VOLUME 70 | NO. 3 | PAGES -132 | SEPTEMBER 2021 | ₹100

THE CHARTERED ACCOUNTANT

JOURNAL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

GST - Story of Extraordinary National Accomplishment

ICAI - SET UP BY AN ACT OF PARLIAMENT

The Institute of Chartered Accountants of India

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Bringing the 'Good and Simple' into Taxation

Tax has never been accepted as having anything 'good' about it. Tax can never be claimed to be 'simple'. But India introduced a new and promising tax regime on 1st July 2017 that is the world's envy. Tax is not all about economics of a bottomless barrel to feed public expenditure, rather it is enjoined with education, healthcare, welfare and development. Indirect and inclusive, it is, such that everyone gets to contribute their share in proportion to their *'ability to bear'*. This makes indirect tax innocuous and almost imperceptible avenue for meeting society's resource needs.

W.E.H. Lecky in 1899 edition of his book, *'Democracy and Liberty'* says, when Faraday was attempting to explain to Gladstone and several others, an important new discovery in science, Gladstone's only commentary was 'but, after all, what use is it?' 'Why, sir,' replied Faraday, 'there is every probability that you will soon be able to tax it!'

With its enviable demography endowed with deep and pervasive background in mathematics, science and English, India is fuelling its tryst with delivering on the $5 trillion goal that Hon'ble PM exhorted to achieve and GST is a very strong contributor towards achieving this goal. The resources that GST is able to garner without the jarring invasiveness of the previous tax regime, has certainly brought about *'certainty and clarity'*. One may jump to reject this offering but consider that a taxpayer in Delhi, four years ago, could not, with certainty, state the tax consequence of a business proposal in the adjoining cities of Gautam Budha Nagar or Gurugram. Today, Chartered Accountants in Kochi are able to advise clients on the tax treatment in Tinsukia with ease.

Certainty is not devoid of opinions and clarity is not the absence of alternatives. Clarity is procedures established by law that upholds Rule of Law. There is not a single provision in this law that can be said to be an affront to that salutary promise that every Nation owes to its people. It is true that taxpayers express anguish that there are several different views to a given tax position. Very often, that has less to do with the provision itself than with the people reading it. And for the development and stability of any new tax regime, all possible views must be welcomed and tested in Courts of law to receive the final one that must prevail.

Perspective bias is one factor but the other is *jus in rem* – to do justice to society, an executive must not remain a bystander when one (or a few) taxpayer adopts a tax position that brings them an unjust tax consequence and causes prejudice to the rest of society. And in a connected world, when utterings in a Court room reach the far corners of the Nation instantaneously and views entertained in another corner become available to be canvassed in another corner, disputes are inevitable and perhaps the sign of a healthy heart that it is beating so well. Thus, the plurality of opinions or the rigourous contest on every tax position is not the indicator of uncertainty and ambiguity but a youthful state.

GST is 'good' because discretion is eliminated and this lack of discretion is drawing taxpayer to operate in a compliant ecosystem. GST is 'simple' because it is knowable as when people are poised to fulfil their potential, collaborating with like-minded citizens for enterprise, research and manufacturing in a borderless world, knowing the tax consequence of any business decision is not so complex.

ICAI has been continually working for dissemination of knowledge, engaging with the Government at the Centre and States for smoothening rough edges in implementation of GST and publishing resource material that is acknowledged by tax authorities too. The accounting profession is leading the nation to accept benefits of GST, that far outweigh the rigours of technology that ensures transparency in everything. The knowledge empowered Chartered Accountants, spread across the nation, are fuelling businesses to become more tax compliant and achieve inclusive development.

-Editorial Board ICAI: Partner in Nation Building

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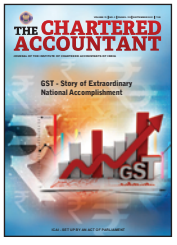

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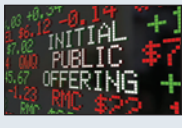

