest on Loan with Reduction in Interest on account of principal repayment)	39,699	32,806	32,335	26,736
Penalty on violation (Assuming 2 Fines a year)	1,000	1,000	1,000	1,000
	2,63,356	2,28,623	2,49,456	2,20,015
Running Cost per Litre	26	23	25	22

Cost of Ownership of Car				
Particulars	**2016**		**2017**	
	Diesel	**Petrol**	**Diesel**	**Petrol**
Car Cost (Swift Dzire)				
Parking Charges in a flat (Assuming Delhi average flat-Purchase Once paid will be forever)				
Repayment though Principal	89,651	73,896	98,548	81,230
Insurance	8,365	6,909	7,947	6,563
Maintenance Cost (Service Cost)	29,282	14,641	32,210	16,105
(Assuming 2 Service in a year and later on Increase in Maintenance Cost)				
Depreciation in value (15% in WDV)	45,415	38,602	38,602	32,812
Fuel Running Cost	29,276	39,237	33,569	46,631
(Assuming 20 KM a day)				
Depreciation of Flat Parking Cost (10% wdv)	19,683	19,683	17,715	17,715
Registration Charges	-	-	-	-
Interest on Car Loan (9.5% Interest on Loan with Reduction in Interest on account of principal repayment)	24,241	20,064	15,344	12,730
Penalty on violation (Assuming 2 Fines a year)	1,000	1,000	1,000	1,000
	2,46,913	2,14,032	2,44,935	2,14,786
Running Cost per Litre	25	21	24	21

Cost of Ownership of Car				
Particulars	**2018**		**2019**	
	Diesel	**Petrol**	**Diesel**	**Petrol**
Car Cost (Swift Dzire)				
Parking Charges in a flat (Assuming Delhi average flat-Purchase Once paid will be forever)				
Repayment though Principal	1,07,220	89,253	-	-
Insurance	7,550	6,235	7,172	5,923
Maintenance Cost (Service Cost)	35,431	17,716	38,974	19,487
(Assuming 2 Service in a year and later on Increase in Maintenance Cost)				
Depreciation in value (15% in WDV)	32,812	27,890	27,890	23,707
Fuel Running Cost	39,970	56,098	39,634	51,669
(Assuming 20 KM a day)				
Depreciation of Flat Parking Cost (10% wdv)	15,943	15,943	14,349	14,349
Registration Charges	-	-	-	-
Interest on Car Loan (9.5% Interest on Loan with Reduction in Interest on account of principal repayment)	5,563	-	-	-
Penalty on violation (Assuming 2 Fines a year)	1,000	1,000	4,000	4,000
	2,45,489	2,14,135	1,32,020	1,19,135
Running Cost per Litre	25	21	13	12

Assumption:

(a) Total Distance Travelled is 1000KM

(b) Registration Charges is 5% of Cost for Diesel and 4% of cost for Petrol Car

(c) Insurance (1.97% of 20% depreciated Value & 12.36% Service Tax/18% GST)

(d) Car Average (Decreases with years): In Second year the decrease in average is 3% and in subsequent years the average decrease is 5% on reducing value basis.

(e) The rate of Diesel and Petrol is taken on average basis considering the stability of rate.

From the above data, if we own petrol or diesel vehicle in India on a loan basis, the cost of ownership per km for 8 years is ₹ 24 per Km for Diesel car and ₹ 22 per Km for Petrol car which is relative in terms of number of KM you drive your car.

The Indian Automobile Industry saw its golden era with a huge spurt in demand before 2019. The major factor which contributed to the industry is demand from Tier 2 and Tier 3 cities along with the financial sector giving Auto Loans. Further thanks to the ambitious infrastructure spending which Central Government undertook on account of reduced crude prices and hiked taxes. This helped them to float huge infrastructure tender year on year basis. The debt of NHAI inflated from 44,567 crores in 2016 to 1,78,867 crore in 2019. The major portion of this debt is attributed to land acquisition. This , in turn, resulted in sweet

The Indian Automobile Industry saw its golden era with a huge spurt in demand before 2019. The major factor which contributed to the industry is demand from Tier 2 and Tier 3 cities along with the financial sector giving Auto Loans.

fruits to automobile industries too. Small chunk of the amount received from compulsory land acquisition resulted in buying of premium cars or small segment cars depending on the amount of premium received in Tier 2 and Tier 3 Cities. Further enhanced portion of compensation further helped automobile industries to get demand from Tier 2 and Tier 3 Cities. Then comes the demand from ride-hailing industries like Ola Uber, Swiggy, Zomato, Food Panda etc which increased its presence on PAN India unprecedentedly. Like Uber buying 2,00,000 cars from Maruti with a whopping investment of 2600 crore. The model is debt-based but the same helped the industry with the huge spurt in demand. However, post capex of these ride-hailing industry or delivery distribution companies and spurt in crude cost (which resulted in decline floating of Infrastructure project) resulted in a decline in demand from Tier 2 and Tier 3 cities. The Tier 1 cities demand was already declining for many years and post Ola and Uber the dilemma of people completely shifted from owning a car to taking car on rent.

Further with the introduction of BSVI emission norms, the industry is forced to do capex of multibillion to comply with the norms.

Now, what changed the mindset of owning a car in India?

As discussed about the ride-hailing technology along with BS VI emission norms and EV vehicles have confused the intended buyers to refrain from owning a car. The cost impact on the industry will be huge considering the capex done for BSVI. This increase cost burden will ultimately be passed on to the customers which will make the vehicles more expensive. If the customer opts for BSIV then the fear of judicial pronouncement with respect to life of the vehicle can give setback to intended users. Whatever Government announce measure to liquidate BSIV vehicles, it will not help to boost the confidence of intended buyers.

Therefore, we see the automotive industry declined for the 17th month in a row in March (Leaving Festive season which is not comparable.

By some estimates, more than 100,000 workers, many of them contractual, have lost their jobs so far. Now post corona, fears are rising that forced lower production resulting in more job cuts in the upcoming month.

Then comes the demand from ride-hailing industries like Ola, Uber, Swiggy, Zomato, Food Panda, etc which increased its presence on PAN India unprecedentedly.

Future Outlook

Before the Corona crisis, the global automobiles saw a sharp slump in sales. In fact, there were many instances where production halts were visible in September or October for a few days. E.g. Ashok Leyland halting its production

Since the sector was heading for major slowdown since last years, so after Corona crisis the situation will further deteriorate. Even during corona crisis, we have seen companies like Hero Moto to defer the payments to vendors or giving OEMs (Original Equipment Manufacturers) to get payment from Banks on Letter of Credit (LC) basis. If debt ridden OEM opts for such option then the margins will further shrink resulting insolvency position. Further dealers of automobile will vanish if such crisis continues for a longer period as the working capital of these dealers will cause a huge dent in their margins. The ratings of debt-ridden OEMs globally will get revised to lower resulting in expensive cost of funding. Same will be applicable to main auto companies. In recent times we have seen downgrading of ratings of Tata Motors or Ford Motors. This scenario is very precarious and can result in the collapse of big giants.

At last, we can conclude that the current scenario is not at all favourable for the industry considering the domino effect of disruption in supply chain and the automobile industry needs some magic stick to get back on track. If the demand is not revived in coming months (which is likely scenario) then we can see accumulation of inventory with these companies and dealers with no real buyer. This will be an avalanche for the industries connected directly or indirectly with the automobile sector. ■

The Institute of Chartered Accountants of India

Precautionary Measures Taken To Prevent Covid-19
Protect Yourself And Those Around You

Wash your hands regularly with soap and water

Make use of alcohol-based hand rub

Avoid touching your face

Maintain Social distance of at least '6 feet' between you and others

See a doctor if you feel unwell

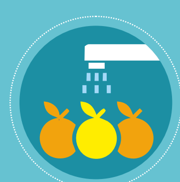
While visiting a doctor wear a mask/cloth to cover your mouth and nose

Stop shaking hands

Take special care of the elderly

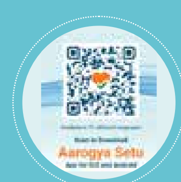
Don't share personal items

Clean and disinfect surfaces on regular basis



Wash fresh groceries and maintain a good hygiene

Stay home and avoid unnecessary travel



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Better Information on Business Combinations: Disclosures, Goodwill and Impairment


CA. Ekta Gurnasinghani **CA. Anjali Butani**

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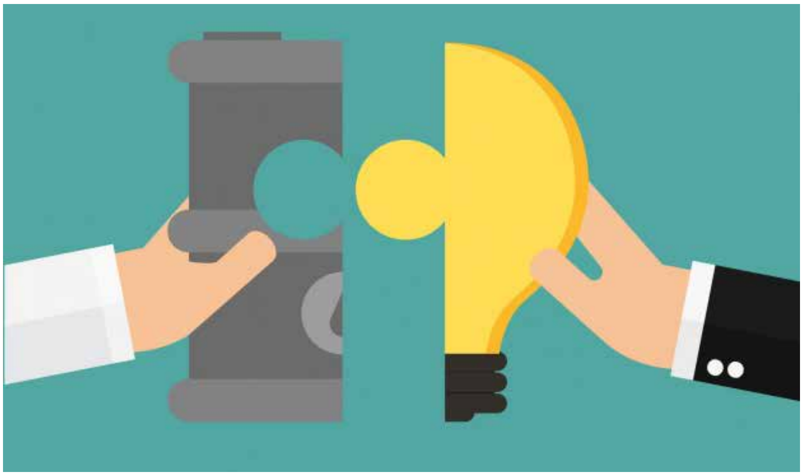
Few years after issuing IFRS 3, Business Combinations, the International Accounting Standards Board (IASB)[1], initiated an assessment called as Post-Implementation Review (PIR) to understand whether the standard was working as intended. Business combinations referred to as mergers and acquisitions are often large transactions and play central role in the global economy. Hence, it was important for the IASB to understand the stakeholders' concerns in regard to the said standard. Basis the feedback received during the PIR of IFRS 3, the IASB decided to initiate a research project called 'Goodwill and Impairment' to explore the possible improvements in IFRS 3 and IAS 36, Impairment of Assets.

In March 2020, the IASB published the Discussion Paper (DP) Business Combinations: Disclosures, Goodwill and Impairment. Read on...



Background and History

A common way for an entity to expand its operations is by acquiring another company or business i.e. mergers and acquisitions. However, acquisitions do not always perform in subsequent years as per management's initial expectations and hence, investors would like to know more about how an acquisition is performing in relation to such expectations. It is important that entities disclose requisite information of these transactions to the users of financial statements in their annual reports. In 2004, the IASB issued revised version of IFRS 3, replacing IAS 22, thereby setting out the accounting aspects of these transactions. The IASB noticed that, the users of financial statements claim that disclosures required by IFRS standards about business combinations do not provide sufficient information for them to understand how the acquired business is performing post-acquisition. In 2013, the IASB, sought stakeholders' feedback on specified matters as part of Post-Implementation Review (PIR) of IFRS 3.

[1] *IASB is an independent standard setting body of IFRS Foundation, responsible for developing a single set of high-quality globally accepted Accounting Standards, known as IFRS Standards. This article contains material from publicly available presentations and documents of IASB.*

Written under guidance of CA. Vidhyadhar Kulkarni

As part of the IASB's due process, a PIR is performed after a new Standard or major amendment to a Standard has been applied internationally for at least two years. The purpose of a PIR is to identify whether the Standard or amendment is working as intended by the IASB.

In 2015, having reviewed the stakeholders' feedback and academic research, the IASB identified the issues/ topics for further research and follow up. In 2018, based on the key findings from their research, the IASB decided to pursue identified objectives for follow-up work for the project. In March 2020, the IASB issued the Discussion Paper – *Business Combinations: Disclosures, Goodwill and Impairment*

Through this project, the IASB is investigating how companies can provide users of financial statements with better information about mergers and acquisitions (business combinations) at a reasonable cost. This investigation includes the challenging question of how companies should account for goodwill after the business combination. Better information on the transactions of mergers and acquisitions will help users and investors assess the performance of the companies entering such transactions and hold management to account more effectively for their decisions to acquire those businesses.

> Better information on the transactions of mergers and acquisitions will help users and investors assess the performance of the companies entering such transactions and hold management to account more effectively for their decisions to acquire those businesses.

Through the stakeholders, the IASB learned that impairment losses of goodwill are often not recognised on a timely basis and that impairment testing is complex and costly to perform. Few stakeholders were of the view that amortisation of goodwill should be reintroduced. Further, some stakeholders also pointed that the separate recognition and measurement of some intangible assets can be challenging. The Discussion Paper sets out IASB's preliminary views on how to respond to the concerns raised by the various stakeholders.

Summary of Key Proposals

Improving Disclosures About Business Combinations

Stakeholders highlighted the fact that entities entering into transactions of mergers and acquisitions do not typically provide enough information about the performance of acquired business post its acquisition. Such information is important as this would help investors to access how effective company's management is at acquiring businesses viz. identifying targets; paying the right price; integrating the acquired business and realising the benefits from the transactions. This will also enable the investors to hold management to account for its future acquisition decisions. Currently, IFRS 3, does not specifically require companies to disclose information about the subsequent performance of the acquisitions made by the entities. Hence, the IASB's preliminary view is that it should develop proposals to help investors with the information they need about the acquired business including management's objectives for acquisitions and mention how acquisitions have performed against those objectives. The IASB has also proposed some targeted improvements to some of the existing disclosures objectives and requirements in IFRS 3.

Further, the IASB in their preliminary views, also discussed the information entities must be required to provide that prove whether the objectives of business acquisition are met. IASB was of the view that no single metric could provide investors with adequate information for evaluating the subsequent performance of the acquisitions. As the acquisition cost is often relatively large, it is significant for the management of the acquiring company to internally monitor the acquisition. The IASB proposes the following disclosures about performance of acquisitions.

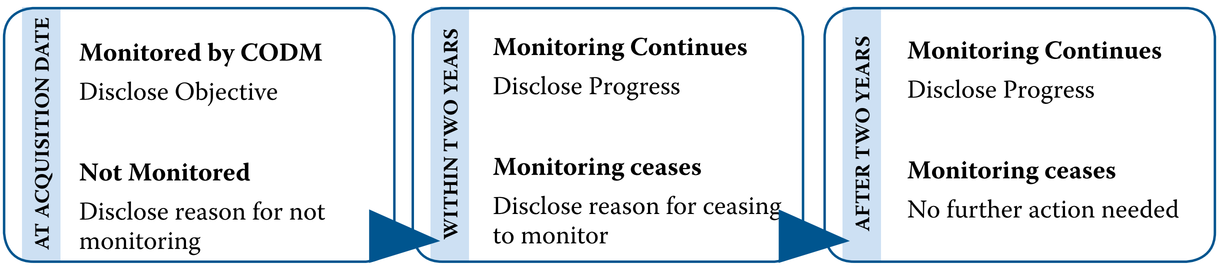
At the Acquisition date
• Strategic rationale for acquisition
• Objectives for the acquisition
• Metrics for monitoring achievement of objectives
After the Acquisition date
• Progress towards meeting acquisition objectives

The IASB further proposes to amend paragraph B64(d) of IFRS 3, wherein instead of disclosing the primary reasons for an acquisition, the entity should rather disclose the strategic rationale for undertaking an acquisition and management's (Chief Operating Decision Maker (CODM) objectives for the acquisition.

Therefore, the IASB's preliminary view for the entities to disclose the following:

- in the year in which an acquisition occurs, the metrics that management (CODM) will use to monitor whether the objectives of the acquisition are being met;
- the extent to which CODM's objectives for the acquisition are being met using those metrics, for as long as CODM monitors the acquisition against its objective;

  if CODM does not monitor whether its objectives for the acquisition are being met, that fact and the reasons why it does not do so;
- if CODM stops monitoring whether its objectives for the acquisition are being met before the end of the second full year after the year of acquisition, that fact and the reasons why it has done so;
- if CODM changes the metrics it uses to monitor whether management's (CODM's) objectives for the acquisition are being met, the new metrics and the reasons for the change.

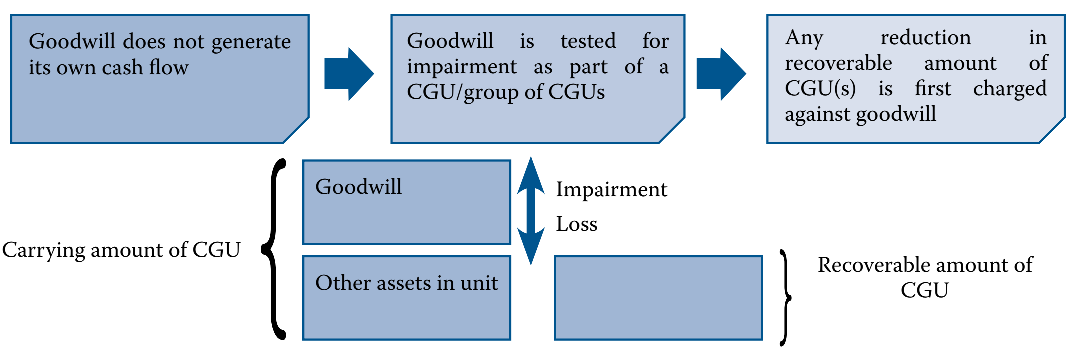


Goodwill: Impairment and Amortisation

Before we understand the proposals stated by the IASB in the said context, let us first re-visit the concepts of Goodwill, Impairment and its accounting:

Goodwill and Impairment Explained

- Goodwill is an asset recognised when one company acquires another company.
- Goodwill reflects expected future economic benefits produced by acquired assets and liabilities in a merger or acquisition that are not recognised separately.
- Each year, the company that makes the acquisition assesses whether the goodwill is impaired.
- Applying IAS 36, Impairment of Assets, the impairment test of goodwill compares the carrying amount of the group of assets containing the goodwill to the recoverable amount of that group of assets (Cash-generating unit or CGU)
- CGU is the smallest identifiable group of assets that generates cash inflows that are largely independent of the cash inflows from other assets or group of assets.



Proposals in the Discussion Paper

During the feedback received on the PIR of IFRS 3 stakeholders were of the view that recognising impairment losses on goodwill provides useful information about the acquisition. However, the impairment losses on goodwill are often recognised too late, long after events that caused these losses. They also reported that impairment test is considered to be difficult and costly to perform.

In view of these concerns, the IASB considered:

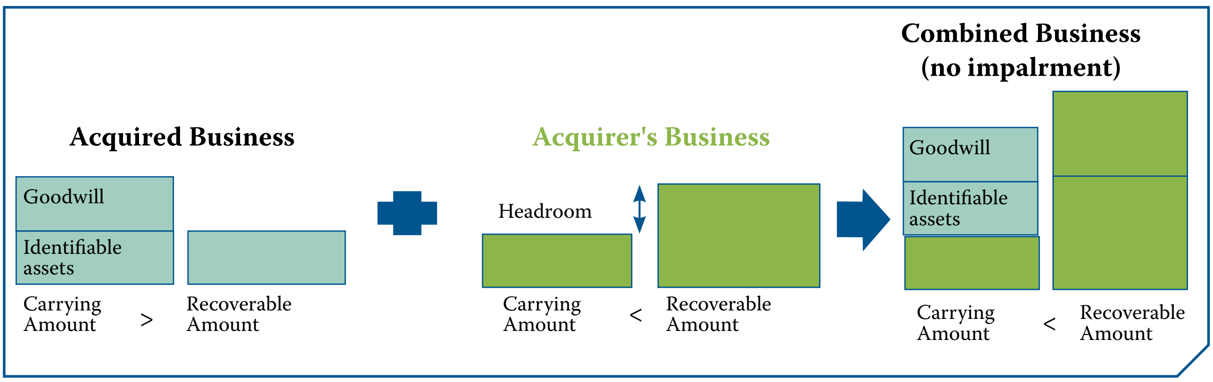
(I) Whether the impairment test could be made more effective?

The IASB's preliminary view is that it should remove the mandatory annual quantitative impairment test of CGUs containing goodwill. Instead, companies would be required to perform quantitative tests only when there is an indication of impairment. This change would reduce the cost of performing the impairment test.

to understand "Shielding" and how it impacts the impairment testing and goodwill accounting.

Shielding – Illustration

Headroom is the amount by which the recoverable amount of a CGU exceeds the carrying amount of its recognised net assets. Headroom largely arises because not all of the value of a business is recognised on a company's balance sheet. For example, a company's balance sheet does not include some intangible assets that the company generates internally.



Few stakeholders informed the IASB that the impairment test does not identify impairment of goodwill on a timely basis. Upon analysis, the IASB identified two broad reasons for concerns about the possible delay in recognising impairment losses on goodwill:

- **Management optimism**
  Management's estimates of future cash flows may be too optimistic. In the said regard, the IASB decided that the risk of over-optimism exists in any impairment test of CGUs and is not just restricted to CGUs that contain goodwill and it is an application issue that would not be resolved by amending the standard.
- **Shielding**
  Goodwill is 'shielded' from impairment by, for example, the headroom of a business with which an acquired business is integrated. Before we state the IASB's preliminary views on shielding, it is important

As can be seen in the above example, the acquired business is not performing as well as expected.

If the acquired business were run independently of the acquirer and tested for impairment separately, an impairment loss on goodwill would be recognised because the value (recoverable amount) of the acquired business is lower than its carrying amount.

However, if the acquired business is integrated with the acquirer's business, as is often the case, the impairment test looks only at the combined business.

In that case, despite the poor performance of the acquired business, no impairment loss is recognised because the recoverable amount of the combined business is higher than its carrying amount.

The headroom of the acquirer's business absorbs the decline in the recoverable amount of the acquired business, thus shielding the goodwill from impairment

The IASB'S Preliminary Views on Reducing The Effect of Shielding

The IASB explored whether it could design an impairment test that reduces the effect of shielding, resulting in earlier recognition of impairment losses on acquired goodwill.

The IASB's preliminary view is that it is not possible to eliminate shielding from the impairment test because goodwill has to be tested for impairment together with other assets and these groups of assets could contain headroom.

After extensive work, the IASB's preliminary view is that significantly improving the effectiveness of the impairment test for goodwill at a reasonable cost to companies is not feasible. However, the IASB would welcome any suggestion stakeholders have for making the impairment test more effective.

Therefore, the impairment test cannot always signal how well the acquired business is performing. The IASB has developed the disclosures discussed above to meet investors' need for timely information about the performance of acquisitions

If the impairment test is performed well, the test can be expected to achieve its objective of ensuring that the carrying amount of a group of assets containing goodwill as a whole is not higher than its recoverable amount.

(II) Whether goodwill should be amortised?

After deciding that the approach in IAS 36 for testing goodwill for impairment cannot be significantly improved at a reasonable cost, the IASB considered whether to develop a proposal to reintroduce amortisation of goodwill.