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From the President

CA. Nihar N. Jambusaria
President, ICAI

My Dear Professional Colleagues,

A few days back, the 75th Independence Day was celebrated across the nation with much ardour and pride. The Indian economy that was largely agrarian earlier can now boast of being the sixth-largest in the world, as per nominal GDP and the third-largest by purchasing power parity. After about one and a half years of stress and strain, induced by extraneous pandemic factors, the Indian economy is showing signs of recovery. The Reserve Bank of India (RBI) in its recent report on the state of Indian economy observed that *"the first impulses of the recovery have arrived, riding on thunder and lightning as the monsoon intensifies"*. The Indian economy spurred by relaxed liquidity and financial conditions, which exhibits positive signals of recovery with turnaround in manufacturing activities. As Momentum for unlocking and vaccines increases, economy is gaining traction which is also reflected in spiralling stock prices, spur in number of Initial Public Offerings in the capital markets and highest ever foreign exchange reserves. The RBI report further notes *"signs of revitalisation of the economy is the manner in which corporate India has faced the second wave of the pandemic relative to the first one. 1,427 listed non-financial companies have declared their earnings results so far and they account for 86.8 per cent of the market capitalisation of all listed nonfinancial companies in India. During the quarter that ended in June 2021, net sales of these companies surged by 57 per cent year-on-year versus a decline of 34 per cent in April-June 2020 when the first wave raged"*.

The report also notes that E-way bill collections rose to their highest level in the last four months. In fact, the gross Goods and Services Tax (GST) revenue collected in July 2021 has been ₹ 1,16,393 crore, 33% higher than in July 2020.

The pre-GST system involved paying multiple taxes that often percolated to the customers in the form of increased prices and with the introduction of GST four years back there is an ease of doing business by creating a streamlined single point of indirect tax rather than multiple taxes to be paid at different points of the production and sales. The implementation of GST has not been simple, and we take pride in the role played by the accounting profession in supporting this endeavour. In the modern governance, taxes are used as an instrument of economic policy leading to economic development, generate employment, bring price stability, regulate cyclical fluctuations, fulfil several non-revenue objectives and have inclusive growth. The growth of economy and its complexities are bringing new vistas in the accounting services and the profession has always raised its bar as partner in the Nation Building.

ICAI renews Mutual Reciprocity Agreement (MRA) with CPA Australia

It is really heartening that the ICAI has renewed the Mutual Recognition Agreement with CPA Australia on 29th July 2021 for a further period of

5 years. You may recall that the Union Cabinet, chaired by Hon'ble Prime Minister Shri Narendra Modi ji, had earlier approved the renewal of MRA between the ICAI and CPA Australia in April 2021.

The signing ceremony was attended by His Excellency Mr. Manpreet Vohra, Hon'ble High Commissioner of India to Australia as Guest of Honour, Ms. Merran H Kelsall, President and Chairman of the Board, CPA Australia, Mr. Andrew Hunter, Chief Executive Officer, CPA Australia along with ICAI leadership. With this renewal, both ICAI and CPA Australia shall continue to recognize the qualification, training of each other and admit the members in good standing by prescribing a bridging mechanism.

Engaging with SAFA Countries

I would like to inform you that the Institute received a request from the SAFA Accounting Standards Committee (ASC) to make a presentation on ICAI Valuation Standards 2018 at the SAFA ASC Meeting held on 30th July 2021. In pursuant to this request and with a view to have uniform Valuation Standards across SAFA countries and also to promote adoption of ICAI Valuation Standards 2018, a presentation was made at the SAFA ASC Meeting by our Valuation Standards Board. I am glad to inform you that the presentation was very well received, and it was decided that the SAFA board will consider the adoption of ICAI Valuation Standards 2018 in the next meeting in order to bring uniformity of valuation practices being followed across the SAFA countries.

Applicability of Accounting and Auditing Standards for LLPs

Limited liability partnerships (LLPs) are an alternative to corporate body form to traditional partnership firms. Under LLP, a partner's liabilities are limited to their investment in the business. Limited Liability Partnership Amendment Bill 2021 has recently been passed by both the houses of parliament and with the assent from Hon'ble President of India come into force from 13th August, 2021. Several changes are made in amendment act that *inter alia* also include introduction of a provision relating to applicability of Accounting and Auditing Standards for LLPs. In order to align with the Companies (Accounting Standards) Rules, the said Act introduced a new section 34A to empower the Central government to prescribe "Accounting Standards" or "Auditing Standards" for a class or classes of limited liability partnerships. The new section provides that the Central Government may, in consultation with the National Financial Reporting Authority prescribe the standards of accounting and prescribe the standards of auditing, as recommended by the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949, for a class or classes of limited liability partnership.

Milestones Achieved by ICAI Social Media

In the present technologically empowered world, Social media platforms are a great opportunity to reach a large pool of stakeholders in order to communicate all important events, news and various other announcements. I am happy to inform you that ICAI social media platforms have recently achieved a major milestone of more than fourteen lakh followers across all seven platforms namely Twitter, LinkedIn, YouTube, Facebook, Instagram, Koo and Telegram. I request all the members to use these platforms to remain updated and got information about the various initiatives and activities of the Institute.

Participate in Sustainability Reporting Awards

The United Nations agenda for Sustainable Development Goals (SDGs) constitute a fitting framework which calls for attention towards the challenges leading to a sustainable future. With the integration of Sustainable Development Goals (SDGs) into organizational practices and reporting, entities across the globe would be able to deal with the world's most pressing issues in a better way and encourage transparency and accountability. The

From the President

Institute in its endeavour to benchmark global best practices *vis-à-vis* sustainability disclosures has this year instigated ICAI International Sustainability Reporting Awards. You may also encourage entities to participate in the Awards. The ICAI International Sustainability Reporting Awards would recognize and award entities for their outstanding contribution to Sustainable Development Goals which have led in initiatives undertaken towards *Gender Equality* and *Climate Change* and have implemented efficient and innovative sustainable practices.

Provide Holistic Learning Experience to Article Trainees

It is important for the members to provide an extensive training to the students covering multiple areas of the professional practice. The profession of Chartered Accountancy offers a broad gamut of the professional opportunities in various forms. A need was felt to expand the scope of industrial training to provide more avenues and encourage students to take industrial training. The wishes were fructified as amendments have been notified recently in the Chartered Accountants Regulations that enhance the scope of industrial training. Now a CA student can undertake industrial training for a period between nine months to eighteen months. Industrial training shall also be allowed in the offices of the Central or State Governments, Central statutory and judicial authorities, regulatory bodies, banking companies and such other departments of Central or State Governments, Institution or Organisation as may be decided by the Council from time to time to further widen the learning scope for students. Further, considering the fading economic geographical boundaries and interest of many students to explore overseas opportunities, the scope of industrial training has been expanded to include training for a certain period in any foreign country under a member of the accountancy body recognized by the International Federation of Accountants. While interested students should take full advantage of emerging opportunities, as member you are requested to inform and encourage them to take up these opportunities.

Concluding Remarks

This month observed the conclusion of the most awaited sports event across the globe – Tokyo Olympics 2020; wherein India crowned its best-ever performance with a seven-medal haul. The Olympics weren't merely about athletics or winning, but about significant lessons which we all should aspire to imbibe. The whole country cheers not only for the medallists, but also for the sportspersons who did not manage to get on the podium but who brought limitless glory to the country, as everything isn't about winning, but persevering for that victory. Neeraj Chopra, Mirabai Chanu, P V Sindhu, Lovlina Borgohain, Ravi Kumar Dahiya, Bajrang Punia, the men Hockey team and a spectrum of other Indian stars including women's Hockey team, with their enduring spirit beat all odds and taught us that success is nothing but an uphill grind. After all, sports reflect the undeniable and irreplaceable significance of all that counts in life, that is self-discipline, hard work, determination, perseverance, and thorough commitment.

The Institute of Chartered Accountants of India too has always taken pride in this culture of deriving success not just from the final outcomes but also the process leading to it as it is rightly said by the famous author Gabrielle Bernstein — *'It's the journey that matters, not the destination'*. Thereby, I urge the CA fraternity and budding students to pursue continual growth and progress, to triumph over their own mental inhibitions and to have the courage and commitment to fulfil all their goals. We must remember that success is superficial unless it is backed by self-actualisation and tenacity.

Stay safe, stay healthy. Best wishes.

CA. Nihar N. Jambusaria
President, ICAI
New Delhi, 24th August, 2021

Photographs

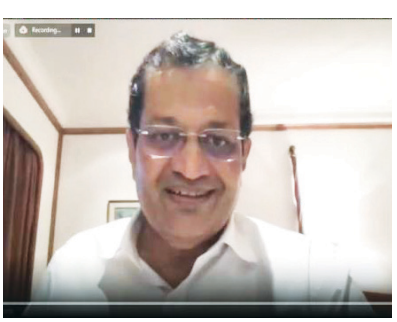
ICAI President CA. Nihar N. Jambusaria at the meeting with the Hon'ble Speaker of the Lok Sabha, Shri Om Birla. (15.08.2021)

ICAI President CA. Nihar N. Jambusaria at the meeting with the Hon'ble Minister of Micro, Small and Medium Enterprises (MSME), Shri Narayan Rane. (16.08.2021)

ICAI President CA. Nihar N. Jambusaria with Central Council Member (Govt. Nominee) Adv. Vijay Jhalani hoisting the National Flag on the 75th Independence Day Celebrations at ICAI Bhawan, Sector 62, Noida. Also seen in picture ICAI Acting Secretary CA. (Dr.) Jai Kumar Batra. (15.08.2021)