In this context, the IASB has heard the following arguments from stakeholders who support either of the two approaches:

Amortising goodwill

- feedback from PIR of IFRS 3 suggests that impairment test is not working as the IASB intended
- carrying amounts of goodwill are overstated and, as a result, a company's management is not held to account
- amortisation is simple because it targets acquired goodwill directly, which the impairment-only model cannot
- goodwill is a wasting asset, which reduces as the benefits are consumed. Amortisation is the only way to show the consumption of goodwill
- amortisation would eventually make impairment testing easier and less costly because amortisation would reduce carrying amount of goodwill, making a large impairment less likely

Retaining the impairment-only model

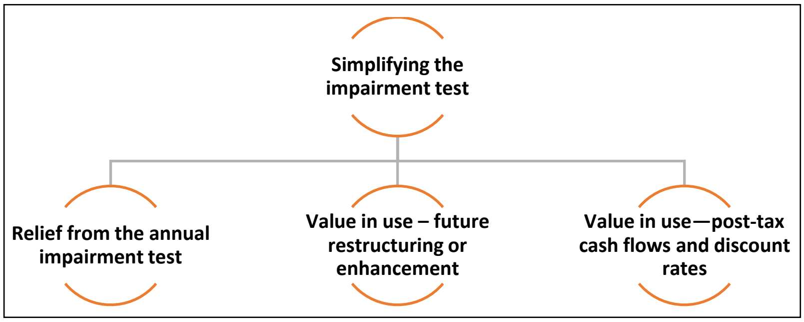
- the impairment-only model provides more useful information than amortisation which is arbitrary—many investors would ignore it and many companies would adjust it from their results
- if applied well, the impairment test achieves its purpose of ensuring the combined carrying amount of the cash-generating unit (or group of units) to which goodwill has been allocated is not higher than the combined recoverable amount
- benefits of goodwill are maintained for an indefinite period of time, so goodwill is not a wasting asset with a finite life
- amortising goodwill would not significantly reduce the cost of impairment testing, especially in the first few year

> The IASB expects removing the requirement to use pre-tax cash flows and pre-tax discount rates would provide more beneficial and understandable information that can be aligned with management estimates and industry practices.

There have always been divergent views on whether goodwill should be amortised or should only be tested for impairment. The IASB understands that both accounting models for goodwill—an impairment-only model and an amortisation model—have limitations. No impairment test has been identified that can test goodwill directly, and for amortisation it is difficult to estimate the useful life of goodwill and the pattern in which it diminishes. The IASB reached a preliminary view that it should retain an impairment-only approach, but this was by a small majority and so the IASB would particularly like stakeholders' views on this topic. The IASB have stated that stakeholders are invited to provide new arguments to help the IASB decide how to move forward on this topic

(III) Whether the impairment test could be simplified?

Having reached a preliminary view that it should retain an impairment-only approach, the IASB thought to simplify the impairment test to address some of the concerns raised by stakeholders, without making the test significantly less robust. The IASB considered proposals intended to make the impairment test less costly and less complex, while improving some aspects of the information it provides, each proposal is discussed in detail below:



Relief from The Annual Impairment Test

A company is required to perform annual quantitative impairment test of CGUs containing goodwill, even if there is no indication that the CGUs may be impaired. Some stakeholders have informed the IASB that performing the impairment test is complex, time-consuming and costly because it has to be done annually, irrespective of whether there is any indication of impairment. Stakeholders have also stated that the impairment tests requires significant judgements and that the benefits are limited as goodwill is not tested for impairment directly and thus, may not always justify its cost.

Stakeholders have suggested that impairment testing of goodwill should be necessitated only when there is a triggering event to indicate possible impairment.

The IASB considered the feedback of stakeholders and thereby deliberated factors such as the cost savings from providing that relief, whether that relief would make the impairment test less robust and whether the same relief should apply for intangible assets with indefinite useful lives and intangible assets not yet available for use.

The IASB's preliminary view is that it should remove the mandatory annual quantitative impairment test of CGUs containing goodwill. Instead, companies would be required to perform quantitative tests only when there is an indication of impairment. This change would reduce the cost of performing the impairment test.

This proposal would also apply to intangible assets with indefinite useful lives and intangible assets not yet available for use.

As a company is required to assess at the end of each reporting period whether there is any impairment indication, this would place more reliance on identifying indicators of impairment. Hence, the IASB plans to evaluate whether the list of indicators in paragraph 12 of IAS 36 needs to be updated.

Value in Use – Future Restructuring or Enhancement

In measuring value in use, IAS 36 requires a company to estimate cash flow projections for an asset in its current condition. IAS 36 restricts these cash flow projections in a manner that they are required to exclude future cash flows expected to arise from a future restructuring to which the company is not yet committed, or to arise from improving or enhancing the asset's performance.

Stakeholders have explained to the IASB that determining which cash flows to exclude makes the test costly and complex. Moreover, excluding such cash flows requires management to adjust its financial budgets or forecasts.

The IASB considered this request and expects that removing the restriction on these cash flows would reduce cost and complexity, make the impairment test less prone to error and make the impairment test easier to understand and perform.

Accordingly, the IASB's preliminary view is that it should develop a proposal to remove from IAS 36 the restriction on including cash flows arising from a future restructuring to which a company is not yet committed or from improving or enhancing an asset's performance. The cash flow forecasts would still need to be reasonable and supportable.

This proposal would apply to all assets and CGUs within the scope of IAS 36.

Value in Use—Post-Tax Cash Flows and Discount Rates

In measuring value in use, IAS 36 requires a company to estimate pre-tax cash flows and discount them using pre-tax discount rates. It also requires disclosure of the pre-tax discount rates used.

Stakeholders have indicated that determining pre-tax discount rates is costly and complex. Further, pre-tax discount rate is hard to understand, is not observable and does not provide useful information because in practice, valuations of assets are generally performed on a post-tax basis.

The IASB expects removing the requirement to use pre-tax cash flows and pre-tax discount rates would provide more beneficial and understandable information that can be aligned with management estimates and industry practices. This would also better align value in use in IAS 36 with fair value in IFRS 13 Fair Value Measurement and maintain consistency with an amendment made in 2008 to IAS 41 Agriculture (for the discount rate) and an amendment to IAS 41 (for cash flows) proposed in 2019.

The IASB's preliminary view is to develop a proposal to remove the explicit requirement to use pre-tax cash flows and pre-tax discount rates in estimating value in use. The IASB would require an entity to use internally consistent assumptions for cash flows and discount rates and disclose the discount rates used, irrespective of whether value in use is estimated on a pre-tax or post-tax basis. This proposal will apply to all assets and CGUs within the scope of IAS 36.

Other Topics

Recognising Acquired Intangible Assets Separately from Goodwill

Paragraph B31 of IFRS 3 requires an acquirer to recognise, separately from goodwill, all identifiable intangible assets acquired in a business combination.

The majority of other stakeholders—mainly preparers, auditors and standard-setters—responding to the PIR of IFRS 3 provided mixed views on recognising intangible assets separately from goodwill

The IASB, therefore, considered stakeholders' feedback about recognising intangible assets separately from goodwill. However, in the IASB's view there is no compelling evidence to change existing requirement. Further, aligning the accounting treatment for all intangible assets is beyond the scope of this project. Accordingly, the IASB's preliminary view is that it should not develop a proposal to change the recognition criteria for identifiable intangible assets acquired in a business combination.

Recognising intangible assets separately from goodwill provides useful information because:

the information provides a better basis for understanding what a company has paid for; and

separate recognition also ensures that intangible assets with a finite useful life are recognised separately and amortised.

Seperate recognition does not provide useful information because:

valuing intangible assets is complex, subjective and costly;

some intangible assets such as brands and customer lists are difficult to identify and value;

similar intangible assets are not recognised if they are generated internally.

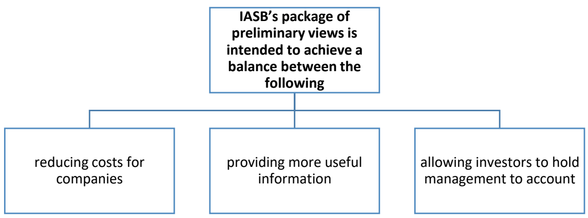
Total Equity Excluding Goodwill

Goodwill is different from other assets because it:	Presenting total equity excluding goodwill on the balance sheet helps to:
•can only be measured indirectly; and •cannot be sold separately.	•draw attention to companies whose goodwill constitute a significant portion of their equity; and •make this amount more prominent.

The IASB's preliminary view is that it should develop a proposal to help investors better understand companies' financial positions by requiring companies to present on their balance sheets the amount of total equity excluding goodwill. There may be some presentation issues in terms of accommodating the amount of total equity excluding goodwill into the balance sheet format. However, the IASB is deliberating other ways in which a company could present the amount on the balance sheet. For example, the amount of total equity excluding goodwill could be presented on the balance sheet as a free-standing amount.

XYZ Group – Extracts from Statement of financial position as at 31 March 20XX	
Total Equity	INR 10,000 Crores
Goodwill	INR 3,000 Crores
Total equity excluding goodwill	**INR 7,000 Crores**

Overall Package of Preliminary Views –



Overall Package of preliminary views	better disclosures about business combinations
	cannot make the impairment test more effective at a reasonable cos
	should not reintroduce amortisation of goodwill but the IASB would welcome any new arguments or new evidence that stakeholders have on this topic
	should provide relief from the mandatory annual quantitative impairment test
	should improve the calculation of value in use
	should continue to require identifiable intangible assets to be recognised separately from goodwill
	should introduce a requirement to present total equity before goodwill
What Next	IASB's deadline for comments on the Discussion Paper is 31 December 2020.
	IASB is mainly seeking comments on: - the usefulness and feasibility of its new disclosure ideas; and - new evidence or arguments on how to account for goodwill.
	IASB would undertake comment letter analysis and redeliberation in H1 2021 whether to develop an exposure draft containing proposals to implement any or all of its preliminary views.
	IASB is also considering stakeholders outreach by way of (virtual) roundtables in various jurisdictions for all stakeholders and focused investor outreach

What is ICAI doing?

- On 30th April 2020, the Accounting Standards Board (ASB) of ICAI with the aim to provide an opportunity to the various stakeholders in India to raise their concerns at the initial International Standard-setting stage itself, has invited comments on the Discussion Paper issued by the IASB. https://www.icai.org/new_post.html?post_id=16468&c_id=219
- Comments should be submitted using one of the following methods, so as to be received not later than 30th June 2020.
  - Submission of comments electronically by visiting page **http://www.icai.org/comments/asb/**
  - Submission of comments by emailing to **commentsasb@icai.in**
- The ASB also proposes to organise webcasts on the said Discussion Paper, details of which would be announced in due course.

Is there a similar project at Financial Accounting Standards Board, US?

- IFRS 3 was developed in a joint project with the FASB and is converged in many respects with US GAAP on this topic.
- On July 9, 2019, the FASB staff issued an Invitation to Comment (ITC) to obtain input from stakeholders focusing on public business entities on the subsequent accounting for goodwill, the accounting for certain identifiable intangible assets, and the scope of the project on those topics.
- The comment period for this ITC ended on October 7, 2019 and one-hundred three letters were received.
- The FASB will consider comment letter feedback on the Invitation to Comment at a future Board meeting.
- FASB's updates on this project can be accessed at https://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdateExpandPage &cid=1176171566054# ■

Impact of COVID-19 on Internal Audit

Internal Audit comes with an objective of delivering assurance and consulting activity designed to add value and improve an organization's operations. The underlying function of conducting an Internal Audit is to measure the risk exposure of the firm to various known and unknown factors and establish control measures for the same. The fundamental characteristic of risk is that it is uncertain. One such uncertain risk that has currently prepossessed our world is in the form of Novel Corona Virus pandemic (COVID-19). Read on to know more…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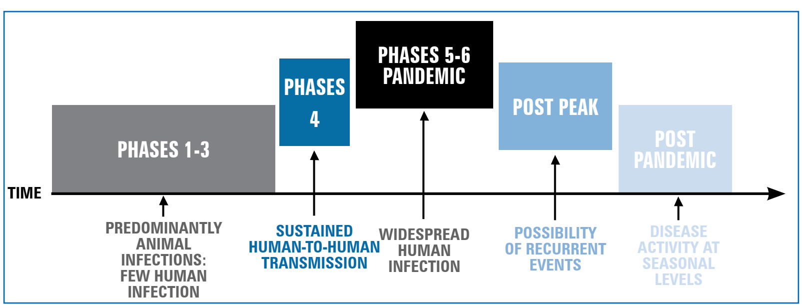
Over a short period, this pandemic has impacted the human life in more ways than one, its impact is visible in threat to life both physically as also economically. With time, and with convenience of movement, coupled with lack of serious steps, the pandemic has shifted its hub from China to geographies such as USA and Mainland Europe.

The spread of the pandemic and its impact on countries, businesses, processes, lives, etc cannot be ignored. Since the global outbreak of COVID-19, the panic and fear among the public throughout the globe is spreading faster than the virus.

The corona virus outbreak across the countries has hampered the local economy, which has had multiplying results on the large and small-scale organizations in each sector of the economy. This crisis also has significant economic effects on companies, for example due to restrictions in production, trade and consumption or restrictions due to travel bans or non-availability of man-power for operations which require manual interface. According to many economists, the global economy might now grow at its slowest rate since the 2008 crisis.



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If we listen to any business owner during this time, there would be hardly anyone saying that the pandemic has not affected them. One of the critical things coming out in this time, is the focus on **'Cash flow'.** Businesses have realised the criticality of having cash on book and money in bank. Businesses, which were less leveraged, and operating at lower fixed costs, will find it easier to drive through this fight against pandemic. One of the key business owners has recently made a comment that these are time when one should look for 'Cash above EBITDA'. As liquidity dries up in the market, a company, which will operate on immediate cash flow with less margin, will be much better placed than a company will in high margin business with low cash flow.

Further development, duration and impact of the coronavirus cannot be predicted. However, a safety net has to be established in order to minimize the risks and losses of the companies to the minimum level possible.

Role of Internal Audit

Following the outbreak, the organisations, their environments, and their ways

> As liquidity dries up in the market, a company, which will operate on immediate cash flow with less margin, will be much better placed than a company will in high margin business with low cash flow.

of working are evolving rapidly and in ways that had not been previously envisioned. With a rapidly changing landscape, to help the company adapt in response, Internal Audit must also change whilst continuing to play the role of critical assurance, advising management and board in face of changing risk factors and aid to anticipate and mitigate risk.

Individual country situations differ greatly and are changing rapidly and dramatically, so it becomes imperative for Internal Audit functions to keep abreast of governmental and regulatory announcements, and follow centrally coordinated organizational responses. However, the impact on companies differ and Internal Audit must consider how it affects their business and review them regularly.

It is business critical that Internal Audit is proactive and prepared, while remaining pragmatic, as the pandemic situation continues to evolve. As the pandemic continues, Internal Audit Heads need to consider many things, which include some of the key considerations as set out below:

Key Considerations for Internal Audit

Internal audit plays a vital role in the pandemic from multiple perspectives. This includes some of the factors such as –

a. to review the organization's business continuity, crisis management and pandemic preparedness

b. need to check the organization's cash management practices also arises to enable it sail through the unexpected crisis

c. provide immediate services for the risk mitigation, and

d. later to-return-to-business-as-usual effort

Internal Auditors should undertake such activities in line with the standard of internal audit with focus and having regards to the deviations required looking at the current scenario. Auditors may need to consider developing alternative procedures to gather sufficient appropriate evidence to support their opinion on the quality of internal controls. Internal Auditors will also need to consider the following considerations:

a. Approach for Internal audit will need to be agile and lean. It will need to focused on short term and regular updates to mirror the changing pace of risk and assurance needs.

Approach for Internal audit will need to be agile and lean. It will need to focused on short term and regular updates to mirror the changing pace of risk and assurance needs.

b. To optimise on limited management bandwidth during times of crisis, it will be critical for Internal Auditors to focus on priority areas, which are material to business. For the prioritisation of audit plan, it will also be important to consult and take formal approval of the Audit Committee for scope modifications

c. In certain cases, the internal audit staff may be called upon to support / perform management functions. It will be important for Internal Audit Head to discuss with the Audit Committee and formally agree with them if resources can be re-purposed to support with projects or any other critical activities of organization.

d. Need to look for ways to avoid overlaps with other service providers such as External Auditors, Compliance, etc

e. To keep an eye on new / elevated risks, in discussion with the different stakeholders

f. To consider different ways to operate and deliver work in time, such as using virtual modes of communication for meetings / reviews, talk-throughs, etc

g. Availability of information / audit evidence with the auditees in electronic mode

h. Deploying tools for Analytics to deliver work focused on coverage and quality

Challenges for Internal Audit

The COVID–19 pandemic has all the ingredients to send many organisations to the wall and Internal Audit is not safe from this as well. A well planned out Internal Audit can be jeopardized in such situations. Audit teams, which were well settled, are suddenly facing major issues. Following are some of the key challenges that IA faces in these times:

- ***Low Staff motivation:*** It is necessary to keep the staff motivated and support them whilst working in remote environments. Weekly team catch-ups, check-ins to discuss any trivial issues or workload, daily stand-ups to track the work are some ways to connect with the staff professionally. Virtual coffee sessions can be planned and success stories can be shared to maintain a positive outlook and a personal touchpoint.

- ***Business existence lost:*** Internal Audit can maintain its existence in the business by increasing the number of meetings with key stakeholders in order to develop strong relationship, credibility, trust and efficiency with clients. This can be done by doing video calls and conferences.

- ***Reduced Controls hygiene:*** Identification of instances of control that override with employees seeking workarounds to existing internal controls in order to keep the business operating efficiently should be looked into. IA should make it clear to the management that even in situations like these maintaining controls is paramount. In extreme situations, alternate / compensatory controls should be put in place.

- ***Work that is challenging auditor independence:*** Organisations will expect Internal Audit to use its professional expertise to help the management in current situation. However, they should limit their scope to providing merely the advice and not get involved in the implementation. This can be done by forming distinct teams.

- ***Review quality hampered due to remote working:*** Technological capabilities available such as Zoom, Skype, Microsoft Teams should be used to maximum for virtual meetings and/ or workshops. In addition, by reducing the quantum of Internal Audits, high quality review can be provided. IA should look into how it maintains its own review mechanism on evidences, work paper and reports during such times.

- ***Restrictive travel policy:*** The restrictions in travel ban for overseas work can be taken care of by using in-country resources or a third party to the extent where domestic travel is permissible.

Emerging Risk Areas to Consider

The current situation has led to complete transformation of the way work is being done. This will not only change the way audits are done, it will also open up new avenues or areas where audit focus can be increased. Below are some of such areas:

- ***Fraud Risk:*** During such difficult times, the line separating acceptable from unacceptable behaviour often become blurred. Organizations need to be sensitive to possible financial statement manipulations. Further, with employees also being under tremendous pressure this could lead to an increased risk of fraud by employees.
- ***User access controls:*** Due to flexible working arrangements and individuals requiring greater access to systems to help cover for people who are off location, user access controls may be compromised and conflicts of interest may arise. Internal Audit should monitor such controls, as it is critical to review the process of maintaining an audit trail for user access changes.
- ***Finance:*** Financial risk includes reviewing process of analyzing working capital requirements against scenario planning assumptions and assessing cash flow forecasts, reviewing organization's response process towards completeness of management's accounting and reporting impact analysis, particularly in the context of year-end financial statements and forthcoming quarterly reporting deadlines and review considerations pertaining to increased exposures in insurance liabilities.
- ***Internal controls:*** Internal audit should understand the changes, both temporary and permanent, being made to the organization's internal control environment, with a specific focus on the management review controls, accounting judgment controls (bad debt provision, inventory provision, impairment of goodwill and intangible assets, fair value of financial and non-financial assets), associate or joint venture accounting controls, transaction processing controls, cash payments controls, automated business controls, outsource service providers, insider trading concerns, key person dependency/super user access, and resilience and remote working
- ***Cyber:*** As the number of remote working environments and the use of third-party software to improve the effectiveness of remote working increases, individuals may inadvertently compromise business security.
- ***Insurance cover:*** With home and remote places becoming the new workspace, there can be increased exposure to insurance liabilities. It is also essential to see whether health and safety standards are being complied with.

> The three lines of defense model is also significantly impacted, with the three lines some-how being merged into each other despite the best efforts of management / internal audit. The day-to-day disruptions will lead to challenges on the risk, control and defense framework.

- ***Business continuity:*** Various disaster recovery plans need to be made to test appropriate scenarios, plans or measures to restore business operations, validating and benchmarking management's assumptions regarding nature, extent, and duration of situation and to forecast the financial and business impact like going concern, goodwill etc.
- ***Contracts:*** Internal audit should review the impact and adequacy of key contractual clauses which may offer relief during this time, such as force majeure, notice provisions, disaster recovery and business continuity provisions, limitation of liability, liquidated damages, governing law and jurisdiction, supplier/subcontractor location and supply chain path and termination rights.
- ***Human capital:*** The adequacy of plans being put

in place by organisations to maintain the health and well-being of their workforce, including the implications for impact on mental health of remote working should be checked. It should be ensured that any 'work arounds' used during lockdown period are regularised and appropriately controlled.

Control Environment Considerations

None of the businesses today have seen an event like this in the past to be able to judge the exact way of working or the way business will be conducted during these times. The same logic applies to the overall control environment as well for any business.

With the control structures being modified overnight to keep business clock ticking, there are and will be number of instances where significant sudden change will be made in control set up. The three lines of defense model is also significantly impacted, with the three lines some-how being merged into each other despite the best efforts of management / internal audit. The day-to-day disruptions will lead to challenges on the risk, control and defense framework.

In such a scenario, it becomes imperative for internal audit to contemplate the extent and impact of such changes. There are certain key questions for which Internal Audit needs to find answers to.

- ***Execution of controls and monitoring*** – Users should be aware of what is the critical information which needs to be monitored and what additional monitoring processes are required, e.g. Daily outstanding review instead of a weekly review. In addition, there has to be innovation in terms of how controls are being performed, e.g. using drones for conducting physical verification. The evidence of control will also undergo a change, as there might not be physical signatures available for review.
- ***Risk assessment impact*** – Internal Audit should take a note of the change, which the pandemic has bought to the overall risk assessment of the business. This may lead to a complete rework on the risk assessment framework. In addition, monitoring of emerging risks as they come should be included in the risk assessment process.
- ***Preparation for control assessments*** – There will be a need to create or enhance existing policies and procedures to adapt to COVID-19 impact, inclusive of roles and responsibilities, timelines and content of policies. The risk control matrices which are being used need to change basis changes in control environment including mitigating controls set up during this time. Internal Audit, along with control owners, also need to finalise a testing strategy which will be used in times to come including use of technology and alternate testing evidences (if any).
- ***Allocation of resources*** – It should be ensured that resources are mapped accurately to the work, basis the control environment. Also, in situation like this the company should have back up resources for each critical control activity.
- ***Key service organisation reliance*** – There are certain service providers that become key in situations like these, e.g. Internet service provider. IA should see what additional oversight controls have been established on such vendors. In addition, if there are any critical services that have been outsourced, a focused risk assessment needs to be done on such services basis criticality.
- ***Remote access*** – There should be sufficient technology support in terms of hardware and software to ensure remote access to all users. There have been instances where companies were not prepared for such a scenario and do not have sufficient tools to enable work from home, e.g. Laptops to all users, VPN access etc. The technology tools should also have established proper firewalls and password control procedures like Multi factor authentication, since employees will be using the home internet networks, which are more susceptible to hacking or other risks.