ICAI President CA. Nihar N. Jambusaria at the meeting with the Hon'ble Minister of Fisheries, Animal Husbandry and Dairying, Shri Parshottam Rupala. (14.08.2021)

ICAI President CA. Nihar N. Jambusaria presenting a bouquet to Dr. Bhagwat Kisanrao Karad, Hon'ble Minister of State, Ministry of Finance. (05.08.2021)



ICAI President CA. Nihar N. Jambusaria at Live Webcast on, "Inclusive Role of Members & Students of ICAI in Financial and Tax Literacy Drive-Vitiya Gyan ICAI ka Abhiyaan". (12.08.2021)

ICAI in Action

Key developments *vis-à-vis* accountancy profession for the information of members, students and other stakeholders

Exposure Drafts for Public Comments

Revised AS 105, Non-current Assets Held for Sale and Discontinued Operations

The Indian Accounting Standards (Ind AS), as notified by the Ministry of Corporate Affairs in February 2015, and as amended from time to time are applicable to the specified class of companies as per Ind AS Roadmap. Accounting Standards notified under Companies (Accounting Standards) Rules, 2021 and those issued by the ICAI are applicable to entities to whom Ind AS are not applicable. The Accounting Standards Board of ICAI (ASB) is working on the project of revision of these standards which will be applicable to entities to whom Ind AS are not applicable. In this direction, the Exposure Draft of revised AS 105, Non-current Assets Held for Sale and Discontinued Operations, has been issued by the ASB for comments with the last date being September 14, 2021.

Please visit, https://www.icai.org/post/ed-of-revised-as-105

Accounting Standards Board has also issued the following Exposure Draft corresponding to amendments in IFRS Standards for public comments with the last date of comments was August 31, 2021:

Disclosures of Accounting Policies - Amendments to Ind AS 1, Presentation of Financial Statements

The Exposure Draft of Amendments to Ind AS 1 requires companies to disclose their 'material accounting policy information' rather than their 'significant accounting policies'. To assist an entity in determining whether accounting policy information is material to its financial statements amendments are proposed to Ind AS 1.

https://www.icai.org/post/ed-of-disclosures-of-accounting-policies-amendments-to-ind-as-1

Exposure Drafts issued by International Accounting Standards Board

Indian Accounting Standards (Ind AS) are based on the IFRS Standards issued by the International Accounting Standards Board (IASB) of IFRS Foundation. The IASB, before issuing the new/amendments to IFRS Standards, issues consultative documents seeking public comments from across the globe. 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, invites comments on the consultative documents issued by the IASB.

- In this regards, the IASB has recently issued Subsidiaries without Public Accountability: Disclosures.

  Please visit, https://www.icai.org/post/subsidiaries-without-public-accountability-disclosures

- Further, the IASB has also issued Exposure Draft on Initial Application of IFRS 17 and IFRS 9 - Comparative Information Proposed amendment to IFRS 17

  Please visit, https://www.icai.org/post/ed-on-initial-application-of-ifrs-17-and-ifrs-9

Multipurpose Empanelment Form (MEF) – 2021-22

The Professional Development Committee of the ICAI hosts the Multipurpose Empanelment Form every year to be filled by the CA Firms and Members applying for the Bank Audits and other assignments. The form is generally hosted on MEF site in the month of August/ September. For the year 2021-22, we wish to inform that the Institute is in the process of upgrading the said form so as to make it comprehensive and more user friendly. In view of the above, it may be noted that the revised MEF Form for the year 2021-22 is expected to be made live (at meficai.org) in the month of October 2021.

Please visit, https://www.icai.org/post/mef2021-22-200821

Extension of last attempt to appear in CA Final and Intermediate old course examination

In order to remove hardship caused to the students due to Covid-19 spread or otherwise, it has been decided that the last attempt to appear in Final and Intermediate (IPC) old courses examinations be extended to November, 2021 for all the students of these courses (irrespective of their opting out of May 2021 examination cycle or not). Further, it may be noted that the November 2021 examinations will be the last attempt for the students writing their examinations under old syllabus and no such extension be given further, under any circumstances as the old course scheme will be closed forever.

Please visit, https://resource.cdn.icai.org/ 66132bos 200821.pdf

December 2021 CA Examinations

The next Chartered Accountants Foundation, Intermediate (IPC) (Old Scheme), Intermediate (New Scheme), Final (Old Scheme as well as New Scheme) Examinations will be held in the month of December, 2021 at a number of places provided that sufficient number of candidates offer themselves to appear.

Please visit, https://resource.cdn.icai.org/65998 exam 100821.pdf

FAQs on Director Simplicitor / Independent Director

Q. Whether a member in practice can be a Director Simplicitor of a company?

A. Yes, a member in practice can be a Director Simplicitor of a Company. The expression "Director Simplicitor" means an ordinary/ simple Director who is not a Managing Director or Whole time Director and is required only in the Board Meetings of the company and not paid any remuneration except for attending such meetings.

Q. Whether a member in practice can become an Independent Director of a company?

A. A member in practice is permitted generally to be a Director Simplicitor, which includes an Independent Director. Such a Director should not be the Managing Director or Whole-time Director and is required only in the Board Meetings of the company and not paid any remuneration except for attending such meetings. Specific permission of the Council is not required in this regard.

Q. Whether a member in practice can become a managing director or a whole time director of a Company?

A. No, members in practice are not allowed to become Managing Director or whole-time Director of a company generally. A member in practice may become a Managing Director or a Whole-time Director of a company after specific and prior permission of the Council, however, he shall not be entitled to perform any attest function.

Further as per "Guidelines for Practice in Corporate Form of Practice" members in practice can hold the office of Managing Director, Whole-time Director or Manager of a body corporate within the meaning of the Companies Act, 1956 provided that the body corporate is engaged exclusively in rendering Management Consultancy and Other Services permitted by the Council under section 2(2)(iv) of CA Act, 1949. After approval of the name of the Management Consultancy Company by the Institute, such Company has to be registered with the Institute.

Q. Whether a member in practice can become a Managing director or a whole-time director in a Company registered under Section 8 of Companies Act, 2013?

A. A member in practice can accept position as Managing Director or Whole-time Director in a Company registered under Section 8 of Companies Act, 2013 provided his position is honorary, and the Company is of charitable, educational, or non-commercial in nature.

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Know Your Ethics

Q. Whether a member in practice being a Director Simplicitor can participate in policy or financial decisions, of the company during meetings?

A. Yes, a member in practice being a Director Simplicitor can participate in policy or financial decisions of the company during meetings, but he should not execute the said decisions or get involved in day to day business/ affairs of the company.

Q. Whether a member in practice being a Director Simplicitor can operate the accounts of the company?

A. No, a member in practice being Director Simplicitor cannot operate the accounts of the company.

Q. Mr. B, member in practice, who is Director Simplicitor of PQR PVT Limited company affixes the common seal of the Company to a company document, and draws/ endorses cheque on the account of the company. Is it permissible?

A. Director Simplicitor may affix the Common Seal of a Company if it is part of statutory requirement of the Director. However, such Director is not permitted to endorse/sign cheques on account of Company.

Q. Whether member in practice being a Director Simplicitor in a company can draw remuneration from the Company?

A. A member in practice being a Director Simplicitor in a Company may receive remuneration for attending Board Meetings of the Company.

Q. Can Mr. R, a full time practicing member being Director Simplicitor in a ABC Company, sign ROC Forms of the Company?

A. No. It is not permissible for a member in practice being Director Simplicitor in a Company to sign ROC Forms of the Company as it is a direct conflict of role.

Q. Whether a member in practice being a Director Simplicitor, or his relatives can hold substantial interest of the Company?

A. Yes. A member in practice being a Director Simplicitor and/ or his relatives can hold substantial interest in a Company.

Q. Whether a member in practice can become Director Simplicitor of a company, if he, or the Chartered Accountants Firm wherein he is a partner, or any of the partner of the said firm is interested in such Company as an auditor?

No. A member in practice cannot become Director Simplicitor of a company, if he, or the Chartered Accountancy Firm wherein he is a partner, or any of the partner of the said firm is interested in such Company as an auditor.

Q. Whether a member in practice who earlier held the position of Director Simplicitor/ Independent Director in a company, may accept audit assignment of the company after completion of his tenure as director?

A. No. As per commentary under clause (4) of the Part-I of the Second Schedule to the Chartered Accountants Act, 1949 appearing in Volume II of revised Code of Ethics, 2020, a member shall not accept the assignment of audit of a Company for a period of two years from the date of completion of his tenure as Director, or resignation as Director of the said Company.

Q. Whether appointment of an Independent Director on Companies Board is mandatory?

A. As per Section 149(4) of Companies Act, 2013, every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public Companies.