Case Study – Traditional Internal Audit vs Internal Audit during Pandemic

To understand a practical scenario of what practically may change, while conducting an audit during current phase of pandemic refer to the table below:

	Sub Area	Traditional Internal Audit	Internal Audit during Pandemic
Planning	Audit Scope finalization	Done as part of annual audit planning	Revised looking at criticality, change in control environment, management bandwidth
	Data Collection	Collected before going on field with an Request for Information list	Collected beforehand through comprehensive listing To check authenticity of data shared electronically
	Identification of Risk and Controls	Done during opening meeting and process walkthroughs on field	To be done remotely through video calls basis availability of stakeholders. Also understand the key risks during such calls
Execution	Actual audit execution / Field work	Complete field work is done all field including : • Detailed Plan • Test controls • Communicate Results • Work Program review	All the steps done however prioritization and Scope breakdown done in various sprints (Agile Internal Audit approach).
	Progress review	Done internally during execution on need basis.	Daily stand up calls for progress meet to be done Stakeholder progress updates to increase
Reporting	Draft report and management response	To be prepared at one go and responses taken on field	Draft report may be given for critical areas first including caveat for work pending for Face-2-Face meeting (if any)
	Closing meeting	To be preferably done Face-2-Face with all stakeholders	To be done on video conferencing with clear distinction of action plans which are critical for business and action plans which may wait
	Follow up review	Update audit committee and board on actions taken for all points	Update only on critical plans. Give management sufficient time to implement. Also, follow up reviews to wait if non-critical.

The coronavirus pandemic is one of the best examples yet of just how quickly a risk can materialise in today's business environment that can change everything and even threaten the future of companies that were on solid footing just weeks ago. With people unable to collaborate in groups, Internal Audit will struggle to complete its work. Technology, like cloud services, virtual meetings, and Internal Audit management systems can help when auditors need to work from home, but Internal Audit will also need some creativity, perseverance, patience, and understanding to work through the crisis.

The pandemic will be over at some point, but just what shape our organizations are in when it does, will rely greatly on the actions and decisions that are being made right now and Internal Audit should play an important role in working through them. ■

Concept of 'Proper Officer' under GST Law

The biggest tax reform GST, launched about 3 year ago, replaced the old indirect tax structure with aim to provide a simplified, transparent and technology-driven single tax regime. Presently we see that there is some dispute under GST regime related to questioning and challenging power, jurisdiction, authorization, competency or appointment of 'Proper Officer'. Therefore, it is highly imperative to understand the concept of proper officer under the GST law. In this article an attempt has been made to understand certain provisions and distinct features of the 'Proper Officer' under the CGST Act and SGST Act. Read on…

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Meaning of 'Proper Officer' under Central Goods and Services Tax Act, 2017

(i) Definition: As per Section 2(91) of Central Goods and Services Tax Act, 2017 *(for short the 'CGST Act')*- *"proper officer"* in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board.

(ii) Analysis
Section 2(91) of the CGST Act which define proper officer, used both word 'Commissioner' and 'Commissioner in the board'. Section 2(24) says *"Commissioner"* means the *Commissioner of central tax* and includes the *Principal Commissioner of central tax* appointed under section 3 and the *Commissioner of integrated tax* appointed under the Integrated Goods and Services Tax Act. (For short 'Commissioner of Central tax'). Section 2(25) defined *"Commissioner in the Board"* means the Commissioner referred to in section 168.

Section 168(2) says that the *Commissioner specified inter-alia* in section 2(91) mean a *Commissioner* or *Joint Secretary posted in the Board*. By reading of the aforesaid provisions if it is interpreted that the meaning of the expression *"Commissioner in the Board"* means Commissioner or Joint Secretary posted in the Board then question is arises that why legislature used both the term being "Commissioner" and *"Commissioner in the board"* in the definition of *'Proper Officer'* under section 2(91) of the CGST Act. If this interpretation is supposed to be correct then legislature must use the expression *"Commissioner"* in place of the expression *"Commissioner in the board".* But it seems that is not the situation as the expression "Commissioner in the Board" defined in Section 2(25) means only the Commissioner posted in the Board and it does not include the Joint Secretary.

(iii) On the basis of above analysis and combing reading of Section 2(25), Section 2(91) and Section 168(2) of the CGST Act, definition of 'Proper Officer' can be read as follows:

"Proper officer in relation to any function to be performed under this Act, means the Commissioner or Joint Secretary posted in the Board or the officer of the central tax who is assigned that function by the Commissioner posted in the Board."

As per *'Rule of last antecedent'* here is no need to say that the qualifying phrase *"who is assigned that function by the Commissioner in the Board"* ought to be referred to the next antecedent being *"the officer of the central tax".* In other words it does not qualify the words *"Joint Secretary posted in the Board".*[1]

Position under State Goods and Services Tax Act, 2017

When we read the State Goods and Services Tax Act, 2017 *(for short the 'SGST Act')* and compare with the CGST Act we find that there is some significant difference between both the Acts as discussed in following paragraphs.

Some relevant definitions and provisions of the SGST Act for example Rajasthan Goods and Services Tax Act, 2017 *(for short the 'RGST Act')* are as follows.

(i) Section 2(24)- 'Commissioner' means the Commissioner of State tax appointed under section 3 and includes the Principal Commissioner or Chief Commissioner of State tax appointed under section 3. (for short 'Commissioner of State tax')

(ii) Section 2(25)-'Commissioner in the Board' means the Commissioner referred to in section 168 of the Central Goods and Services Tax Act.

(iii) Section 2(91)-'proper officer' in relation to any function to be performed under this Act, means the Commissioner or the officer of the State tax who is assigned that function by the Commissioner.

Comparison of the provisions of both Act

(i) On analysis of above provisions and comparison with the provisions CGST Act, it appears that there is significant disparity between them. Section 168(2) of the CGST Act clarifies that the *Commissioner* specified in certain sections/ sub-sections/clauses as mentioned therein shall mean a *Commissioner or Joint Secretary posted in the Board* and such *Commissioner or Joint Secretary* shall exercise the powers specified in the said section with the approval of the Board. However there is no such provision in the RGST Act or any other SGST Act. Thus, the distinguishing points are that so far as the CGST Act is concerned, certain powers like power of delegation under section 5(3)/167, power to notifying any person or class of persons/taxable persons under section 25(9)(b)/35(3), power to notifying any goods as referred to in clause (ii) of 1st Proviso to Section 143(1), power to extension of time limit under 2nd proviso to Section 143(1), power to determination of expenses of audit under section 66(5), power to direction for collecting statistics under section 151(1) and power to give opinion that publishing the information is desirable in the public interest under Clause (l) of Section 158(3) of the CGST Act are lying with the *Commissioner or Joint Secretary posted in the Board* and not with the *Commissioner of Central tax.* Whereas such powers under the RGST or any other SGST Act are lying with the *Commissioner of State tax.*

It is also considerable point that the word "Commissioner" is also used in sub-section (2) of Section 151of the CGST Act, but this sub-section has not been referred in section 168(2) of the CGST Act. Thus it appears that for the purpose of this sub-section 'Commissioner" means *'Commissioner of Central tax' i.e. 'Commissioner'* as defined in sub-section (24) of Section 2 of the CGST Act. Further use of the article "the" before the word "Commissioner" in sub-section (2) of Section 151 also have no relevance as the word "Commissioner" in sub-section (1) of Section 151 is also prefixed by the article "the". If legislature intention was meant 'Commissioner' as *'Commissioner or Joint Secretary posted in the Board'* in both the sub-sections (1) and (2) of Section 151, then he must used the phrase *'Section 151'* or *'sub-sections (1) and (2) of Section 151'* like in case of Section 35 in the Section 168(2) of the CGST Act.

However there is no such issue or disparity in case of RGST Act or any other SGST Act as the word *"Commissioner"* exist in both the sub-sections (1) and (2) of Section 151 means only the *'Commissioner of State tax.'*

(ii) It may be noted that reference of Section 66(5) in Section 168 of the CGST Act has been omitted by the Finance Act, 2020 (No. 12 of 2020 dt. 27th March, 2020) w.e.f. from the date yet to be notified. Similarly the phrase "sub-section (1) of Section 143" in Section 168 of the CGST Act has been substituted by the phrase *"sub-section (1) of Section 143, except the second proviso thereof"* by the aforesaid Finance Act w.e.f. from the date yet to be notified.

(iii) Section 168 of the CGST Act empowers the Board to issue necessary orders, instructions or directions in certain circumstances whereas Section 168 of the RGST Act or respective SGST Act gives such powers to Commissioner of State tax. Commissioner of State tax by exercising power given under section 5(3) or Section 167 of the SGST Act can delegate his power of issuing instructions or directions etc. under section 168 to any officer subordinate to him or any other authority or officer of State tax or Central tax, as the case may be. But this privilege is not available to Commissioner of Central tax. Though power of issuing instructions or directions etc. under section 168 can be delegated to the Commissioner of Central tax but said power further cannot be sub-delegated by Commissioner of Central tax in view of the maxim 'Delegatus Non Potest Delegare' and non-availability of power under section 5(3) and Section 167 of the CGST Act.

Deeming fiction

It is pertinent to note that in Sections 25(9)(b), 35(3), 35(4), 66(5), 143(1), 151(1) and 158(3)(l)of the CGST Act, no such deeming fiction are created to provide that any such person or class of persons/taxable persons as notified/ permitted or determination of expenses of audit or notifying any goods or extension of time limit or direction for collecting statistics or opinion regarding publishing any information desirable in the public interest by the Commissioner of State tax or Union territory tax shall be deemed to be notified/ permitted/determined/ extended/directed or opinioned, *as the case may be*, by the Commissioner unlike Sections 37(1), 38(2), 39(6), 44(1), 52(4) and 52(5). Thus where any notification is issued under section 25(9)(b), 35(3), 35(4), 143(1) or 151(1), as the case may be, a parallel notification is required to be issued under the respective SGST Act too.

It is also worthwhile to mention here that by virtue of Section 26 of the CGST Act, Unique Identity Number (UIN) granted under the respective SGST Act or Union Territory Goods and Services *Tax Act (for short the 'UTGST Act')* would be deemed to be a grant of the UIN under CGST Act. But without notifying any person or class of persons by the Commissioner under section 25(9) (b) of the respective SGST Act, no such UIN can be granted under the said Acts. Further it can be said that if such person or class of persons is notified by the Commissioner under section 25(9)(b) of either of the Act and granted UIN under the said Act then further such person or class of persons is not required to be notified under the other Act due to effect of Section 26 of that Act.

Disparity related to auditor appointment and audit expense under section 66 of the CGST Act-

Section 66(1) of the CGST Act provide that for the purpose of the examination and audit under the said section the chartered accountant or the cost accountant is nominated by the '***Commissioner'*** i.e. ***Commissioner of Central tax.*** Section 66(5) r/w Section 168(2) of the CGST Act provide that the expenses of the examination and audit of the records including the remuneration of the auditor shall be determined and paid by the *'Commissioner or Joint Secretary posted in the Board'* and such determination shall be final. Thus there is disparity in both the provisions so far as the expenses of the audit including remuneration of the auditor is determined by the officer other than who nominate the auditor. However there is no such disparity under the respective SGST Act.

Authorisation of proper officer under section 6(1) of the CGST Act

Section 6(1) read as follows:

"Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify."

By reading of aforesaid provision a question is arises whether officers appointed under the respective SGST/ UTGST Act are automatically become competent to perform the functions as *"Proper Officers"* for the purposes of CGST Act by virtue of this provision. If answer is affirmative then further question arises what is significance of the definition of *'Proper Officer'* given under section 2(91).

Section 2(91) for defining *"proper officer"* specifically talks of the assigning functions by the Commissioner in the Board to the Commissioner or the officer of the central tax. Further it uses the definite article 'the' as opposed to *'an'* or *'any'* which is also significant.[2] This means only the Commissioner or the officers who have been assigned the functions of the *'proper officer'* can be considered as the *"proper officer"* for the purposes of section 2(91) of the CGST Act.

One may argue that Section 6(1) also uses the definite article 'the' and confers authorization on 'the officers' (instead of 'a officer' or 'any officer') to be 'the proper officers' (instead of *'a proper officer' or 'any proper officer'*).

If it is interpreted that all the officers appointed under the SGST/UTGST Act are deemed to be *'proper officers'* for the purposes of CGST Act, then it would lead to a situation of utter chaos and confusion, inasmuch as all officers appointed under the SGST/ UTGST Act, in a particular Commissionerate or Division or Range, would be *'proper officers'.* This interpretation would make this provision overbroad in as much as it confers jurisdiction on a plurality of officers on the same subject matter and grant wide powers to a wide range of officers. This interpretation is also against the principal laid down in Section 6(2)(b) and the theory of "committy of courts". Further in such case the provision might be vulnerable to be declared unconstitutional or violative of article 14 of the Constitution.[3]

The mere authorizing of any officers as *'proper officers'* can't tantamount to assigning them any specific function. Such authorization must be in relation to a territorial or any other jurisdictional limit. It is also significant that the section 6(1) authorized the *"officers"* instead of the *"proper officers"* to be the 'proper officers'. Further it start with the expression *"without prejudice to the provisions of this Act"*

Careful reading of the Section 6(1) show that it does not ***ipso facto*** confer jurisdiction on the officers appointed under the SGST/ UTGST Act to exercise power entrusted to the 'proper officers' for the purpose of the CGST Act.

Connotation of the expression "Subject to such conditions as the Government shall by notification specify"

On various occasion Supreme Court held that the expression *"subject to such conditions as may be prescribed"* means a particular power can be exercised only if a specific enacting law or statutory rules have been framed or the conditions is prescribed for that purpose. Court also held that when expression *"if any"* attached therewith then there is no obligation or mandatory requirement to follow any, except whatever the provision itself provides. The Supreme Court observed the expression *'such manner as may be prescribed"* and distinguished the said expression from the expressions *'in the manner prescribed'* or 'in the prescribed manner'. It was held that *"as may be prescribed"* means "if any". In another judgment it was held that when power is made available, conditional upon prescription, the phrase *'subject to'* in the context means only conditional upon, the exercise of power in the absence of such prescription is illegal.[4]

In nutshell the meaning of such expression takes color in context with which it is used and the manners of its use as prefix or suffix etc. It depends on the language of the particular provision that whether exercise of the power is dependent on the framing of the Rules or prescribing the manner or conditions. There is no rigidity about it.

After the aforesaid discussion and considering the facts that Section 6(1) uses the word *'shall'* instead of *'may'* and the expression *'subject to'* without using the expression *'if any',* it can be concluded that issue of notification is obligatory. Thus for the operability of the provision of Section 6(1) there has to be a specific order or notification. Further notification must be published in the Official Gazette as required by the Section 2(80). It is clarified that there is no need for publication of the notification in the name of the person who is assigned the function or holding the post as it is not the assignment or appointment as *persona disgrata*. Power can be vested upon a post. Provision of Section 15 of the General Clauses Act, 1897 also supports this view.

It is point out that Govt. has also in exercise of the power conferred by Section 6(1) issued *Notification No. 39/2017-Central Tax, dated 13-10-2017* authorising Officer of State Tax/ Union Territory Tax to act as proper officer under CGST Act for the purposes of Section 54 & 55.

On the basis of above analysis it can be safely adduced that only such Officer who has been assigned the specific function and duty in relation to the specific jurisdiction through issue of notification by the Government in term of powers conferred by section 6(1) is competent to perform such function as "proper officer". Any other interpretation of Section 6(1) would make the Section 2(91) senseless.

Significance of Section 6(1) of the CGST Act

After the aforesaid discussion a question is arises why legislature felt need for providing the said provision of Section 6(1). It seems that this is the additional power expressly provided in the statute to the Government in addition to the *'Commissioner in the Board'.*

Further this provision makes the officers appointed under the SGST/UTGST Act as *"the officers for the purposes of this Act (CGST Act)"* or *"the officers under this Act (CGST Act)".* Thus this provision enable the *'Commissioner in the board'* to assign the function under section 2(91) or delegate the powers under section 167 to the officers appointed under the SGST/UTGST Act.

It was held that the words *'Under the Act'* means an act sanctified by provisions and done for the purpose of the Act.[5] In another case it was held that the words *'under the Act'* means what is not directly to be found in the statute itself but is conferred or imposed by virtue of powers enabling this to be done or by virtue of rules or byelaws which are framed by a subordinate law making authority which is empowered by the Parent Act. Similarly the expression *'By an Act'* means by a provision directly enacted in the statute itself.[6]

Analysis of other provisions of Section 6 of the CGST Act

(i) Clause (b) to Section 6(2) prohibits the proper officer under the CGST to initiate any proceedings on the subject matter on which proceedings already initiated by the proper officer under the SGST/UTGST Act. However it seems restriction is on initiation of proceeding on same subject matter by the two officers but not on initiation of proceeding on same subject matter separately under both the Act by the same officer provided he is competent to do so.

(ii) Any rectification, appeal or revision against any order passed by an officer appointed under CGST Act shall not lie before an officer appointed under the SGST Act/UTGST. The language of the Sub-section (3) to Section 6 is in negative sense. In other way we can say that any rectification, appeal or revision against any order passed by an officer appointed under the CGST Act shall lie before any officer (except officers appointed under the SGST/UTGST Act), authority, court etc. in accordance with the provisions of CGST Act. Further restriction is only against officer *"appointed".*

(iii) Where a proper officer issues an order under CGST Act, he simultaneously required to issue an order under the SGST/UTGST Act by virtue of Section 6(2)(a) of the CGST Act thus this provision make enable the same proper officer to issue both order under respective Act. Accordingly any rectification, appeal or revision against both the said order can be made before an officer appointed under CGST Act. Such provision has been provided under the GST law to avoid dual control over a taxable person.

Other relevant points

(1) It may be noted that all the aforesaid discussions are, *mutatis mutandis,* apply *so far as may be,* in case of the SGST Act and the IGST Act as there are parallel provisions.

(2) In the case of *Valerius Industries v. Union of India [2019] 109 taxmann.com 218 (Gujarat)* Gujarat High Court observed that under section 83 of the Gujarat GST Act, 2017 it is the Commissioner's opinion which is relevant, so such power cannot be delegated to the subordinate officers. However later on in the case of *Nathalal Maganlal Chauhan v. State of Gujarat [2020] 114 taxmann.com 425 (Gujarat)* Gujarat High Court taken a view that the observations made by this Court in the above referred case could be termed as per incurium. Accordingly, once the powers are delegated validly under the Act, the subjective satisfaction, or rather, the reasonable belief should be that of the delegated authority. Here it is notable point that Commissioner of State Tax is empowered under SGST Act to delegate his power of Section 83 to the subordinate officers but Commissioner of Central tax is not empowered for the same under CGST Act.

(3) In the case of *State of Punjab vs. Harnek Singh* reported in 2002(3) SCC 481, the Hon'ble Supreme Court dealt with the General Clauses Act, 1897 and observed as under:

The General Clauses Act has been enacted to avoid superfluity and repetition of language in various enactments. The object of this Act is to shorten the language of Central Acts, to provide as far as possible, for uniformity of expression in Central Acts, by giving definition of series of terms in common use, to state explicitly certain convenient rules for the construction and interpretation of Central Acts, and to guard against slips and oversights by importing into every Act certain common form clauses, which otherwise ought to be inserted expressly in every Central Act. In other words the General Clauses Act is a part of every Central Act and has to be read in such Act unless specifically excluded.

Thus the provisions of the General Clauses Act can be called in aid if the particular enactment to which it is applied for the purposes of interpretation does not impliedly or expressly exclude the operation of the General Clauses Act. *[Section 4 of the General Clauses Act]*. Section 21 of the General Clauses Act, 1897 provides that power to issue would include power to add, amend, vary or rescind any rule, order or notification already issued. Similarly section 14, 15, 16, 20 etc. of the General Clauses Act are also relevant to this article.

Conclusion

The foremost reasons for litigation between tax payers and tax authorities are the lack of knowledge and clear understanding of the relevant laws which results interpretational problems.

For example Section 167 of the CGST Act, which empowers the Commissioner to notify that any power exercisable by *"any authority or officer"* under this Act may be exercisable also by another authority or officer, as may be specified. The word *'any'* and *'authority'* are not defined in the Act. So the expression can be interpreted as *"authority or officer inferior to the Commissioner"* or *"authority or officer inferior as well as equal in rank to the Commissioner"* or *"any authority or officer whether superior or inferior to the Commissioner".* Here confusion is also arises that whether the Commissioner himself included in the said expression. One more example is in the case of Special Audit under section 66. Wherein confusion is arises that whether audit under section 66 is a *'proceeding'* within the meaning of Section 6(2)(b). If answer is affirmative then provision of clause (b) of Section 6(2) will attract. The expression *'proceeding'* is not a technical term with a definite meaning but would depend upon the scope of relevant enactment and the context in which it used and may be influenced by subjective factors. Similarly whether intimation of findings of the audit under section 66 in Form GST ADT-04 is an *'order'* within the meaning of Section 6(2)(a)!

The business man and tax authorities should made efforts to understand GST law clearly and objectively. Authorities should follow a practical approach in implementation of the provisions of the Act which is new one.

As time will goes by the business community as well as common man get familiar with the GST law. New tax regimes always pose certain difficulties but this way it can be minimised.

References

1 *Case of Mangibai Hariram vs. State of Maharashtra AIR 1966 SC 882.*

2 *Case of Consolidated Coffee Ltd. vs. Coffee Board 1980 taxmann.com 235 (SC) and Shri Ishar Alloys Steels Ltd. vs. Jayaswals Neco Ltd. [2001] 3 SCC 609).*

3 *Case of Pushpit Steels Pvt. Ltd. vs Commissioner of Custom (2000 taxmann.com 126) (CEGAT- Chennai)/ [2001] 130 ELT 520 (CEGAT- Chennai); Commissioner of Customs v. Sayed Ali 2011 (265) E.L.T. 17 (SC).*

4 *Case of Dr. Subramanian Swamy v. State of Tamil Nadu [2014] 5 SCC 75; Hindustan Ideal Insurance Co. Ltd. v. LIC AIR 1963 SC 1083; BSNL v. BPL Mobile Cellular Ltd. (2008) 13 SCC 597; Telecom Employees Co-operative Housing Society Ltd. v. Scheduled Castes, Scheduled Tribes, Minority Communities & Backward Classes Improvement Centre ILR 1990 Kar. 3320; Orissa State (Prevention & Control of Pollution) Board v. Orient Paper Mills [2003] 10 SCC 421.*

5 *Case of Stock Exchange v. Vinay Bubna [2001] 103 Company Cases 584 (Bom).*

6 *Case of Dr. Indramani Pyarelal Gupta v. W.R. Natu AIR 1963 SC 274.* ■

Intermediary Services Vs. Export of Services: An Open Pandora Box

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Whether services provided to overseas entities would be qualified as an 'intermediary service' or 'export of services' has been a litigative matter under the Service Tax law as well as GST law. Place of supply of services acts as a deciding factor along with the scope of services in the contract agreed by both parties. Judicial authorities in Service Tax and rulings in GST have laid down criteria to determine as to when service is provided on one's own account. However, most of them have confined to the question posed for this consideration without laying down a 'principle' to provide guidance in deciding in all the cases. And when there's a composite supply involved, decisions have also not identified the significance of principal supply. To end unwarranted litigations and the resultant financial repercussions, clarity is required from the Government. Read on...