Q. Whether a member in practice can be a Director in Cooperative Bank?

A. Yes. A member in practice may be a Director Simplicitor in a Co-operative Bank, provided he is not in charge of the executive functions, or he, or Chartered Accountancy Firm wherein he is a partner, or any of the partner of the said firm are not interested in the Bank as an auditor.

Presentation of change in non-current asset in Cash Flow Statement

A. Facts of the Case

1. A Company (hereinafter referred to as 'the Company') has been incorporated as a Special Purpose Vehicle (SPV) by I Ltd., its holding company, on 11th May 2017, for executing the project works of 'Six-laning of Davangere – Haveri from km 260+000 to km 338+923 of NH-48 (old NH-4) in the State of Karnataka under Hybrid Annuity Model (HAM) under National Highway Development Project (NHDP) Phase – V' in accordance with the terms of the Concession Agreement (a copy of Concession Agreement has been supplied separately by the querist for the perusal of the Committee), signed with the National Highways Authority of India (hereinafter referred to as 'the Authority') on 19th June 2017. Concession period for the project is 15 years excluding the project construction period of 912 days.

2. The querist has stated that the total project execution cost is Rs.1177.00 crores plus escalation wherein 40% project cost is reimbursable by the Authority and 60% is to be funded by SPV, viz., the Company. 40% of the bid project cost (BPC), adjusted for Price Index Multiple, shall be due and payable by the Authority to the Concessionaire in 5 equal instalments of 8% each during the construction period and the remaining bid project cost, adjusted for Price Index Multiple, shall be due and payable in 30 biannual instalments commencing from the 180th day of Commercial Operation Date (COD).

3. Further, interest shall be due and payable by the Authority to Concessionaire on the reducing balance of completion cost at the interest rate equal to the applicable bank rate plus 3%. Such interest shall be due and payable biannually along with each instalment.

4. Presently, the Company is recognising revenue using input method as per Appendix D of Indian Accounting Standard (Ind AS) 115, 'Revenue from Contracts with Customers', which states that the consideration received or receivable by the Company is a right to a financial asset. The Company recognises a financial asset to the extent that it has an unconditional contractual right to receive cash or another financial asset from or at the direction of the grantor (Authority) for the construction services; the grantor has little, if any, discretion to avoid payment, usually because the agreement is enforceable by law. Presently, 40% of BPC shall be due and payable by the Authority during construction period in 5 instalments on achievement of milestones and remaining 60% will be payable biannually during 15 years in the form of annuity. Here, financial asset represents the 60% amount payable by the authority. The Company presents amount receivable from the Authority within 12 months on achievement of milestone as current financial asset and remaining as non-current financial asset.

5. Accordingly, the Company presented the movement in non-current financial asset due to billing progress under 'cash flows from operating activity' in the cash flow statement for the financial year (F.Y.) 2018-19 as it is a non-cash adjustment and is required to be adjusted from profits only as per the indirect method stated in the relevant standard. However, during supplementary audit, Comptroller and Auditor General of India (CAG) had issued a paragraph that "the change in non-current financial asset has been disclosed in adjustment of working capital changes instead of disclosing the same under cash flow from investing activity in cash flow statement". (A copy of the CAG comment has been separately provided by the querist for the perusal of the Committee.)

6. The Company continued the same treatment in F.Y. 2019-20 in its books of account. However, CAG has again issued the same paragraph, i.e., "The company during the current year has again disclosed the working capital changes in non-current financial assets (amounting to Rs. 12048.40 lakh) under cash flows from operating activities instead of showing under cash flow

from investing activities as required under paragraph 16 of Ind AS 7." Further, change in current financial asset was also disclosed under cash flows from operating activity but CAG does not give any observation on it.

7. The querist has referred to the following provisions of Indian Accounting Standard (Ind AS) 7, 'Statement of Cash Flows':

"18 An entity shall report cash flows from operating activities using either:

(a) the direct method, whereby major classes of gross cash receipts and gross cash payments are disclosed; or

(b) the indirect method, whereby profit or loss is adjusted for the effects of transactions of a non-cash nature, any deferrals or accruals of past or future operating cash receipts or payments, and items of income or expense associated with investing or financing cash flows."