Introduction

One of the biggest indirect tax reforms undertaken since India's independence was the introduction of Goods and Services Tax (GST) which was enacted in compliance with the Government's moto of *'one nation, one tax'* in order to promote businesses, trade and to bring transparency in the tax system.

Ever since its inception, one of the areas which has gained attention of the taxpayers is relating to the tax implications on the transactions undertaken by the taxpayers with its overseas counterparts in non-taxable territory, whether classifying it as 'export of services' or falling under the category of 'intermediary services'.

The concept of intermediary has been carried forward from the erstwhile Service tax regime which had been much debated issue and subject matter of long drawn litigation.

Before understanding the intermediary and export provisions and its issues under the GST law, let us first analyse the scope of intermediary and its related provisions, along with- judicial precedents under the erstwhile regime.

Under Service Tax Regime

- The concept of 'Intermediary services' was introduced in the Service Tax regime under Rule 2(f) of the Place of Provision of Services Rules, 2012 (POPS) defines as:

  "Intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;

- Thus, it may be interpreted that an intermediary is involved in making two supplies at any one time i.e.

  i) the supply between the principal and the third party; and

  ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.

- Rule 6A of the Service Tax Rules, 1994 defines the meaning of 'Export export of services' which is as under:

  The provision of any service provided or agreed to be provided shall be treated as export of service when:-

  i) the provider of service is located in the taxable territory,

  ii) the recipient of service is located outside India,

  iii) the service is not a service specified in the section 66D of the Act,

  iv) the place of provision of the service is outside India,

  v) the payment for such service has been received by the provider of service in convertible foreign exchange, and

  vi) the provider of service and recipient of service are not merely establishment of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act.

- One of the important criteria that extricates intermediary services out of coverage of from export of services is its 'place of provision.'

- Rule 9 of the POPS provides that in relation to specified services which *inter alia* includes intermediary services, the place of provision of services is the location of the services provider. It implies in case any Indian service provider provides intermediary services to services recipient outside India, place of provision of services is India i.e. location of service provider.

- It is imperative to note that in a usual scenario under the default rule, the place of provision of a service shall be the location of the service recipient. Accordingly, in a similar example, where Indian service provider provides services to the recipient outside India which are not classified under intermediary services, place of provision of services shall be outside India i.e. location of service recipient.

- The Education Guide issued by the Tax Research Unit of the Board in 2012 provided the factors which helps to determine when a person is acting as an intermediary. These includes:

  ➢ **Nature and value:** An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.

- **Separation of value:** The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".
- **Identity and title:** The service provided by the intermediary on behalf of the principal is clearly identifiable.

E.g. Services provided by a commission agent as a percentage of sales executed by him on behalf of principal would be classified as intermediary services. However, when fee charged has no direct nexus with the supply of goods or services by the principal to the third parties, then it would not be termed as intermediary.

Judicial precedents:

- In the matter of *M/S Chevron Phillips Chemicals India Pvt. Ltd. Versus Commissioner Of CGST & Central Excise, Mumbai East [2019 (12) TMI 1066 - CESTAT MUMBAI]*, the appellant was engaged in providing business auxiliary services i.e. marketing and sales promotion of chemicals to its foreign counterparts and received the compensation/ remuneration of the service rendered with respect to formula based on the invoice price. It is imperative to note that the appellant had no role in fixation of price, nor were they involved in negotiations with the third parties. Accordingly, Tribunal held that such services cannot be termed as an intermediary as they were acting as an independent party in terms of their contractual agreement.
- In the matter of *Lubrizol Advanced Materials India Pvt. Ltd. Versus Commissioner Of Central Excise, Belapur [2019 (1) TMI 720 - CESTAT MUMBAI]*, the appellant was engaged in rendering administrative and sales related services to the group entities located outside India. The original authority rejected the refund claim treating the services supplied as intermediary. The Tribunal held that the consideration received by the appellant which was based upon cost plus mark-up was for providing the services on principal to principal basis and is nowhere connected with the main supply of goods. The appellant is not acting as a bridge between the overseas group entities and supplies made to their customers in India and accordingly, it cannot be treated as intermediary service and should be governed under the provisions of Rule 9 of the rules.
- In the matter of Principal Commissioner CGST Delhi South Commissionerate Versus *M/S. Comparex India PVT LTD. [2020 (1) TMI 429 - CESTAT NEW DELHI]* it was held that where the respondent is engaged in purchase and sale of software licenses on its own account and independently negotiates prices with the overseas customers, such activity would fall under export of services and not intermediary services.
- In the matter of *M/S Times Internet Ltd Versus Commissioner Of Central Excise, New Delhi, [2013 (9) TMI 513 - CESTAT NEW DELHI]*, the appellant was providing services to connect service user and service provider and was remunerated on the basis of destination based consumption tax. It was held that the appellant was providing intermediary services to its clients who is the ultimate service provider.
- In the matter of *Commissioner Of Service Tax, Central Excise Vs Lamhas Satellite Serices Ltd, [2019 (6) TMI 271 - CESTAT MUMBAI]*, the applicant entered into agreement with Globecast based outside of India to

provide services in relation to distribution of Russia Today Channel in India for which the applicant has entered agreements with the channel distribution partners and various hotels. The role of the applicant was to receive the consideration from Globecast and in turn pay to various channel distributors apart from receipt of other professional/service fee. The CESTAT held that applicant acted as mediator for provision of services by channel distribution partners to Globecast which in turn would fall under intermediary services .

Authority for Advance Ruling

- In the matter of *M/S Godaddy India Web Services Pvt. Ltd. Versus Commissioner Of Service Tax, Delhi-IV, [Ruling No. AAR/ST/08/2016]*, the applicant was engaged in providing business support services to GoDaddy US in terms of marketing, branding and sales promotion services along with allied services like after sales support, payment collection support by engaging third parties who would have direct contract with their overseas entity. The Authority for Advance ruling held that supporting the business/ brand of GoDaddy US in India was the main service and processing payments and oversight of services of third party call centres were ancillary and incidental to the provision of main service in a naturally bundled services and since these services are being provided on own account, it cannot be treated as intermediary services.

In the matter of *M/S Universal Services India Pvt. Ltd. Versus The Commissioner Of Service Tax, Gurgaon [Ruling No. AAR/ST/ 07/2016]*, the service provided by the applicant to WWD US is processing of payments, which is the main service for which they would receive fee equal to the operating costs incurred by the applicant plus mark-up. It was held that such services would not be treated as intermediary services as no remuneration is received by the applicant from Indian Customers. The applicant would receive fees even if the Indian customer directly remit foreign entity through International credit card.

Under GST Regime

- The term 'Intermediary' has been defined under Section 2(13) of the IGST Act as under: *"intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.*
- The definition of intermediary (referred above) can be broken down into four legs i.e.
  - ➢ a broker or an agent;
  - ➢ arranges or facilitates supply of goods or services or securities;
  - ➢ between two or more persons;
  - ➢ excludes a person who supplies such goods or services or securities on his own account.
- It is noteworthy to mention that the concept of principal-agent relationship has been originated from the Indian Contract Act, 1872. Chapter X of the said Act deals with laws relating to Agency where "agent" has been defined as a person employed to do any act for another or to represent another in dealing with third persons and the person for whom such act has been done or who is so represented is called "principal". Therefore, the crucial element to qualify principal-agent relationship is the representative character of the agent which enables him to carry out activities on behalf of the principal.
- Under the GST Act, Section 2 of the CGST Act, 2017 defines "Agent" and "Principal" as follows:

  "Agent" means a person, including a factor, broker,

commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

"principal" means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;

- On the perusal of above definitions, it may be interpreted that the crucial component for covering a person within the ambit of the term "agent" under the CGST Act is corresponding to the representative character identified in the definition of "agent" under the Indian Contract Act, 1872.
- The term 'export of services' has been defined under Section 2(6) of the IGST Act as:

  "Export of services" means the supply of any service when, –

  (i) the supplier of service is located in India;

  (ii) the recipient of service is located outside India;

  (iii) the place of supply of service is outside India;

  (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and

  (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8"
- Since GST is a destination-based tax and levied at a single point at the time of consumption of goods or services, provisions relating to place of supply helps in determining destination of supply. In case of export of services, ultimate beneficiary of the services is located outside India and accordingly no taxes should be charged since goods will ultimately be consumed outside India. This is also in line with promoting India's trade and making Indian goods or services competitive. However, one of the important conditions in respect of export of services is payment in foreign currency has been received.
- Section 13 of the IGST Act deals with provisions relating to place of supply where either of service provider or service recipient is located outside India. As per the default rule under Section 13(2), place of supply is the location of service recipient. However, Section 13(8) created a deeming fiction for intermediary services where place of supply of services is location of service provider which is generally in India and accordingly, GST applicability arises
- The intent of the government to create such deeming fiction is to tax the services which are actually supplied in India. However, it leads to an increase in the overall cost of goods or services as tax credit cannot be availed by foreign recipient deterring India's exports.
- It is interesting to note where the Indian Company engages foreign agent to promote Indian business outside India or to attract foreign customers, by the virtue of intermediary provisions, the place of supply would be location of service provider, which in the instant case is located outside India, accordingly GST applicability would not arise under import of services.
- The Department Related Parliamentary Standing Committee on Commerce presented 139th report on 'Impact of GST on Exports' making recommendation to amend Section 13(8) of the IGST Act to exclude intermediary services and make it subject to the default Section 13(2) so that benefit of export of services would be available.
- The Central Board of of Indirect Taxes and Customs ('CBIC') also issued Circular No.107/26/2019

– GST dated July 18, 2019, clarifying the applicability of GST on supply of Information Technology enabled Services ('ITeS') and back-end support services. The Circular clarified following key issues:

- ➢ Services provided by the supplier (back end ITeS services) on his own account to recipients or customers of recipients, will not qualify as intermediary service; and
- ➢ Backend services for arranging or facilitating supply of goods or services like order placement and delivery and logistical support, obtaining relevant governmental clearances, transportation of goods, post-sales support and other services, etc., will qualify as intermediary service.

- However, pursuant to various representations made by the taxpayers, the CBIC withdrew, ab-initio, the Circular No. 107 /26/2019-GST dated 18 July 2019. It was not stated at the time of such withdrawal whether it was (i) due to ab initio erroneous interpretation realized by Government or (ii) due to reconsideration of an earlier interpretation, that the circular was withdrawn. Further, it is not impossible for tax administration to read the above cited reasons into this withdrawal of circular, and start denying zero-rated benefits to IT-ITeS businesses.

- Further, Circular No. 57/31/2018-GST dated 4 September 2018 brings out clarity on the scope of principal-agent relationship in the context of Schedule I. Relevant extract of Para 3 of Schedule 1 has been reproduced below for ease of reference:

"3. Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal."

Said circular clarifies that the key ingredient for determining principal-agent relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. In other words, the crucial point is whether the agent has the authority to pass or receive the title of the goods on behalf of the principal. To discuss it in detail, let us discuss two scenarios to determine principal-agent relationship:

Scenario 1: Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A. In this scenario, Mr. B is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr.B is not an agent of Mr. A for supply of goods in terms of Schedule I.

Scenario 2: Mr. A, an artist, appoints M/s B (auctioneer) to auction his painting. M/s B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s B on the behalf of Mr. A but in his own name and the painting is delivered to the successful bidder. In this scenario, M/s B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Schedule I.

- Correlating the principal emerging from above scenarios with intermediary services, it is may be interpreted where the agent is engaged in providing services or transfer of title in his own name on behalf of principal, it would qualify under intermediary.

- The constitution of AAR under GST mainly consist of tax officers unlike under erstwhile regime where AAR were headed by the retired judges. Interestingly, there has been a lot of Advance Rulings pronounced by the Authority for Advance Ruling as well as Appellate Authority on the criteria and mechanism whether the services provided to foreign overseas entities amounts to intermediary services or export of services. Majority of the rulings has pronounced its decisions considering whether the applicant is directly engaged in interacting with the third parties on behalf of the principal to facilitate the supply of goods or services between two parties and ignored the concept of composite supply under GST.
- Composite supply is a supply consisting of two or more supplies of goods or services, which are naturally bundled and supplied in conjunction with each other in ordinary course of business where one of which is a principal supply. Taxability of composite supply is determined basis the nature of principal supply. Accordingly, where a supply involves business support services provided on own account as well as facilitation services, where the predominant nature is that of support services which are being provided as a package and bundled in natural course of business, it should be qualified as export of services.

Advance Rulings on Intermediary

- West Bengal Authority for Advance Ruling in the matter of *Global Reach Education Services Pvt Ltd [2018-VIL-06-AAR],* the applicant provides promotional and marketing activities by way of promoting the courses by foreign universities and receive consideration in the form of commission from the foreign university for the service rendered to prospective students. The Authority held that the main service provided by the applicant is facilitating recruitment of students and the consideration is paid as commission on the basis of course fee and recruitment through the applicant. Promotion of the courses is incidental to the above principal supply; accordingly, services does not qualify as export of services but intermediary services. Same view has been taken by Appellate Authority for Advance Ruling [2018-VIL-04-AAAR]
- Maharashtra Authority for Advance Ruling in the matter of *Vservglobal Private Limited [2018-VIL-270-AAR]* held that where the applicant is engaged in providing business support services comprising of back office support and accounting services which inter-alia includes liaison with the buyers/sellers with respect to delivery, transportation of goods and payment etc. it would fall under the category

of intermediary since the applicant arranges or facilitate the supply of goods or services. The ruling of AAR has been upheld by the Maharashtra AAAR on the appeal filed by the applicant. *[2019-VIL-39-AAAR]*

- Karnataka Authority for Advance Ruling in the matter of *M/s Fulcrum Info Services LLP [2019-VIL-323-AAR]* held that where the applicant is engaged in providing support services which is in the nature of back office work mainly assistance in different types of compliances, manual document preparation etc. , it would not be classified as an intermediary services since there is no interaction of the applicant with the third parties, either directly or indirectly.
- Karnataka Authority for Advance Ruling in the matter of *M/s Toshniwal Brothers (SR) Private Limited [2018-VIL-203-AAR]* held that marketing, sales promotion and certain post-sales support services to the foreign client by the applicant would be classified as intermediary services instead of export of services as the contract agreement between both the parties clearly refer the applicant as an agent who is responsible on behalf of principal in negotiating the business transactions with the prospective customers while taking care of the interest of principal along with regular visits to prospective customers in the taxable territory. Similar view has been taken by the Appellate Authority for Advance Ruling *[2019-VIL-02-AAAR]*
- Maharashtra Authority for Advance Ruling in the matter of *NES Global Specialist Engineering Services Private Limited [2019-VIL-63-AAR]*, the applicant propose to enter into an agreement with their parent entity outside India to provide support services in respect of foreign business carried out by NES Dhabi which inter-alia includes accounting, sales/purchase invoicing, payroll assistance etc. in exchange of fee on cost plus markup. The Authority held that the relationship between the parties are that of independent contractors and not in a principal-agent relationship. Accordingly, transaction between applicant and NES Abu Dhabi is a zero-rated supply.

Conclusion

In view of extensive deliberations and the rationale behind the order pronounced by the Advance authority, it is evident that in the erstwhile Service tax regime as well as GST regime, the contractual agreements between the parties tends to be of paramount importance which act as a deciding factor as to whether the services would qualify as export of services or intermediary services. Accordingly, it is imperative that a detailed analysis/re-examination of contracts entered with overseas entities is carried out by the taxpayers to evaluate nature of supply, payment terms etc. in order to avoid future litigations.

Surprisingly, most of the Advance rulings pronounced under GST is pro-revenue as the constitution of such authority are mainly amongst the officer of Central tax/state tax. Even though definition of intermediary under GST is exactly similar to the one specified in service tax regime, AAR has not considered the rationale behind the ruling pronounced under erstwhile service tax law. There have also been divergent rulings on the same issue by two or more AAR leading to conflicting views and ambiguity of opinions.

Therefore, in order to maximize the tax revenue, the authorities tend to extend the principle of agency to widen up the ambit of intermediary services even though such services may be provided independently or on own account.

It is, therefore, high time that taxing services under the ambit of intermediary services is dealt with by changing provisions relating to the place of supply in respect of such intermediary services as has been recommended by the 139th Report of Parliamentary Standing Committee on Commerce. ■

Used Cars Segment in GST Fast Lane

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As the COVID-19 pandemic continues to alter billions of lives, automobile sector is expected to witness an upsurge in disposals whether due to delinquency or cost of retention. Public transport utilities and shared vehicle facilities may see delay in recovery, as people, compelled to maintain social distancing, prefer to let go of savings in travel cost. Reduced purchasing power of consumers could stall new vehicle purchase and embrace the rise of 'pre-owned' segment in the automobile industry. This article surveys the applicable GST treatment on sale of old and used vehicles, its rates and issues that still need to be addressed. Read on …

The COVID-19 pandemic-induced lockdown has led to the reset of the decisions of businesses as well as the consumers. Automobile sector, in particular, has not been free from seeing its impact. However, amid this dark phase, there is a silver lining for the automobile sector.

Once the nationwide lockdown is lifted and people are allowed to commute, one change that will be eminent is that people would prefer to own their private vehicles rather than using public transport system and shared transport facilities, in order to maintain social distancing while travelling. However, due to the budget constraints amid the pandemic, the entry-level segment cars and pre-owned (used) cars are likely to be preferred over the new ones. Sensing this upcoming wave of growth in the used cars segment, several major players of the automobile sector have already started up scaling their own network of used cars e.g. Mahindra's First Choice, Maruti Suzuki's True Value. Entry of large number of start-ups (such as, Droom, Cars24) in the recent past, perhaps, testify the rapid growth that this segment had already been experiencing.

Henceforth in this article, we shall be discussing the tax provisions under the Goods & Services Tax (GST) law that applies to this segment of pre-owned cars.

A. Journey so far

The tax rate structure applicable under the GST regime on the supply of new motor cars comprises of following -

Tax component	Tax rate (New Motor Car)	Total tax rate (on sale value)
GST	12% - 28% (12% rate for electric cars; 28% rate for petrol and diesel-run cars)	12% - 50%
GST Compensation Cess	0% - 22% (depending upon the vehicle category)	

Supply of used cars, however, calls for a different tax treatment owing to issues such as double taxation (in cases where input tax credit (ITC) was not availed by the supplier at the time of its purchase). It is noteworthy that no tax is required to be paid on the sale of used cars between/ by the individuals. Only GST registered persons are required to charge GST on sale of used cars.

In the VAT regime, used cars attracted VAT at the rate of 0.5 - 14% across various States/ UTs and such levy was made on the resale value of car. Let's take a look at how the scenario of applicable taxes on sale of old and used cars changed over the time, under the GST regime.

- **On GST implementation** - Interestingly, at the time of implementation of GST regime in India w.e.f. July 1, 2017, there was no contrast being made between the supply of new and old motor vehicles *i.e.* tax rates applicable on supply of new vehicles used to get applied to the supply of old and used vehicles also.

  However, separate valuation provisions existed for persons dealing in buying and selling of old and used goods (including motor vehicles), wherein supplier could opt to pay GST only on the value of margin *i.e.* selling price minus purchase price [**Rule 32(5) of the Central Goods and Services Tax Rules, 2017** ("CGST Rules")]. Such option existed only in cases where such used goods are supplied with no processing or minor processing that does not change the nature of the goods and where ITC had not been availed by supplier on their purchase. This was pretty much in line with the tax practice followed in other countries, such as UAE and UK and was a much-needed departure from the tax treatment followed under the VAT regime (*i.e.* taxes on resale value). In the cases where ITC had been availed by the supplier at the time of purchase of motor vehicle, tax is payable on the sale value.

  However, tax rates applicable on the margin value were the same as that applicable on sale of new motor vehicles. This needed to be corrected, primarily on account of the fact that taxes paid on purchase of motor vehicles are not creditable under the GST law and hence, becomes the part of cost for majority of businesses. By reduction of tax rates, such cost burden could be reduced and further, this would result in making the prices of pre-owned cars attractive to buyers, thus helping this industry strengthen its feet in the Indian market.

> In the cases where ITC had been availed by the supplier at the time of purchase of motor vehicle, tax is payable on the sale value.

- **GST Council meetings** - The issue of charging same tax rates for new as well as old and used motor vehicles was taken up by the GST Council in its 22nd and 25th GST Council meetings and the suggestions inter-alia included (as per the minutes of the meetings) -

  (i) increased rate of allowed transitional credit of CGST for old vehicles; and

This was pretty much in line with the tax practice followed in other countries, such as UAE and UK and was a much-needed departure from the tax treatment followed under the VAT regime (i.e. taxes on resale value).

(ii) extending excise duty paid on vehicles purchased prior to July 1, 2017 as ITC under GST.

However, due to contradictions in law, these suggestions could not be accepted and instead, decision to reduce the applicable GST rate was taken.

Following GST notifications were issued to reduce the tax rate w.r.t. old and used motor vehicles –

i. **Notification No. 37/2017-Central tax (Rate), dated October 13, 2017 ['Notification I']** – This notification provided much-needed relief to persons which were not in the business of dealing in old and used motor vehicles.

   - **35% abatement** - It provides 35% abatement on tax payable on leased motor vehicles prior to July 1, 2017 and the supply of old motor vehicles that were purchased prior to July 1, 2017 provided that ITC of any tax had not been availed at the time of its purchase. This notification is applicable only till **June 30, 2020.** Similar abatement of 35% was provided w.r.t. GST Compensation Cess vide issue of notifications[1], which was subsequently exempted in full w.e.f. January 25, 2018[2].

It implies that, GST liability on sale of old motor vehicles would amount to 65% of the tax liability computed otherwise under the normal provisions, except that GST Compensation Cess is wholly exempt.