"16 The separate disclosure of cash flows arising from investing activities is important because the cash flows represent the extent to which expenditures have been made for resources intended to generate future income and cash flows. Only expenditures that result in a recognized asset in the balance sheet are eligible for classification as investing activities. Examples of cash flows arising from investing activities are:

(a) cash payments to acquire property, plant and equipment, intangibles and other long-term assets. These payments include those relating to capitalised development costs and self-constructed property, plant and equipment;

(b) cash receipts from sales of property, plant and equipment, intangibles and other long-term assets;

(c) cash payments to acquire equity or debt instruments of other entities and interests in joint ventures (other than payments for those instruments considered to be cash equivalents or those held for dealing or trading purposes);

(d) cash receipts from sales of equity or debt instruments of other entities and interests in joint ventures (other than receipts for those instruments considered to be cash equivalents and those held for dealing or trading purposes);

(e) cash advances and loans made to other parties (other than advances and loans made by a financial institution);

(f) cash receipts from the repayment of advances and loans made to other parties (other than advances and loans of a financial institution);

(g) cash payments for futures contracts, forward contracts, option contracts and swap contracts except when the contracts are held for dealing or trading purposes, or the payments are classified as financing activities; and

(h) cash receipts from futures contracts, forward contracts, option contracts and swap contracts except when the contracts are held for dealing or trading purposes, or the receipts are classified as financing activities.

When a contract is accounted for as a hedge of an identifiable position the cash flows of the contract are classified in the same manner as the cash flows of the position being hedged."

8. The querist has informed that the Company is of the view that during the F.Y. 2019-20, there was no receipt under the head 'other non-current financial assets' (Receivable). Hence, this represented transactions of a non-cash nature as per paragraph 18 of Ind AS 7 and required to be disclosed under operating activities under working capital change. The Company, accordingly, disclosed the same under working capital change.

B. Query

9. In view of above, the opinion of the Expert Advisory Committee of the Institute of Chartered Accountants of India (ICAI) has been sought by the querist on the issue as to whether change in non-current financial asset recognised in accordance with Ind AS 115 should be disclosed as cash flows from operating activity or under investing/financing activity as per Ind AS 7.

C. Points considered by the Committee

10. The Committee notes that the basic issue raised by the querist relates to classification of change in non-current financial asset in the cash flow statement. The Committee has, therefore, considered only this issue and has not examined any other issue that may be contained in the Facts of the Case, such as, accounting for the expenditure incurred on the project including classification of cash flows arising from such expenditure, classification of change in current financial asset in the cash flow statement, accounting for interest due/payable by the Authority, accounting for and classification of cash flows from interest and other finance costs incurred by the Company, appropriateness of classification of financial assets as current and non-current, accounting for Concession Agreement and application of Appendix D, 'Service Concession Arrangements' to Ind AS 115, 'Revenue from Contracts with Customers' in the extant case, recognition of revenue including the appropriateness of method used (input method), accounting for liquidated damages or penalty or bonus element, if any, included/ adjusted in the annuity payments, etc. Further, the opinion expressed, hereinafter, is purely from accounting perspective and not from any legal perspective or interpretation of terms of Concession Agreement. The Committee notes from the Facts of the Case that the Company is recognising revenue as per the requirements of Ind AS 115. Further, it is also noted from the Annual Reports provided by the querist for the perusal of the Committee that the Company is following the requirements of Appendix D, 'Service Concession Agreements' to Ind AS 115, 'Revenue from Contracts with Customers' for the Concession Agreement in the extant case. Although the Committee has not examined the application of the same in the extant case, the Committee presumes that it is a service concession arrangement within the scope of the Appendix D to Ind AS 115.

11. The Committee further notes the following relevant extracts from the Concession Agreement, provided by the querist for the perusal of the Committee as follows:

"2.1 **Scope of the Project**

The scope of the Project (the **"Scope of the Project"**) shall mean and include, during the Concession period:

(a) construction of the Project on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;

(b) operation and maintenance of– the Project in accordance with the provisions of this Agreement; and

(c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement"

"3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, license and authority to construct, operate and maintain the project (the **"Concession"**) during the Construction Period of 912 (nine hundred and twelve) days and Operation Period of 15 (Fifteen) years commencing from COD, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein."

"5.8 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except

with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein."

"15.1.1 ... The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Annuity Payments in accordance with the provisions of this Agreement."

"23.1 Bid Project Cost

The parties expressly agree that the cost of construction of the Project, as on the Bid Date, which is due and payable by the Authority to the Concessionaire, shall be deemed to be Rs. 1177.00 Crore (Rupees One Thousand One Hundred Seventy Seven Crore only) (The **"Bid Project Cost"**). The Parties further agree that the Bid Project Cost specified hereinabove for payment to the Concessionaire shall be inclusive of the cost of construction, interest during construction, working capital, physical contingencies and all other costs, expenses and charges for and in respect of construction of the Project, save and except any additional costs arising on accounts of variation in Price Index, Change of Scope, Change in Law, Force Majeure or breach of this Agreement, which costs shall be due and payable to the Concessionaire in accordance with the provisions of the Agreement. For the avoidance of doubt, the Bid Project Cost specified herein represents the amount due and payable by the Authority to the Concessionaire and may be less than, equal to, or more than the Estimated Project Cost."