- **Vehicles purchased/ leased prior to July 1, 2017** - Abatement is provided under 'Notification I' only in respect of motor vehicles that were purchased or leased prior to GST implementation date *i.e.* up to June 30, 2017. The motor vehicles that were purchased after June 30, 2017 are not eligible for the benefit of this notification.
- **Non-availment of ITC** – In case of sale of old and used motor vehicle, supplier should not have availed ITC of any taxes paid at the time of purchase *i.e.* excise duty, State-VAT, etc., while in the case of ongoing leases, it is irrelevant whether ITC was claimed or not at the time of purchase.
- **Ambiguity on application of Rule 32(5) of CGST Rules** – While Rule 32(5) of the CGST Rules is applicable to the registered persons 'dealing in used goods', Notification I does not specify any particular set of persons to whom its provisions are applicable. On combined reading of Rule 32(5) and Notification I, it might be inferred that benefits of both, margin method and 35% abatement, will be available. However, since the same has not been mentioned specifically in Notification I, this may not be the intention of the legislature. This article has been drafted with a view that the benefit of Rule 32(5) of the CGST Rules is not available in cases where 'Notification I' is applicable.

From the above, it is clear that Notification I provided only limited benefits to dealers and left a lot to be desired.

ii. **Notification No. 8/2018-** Central tax (Rate), dated January 25, 2018 ['Notification II'] – The used cars segment was given a shot-in-the-arm by the issue of Notification II.

- **Lower GST rates on margin value** - This notification prescribed lower GST rates, ranging between 12 and 18 per cent, on the supply of old and used motor vehicles. Additionally, such lower tax rates are applicable on the margin value (*i.e.* difference between selling price and purchase price), instead of the value of supply.

[1] *Notification No. 6/2017- Compensation Cess (Rate), dated October 13, 2017*
[2] *Notification No. 1/2018-Compensation Cess (Rate), dated January 25, 2018*

- **Applicable on all motor vehicles** - In contrast to Notification I, Notification II is applicable on all types of old and used motor vehicles, irrespective of the date of purchase of such motor vehicles *i.e.* whether vehicle was purchased prior to July 1, 2017 or afterwards.
- No GST in case of negative margin - In case of negative margin value (*i.e.* where business does not sell the car at a profit), no GST is payable.
- Non-availment of ITC - Benefit of Notification II is available where the supplier had not availed ITC of any taxes paid at the time of purchase of such motor vehicle *i.e.* excise duty, State-VAT, GST, etc.

Further, as mentioned above, GST Compensation Cess has been exempted on the supply of old and used motor vehicles w.e.f. January 25, 2018.

Note – *Notifications corresponding to the aforementioned Central Tax (Rate) notifications have been issued under the Integrated Goods and Services Tax (IGST) Act, 2017[3], for inter-State supplies.*

Summary of Notifications

The aforementioned two notifications have been summarized below, for ease of reference -

Particulars	**Notification I**	**Notification II**
Applicability	(i) Ongoing motor vehicle leases as on July 1, 2017; (ii) Sale of motor vehicles leased prior to July 1, 2017 (finance leases); and (iii) Sale of motor vehicles that were purchased prior to July 1, 2017.	Supply of old and used motor vehicles (includes sale and leasing).
Eligible persons	Lessors and registered persons who are not dealer of the used goods	All registered persons (whether or not dealer of used goods)
Condition of ITC non-availment	(i) Leasing business – Not applicable. (ii) Other supplies - Applicable.	Applicable.
Date of purchase/ lease of motor vehicles	Purchased or leased prior to July 1, 2017.	Date of purchase of motor vehicle is irrelevant.
Tax liability	= Value of taxable supply * (Applicable GST rate) * 65%.	= Margin value * 12% or 18% (as the case may be).
Date of Notification	October 13, 2017	January 25, 2018
Sunset clause	June 30, 2020.	Not applicable.
Example	Facts – A Company registered under GST sells its car for ₹ 80,000/- on which ITC had not been availed at the time of purchase; Purchase value – ₹ 3,50,000; Applicable GST rate on sale of new car – 28% (CGST+SGST) + 1% Compensation Cess	
	Total tax liability = 80,000*29%*65% = ₹ **15,080/-**	Margin value = 80,000 – 3,50,000 = (- 2,70,000) Since margin value is negative, tax liability will be **NIL**.

[3] *Notification No. 38/2017- Integrated Tax (Rate), dated October 13, 2017 and Notification No. 9/2018 – Integrated Tax (Rate), dated January 25, 2018*

It would be worthy to observe that the aforementioned notifications co-exist. However, Notification I is applicable only till June 30, 2020. Hence, the supplier may choose the one which is applicable and more beneficial for him.

Most probably, Notification II is more beneficial for the taxpayers, since rates prescribed under 'Notification I' is applicable on value of supply, whereas rates prescribed under Notification II is applicable only on the margin value.

B. Comparison of applicable GST Rates – New Cars vs. Old Cars

A comparison of the applicable GST rates between new motor cars and old and used motor cars is mentioned below –

Type of Vehicle	New motor vehicle			Old and used motor vehicle		
	GST Rate	Compensation Cess	Total Tax Rate	GST Rate	Compensation Cess	Total Tax Rate
	On value of supply			On margin value (assuming Notification II is followed)		
Small Car - Petrol/ CNG/LPG; Engine capacity less than 1200 cc; Length less than 4 meters	28%	1%	**29%**	12%	Nil	**12%**
Small Car - Diesel; Engine capacity less than 1500 cc; Length less than 4 meters	28%	3%	**31%**	12%	Nil	**12%**
Mid-segment car - Engine capacity less than 1500 cc (Petrol/ Diesel)	28%	17%	**45%**	12%	Nil	**12%**
Large car (other than SUV) - Engine capacity more than 1500 cc	28%	20%	**48%**	18%	Nil	**18%**
Sports Utility Vehicle (SUVs) - Engine capacity exceeding 1500 cc; Length exceeding 4 meters; and ground clearance of 170 mm and above	28%	22%	**50%**	18%	Nil	**18%**
Hybrid car (Mid-segment car/ Large car)	28%	15%	**43%**	12%	Nil	**12%**
Hybrid car (SUV)	28%	15%	**43%**	18%	Nil	**18%**

C. Deeper into the Provisions

1. **Valuation in case of employee car leasing**

   As an employee welfare arrangement, businesses often provide the facility of car leasing to its employees (including directors), as a part of their overall compensation package. Under this arrangement, a certain amount is deducted from an employee's monthly salary towards car-leasing, for a certain period of time. After completion of specified time period, the leased motor vehicle is offered to employee for sale.

   At this juncture, valuation provisions prescribed under the CGST Rules come into play. Since employees are related persons for the business as per the GST law, supply of leased motor vehicle to employee upon completion of specified time period should be valued at the **'Open Market Value'** (Rule 28 of the CGST Rules), for the purposes of charging GST.

   [Note: 'Open Market Value' means the full value in money, where supplier and recipient are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.]

2. **Computation of Margin value by businesses**

   Reduced tax rates prescribed under Notification II are applicable on the margin value. In the said notification, mechanism to compute margin value has been prescribed for two separate scenarios, mentioned below –

   Scenario I - Depreciation under Income Tax Act, 1961 is claimed on Motor Vehicles - Margin value should be computed as the difference between amount of consideration received and the depreciated value of such motor vehicle on the date of supply *i.e.* written-down value (WDV) as per the Income Tax Act, 1961.

   Scenario II - Depreciation is not claimed under Income Tax Act, 1961 - Margin value should be computed as the difference between selling price and purchase price. As per the Proviso to Rule 32(5) of CGST Rules, in the case of repossession of goods from a defaulting borrower (unregistered) for the purpose of recovery of a loan or debt, the purchase value shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by 5% for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession. This is usually applicable for lending banks and financial institutions.

   However, in both the above scenarios, where margin value arrives as negative, it shall be ignored and no GST shall be payable accordingly. Further, in case of negative margin value, the supply should not be treated as non-GST supply and GST ITC reversal should not be required.

3. **Applicability of reverse charge mechanism on supply of old vehicles by government**

   As per **Notification No. 36 /2017 - Central Tax (Rate)** dated October 13, 2017[4], supply of old and used goods (including used vehicles) by the Central Government, State Government, Union territory or a local authority to a registered person shall be taxable under the reverse charge *i.e.* GST shall be payable by the registered person buying such goods. This situation usually arises in the case of sale on auction basis by the Government.

   Further, in case of supply of old and used vehicles by the Central Government, State Government,

[4] *Corresponding notification under IGST Act, 2017 - Notification No. 37 /2017- Integrated Tax (Rate), dated October 13, 2017*

Certain reasonable criteria should be defined in order to classify a motor vehicle as ‘old and used’, such as minimum time-limit of registration with the State Regional Transport Office (State RTO), minimum distance covered by the motor vehicle as per its odometer readings, etc.

Union territory or a local authority to an unregistered person, tax on such supply should be paid by the respective department of the Central Government, State Government, Union territory or a local authority by obtaining registration under GST. The same has been clarified vide the issue of **Circular No. 76/50/2018-GST dated December 31, 2018** (Sl. No. 1).

D. Unanswered Aspects

The issue of aforementioned two notifications has left certain questions unanswered. Such issues have been mentioned below -

1. **Term ‘old and used’ not defined**

   The term ‘old and used motor vehicles’ used in Notification II has not been defined either in the notification or in the CGST Rules. Thus, in a possible scenario of debate by the tax authorities on the treatment of motor vehicles as ‘old and used’, the burden of proof would lie on the taxpayer in order to claim applicability of lower tax rates. Further, it has not been mentioned in Notification II as to whether there is a condition for the minimum period of prior ownership of motor vehicle by the supplier.

   For instance, whether or not the demo car used by the auto-dealerships will be treated as old and used motor vehicle, has not been stated. Or say, a bank repossesses a car upon default in payment of the **first monthly installment** of the car loan that was taken by its customer (borrower). Whether the sale of such repossessed car can be treated as sale of ‘old and used car’ is not made clear by the notification.

   Certain reasonable criteria should be defined in order to classify a motor vehicle as ‘old and used’, such as minimum time-limit of registration with the State Regional Transport Office (State RTO), minimum distance covered by the motor vehicle as per its odometer readings, etc.

2. **Mechanism to Compute WDV on the Date of Supply**

   As mentioned above, in cases where supplier has claimed depreciation under the Income Tax Act, 1961, ‘margin value’ shall be calculated as the difference between consideration received and WDV of such motor vehicle on the date of supply. However, on analysis of relevant provisions of the Income Tax Act, 1961 (including, but not limited to Section 32), it is observed that depreciation is claimed on the block of assets, which comprises of a class of assets.

   When an asset enters into the block, it loses its identity and becomes a part of the block of assets itself. In such a scenario, it would be difficult to ascertain the WDV of a particular asset as per the Income Tax Act, 1961.

   Further, the provisions under GST notification prescribe WDV on the ‘date of supply’. However, depreciation under Income Tax Act, 1961 is not computed proportionately to the number of days for which asset is acquired and instead, 180 days concept is followed. If asset is held for more than 180 days, full depreciation rate is charged, otherwise half of the depreciation rate.

   Furthermore, the amount of depreciation becomes eligible to be claimed as deduction only at the ‘end’ of concerned previous year.

   In light of above stated facts, the value to be adopted by supplier as WDV on ‘date of supply’

need to be carefully analyzed, as the basis for determining the same may be debated by the tax authorities.

3. **Application of Valuation Rules for Computing Margin Value**

As per Notification II, margin value should be computed as - difference between **'consideration received'** and WDV (in case registered person has claimed depreciation under the Income Tax Act, 1961) and as the difference between **'selling price'** and purchase-price (in other cases).

The word 'consideration' has been defined in Section 2(31) of the Central Goods and Services Tax Act, 2017 ("CGST Act") to include payments made in money and in kind. However, the term "selling price" has not been defined either in the Notification II or CGST Rules. Hence, the meaning of the term "selling price" should be derived as per the general understanding of the term *i.e.* amount of money received for the sale of goods, in which case any consideration received in mode other than money (*i.e.* in kind) would not be included in the selling price. This may not be the intention of the legislature.

Further, a crucial aspect to be considered is that whether Rule 28 of the CGST Rules (regarding valuation at Open Market Value) would be applicable while determining 'consideration received'/ 'selling price', as the case may be, in situations where price is not the sole consideration or where supply is made to the related persons.

At the outset, it appears that since the specific terms 'consideration received' and 'selling price' have been used in Notification II for computation of **'margin'**, recourse should not be made to the CGST Rules which are applicable for the computation of **'value of supply'.** However, this issue has not been clarified by any Circular and may be debated by the tax authorities.

Where the valuation provisions as per the CGST Rules are applied, the concept of 'margin value' itself would get defeated and the supplier will be required to pay tax even in case of sale of used cars on loss.

E. Conclusion

Automobile sector has been long demanding a reduction in the applicable GST rate on sale of new cars, from 28% to 18%. Till the time such reduction is made by the Government in order to boost the market demand, purchase of second-hand cars would remain a lucrative option for the consumers. The consistent growth of the Indian used car market is the centre of attraction in the otherwise slow-growth automobile sector.

Having said this, there is still a high scope for future growth through the organized sector, which at present account for only 17% of the total sales. In order to boost participation of the formal sector, Government should provide timely clarifications/ answers on the aforementioned issues regarding GST applicability, as this would bring greater transparency in its taxation structure on pre-owned cars. ■

Direct Tax Issues : Real Estate Sector

This article seeks to highlight and redress the direct tax issues prevailing in real estate Sector. It deals with the issues of date of transfer in case of Joint Development Agreements, minute reading of the provisions of Section 45(5A) of the Income-tax Act, 1961 and tax issues arising when the asset is held as inventory. Further it seeks to analyse provisions of Section 80-IBA of the Act and brings out the lacunae in the current provisions and the potential litigation which may arise. It also deals with interesting aspects of the Rule 11UA valuation to real estate companies. Read on to know more...

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The contribution of real estate sector is significant to the economic development of our country. While we understand that the Government's moto is "Housing for all", unfortunately in recent past, this sector is going through a gloomy patch with plethora of challenges piling up. In line with the Government's moto & to boost this sector, various amendments have been made under the Income Tax Act, 1961 ('the Act'). However, the tax aspects of this industry are not free from ambiguity. This article seeks to highlight & redress the tax issues specifically focusing on the Joint Development Agreements, profit linked deduction u/s 80IBA of the Act & Valuation of real estate companies.

I. Taxation of the Joint Development Agreements

In recent past, Joint Development Agreements (JDAs) has emerged as an effective & a trending business model, wherein the land owner transfer the development rights to the Developer who in turn develops the project. Typically, the Land owner either gets a share in the constructed units or a consideration in money or a combination of both for transferring the development rights. Since, this transaction

Clearly, the Government should come up with specific ICDS to govern revenue recognition on real estate projects addressing these issues & reduce the scope of litigation.

is different from the traditional model; following are the grey areas which needs to be focused upon:

a. **Determination of Date of Transfer:**

The most litigated tax issue arising in JDA is the determination of date of transfer for land owner, who will be subjected to capital gain tax.

Section 2(47) of the Act defines transfer, which inter alia includes "any transactions involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred in Section 53A of Transfer of Property Act, 1882". Based on these provisions, revenue contends that the date of transfer is effectuated on giving the possession of the land to the developer. However, it is very draconian to charge tax in the year of transfer, as the land owner in reality has not earned any income by virtue of entering into the JDA.

Generally real estate projects run into years, therefore deferring the taxability in the year of completing the project is very essential. Finance Act, 2017 inserted Section 45(5A) to redress this issue, but unfortunately it extended the benefit of deferment only to Individuals & HUF. Therefore, following Judicial precedence may be still relevant while dealing with this issue, wherein the courts have held that the tax will not be levied in the year in which the JDA is entered or when the land is handed over to the Developer:

i. **PCIT, Jalandhar-I vs Chuni Lal Bhagat [2019] 103 taxmann.com 379 (SC),**

ii. **PCIT, Kolkata-1 Vs Infinity Infotech Parks Ltd. [2018] 96 taxmann.com 274 (Calcutta)**

iii. **Smt. Lakshmi Swarupa Vs ITO, Ward 4 (4), Bangalore [2018] 100 taxmann.com 148 (Bangalore - Trib.)**

Also, from the way the courts have opined the date of transfer, it is very critical to note the way in the which the JDA is drafted. While, this has been a long-litigated issue, Government should extend the benefit of deferment to all assesses considering the liquidity crisis.

b. **Capital Gain Tax arises even if Part CC of project is received**

As discussed above, the new Section 45(5A) inserted by the Finance Act,2017 extended the benefit of deferment only to Individuals and HUF. Furthermore, if we do a minute reading of this Section one will note that, the tax is levied on the whole project even if completion certificate for part of the project is received. While the term "project" is not defined under the Act, in case of big projects consisting of many towers, the land owner may be burdened with the tax liability in the initial year itself if the part CC of the project is received; therefore, the benefit of deferment in reality is not practically met.

c. **Ambiguity on tax treatment for assesses holding the land as "Stock in Trade"**

In case the Land is appearing as "stock in trade" of the assessee who enters into a JDA, then the income arising by virtue of JDA, may be charged as business income. However, the Act does not contemplate a specific computation mechanism unlike the provisions of capital gain under section 45(5A) of the Act.

It is worthwhile to note that there is no specific ICDS (Income computation and disclosure standard) governing the Income recognition on the real estate projects, therefore there is an ambiguity on the quantum of income and the time of chargeability as discussed below:

As regards to the time of chargeability the assessee may opt to defer the tax by following project completion method which may be litigated by the revenue. Also, there are no provisions in the Act to govern the quantum of income that would be taxed. One may take a view that the stamp duty value of the constructed units be considered as the business income & other may consider the stamp duty valuation on registering the JDA. Clearly, the Government should come up with specific ICDS to govern revenue recognition on real estate projects addressing these issues & reduce the scope of litigation. However, it is important to note that the provisions of the Section 50D of the Act may not be applicable as the asset held is not the capital asset.

II. Profit Linked deduction for developing and building housing projects

The current law exempts 100% profits arising on the developing and building housing projects. Section 80IBA was inserted in Finance Act 2016 in line with the Government's objective of "Housing for all". While the section seems attractive, there are still some tax issue and ambiguity that needs to be addressed.

As per the provisions of Section 50CA & 56(2)(x) of the Act, the transferor and transferee cannot transact less than the fair market value as per Rule 11UA(1)(c)(b).

a. Restriction of allotting one unit is only applicable in case of Individuals

Currently, the section 80IBA provides for various conditions that needs to be satisfied in order to claim the tax exemption which inter alia stipulates a condition that, only one residential unit can be allotted to an Individual, his spouse and a minor child. However, this restriction is not applicable to other assesses. For instance, if the assessee sells more than one unit to HUF of an individual, then the provisions of this section have been said to be complied with. Going further, the developer may also allot all the units of the project to a single assessee other than individual & claim deduction. However, if one goes by the intent of "Housing for All" this may be questioned.

b. Sale & lease back transactions may also be eligible for deduction

Presently, this Section does not preclude sale and lease back transaction, implying if the Developer sells the units to Investors who in turn lease back the units to the Developer for earning rental income, then also the deduction may be allowed. However, as stated going by the intent of housing for all which was clearly mentioned in the Memorandum to Finance Bill 2016, tax authorities may invoke GAAR (General Anti Avoidance Rules) on such transactions.

c. No clarity on charging back Income claimed in previous years if any of the other provisions are not complied

Presently, the deduction claimed under this section for previous years is charged back only in case when the project is not completed within a period of 5 years. However, there is no clarity as to what happens if the assessee fails to comply with any other provisions of this Section. Let us say, the assessee claimed exemption under this section for initial 4 years, however in year 5 it has contravened the provisions of this Section by say allotting 3 units to an Individual. Now, the important question is whether the exemptions claimed in earlier years be taxable in the year of contravention. Possibly a view may exist that, as there is no specific clause under the Act, the previous exemption may not be charged back.

> While the term "project" is not defined under the Act, in case of big projects consisting of many towers, the land owner may be burdened with the tax liability in the initial year itself if the part CC of the project is received; therefore, the benefit of deferment in reality is not practically met.

d. **SPVs may not benefit from this section**

The provisions of this Section may not be attractive in case of SPVs specifically formed for this project as the assessee may be subject to MAT/AMT which will not be utilized in future years leading to an effective tax cost of 15% plus cess & surcharge.

III. Valuation of shares of a Real Estate Company in accordance with Rule 11UA

As per the provisions of Section 50CA & 56(2)(x) of the Act, the transferor and transferee cannot transact less than the fair market value as per Rule 11UA(1)(c)(b). There are certain challenges that may be encountered while valuing the shares of a real estate company which may be as under:

a. No mechanism to protest the stamp duty valuation

As per the valuation mechanism prescribed under Rule 11UA, immovable property is valued at the value adopted or assessed or assessable by any authority by the Government for the purpose of payment of stamp duty. As per the provisions of Section 50C, if an assessee transfers a land or a building & the sale consideration is less than the Stamp Duty Valuation, then he has the right to ask the assessing officer to refer it to the Departmental Valuation officer. However, there are no such provisions while valuing the shares of a company which has a immovable property, therefore there may be unwarranted exposure to tax.

b. **No Clarity on WIP valuation**

The real estate companies typically have an inventory of work in progress (WIP) which is nothing but the capitalization of the project related expenses. There is no clarity on valuation of WIP as to whether WIP qualifies as an immovable property? While the term immovable property is not defined in Rule 11UA, one may take a view that, WIP cannot be considered as immovable property & therefore to be valued at cost.

c. **Whether TDRs qualifies as an immovable property?**

Another dilemma that needs to be addressed is how the valuation of TDR (Transferable Development Rights) is to be determined. In case of SRA projects or a rehabilitation projects if the developer fulfills its obligation by constructing units to the Slum Dwellers or society members, then certain amount of TDR/FSI is generated for the sale building. Now the question arises is whether the definition of immovable property includes TDR or FSI? It is interesting to note that the term immovable property is not defined in the Rules. However, Section 269UA of the Act defines immovable property which inter alia includes any rights in land or building which is constructed or which is to be constructed. Therefore, one may take a view that stamp duty valuation might be considered. However, it is worthwhile to note that this definition is applicable only for that chapter, therefore one may take a view that it cannot be extended to Rule 11UA and not to be treated as Immovable Property.

While there are several other tax issues that are prevailing like the conversion tax, notional rent tax what needs to be considered is that this sector really needs a revamp to bring more liquidity & transparency. Appropriate steps to strengthen and improve the sector by meeting challenges are crucial. Specific and customised tax laws which meets the business dynamics of this sector is the need of the hour.■

Towards Better Financial Reporting

COVID 19 pandemic has brought in severe concerns around health and safety of humanity around the globe and it has its consequential impact on the economic environment and the financial reporting. The Accounting Standards Board (ASB) had recognised the need for guidance for application of Ind AS and AS in the context of economic and operating environment affected by COVID-19. Accordingly, on March 27, 2020, the ASB jointly with AASB had issued advisory on accounting and auditing aspects. A further addendum to this was also issued by ASB on April 10, 2020. Though the high quality Ind AS Framework has comprehensive and robust application guidance and illustrative examples, a need was felt to provide additional application guidance in certain areas of accounting in the form of Frequently Asked Questions (FAQs) in the context of contraction in economic activity, disruptions in financial markets and a series of actions by government, monetary and prudential authorities.

Accordingly, a guidance containing 49 FAQs covering following Ind ASs was prepared by ASB Secretariat:

1. Inventories
2. Property, Plant and Equipment (PPE)
3. Impairment of Assets
4. Financial Instruments
5. Fair Value Measurement
6. Leases
7. Revenue from Contracts with customers
8. Provisions, Contingent Liabilities and Contingent Assets
9. Income Taxes
10. Employee Benefits
11. Share-based Payments
12. Borrowing Costs
13. Government Grants and Assistance
14. Intangible Assets
15. The Effects of Changes in Foreign Exchange Rates
16. Presentation of Financial Statements

The guidance offered in the FAQs is applicable for annual financial statements prepared in Ind AS framework for the ending March 31, 2020. The FAQs have been hosted on ICAI website at https://www.icai.org/post.html?post_id=16438

Online Certificate Course on Ind AS through Digital Learning Hub Platform of ICAI launched – In view of the unprecedented emergency situation due to outbreak of COVID-19 pandemic across the country, Online Certificate Course on Ind AS through Digital Learning Hub Platform of ICAI has been launched from April 26, 2020. Overwhelming response has been received from the members, ICAI, for the said course. The first batch was commenced on April 26, 2020 with 100 members. In May 2020, another 9 (nine) batches have been launched wherein 900 members are getting training in Ind AS. Accordingly, a total of 1000 members comprising of 10 batches are getting training on Ind AS online simultaneously.

Developments at IFRS Foundation & IASB

- **Exposure Draft : Classification of Liabilities – Deferral of Effective Date** - The IASB has proposed to defer by one year the effective date of Classification of Liabilities as Current or Non-current, which amends IAS 1, Presentation of Financial Statements. The IAS 1 amendments were issued in January 2020, effective for annual reporting periods beginning on or after 1 January 2022. However, in response to the covid-19 pandemic, the IASB is proposing to provide companies with more time to implement any classification changes resulting from the amendments by deferring the effective date by one year to annual reporting periods beginning on or after 1 January 2023. The IASB is not proposing any changes to the

Contributed by Accounting Standards Board of ICAI. Comments can be sent to asb@icai.in. Refer https://www.icai.org/post.html?post_id=14058 for Ind AS –IFRS Standards Convergence Status, https://www.icai.org/post.html?post_id=15770 for Ind AS Implementation Guidance and https://www.icai.org/post.html?post_id=16438 for COVID-19 Accounting Guidance of ICAI

original amendments other than the deferral of the effective date. The IASB has responded quickly to provide support to stakeholders at this difficult time. Accordingly, the comment period on the proposal is short—30 days, i.e., until 3 June 2020.

- **IASB issues package of narrow-scope amendments to IFRS Standards** - The IASB on May 14, 2020 issues package of amendments which includes narrow-scope amendments to three Standards as well as the IASB's Annual Improvements, which are changes that clarify the wording or correct minor consequences, oversights or conflicts between requirements in the Standards. All amendments are effective from 1 January 2022.
  - **Amendments to IFRS 3 Business Combinations** - update a reference in IFRS 3 to the Conceptual Framework for Financial Reporting without changing the accounting requirements for business combinations.
  - **Amendments to IAS 16 Property, Plant and Equipment** - prohibit a company from deducting from the cost of property, plant and equipment amounts received from selling items produced while the company is preparing the asset for its intended use. Instead, a company will recognise such sales proceeds and related cost in profit or loss.
  - **Amendments to IAS 37 Provisions, Contingent Liabilities and Contingent Assets** - specify which costs a company includes when assessing whether a contract will be loss-making.
  - **Annual Improvements** - make minor amendments to IFRS 1 First-time Adoption of International Financial Reporting Standards, IFRS 9 Financial Instruments, IAS 41 Agriculture and the Illustrative Examples accompanying IFRS 16 Leases
- With the purpose of addressing issues affecting the application of certain requirements of a newly issued IFRS Standard, IFRS 16, Leases, to large volumes of rent concessions granted as a consequence of COVID-19 pandemic during 2020, IASB in April 2020 has issued an Exposure Draft on COVID-19 Related Rent Concessions (Proposed amendment to IFRS 16, Leases) to provide lessees with a practical relief from requirements of IFRS 16 w.r.t sub-topic of lease modifications. The proposed amendment:

i. permits lessees, as a practical expedient, not to assess whether particular COVID-19-related rent concessions are lease modifications. Instead, lessees that apply the practical expedient would account for those rent concessions as if they were not lease modifications.

ii. requires lessees that apply the practical expedient to disclose that fact.

The Exposure Draft issued by IASB was open for comments until 8 May 2020 and proposed to be effective from annual reporting periods beginning on or after 1 June 2020. To invite comments from Indian stakeholders, the said Exposure Draft of IASB was hosted on ICAI website for comments by May 05, 2020. On the basis of the comments received from Indian stakeholders and discussions held at recently concluded meeting of ASB, the comments were submitted to IASB which can be assessed at https://www.icai.org/post.html?post_id=10209

The IASB held a supplementary meeting on 15 May 2020 to:

- consider feedback in response to the April 2020 Exposure Draft Covid-19-Related Rent Concessions, which proposed an amendment to IFRS 16, Leases; and
- re-deliberate the project proposal in the light of that feedback.

The IASB tentatively decided to finalise the proposal in the Exposure Draft with the following changes:

i. extend the condition proposed in paragraph 46B(b) to capture covid-19-related rent concessions for which any reduction in lease payments affects only payments originally due on or before 30 June 2021;

ii. require a lessee applying the practical expedient to disclose the amount recognised in profit or loss to reflect changes in lease payments that arise from covid-19-related rent concessions; and

iii. specify that in the reporting period in which a lessee first applies the amendment, the lessee is not required to disclose the information required by paragraph 28(f) of IAS 8 Accounting Policies, Changes in Accounting Estimates and Errors.

The IASB plans to issue the amendment to IFRS 16 on or around 28 May 2020.

- IFRS 17 Insurance Contracts—why annual cohorts?

  The requirement to use annual cohorts as part of the process of accounting for insurance contracts has been the cause of much debate since IFRS 17 was issued in May 2017. The IASB's Chair Mr. Hans Hoogervorst in the Article has explained the reasons for the IASB's decision to retain unchanged the annual cohort requirement. The Article can be assessed at https://www.ifrs.org/news-and-events/2020/04/ifrs-17-insurance-contracts-why-annual-cohorts/

- **Sustainability reporting and its relevance to the IFRS Foundation** - IFRS Foundation Trustee Ms. Teresa Ko at the inaugural meeting of the Green and Sustainable Finance Cross-Agency Steering Group earlier in May 2020 provided the prepared remarks. The group was established by the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) to coordinate the management of climate and environmental risks to the financial sector in Hong Kong. In her remarks, she outlines possible future roles the IFRS Foundation could play in supporting progress towards the development of high-quality, internationally recognised standards for sustainability reporting. The same can be assessed at https://www.ifrs.org/news-and-events/2020/05/sustainability-reporting-and-its-relevance-to-the-ifrs-foundation/

Comments on documents issued by IFRS Interpretations Committee (IFRS IC)

Comments on the Tentative Agenda Decision issued by the IFRS IC submitted on May 13, 2020:

(a) Sale and Leaseback with Variable Payments (IFRS 16)

(b) Deferred Tax Related to an Investment in a Subsidiary (IAS 12)

Centre likely to Fast-track changes for Uniform Flexi Labour Laws

Top policymakers have begun discussions on a framework that will attract investors looking to shift manufacturing to India, a senior government official told ET.

The Centre could tweak labour law changes and fast-track their implementation to supersede ordinances issued by three BJP-ruled states to ensure uniform regulations that offer flexibility to new and existing businesses across the country. Top policymakers have begun discussions on a framework that will attract investors looking to shift manufacturing to India, a senior government official told ET. "This is needed as multinational companies looking at relocating from China to India would prefer flexible central laws over state laws for uniformity of operations across different locations," the official said. BJP-ruled Uttar Pradesh, Madhya Pradesh and Gujarat have passed executive orders exempting new establishments from most labour rules. While all of them had allowed businesses, to extend shift hours to 12 from eight hours as part of the reforms, UP rescinded the decision after strong protests by RSS-affiliated labour union Bharatiya Mazdoor Sangh. Existing businesses in these states are upset as they don't get the benefit of the easier regulations. They have now sought similar flexibility.

(Source: https://economictimes.indiatimes.com/)

SEBI to Companies: Increase COVID Disclosures

To help investors make informed decisions about their holdings of stocks and bonds, markets regulator SEBI on Wednesday asked listed entities to disclose the impact of the Covid-19 pandemic on their businesses.

SEBI acknowledged that many listed entities have provided disclosures about shutdown of operations due to COVID-19, and some entities have also intimated exchanges about actions taken for sanitation, safety, etc. But SEBI said that disclosures relating to the financial impact were not enough. The regulator also warned companies from making selective disclosures. While submitting financial statements under the Listing Obligation and Disclosure Requirements Regulation, listed companies may specify the impact of COVID-19 pandemic on their finances, to the extent possible, the circular noted

(Source: https://timesofindia.indiatimes.com/)

Shares in Depository Account can be used as Margin till August 31: SEBI

Markets regulator SEBI recently said shares in depository account, which may be pledged or repledged, can be used as margin for another three months till August 31 in the wake of coronavirus pandemic. The markets regulator in February came out with framework on margin obligation to be given by way of pledged or repledged shares in the depository system. Under the framework, trading or clearing member need to accept collateral from clients in the form of securities, only by way of 'margin pledge', created in the depository system with effect from June 1. Now, the regulator has extended the guidelines by three months for the implementation of the framework, SEBI said in a circular.

In view of the situation arising due to COVID-19 pandemic, lockdown imposed by the government, representations received from the depositories and the clearing corporations and that the changes to the systems and software development still under progress, it has been decided to extend the implementation of the framework to August, 2020, the regulator added. Accordingly, the trading member (TM) / clearing member (CM) shall be required to close all existing demat accounts tagged as 'Client Margin / Collateral' by August 31, 2020. However, the provision regarding holding of Power of Attorney by TM or CM not to be considered as equivalent to the collection of margin by such member in respect of securities held in the demat account of the client will be applicable from June 1. Investors have been eased in a way as share in DP account, which may be pledged / unpledged can be used as margin for another 3 month till 31 August 2020. So, this can and may address some near term selling pressure and we may not see that coming.

(Source: https://timesofindia.indiatimes.com/)

Legal Decisions

Income Tax

LD/68/175, [ITAT Delhi: ITA 2699 Del/2015], Hindustan Coca-Cola Beverages Pvt. Ltd Vs. The Dy. Commissioner of Income Tax, 27/04/2020

Non-compete fees paid by assessee to bottlers held to be a capital expenditure, not eligible for depreciation unser section 32 and also not eligible for amortisation. Assessee had acquired the business of various bottlers and had amortised the fees paid over a period of 5 years and deduction thereof was claimed. AO held that since expense was related to acquiring of business, the same was a capital expenditure. ITAT noted that assessee's appeal on same issue was already decided by coordinate bench against the assesse which matter has been admitted and is pending before the High Court. ITAT ruled this instant matter in favour of Revenue.

LD/68/176, [Supreme Court: Civil Appeal no. 6110 of 2009], Basir Ahmed Sisodiya Vs. The Income Tax Officer, 24/04/2020

AO had made addition under section 68 towards cash credit amount shown against names of certain unregistered dealers since assessee had failed to failed to prove the authenticity of the entries in question. During appeal related to penalty proceedings arising from assessment order of same addition, the CIT(A) had held that assessee had not made any concealment of income or furnished inaccurate particulars of income since during the penalty proceedings the assessee had furnished affidavits & statements of unregistered dealers which was duly verified and accepted by the AO without any adverse findings. Supreme Court ruled in favour of assessee and held that the factual basis on which the Officer formed his opinion in the assessment order stands dispelled by the affidavits and statements of the concerned unregistered dealers in penalty proceedings.

LD/68/177, [Gujarat High Court: Special Civil Application No. 15992 Of 2015], Jayesh Kotak Vs. The Dy. Commissioner of Income Tax, 26/03/2020

Reassessment proceedings reopened beyond 4 years' time, quashed by the High Court. Loan transaction between companies wherein the assessee held substantial interest cannot be deemed as dividend unser section 2(22)(e) when the assessee neither received any amount nor derived any benefit from such transaction. The AO had information that unsecured loans was advanced by a company to its sister concerns where assessee held substantial interest, but there was no information that effect that such payment was made for the benefit of assessee. Also, there was no specific requirement for the assessee to disclose such independent transactions.

LD/68/178, [ITAT Bangalore: ITA No.169/ Bang/2014], Texas Instruments (India) Private Limited Vs. The Addl. Commissioner of Income Tax, LTU 06/03/2020

80JJAA deduction with respect of additional wages of new employees employed by assessee (a software development company) during the preceding year who were not eligible for deduction in such preceding year as they did not work for more than 300 days, allowed by ITAT. It is not proper to say that if the deduction is refused in the first year of employment of the new employee then for the next two succeeding Assessment Years also, the benefit of deduction will not be available. Such an approach defeats the very purpose for which deduction unser section.80JJAA of the Act is allowed for three consecutive Assessment years.

Contributed by CA. Sahil Garud, CA. Mandar Telang, GST & Indirect Taxes Committee, Disciplinary Directorate and ICAI's Editorial Board Secretariat.
For details please visit Editorial Board webpage at https://icai.org/new_post.html?post_id=967&c_id=59
Readers are invited to send their comments on the selection of cases and their utility at eboard@icai.in. For full judgement write to eboard@icai.in.

Transfer Pricing

LD/68 /179, [ITAT Bangalore: ITA 1915/ Bang/2017], Toyota Kirloskar Auto Parts Private Limited Vs. Dy. Commissioner of Income Tax, LTU, 13/03/2020

Revenue applied Profit split method to benchmark royalty paid by assessee for using AE's technology, as against Transactional Net Margin method (TNMM) used by assessee. TPO has observed that economic life of the technology had an impact on the most appropriate method and that the concerned technology was to be used by start-ups, and since the assessee was using the technology for a fairly long period of more than 5 years, it would not be proper to adopt the TNMM. ITAT held that passage of time cannot be the basis to discard TNMM. ITAT held that conditions for use of Profit Split method were not satisfied and also affirmed assessee's reliance on by OECD's Revised Guidance on application of transactional Profit split method.

LD/68/180, [ITAT Mumbai: ITA 7371/ Mum/2017], Essar Shipping Limited Vs. Asst. Commissioner of Income Tax, Mumbai, 06/03/2020

Assessee had provided negative lien to bank which had advanced loan to assessee's ultimate parent entity. As a part of this arrangement, assessee had agreed not to sell 49% of its stake in its wholly owned subsidiary without prior consent from the bank during pendency of the loan. ITAT stated that this arrangement is not equal to guarantee given to Bank and directed AO to make TP-adjustment by applying 0.25% to the said transaction instead of 0.5%. Separately, TP-adjustment in respect of purchase of 2 qualifying ships under Bare Boat Charter cum Demise (BBCD) agreement from Essar Shipping and Logistics Limited, Cyprus, was deleted by ITAT by relying on coordinate bench which had held that TP-regulations will not be applicable to income covered under tonnage tax scheme under Chapter XII-G.

INDIRECT TAXES

GST

LD/68/181, [Bharti Airtel Ltd Vs. UOI 2020-TIOL-901-HC-DEL-GST], 05/05/2020

The High Court read down para 4 of Circular No. 26/26/2017-GST dated 29.12.2017 to the extent that it restricts the rectification of Form GSTR-3B in subsequent tax periods and not in the period in which the error has occurred. Having regard to the scheme of the GST Act, there is nothing that prohibits the assessee from rectifying the returns, and the petitioner is entitled to rectify the same in the same month to which the error relates and not necessarily only in the subsequent period returns.

LD/68/182, [2020 – TIOL – 924 – HC – RAJ – GST], M/s Shree Motors Vs. Union of India, 18/03/2020

Once the provisions of Rule 117 of the CGST Rules, which prescribe limitation within which the claim should be made has been upheld, the plea raised pertaining to the denial of vested right on account of petitioners failing to submit/file Form GST Tran-1 within the prescribed time cannot be entertained. The High Court also denied relief to the petitioner on the ground that no evidence is furnished to suggest that the failure to furnish TRAN-1 forms within the prescribed period was due to the technical glitches.

LD/68/183, [2020-TIOL-640-HC- Chattisgarh-GST], K P Sugandh Ltd. Vs. State of Chhattisgarh, 16/03/2020

Undervaluation of the goods in the invoice cannot be a ground for the detention of the goods and vehicle for a proceeding to be drawn under Section 129 of the Central Goods and Service Tax Act, 2017 read with Rule 138 of the Central Goods and Service Tax Rules, 2017.

Legal Update

SERVICE TAX

LD/68/184, [CESTAT Delhi: STA 52970 of 2015], Nitco Logistics Private Limited Vs. Commissioner of Service Tax, 04/03/2020

Assessee, claimed exemption under Notification dated December 3, 2004 and submitted a CA certificate in support of reconciliation between receipt and accrual of payments & containing details of exempted bookings. CA certificate was not considered by the Commissioner and also no information was sought regarding the exemption claim from the assessee. Matter remanded for de-novo adjudication by CESTAT. Referring to CBEC Circular dated 11/06/2007, CESTAT observed that assessee was not bound to provide vehicle numbers for small consignment.

LD/68/185, [2020-TIOL-811-CESTAT-BANG] United Telecoms Ltd. Vs. Commissioner of Service Tax, 26/02/2020

Setting up of computerised facilities in their Road Transport office for issue of Smart Car Driving Licence and also paper learning licences is a part of outsourced activities for carrying out statutory function and hence cannot be regarded as business auxiliary services liable to service tax.

LD/68/186, [CESTAT Mumbai: STA 87214 of 2018], Indian Pharmaceutical Association Vs. Commissioner of Central GST and Central Excise 11/11/2019

Service tax demand was raised on assessee on receipts from members under 'club or association service' and 'convention service'. CESTAT observed that assessee does not offer 'convention services' but gets events organised by professionals and, by collecting fees which are transmitted to such organisers, enables its members to participate in them. Assessee did not retain any part of fees charged by Convention organizers and was only an agent for recovery of the costs charged by convention organisers. CESTAT held that the activity is beyond the purview of taxability under section 65 (105) (zc) of Finance Act, 1994

EXCISE

LD/68/187, [Supreme Court: Civil Appeal Nos. 302/303 Of 2009], Commissioner of Central Excise Vs. Uni Products India Limited, 01/05/ 2020

CESTAT classified car matting/carpets under Chapter 57 of First Schedule to Central Excise Tariff Act under the heading of 'Carpets and Other textile Floor Coverings'. Supreme Court stated that once the subject goods are found to come within the ambit of chapter heading 570390.90, for the sole reason that they are exclusively made for cars and not for "home use" (in broad terms), those goods cannot be transplanted to the residual entry against the heading 8708. HSN Explanatory Notes specifically exclude "tufted textile carpets, identifiable for use in motor cars" from 87.08 and place them under heading 57.03. The common parlance test, marketability test, popular meaning test, are to be used for interpretation only if a particular tariff entry is capable of being classified in more than one heads.

LD/68/188, [Bombay High Court: Central Excise Appeal 196 of 2019]

The Principal Commissioner of Central GST Vs. Patodia Filaments Private Limited, 25/02/2020

Assessee is not required to reverse entire credit balance lying on the date of opting Exemption Notification No.30/2004-CE dated July 09, 2004. Rule 11(3)(i) of CENVAT Credit Rules, 2004 (CCR), does not envisage lapsing of CENVAT for the assessee. Stipulation of lapsing is included in Clause (ii) and not in Clause (i). In Rule 11(3) (i) it is the option given to the manufacturer or producer for obtaining exemption whereas in category (ii) there is no such option. Two categories being distinct, the placement of stipulation cannot be considered as a mere draftsman error, as per High Court.

Disciplinary Case

Issuance of capital expenditure certificate and thereafter certification of Balance sheet by the same Respondent with different figures of capital expenditure incurred -- Figures certified in certificate do not match with the figures appearing in Schedule V of the Balance sheet -- Plea of Respondent that Balance sheet and certificate were signed on different dates -- Respondent is guilty of Professional misconduct falling within the meaning of Clause (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Held:

The Disciplinary Committee noted that at the time of issuing capital expenditure certificate, the Company had issued two cheques of ₹ 25 crores and ₹ 7 Crores as Advances for purchase of machineries. The Respondent had issued capital expenditure certificate relying upon entries as appearing in the books of accounts of the Company, and wrongly included the amount of advance as expenditure incurred on Plant & Machinery without verifying details of encashment of cheques. Committee further noted that Respondent was required to show the advance separately in his certificate so as to enable its user to take note of the same for a logical decision but he failed to do so. Further, being aware of cancellation of cheques, the Respondent should have included a reference of the same in his audit report. In light of the above the Committee is of the view that the Respondent did not exercise due diligence while certifying certificate in respect of capital expenditure by including a subjective disclosure and did not take care to adequately qualify the same in the audit report. Hence in the opinion of Committee, the Respondent was guilty of professional misconduct falling within the meaning of Clauses (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949. (Indian Bank, Pune Vs. Jayant Vasantrao Kolapkar [PR-133/2010-DD/148/2010/ DC/275/2013)

Classifieds

Circulars/Notifications

Given below are summarised important Circulars and Notifications issued by the CBDT, CBIC-GST and issued since the publication of the last issue of the journal, for information and use of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/notification. Suggestions on this column can be submitted at ***eboard@icai.in***

I. NOTIFICATIONS

1. Protocol amending the convention between India and Austria for the avoidance of double taxation and the prevention of fiscal evasion w.r.t. taxes on income – Notification No. 22/2020, dated 24-04-2020

The Central Government has notified that all the provisions of the amending protocol as annexed to this notification shall be given effect to in the Union of India w.e.f. 01.05.2020.

2. *Substitution of Rule 44G and Form No. 34F vide the Income-tax (8th Amendment) Rules, 2020* - Amendment of Mutual Agreement Procedure (MAP) procedure - Notification No. 23/2020, dated 06-05-2020

Vide this notification, Rule 44G (Application for giving effect to the terms of any agreement u/s 295(2)(h)) and Form No. 34F (Form of application for an assessee, resident in India, seeking to invoke mutual agreement procedure provided for in agreements with other countries or specified territories) have been substituted w.e.f. 06.05.2020. Further, Rule 44H relating to action by the Competent Authority of India and procedure for giving effect to the decision under the agreement has been omitted.

The detailed Notification can be downloaded from the link below:
https://incometaxindia.gov.in/communications/notification/notification23_2020.pdf

II. CIRCULARS

1. *Clarifications on provisions of the Direct Tax Vivad se Vishwas Act, 2020 - Circular No. 09/2020, dated 22-04-2020*

55 questions contained in Circular No. 7/2020 dated 04.03.2020 are reissued under this circular with modifications specified therein.

2. *Order u/s 119 regarding reporting requirement under clause 30C and clause 44 of the Form 3CD - Circular No. 10/2020, dated 24-04-2020*

CBDT has decided that the reporting under clause 30C and clause 44 of the Tax Audit Report shall be kept in abeyance till 31.03.2021.

3. *Clarification in respect of residency under section 6 of the Income-tax Act,1961 - Circular No. 11/2020, dated 08-05-2020*

The CBDT has provided relief in certain specified situations for the purpose of determining the residential status under section 6 of the Act during the previous year 2019-20 in respect of an individual who has come to India on a visit before 22.03.2020.

III. PRESS RELEASES/INSTRUCTIONS/ OFFICE MEMORANDUM/ORDER

1. *New procedure for registration, approval, etc. of certain entities deferred to 01.10.2020 – Press Release, dated 09-05-2020*

In view of the unprecedented humanitarian and economic crisis, the CBDT has decided that the implementation of new procedure for approval/ registration/notification of certain entities shall be deferred to 01.10.2020.

2. *Reduction in rate of Tax Deduction at Source (TDS) & Tax Collection at Source (TCS) – Press Release, dated 13-05-2020*

In order to provide more funds at the disposal of the taxpayers for dealing with the economic situation arising out of COVID-19 pandemic, the rates of TDS for the specified non-salaried payments made to residents has been reduced by 25% for the period from 14.05.2020 to 31.03.2021.

1. GST

FORM GST PMT-09 effective from 21st April, 2020

CBIC **vide Notification No. 37/2020-Central Tax dated 28-04-2020** notified 21st April, 2020 as the effective date to give effect to the provisions of rule 87 (13) and FORM GST PMT-09 of the CGST Rules, 2017.

[1] (Matter on Direct and Indirect Taxes, is contributed by Direct Taxes Committee and GST & Indirect Taxes Committee of ICAI respectively. FEMA updates by CA. Manoj Shah, CA Hinesh Doshi and CA. Sudha G. Bhushan)

Amendment in CGST Rules to allow filing of Nil Return (GSTR-3B) through SMS

CBIC **vide Notification No. 38/2020-Central Tax dated 05-05-2020** has inserted Rule 67A (Manner of furnishing of return by short messaging service facility) with effect from a date to be notified later in the CGST Rules, 2017 to allow the registered person to furnish a Nil return in FORM GSTR-3B for a tax period, through a short messaging service (SMS).

Amendments to special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016

CBIC vide Notification No. 39/2020-Central Tax dated 05-05-2020 has made the following amendments:-

- The corporate debtors who have furnished GSTR-1 & GSTR-3B for all the tax periods prior to the appointment of IRP/RP have been excluded from following the special procedures as specified in the earlier notification.
- Those corporate debtor who are to be treated as distinct person & liable to take a new registration in each of the States or Union territories where the corporate debtor was registered earlier, shall be liable to take new registration within:-
  - ☐ thirty days of the appointment of the IRP/RP
  - ☐ or by 30th June, 2020, whichever is later ".

Extension of FORM GSTR 9/9C for FY 2018-19 till 30th September, 2020

CBIC vide Notification No. 41/2020-Central Tax dated 05-05-2020 seeks to extend the due date for furnishing of FORM GSTR 9/9C for FY 2018-19 till 30th September, 2020.

Extension of due date for furnishing FORM GSTR-3B for the taxpayers registered in Ladakh and Jammu and Kashmir

CBIC vide Notification No. 42/2020-Central Tax dated 05-05-2020 has further provided/extended the due dates of furnishing of FORM GSTR-3B, Nov-March, 2020 returns for registered persons whose principal place of business is in the Union territory of the Union territory of Ladakh and the due dates of furnishing of FORM GSTR-3B, Nov-Feb, 2020 returns for registered persons whose principal place of business is in the Union territory of the Jammu and Kashmir.

Section 128 of Finance Act, 2020 notified with effect from 1st July, 2017

CBIC vide Notification No. 43/2020-Central Tax dated 16-05-2020 seeks to bring into force Section 128 of Finance Act, 2020 in order to bring amendment in Section 140 of CGST Act w.e.f. 01.07.2017.

Clarification in respect of certain challenges faced in implementation of provisions of GST Laws

CBIC vide Circular No. 138/08/2020-GST dated 06-05-2020 has issued clarifications in respect of certain challenges that are being faced by taxpayers in adhering to the compliance requirements under various provisions of the CGST Act.

2. CUSTOMS

Electronic Sealing-Deposit in and removal of goods from Customs Bonded Warehouses

CBIC vide Circular No. 20/2020 dated 21st April, 2020 has deferred the implementation of Circular No. 10/2020 dated 07th February-, 2020 till 30th June, 2020 and therefore the new date of implementation of such circular is 01st July, 2020.

IGST refunds on exports-extension in SB005 alternate mechanism

CBIC vide Circular No. 22/2020 dated 21st April, 2020 extended the facility of SB005 of error correction in the Customs EDI system for Shipping Bills with date upto 31.12.2019.

Review of 'Measures to facilitate trade during the lockdown period - section 143AA of the Customs Act, 1962

CBIC vide Circular No. 23/2020 dated 11th May, 2020 extended the facility of acceptance of an undertaking in lieu of a bond required during customs clearance, subject to conditions as underlined in the circular. Consequently, the date for submission of proper bond in lieu of which the undertaking is being temporarily accepted is extended till 15.06.2020

Implementation of PGA e-SANCHIT– Paperless Processing under SWIFT-Uploading of Licenses / Permits / Certificates / Other Authorizations (LPCOs) by PGAs

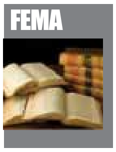
Circular No. 24/2020 dated 14th May, 2020

Provisional Clearance of Goods under India's Trade Agreements

CBIC vide Instruction No. 04/2020 – Customs dated 4th May,2020 has issued instructions that where original hard copy of Certificate of Origin (CoO) has not been submitted or only digitally signed copy or unsigned copy of CoO is submitted, same may be treated at par with category as listed at serial no. 5(c) of the Circular 38/2016-Customs, provided that the matter is not covered under 5(a), wherein there is reasonable belief that the it involves mis-declaration of origin/value addition.

Guidelines for conduct of personal hearings in virtual mode under Customs Act, 1962

CBIC vide Instruction No. F. No. 390/Misc/3/2019-JC,dated 27th April, 2020 has issued guidelines & decided that personal hearing, in respect of any proceeding under Customs Act 1962, given by various authorities, such as Commissioner (Appeals), original adjudicating authorities and Compounding authority, may be conducted through video conferencing facility.



FEMA

Amendments to Non Debt Instrument Rules 2019 for curbing opportunistic takeovers/ acquisitions of Indian Companies due to current COVID 19 pandemic

Notification Dated 22nd April 2020 issued by Ministry of Finance

In order to curb opportunistic takeovers and acquisitions of Indian companies due to COVID 19 pandemic, government has amended provisos to Rule 6(a) of Non Debt Instruments Rules, 2019 as under:

Provided that an entity of a country, which shares land border with India or the beneficial owner of an investment into India is situated in or is a citizen of any such country, shall invest only under Government Approval Route.

Provided further a citizen of Pakistan or an entity incorporated in Pakistan shall invest only under the Government route in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.

Provided also that in the event of transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction/purview of above provisos such subsequent change in beneficial ownership will also require Government approval.

Comments: Previously foreign investment by an entity of Bangladesh and Pakistan or citizen of Bangladesh and Pakistan was under government approval route. However, with outbreak of COVID 19 pandemic to protect opportunistic takeovers/acquisitions of Indian Companies government has brought this change in FDI Policy. Accordingly, it has been decided that any foreign investment by an entity or citizen of any country connected through land border with India or beneficial owner of investment is situated in any country connected with land border to India will require prior government approval.

Amendments to Non Debt Instrument Rules 2019 – Acquisition after renunciation of rights

Notification Dated 27th April 2020 issued by Ministry of Finance

As per existing provisions [Rule 7 of Non Debt Instrument Rules 2019 (NDI Rules)] existing foreign investors are allowed to acquire shares through rights issue subject to conditions prescribed therein the rule. Further, explanation to the rule clarified that conditions of Rule 7 would even apply to foreign investor who acquires securities pursuant to renunciation of rights. Therefore, in case when foreign investor, not even being an existing shareholder, could acquire securities of Indian Company on account of renunciation of rights at the applicable rights price.

The Ministry of Finance vide Notification dated 27th April 2020, amended the Rule 7 and omitted the explanation to Rule 7 of NDI Rules and added new Rule 7A. Rule 7A states that –

'a person resident outside India who has acquired a right from a person resident in India who has renounced it may acquire equity instruments (other than share warrants) against the said rights as per pricing guidelines specified under rule 21 of these rules'

Accordingly, all transactions where shares are acquired by foreign investor due to renunciation of rights will have to comply with pricing guidelines prescribed in Rule 21 of NDI Rules.

Comments: The amendment to Rule thus prohibits acquisition of shares by non existing foreign investor based on existing rights price which was allowed earlier. Now in wake of Rule 7A if shares are acquired on account of renunciation of rights pricing guidelines would be required to be complied.

Amendments to foreign investment in Insurance Sector – NDI Rules 2019

Notification Dated 27th April 2020

Government also made amendment to foreign investment in Insurance Sector and sector specific conditions there to. It has added few areas in Insurance Sector where 100% investment can be made under automatic route.

As per amendment, 100% foreign investment in Intermediaries or Insurance Intermediaries including Insurance Brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, surveyors and Loss Assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of Indian from time to time is allowed under automatic route.

For updated sector specific conditions refer notification at –

http://egazette.nic.in WriteReadData/2020/219200.pdf

Contribution to ICAI COVID-19 Relief Fund

The COVID-19 pandemic marks an unprecedented time that requires all members of society to extend support to the government initiatives. ICAI created a separate fund to facilitate collection of funds for COVID -19 relief. A large number of members are coming forward to contribute to the fund. The collected amount is being given to Prime Minister's National Relief Fund/PM Cares Fund. All contributions towards this Fund are eligible for deduction from Income Tax under Section 80G. For details members may visit - https://www.icai.org/new_post.html?post_id=16403. A list of major contributors has been included in the May, 2020 issue of the Journal. Subsequently, there have been more contributions as given below:

Members Contributing ₹ 1,00,000 and Above

Member-ship No.	18703
Name	CA. B.P. Rao
Place	Bengaluru

Member-ship No.	108551
Name	CA. Darshak Jitendra Shah
Place	Abu Dhabi

Members Contributing ₹ 50,000 and Above

Member-ship No.	Name	Place
035520	CA. Nihar Niranjan Jambusaria	Mumbai
068861	CA. Sumeet Bucha	Al Khobar
110569	CA. Manoj Bhojwani	Singapore
202054	CA. Kumaraswamy C V	Bengaluru
206998	CA. Jayashree Ullal	Bengaluru
209314	CA. Vaidyanathan C V	Muscat

Members contributing ₹ 25,000 and Above

Member-ship No.	Name	Place
018229	CA. Jayaprakash K	Puducherry
024142	CA. Sadagopan Srinivasan	Madurai
025935	CA. Mathivanan Devadoss R	Riyadh
028820	CA. Gopi Chand Tripuraneni	Warangal
059494	CA. Rajib Chaudhuri	Kolkata
063357	CA. Nilanjan Mazumdar	Kolkata

Members contributing ₹ 25,000 and Above

Member-ship No.	Name	Place
088280	CA. Pawan Kumar Garg	Jaipur
201334	CA. Ramachandra Rao K	Visakhapatnam
202318	CA. Sridhar G	Hyderabad

Members Contributing ₹ 10,000 and Above

Member-ship No.	Name	Place
008414	CA. Somesh Rai Sahgal	Kolkata
011391	CA. Kumaran Nair K K	Aluva
012322	CA. Vasavada Kulin Harshadrai	Ahmedabad
013838	CA. Melappalayam Krishnaswamy Santhanaraman	Chennai
018534	CA. Mohanan Nambiar C C	Kannur
018666	CA. Krishnamoorthy V	Chennai
020287	CA. Sravan Kumar T	Warangal
020962	CA. Karunakar Tota	Warangal
022339	CA. Kurian K	Kollam
022465	CA. Poonimangadu Subramaniyan Manohar	Chennai
023554	CA. Suresh K	Thiruvananthapuram
024161	CA. Rajendra Kamath K R	Aluva
024245	CA. Subramaniam P R	Bengaluru
024438	CA. Mohanan Nambiar P R	Amman
025113	CA. Ananthavardhana G N	Mysuru
030083	CA. Patel Kaushikkumar Chandulal	Ahmedabad
034843	CA. Bhobe Rajendra Laxmikant	Panaji Goa
035266	CA. Bhuta Ashok Indulal	Mumbai
039166	CA. Chandrashekhar Bhaskar Dushi	Pune
039692	CA. Shridhar Prabhakar Bhat	Ponda Goa

Members Contributing ₹ 10,000 and Above		
Membership No.	Name	Place
041360	CA. Rajesh Gopal Mundada	Pune
041429	CA. Abraham Thomas	Doha
044066	CA. Parekh Jayendra Rajendra	Mumbai
044075	CA. Durgesh Kumar Kabra	Mumbai
045105	CA. Joshi Madhav Anant	Mumbai
045769	CA. Atul Gajanan Godbole	Mumbai
047643	CA. Thakkar Ajit Gangaram	Mumbai
047643	CA. Thakkar Ajit Gangaram	Mumbai
055193	CA. Ojha Basudev	Bhubaneswar
057589	CA. Arun Kumar Bhawsinka	Cuttack
058596	CA. Amit Shyamsukha	Kolkata
061005	CA. Sharma Renu	New Delhi
071187	CA. Banka Binod Kumar	Ranchi
071253	CA. Jain Anil Kumar	Kanpur
074633	CA. Pradeep Kumar Kulkarni	Margao Goa
075629	CA. Purwar Ashish Kumar	New Delhi
078550	CA. Rajendra Jain	Bengaluru
081201	CA. Sushil Kumar Rakhecha	New Delhi
082723	CA. Bhatnagar Y S	New Delhi
083022	CA. Monga Arun	New Delhi
084906	CA. Sanjay Jain	New Delhi
087513	CA. Kailash Chand Gupta	Noida
090584	CA. Vinod Kumar Jain	Sonepat
092534	CA. Mittal Mukesh	Delhi
092958	CA. Manoj Kumar Agrawal	Gurgaon
094416	CA. Panda Sunil Kumar	Sambalpur
100551	CA. Sukumar Kanwaldev Chopra	Manama
101023	CA. Ronak Tikendra Desai	California
107442	CA. Ramesh Shantilalji Dave	Abu Dhabi
108044	CA. Pravin Tulsyan	Gurgaon
108058	CA. Percy Cooverji Irani	Mumbai
110848	CA. Arunkumar Mahaveerprasad Agarwal	Mumbai

Members Contributing ₹ 10,000 and Above		
Membership No.	Name	Place
111759	CA. Manish Ramnivas Somani	Pune
112045	CA. John George	Abu Dhabi
116665	CA. Rajiv Ravindra Datar	Abu Dhabi
119327	CA. Prasad Adavayya Turamari	Bengaluru
124258	CA. Bhavana Ramesh Lohiya	Aurangabad (Mh)
133587	CA. Jayendrakumar Chimanlal Panchal	Essendon
139922	CA. Dhiraj Vijay Mutha	Ahmednagar
141295	CA. Suresh Kumar P	Pune
150004	CA. Rohit Dayma	Abu Dhabi
192271	CA. Chintan Ajay Shah	Vapi
200303	CA. Rayanna M	Warangal
200869	CA. Rajendra Kumar A	Warangal
202880	CA. Raveendra S K	Bengaluru
205513	CA. Raja Sekhar D	Hyderabad
206107	CA. Renuka G	Dubai
206816	CA. Ravi Kumar G	Warangal
208160	CA. Krishnan N V	Dubai
209688	CA. Subrahmanyeswara Rao K	Visakhapatnam
209998	CA. Ramaswamy K	Kochi
211364	CA. Umesh Lakshminarayana Bhat	Kochi
211712	CA. Kiran Kumar Thota	Warangal
212782	CA. Saji P V	Abu Dhabi
214731	CA. Sirish Kumar K V N	Warangal
215170	CA. Surendra Reddy G	Kurnool
215178	CA. Sateesh R	London
215252	CA. Ashok Raj R	Chennai
216244	CA. Dayaniwas Sharma	Hyderabad
217484	CA. Nakka Venkata Ramana Rao	Visakhapatnam
217523	CA. Hari Krishna R	Hanamkonda
218642	CA. Srinivas Palaparthy	Visakhapatnam
219778	CA. Yarabarla Nagavalli	Vijayawada
220084	CA. Vikram Deshpande	California
221134	CA. Mohd Ateequr Rahman	Hyderabad
222329	CA. Saritha M N	Ras Al Khaimah
225078	CA. Urmila S	Coimbatore
226208	CA. Anil Malpani	Hyderabad
227537	CA. Anu Thomas	Ernakulam
231140	CA. Pradeep Chander N	Warangal

Members Contributing ₹ 10,000 and Above		
Membership No.	Name	Place
237437	Ambati Rajesh Reddy	Abu Dhabi
301027	CA. Monika Bucha	Dhubri
404761	CA. Vaidhya Abhay Kumar	Vidisha
404814	CA. Birla Priyanka	Abu Dhabi
405820	CA. Aashish P Bhandari	Abu Dhabi
405856	CA. Bhuvaneshwar Sharma	Jaipur
437741	CA. Tushar Goyal	Hanumangarh Town
504540	CA. Devesh Kumar	Gurgaon
530126	CA. Chandan Kumar Singh	New Delhi

CONTRIBUTIONS BY FIRMS

Firms Contributing ₹ 1,00,000 and Above		
Firm No.	Firm Name	City
003897N	Kansal Singla & Associates	Chandigarh
006591N	K G Somani & Co	New Delhi

Firms Contributing ₹ 50,000 and Above		
Firm No.	Firm Name	City
304084E	K S Bothra & Co	Kolkata

Firms Contributing ₹ 50,000 and Above		
Firm No.	Firm Name	City
008833S	A V Gopalakrishnan & Dinesh	Madurai
004610S	K Venkatachalam Aiyer & Co	Kochi
003848S	Shriram Narayan Associates	Hyderabad
003683N	R Sharma & Associates	New Delhi
000131N	Kumar Chopra & Associates	New Delhi

CONTRIBUTIONS MADE BY STUDENTS

Students Contributing ₹ 10,000 and Above		
Registration No.	Name	City
WRO0583976	Mr Ashish Vipin Ratnaparkhi	Mumbai
WRO0123030	Mr Naresh Mohanlal Varma	Mumbai

OTHER CONTRIBUTIONS

₹ 10,000 and Above	
Name	City
Amita Jayendra Parekh	Mumbai

Voluntary Contribution to the Chartered Accountants' Benevolent Fund (CABF) – Members Contributing ₹ 100,000 or More

Chartered Accountants Benevolent Fund (CABF) was established in 1962 by ICAI with sole objective to provide financial support to the Members of CA Fraternity facing distress on account of medical treatment, maintenance or any similar purpose for living. From the fund suitable financial assistance is granted to the Member or wife/husband or legal heirs in case of accidental/unnatural death of Member at age below 55 years. A considerable number of members/family have already been granted such assistance. CABF expresses its sincere gratitude to the Members for their generous gesture towards the noble cause. Members who voluntary contributed recently to the CABF are:

	Name	CA. Ranjeet Kumar Agarwal
	Membership No.	059869
	Amount	₹ 251000.00
	Name	CA. Amarjit Chopra
	Membership No.	016984
	Amount	₹ 237920.00
	Name	CA. Griffin Kayoj M.P.
	Membership No.	019183
	Amount	₹ 115115.00
	Name	CA. Weslin L.
	Membership No.	201921
	Amount	₹ 111111.00
	Name	CA. Ashok Duraisamy
	Membership No.	205424
	Amount	₹ 100000.00
	Name	CA B.A. Shanker
	Membership No.	228371
	Amount	₹ 100000.00

Option for Students to OPT-OUT and Carry Forward their Candidature to Next Examination i.e. November, 2020 Examination Cycle

During last few days, we have received mixed expression of opinions, views and requests from students, both relating to holding exams as per the schedule issued by The Institute of Chartered Accountants of India commencing from 29th July, 2020 or not holding exams in the prevailing COVID-19 pandemic situation.

Some students expressed concerns and anxiety on likelihood of spurt in COVID-19, availability of examination centre, students/centre in containment zone, social distancing and sanitization, availability of transport and accommodation facilities, loss of examination fee already paid and carry forward of exemption in case the student is not able to appear in the July 2020 examination. However, large number of students showed their strong desire to appear in examination as per the announced schedule.

ICAI is committed to serve even if one student wish to appear in examination scheduled from 29th July 2020, still considering the prevailing COVID-19 situation and in the interest of mitigating the anxiety and hardships of students, it has been decided **to provide an OPT-OUT option to students.**

The students (who have already submitted online examination application for May 2020 Examination cycle) shall be allowed to OPT-OUT and carry forward their candidature to next examination i.e. November, 2020 examination cycle. In this case, the examination fees and exemption, if any, of the particular student will automatically be shifted and carried forward to next examination i.e. November 2020 cycle and this attempt (May 2020) will be treated as cancelled / not counted. The student will be required to apply afresh for November 2020 Examination cycle at the relevant time. His / Her Examination fees will be adjusted and differential fees, if any, will only be charged (In case he/she has filled the form for May 2020 exams for one group only and in November 2020 exams cycle, he/she opts to appear in both groups, then, he/she will be required to pay the differential fees).

Remaining students who will choose not to opt out and wish to appear for the exams commencing from 29th July 2020, the Institute is making all the required and necessary arrangements for smooth conduct of May 2020 examination (commencing from 29th July, 2020) across the globe including strict adherence to the precautions / measures related to COVID–19 which cover thermal scanning, hands' sanitization, wearing of masks, maintaining social distancing at all times, following Government guidelines, etc. for the examinees / centre functionaries during the conduct of Chartered Accountant Examination.

However, situation of pandemic will be reviewed (COVID cases, MHA guidelines, Centre and State Government directions) in first week of July 2020 and status will be intimated to students who have not opted out. Further, conduct of examinations commencing from 29th July 2020 will be strictly dependent upon the then Government's advisories which may be issued for the area in which a particular Centre is situated and in any such eventuality, the students will be accommodated to the November 2020 examination cycle.

Furthermore, for Students seeking change of examination centre for the exams commencing from 29th July, 2020, the online facility for seeking change of examination centre (for the students who have already submitted online examination application for May 2020 Examination cycle) will be available at http://icaiexam.icai.org from **17th June 2020** (Wednesday) 11 AM Onwards to **20th June 2020** (Saturday) 11.59 PM.

Intermediate (Integrated Professional Course) [IPCE-Old Course] will be extended for one more attempt i.e. November 2020 Examination cycle.

Procedure for availing OPT–OUT facility

(a) Submit a declaration online available at https://icaiexam.icai.org from **17th June 2020** (Wednesday) 11 AM Onwards to **20th June 2020** (Saturday) 11.59 PM.

(b) On submitting the declaration, candidature of the student for May 2020 Examination Cycle will be cancelled and he/she will be shifted to next Examination Cycle.

(c) Kindly note that once option for "Opt out" is taken, it will be treated as final. No request for its change will be entertained under any circumstances.

The candidates are are advised to note the above and stay in touch with the website of the Institute, www.icai.org.

Additional Secretary

(Exams)

ICAI - Doctoral Scholarship Scheme 2020

Introduction

Doctoral scholarship will be awarded to registered Ph.D. Scholars from UGC recognized Indian Universities/ Deemed Universities/ Colleges, IIMs having University/ IIMs approved Ph.D. Programme to pursue and complete their Doctoral Research in Auditing, Taxation, Commerce, Management and Accounting Discipline.

The candidates must have confirmed Ph.D. Registration (Research Degree Committee (RDC) approved) at any of the institutions mentioned above on the last date of application. It includes the requirements of clearance of Research Entrance Test (RET).

Eligibility

- Membership of the ICAI with minimum 75% marks/ grade in 10th and 12th.
- NET/SLET and M Phil from a recognized university will carry weightage in the assessment of research proposal.
- The scholar should not be more than 40 years of age on the last date of application.
- Candidates who have already availed UGC Junior research fellowship (JRF)/Rajiv Gandhi National Fellowship (RGNF)/ Maulana Azad National Fellowship (MANF)/ICSSR/ICAR/CSIR/ICPR/ICMR/ ICHR or any such doctoral fellowship awardees are not eligible to apply.

How to apply

- Applications are invited through ICAI website, ICAI journal, mass email to members and should be received before 31st July 2020
- The application along with research proposal & abstract (3000 and 300 words respectively) and all the enclosures, must be sent to: Research Committee before the last date mentioned in the advertisement duly signed and stamped by the Ph.D. Registered institution.

Procedure for the award

- Applications are initially scrutinized by the Research Committee Secretariat
- Thereafter, subject group(s)/Expert Committee(s) will short-list the meritorious proposals from the eligible applications and thereafter by the Research Committee of ICAI.
- Such applicants may also be invited for a presentation before an Expert Committee at ICAI- HO or its COEs/ DCOs.
- The recommendations of the Expert Committee will then be placed before the Research Committee for its final approval.

Scholarship

- Rs 50,000 per month for maximum period of 36 months.
- Annualy 5 Scholars will be selected.

Contingency grant

- Yearly grant not exceeding Rs. 50000/- per year.

Scholarship Topics

The following topics are suggested:

1. Human Resource Accounting
2. Simplification of Human Resource Laws
3. Government Sector Accounting
4. Integrated Reporting
5. International Taxation Laws
6. Water Audit

The Research Committee will decide the suitability of the topics from time to time.

https://www.icai.org/new_post.html?post_id=16491

Scan for Open Link

For further details please write to:
Secretary, Research Committee
The Institute of Chartered Accountants of India
ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi - 110002
Tel.: 011-30110468; Email: research@icai.in, website: www.icai.org

The Institute of Chartered Accountants of India (ICAI)
(Set up by an Act of Parliament)

Last date for receipt of entries: 30th September 2020

Research Committee of the ICAI Presents

ICAI AWARDS FOR EXCELLENCE IN FINANCIAL REPORTING

Unique opportunity to participate in the Competition for the year 2019-20

OBJECTIVE OF ICAI AWARDS FOR EXCELLENCE IN FINANCIAL REPORTING'

To recognise and encourage excellence in preparation and presentation of financial information.

PROCESS FOR DECIDING AWARDEES

*Selection of awardees in specified categories are made through a **robust three tier process:***

- Review by Technical Reviewers
- Review of short-listed annual reports by Shield Panel and
- Selection by External Jury consisting of representatives from regulatory bodies, professionals, academicians, etc.

PROCEDURE FOR PARTICIPATION

1. There is no fee for participation in the competition.
2. Annual report relating to the financial year ending on any day between April 1, 2019 and March 31, 2020 (both days inclusive) is eligible for participation in this competition.
3. Decisions of the Panel of Judges in all the matters relating to the Competition will be final.
4. An entity awarded 'Hall of Fame' may again participate in the competition after the cooling period of three years of receiving the award of 'Hall of Fame'.
5. Fill in the Entry Form and submit with requisite documents on or before September 30, 2020 to Secretary, Research Committee.

Note: The documents submitted by the entities for the competition will not be utilized for any other purpose.

AWARD CATEGORIES

- Hall of Fame awarded to the entity that has been winning the first prize under the same category continuously for five years.
- One Gold Shield in each category for the best entry.
- One Silver Shield in each category for the next best entry.
- Plaques to be awarded to the entities who are following better financial reporting practices as is decided by the Jury.

AWARD CATEGORIES OF THE COMPETITION 'ICAI AWARDS FOR EXCELLENCE IN FINANCIAL REPORTING' FOR THE YEAR 2019-20

Category I	Public Sector Banks
Category II	Private Sector Banks (including Foreign Banks)
Category III	Co-operative Banks
Category IV	Life Insurance
Category V	Non-Life Insurance
Category VI	Financial Services Sector (Other than Banking and Insurance)
Category VII(a)	Manufacturing and Trading Sector (including entities engaged in processing, mining, plantations, oil and gas enterprises) (Turnover equal to ₹ 3000 crores or more)
Category VII(b)	Manufacturing and Trading Sector (Turnover equal to and between ₹ 500 crores and ₹ 3000 crores)
Category VII (c)	Manufacturing and Trading Sector (Turnover less than ₹. 500 crores)
Category VIII(a)	Service Sector (Other than financial services sector) (Turnover equal to or more than ₹ 500 crore)
Category VIII(b)	Service Sector (Turnover less than ₹ 500 crore)
Category IX	Not-for-Profit Sector
Category X (a)	Infrastructure and Construction Sector (Turnover equal to or more than ₹ 500 crore)
Category X (b)	Infrastructure and Construction Sector (Turnover less than ₹ 500 crore)
Category XI	Public Sector Entities
Category XII	Integrated Reporting

For further information please write at **research@icai.in or visit our website www.icai.org**

Secretary, Research Committee,The Institute of Chartered Accountants of India,
ICAI Bhawan, Indraprastha Marg, New Delhi – 110 002

https://www.icai.org/new_post.html?post_id=16508

The Institute of Chartered Accountants of India (ICAI)
(Set up by an Act of Parliament)

THRUST AREAS

1. Tax Reforms
2. Revival of Economy
3. Integrated Reporting
4. Impact of Rotation of Auditors on Audit Quality
5. Contribution of Accountancy profession on significant economic developmental subjects like broadening the tax base in country
6. Role of professionals in USD 5 Trillion Indian Economy
7. Impact of moving from Single Entry System to Double Entry System
8. Impact of Dispute Resolution Scheme
9. Impact of CSR on society
10. Research studies on NGOs
11. Start ups
12. Others pertaining to profession.

THE ELIGIBILITY CRITERIA

Projects will be supported to the extent that they are strategic in nature, have a strong research dimension, inter alia, by involving qualified research scholars such as

a. The applicant must be a member of the Institute of Chartered Accountants of India with a research aptitude having at least 10 years post-qualification experience either in the practice of the profession or as an employee with a reputed manufacturing/service organisation; or
b. An experienced research scholar with PhD or faculty of a recognized University/ Institute of a high repute.

Applications from persons having an experience less than as stated above might also be considered on the basis of merit.

MONITORING

The Research Committee would monitor the implementation and progress of the research projects approved under this project facility. The applicant (researcher) may, at any point of time during the project, be requested to provide the details the work done/remaining, the draft of the project/publication, etc, so that Research Committee may evaluate the implementation and progress. If Research Committee feels that the project is not being carried out as mentioned in the research proposal or the progress made by the researcher is not satisfactory, the Research Committee may consider withdrawal of the project from the researcher. In such a case, the work already completed would be the property of ICAI.

DURATION

The duration of research project should not exceed 6 months from the date the project proposal is approved by Research Committee of ICAI unless a longer period is otherwise justified.

THE EXPECTED OUTPUTS OF THE PROJECTS INCLUDE

- Research Paper/Publication and
- Dissemination of best practices and launching/implementation of the results, policy-oriented seminars, workshops and exchanges.
- Capacity building of the members of the profession and of the targeted beneficiaries as may be agreed in the project.

COPYRIGHT, PATENT, ETC

Any copyright or intellectual property right or patent, etc. arising out of the research work done would vest with ICAI. The ICAI would, however, duly acknowledge the researcher.

For further details please write to:
Secretary
RESEARCH COMMITTEE
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi-110002
Tel. : 011-30110468, E-mail : research@icai.in, www.icai.org

https://resource.cdn.icai.org/59494research48411project.pdf

ICAI International Research Award 2020

ORGANISED BY
RESEARCH COMMITTEE OF ICAI

CALL FOR RESEARCH PAPERS
From 15th May 2020
(10 AM Indian Standard Time)

LAST DATE FOR RECEIPT OF PAPERS
14th August 2020
(05 PM Indian Standard Time)

INTRODUCTION

The Institute of Chartered Accountants of India (ICAI) is a statutory body established under the Chartered Accountants Act, 1949 for regulating the profession of Chartered Accountants in India. ICAI is the second largest accounting body in the whole world with a strong tradition of service to the public interest and to the Indian economy.

The Research Committee of the Institute of Chartered Accountants of India is one of the oldest technical committees set up in 1955 with a view to undertake research activities to improve the quality of services rendered by the profession.

OBJECTIVE

To acknowledge the vital contribution made in research activities in the area of Accounting, Auditing, Finance, Economics and Taxation with an objective enhance the research activities in Accounting, Finance and Taxation and allied areas and to identify the challenges confronting the global economy where accounting profession can play its due role in Public Interest by way of research and contributions which could pave path for innovative practices in mitigating the various emerging financial and non-financial risks and alternatively propagate good practices for promoting public interest.

COVERAGE OF THE AWARDS

The areas/scope of the awards would be to identify the topics of international and societal importance where accounting profession can leverage its due role. The award will be given in five broad categories:

- Accounting
- Auditing
- Finance
- Economics
- Taxation

The illustrative list of areas of such research activities is as under:

- Combating corruption
- Transparency in reporting
- Anti –money laundering
- Fraud detection
- Combating terrorism financing
- Global Financial stability
- Global sustainability growth
- Reducing tax evasion
- Corporate Social Responsibility
- Impact of Rotation of Auditors on audit quality in the Indian context
- Water Audit
- Human Resource Accounting
- Simplification of Human Resource Laws
- Government Sector Accounting
- Integrated Reporting
- International Taxation Laws

Being an illustrative list, the areas indicated are 'not exhaustive' but indicate areas which came in the realm of accountancy profession qualitatively and ultimately achieve tranquility, serenity and stability in the financial systems. The topics of national level or country specific are specifically excluded from these categories.

NOMINATION PROCESS AND GENERAL GUIDELINES

1. Only online nomination through eligible institution is allowed.
2. Only Published Research Work is allowed to be nominated.
3. Nomination will be accepted only between invite open date to close date.
4. Nominating entity has to submit a recommendation letter for each nomination.
5. One Research Paper is to be nominated in one category only.
6. Nomination must contain consent of Author and contact details of Author and Nominating Entity.
7. The awardee may be asked to present their Research Paper for the benefit of larger audience.
8. Decisions of the Panel of Judges in all the matters relating to the Competition will be final.
9. Selection of awardees in specified categories are made through software, review by subject matter experts and then by eminent international Jury.

Note: The Research papers submitted for the competition will not be utilized for any other purpose.

Scan for weblink https://resource.cdn.icai.org/59392research48349awards.pdf

For further details please write to:
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ICAI in Media : Glimpses of April -May 2020

hindustantimes

ICAI launches online post qualification, certificate courses during lockdown, details here

The Institute of Chartered Accountants of India (ICAI) has launched important post qualification/ certificate courses in virtual mode for its members. Students can access the course online through https://learning.icai.org

Hindustan Times, New Delhi, Education, Updated: Apr 28, 2020

The Institute of Chartered Accountants of India (ICAI) has launched important post qualification/ certificate courses in virtual mode for its members. Students can access the course online through https://learning.icai.org. The courses include:

1. Certificate Course on Forensic Accounting and Fraud Detection
2. Certificate Course on Concurrent Audit of Banks
3. 50 hours Educational Course by ICAI Registered Valuers Organisation for the Asset Class- Securities or Financial Assets.

CA Atul Kumar Gupta, President, ICAI said "I regard technology as the engine of modern economy and CA's workplace. In these times of pandemic, ICAI will put technology to optimum use for efficient delivery of services and betterment of the professional capabilities. ICAI's technology driven initiatives of DCMM, UDIN and Digital Learning Hub are well recognized, used and acknowledged by various professional organisations globally, and we will work together to leverage tech-driven innovations to give our profession a winning edge and raise a generation of global professionals."

ICAI has launched the digital learning hub in order to provide the state-of-the-art online training courses/ e-books/ video lecturers and other study materials for the members and students to provide knowledge at their doorsteps.

President, ICAI further added "The International Federation of Accountants (IFAC), global organization for the accountancy profession recognising the online modules in these times of crises; had sought if ICAI could provide this facility globally to all Professional bodies for a limited time and ICAI has offered its voluntary and free support for the professional brethren globally."

DETAILS OF COURSE:

Certificate Course on Forensic Accounting & Fraud Detection- Forensic Accounting, Fraud Detection & Prevention specialization is in increasing demand considering increasing incidents of cyber-crimes and frauds. It is the practice of utilizing accounting, auditing, CAATs/ Data Mining Tools, and investigative skills to detect frauds. ICAI conducted Virtual Classes of Certificate Course on Forensic Accounting & Fraud Detection through its Digital Learning Hub (https://learning.icai.org)

50 hours Educational Course by ICAI Registered Valuers Organisation - ICAI Registered Valuers Organisation, a section 8 Company formed by ICAI launched its 1st On-Line batch of 50 hours Educational Course from April 26th to May 3rd, 2020 for the Asset Class- Securities or Financial Assets.

The course is designed as per the syllabus prescribed by Insolvency and Bankruptcy Board of India (IBBI) which is a mix of Valuation as well as Law and other related topic which includes topics like heads of income, various laws, macro-economics, financial experience is eligible to become Registered Valuer.

Certificate Course on Concurrent Audit of Banks - ICAI through its Internal Audit Standards Board (IASB) conducts Certificate Course on "Concurrent Audit of Banks" to enable members to understand the intricacies of concurrent audit of banks. The overall objective of the course is to supplement the effort of the banks in carrying out internal check of the transactions and other verifications and compliance with the procedures laid down; to improve the effectiveness of concurrent audit system in banks and to improve quality and coverage of concurrent audit reports. IASB recently launched Virtual Certificate Course on Concurrent Audit of Banks.

EQUITY EB BULLS

ICAI issues Concept Paper on All About Fair Value

Posted On: 2020-05-01 19:10:01

Financial Reporting in India has undergone a significant transformation owing to the adoption of Indian Accounting Standards (Ind AS) and fair value is the guiding principle in financial reporting across the globe. The Institute of Chartered Accountants of India (ICAI) converged Accounting Standards with IFRSs and accordingly, the financial statements beginning from the accounting year 2016-17 started disclosing financial figures based on fair value measurement.

Fair value is a common basis of value associated with financial reporting valuations and is utilised throughout the Indian Accounting Standards. It is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the valuation date.

To standardise the various principles, practices and procedures followed by registered valuers/ valuation professionals in valuation of assets and liabilities, ICAI issued "ICAI Valuation Standards-2018" which were formulated on the basis of "Fair Value principles" as per Ind AS 113 as notified by the Ministry of Corporate Affairs. ICAI Valuation Standards, 2018 have been adopted by ICAI Registered Valuers Organisation (ICAI RVO).

CA. Atul Kumar Gupta, President, ICAI and Director ICAI RVO said "Looking at the importance of the concept of fair value and its various aspects, it was thought to bring out a Concept Paper on "All about Fair Value" highlighting various Key aspects of Fair Value as per Ind AS 113, Consideration for determination of value based on highest and best use, where the highest and best use is different from the existing use, factors influencing Fair Value and Relevance of Exit Price in Fair Value."

In this Concept Paper, an analysis of 505 Companies listed on S&P500 in identifying data related to fair value accounting since year 1990 has been done along with an Analysis of Fair Value Impact in Financial Statements of Nifty 50since FY 1989-90.

This Concept Paper will help the registered valuers, other stakeholders to convey more clearly that fair value is a market-based measurement, and not an entity-specific measurement, and that fair value reflects current market conditions (which reflect market participants', not the entity's, current expectations about future market conditions).

The Institute of Chartered Accountants of India and ICAI Registered Valuers Organisation are committed to provide continued knowledge and support to the Registered Valuers, Professionals and other stakeholders.

President, ICAI further added "I am sure the Concept Paper and the empirical research of 505 Companies listed on S&P500 Nifty 50since FY 1989-90 will help the stakeholders and societies to know more about the trends and findings with regard to fair value."

TAX SCAN

ICAI issues Specific Considerations for conducting Online Audit of Bank Branch under current Covid-19 situation

By : Mariya Paliwala | May 7, 2020

The Institute of Chartered Accountants of India (ICAI) issued specific considerations while conducting the Distance Audit or Remote Audit or Online Audit of Bank Branch under the current Covid-19 situation.

The letter issued by ICAI addresses certain vital aspects related to Statutory Bank Branch Audits in the form of "Specific Considerations while conducting Distance Audit or Remote Audit or Online Audit of Bank Branch under current Covid-19 situation."

"It is advisable for the auditor that while planning and performing the alternative procedures, more professional skepticism may be exercised to ensure compliance with Standards on Auditing," the letter addressing all the Statutory Bank Branch Auditors advised.

"The audit firm will enquire and adopt the SOPs adopted by the respective banks under the Covid-19 situation and would strictly comply with the government regulatory guidelines issued in this regard without any deviation," the letter said.

The Auditing and Assurance Standards Board of ICAI, while assuring compliance with the norms of lockdown clarified, "The audit firm can request the bank to provide the data or documents required for the purpose of conducting the audit in soft copy format at the mutual convenience of the auditor and auditee. The audit firm will ensure strict compliance with the Non-Disclosure Agreement (NDA) terms with regards to such data/ documents received and will ensure the confidentiality of the data or documents."

The Reserve Bank of India issued two circulars dated March 27, 2020, and April 17, 2020, resulting in changes in Asset Classification, and Provisioning norms to a certain extent. It is suggested that the auditor should satisfy itself as regards compliance of the same by the bank.

With a view to supporting our members for fast resolution of such queries, the facility of "Online Panel of Experts for answering the queries of Bank Branch Auditors" made available by the Auditing and Assurance Standards Board (AASB) of ICAI for responding queries related to statutory bank branch audit.

Education TIMES

ICAI to provide scholarships to CA students from 100 crore corpus fund

The scholarships will be offered in different categories including merit, merit-cum-need based and economically weaker section

TNN | Posted on Sunday, May 10, 2020

To strengthen the future of the students pursuing chartered accountancy courses and to encourage more students to enter this field, the Institute of Chartered Accountancy of India (ICAI) has created a corpus fund of Rs 100 crore earmarked to provide scholarships for the students who are pursuing CA and increase the beneficiaries gradually.

Atul Kumar President, ICAI said "The corpus fund will be used for granting recurring Scholarships to the students in different categories namely merit, merit -cum-need based, need-based and economically weaker sections. This will enable students to have a bright future and pursue their dreams."

He added, "In the recent past, ICAI had decided to waive off 75% fee for the students registering from the newly formed Union Territories of Jammu & Kashmir, Ladakh and also from 8 north-eastern states, for all level of CA Course i.e. Foundation, Intermediate and Final. The decision was a step forward towards encouraging the young aspirants who wish to pursue their dream of becoming a Chartered Accountant and serve the nation with their capabilities and knowledge."

CA course offers numerous Professional opportunities in the industry apart from the option to start one's practice. Chartered accountants earn an average starting salary of 8.5 lakh per annum. The ICAI is a statutory body set up in 1949 by an Act of Parliament to regulate the Profession of Chartered Accountancy in India. Created through legislative fiat, ICAI continues its steadfast march to uphold the virtues of accountability, integrity and transparency in every sphere of the country's economic system.

Business Standard

ICAI issues norms for auditors to assess going concern, key audit matters

Institute suggests engaging internal auditor or another CA in cases where physical verification of stocks is not possible for statutory auditor

Ruchika Chitravanshi | New Delhi , Last Updated at May 19, 2020

The institute of chartered accountants of India (ICAI) has issued detailed guidelines for auditors to assess the going concern nature of the company and key audit considerations during Covid-19.

"The auditor would be more skeptical about impairment assessment in current scenario….It should be noted that the auditor is not performing procedures to assess the impact of Covid-19 itself rather the procedures are being performed in respect of specific items of financial statements or assumptions," ICAI guidelines said.

ICAI has also asked auditors to consider industry reports, analyst reports, third party studies for the purpose of his assessment.

Auditors have to include a paragraph on emphasis of matter (EOM) to highlight aspects "fundamental to users' understanding of the financial statements" after assessing the impact of Covid on the backdrop of the pandemic.

"Such EOM paragraph shall be included by the auditor only when all related disclosures areappropriately made by the management. Otherwise, it could even lead to modification of auditor'sopinion," ICAI guidelines said. This means that the auditor may have to give an adverse opinion, qualification or a disclaimer in the report if disclosures are not satisfactory.

The guidelines suggest that the auditor should take into account regulatory, operating environment and liquidity considerations to form an opinion about the going concern.

"Due to Covid 19, there are several accounting and auditing issues on which auditors and industry has been seeking guidance...a detailed guidance was missing on going concern, physical verification of inventory and auditors' report till now," said Sanjeev Singhal, partner, SR Batliboi.

ICAI has said that the auditor should consider whether the management has performed a preliminary assessment order to assess the ability of the company to continue as a going concern.

Auditors have to take into account any financial difficulties, resulting in additional credit risks, higher than usual bad debts and potential impairments and write-offs because of the Covid-19 outbreak.

The auditor also has to check if the risk of inadequate disclosures in the financial statements related to the Covid-19 outbreak and management's recovery plans has been considered in the report.

The ICAI has said that when highlighting the key audit matters the auditor should be very specific and articulate in bringing out the complexities arising out of Covid-19.

ICAI has also asked auditors to cross-verify any "other information" if it contradicts their understanding of the impact of Covid on the company's business.

ICAI has also suggested an alternative audit procedure for physical verification wherever it is not possible to observe the inventory and balance sheet which can include engaging the internal auditor or another chartered accountant to observe stock verification on their behalf, leveraging the use of technology.