"23.3.1 40% (forty per cent) of the Bid Project Cost, adjusted for the Price Index Multiple, shall be due and payable to the Concessionaire in 5 (five) equal installments of 8% (eight per cent) each during the Construction Period in accordance with the provisions of Clause 23.4.

23.3.2 The remaining Bid Project Cost, adjusted for the Price Index Multiple, shall be due and payable in 30 (thirty) biannual installments commencing from the 180th (one hundred and eightieth) day of COD in accordance with the provisions of Clause 23.6.

23.4 Payment during Construction Period

Upon receiving a report from the independent Engineer certifying the achievement of the below mentioned Payment Milestones, the Authority shall disburse, within 15 (fifteen) days of the receipt of each such report, an installment equal to 8% (eight per cent) of the Bid Project Cost, adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of that report.

For the purpose of this Clause 23.4, the Payment Milestone for release of payment during Construction Period shall be as under:

a) I (first) Payment Milestone – On achievement of 10% Physical Progress

b) II (second) Payment Milestone – On achievement of 30% Physical Progress

c) III (third) Payment Milestone – On achievement of 50% Physical Progress

d) IV (fourth) Payment Milestone – On achievement of 75% Physical Progress

e) V (fifth) Payment Milestone – On achievement of 90% Physical Progress

Provided that in case of Change of Scope, the Physical Progress shall be recalculated to account for the changed scope."

"23.6 Annuity Payments during Operation Period

23.6.1 The (the "**Completion Cost**" shall be summation of A, B, C, D, E and F below:

A. 10% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 10% Physical Progress.

B. Another 20% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 30% Physical Progress.

C. Another 20% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 50% Physical Progress.

D. Another 25% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 75% Physical Progress.

E. Another 15% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 90% Physical Progress.

F. Another 10% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the COD.

The Parties acknowledge and agree that the Authority has paid a portion of the Completion Cost as payments during Construction Period pursuant to Clause 23.4 of this Agreement. The balance Completion Cost remaining shall be due and payable during the Operation Period in accordance with provisions of Clause 23.6.2.

23.6.2 The Completion Cost remaining to be paid in pursuance of the provisions of Clause 23.6.1 shall be due and payable in biannual installments over a period of 15 (fifteen) years commencing from COD, (the **"Annuity Payments"**). The 1st (first) installment of Annuity Payments shall be due and payable within 15 (fifteen) days of the 180th (one hundred and eightieth) day of COD and the remaining installments shall be due and payable within 15 (fifteen) days of completion of each of the successive six months ("the **Annuity Payment Date**"). For the avoidance of doubt, the last Annuity Payment Date would be adjusted to in such a way that it falls at the end of the Operations Period."

23.6.4 Interest shall be due and payable on the reducing balance of Completion Cost at an interest rate equal to the applicable Bank Rate plus 3% (three per cent). Such interest shall be due and payable biannually along with each installment specified in Clause 23.6.3. … The Parties further agree that interest shall be calculated based on the number of days a particular Bank Rate was applicable during the period of calculation. For the purpose of illustration, assuming that the balance capital cost remaining to be paid is Rs. 100 crores on the 1st Annuity Payment Date, the applicable Bank Rate for the first 75 days is 8% and thereafter it is revised to 7.5% and remain unchanged till the 2nd Annuity Payment Date, the interest would be calculated as ((100* 11%*75)/365)+((100*10.5%*105)/365). For the avoidance of doubt, the interest would be calculated on simple interest basis and no compounding of the same would be undertaken.

12. With regard to presentation in the statement of cash flows, the Committee notes the following paragraphs of Ind AS 7, 'Statement of Cash Flows':

> ***"Operating activities*** **are the principal revenue-producing activities of the entity and other activities that are not investing or financing activities.**

Investing activities **are the acquisition and disposal of long-term assets and other investments not included in cash equivalents.**

Financing activities **are activities that result in changes in the size and composition of the contributed equity and borrowings of the entity."**

"11 An entity presents its cash flows from operating, investing and financing activities in a manner which is most appropriate to its business. Classification by activity provides information that allows users to assess the impact of those activities on the financial position of the entity and the amount of its cash and cash equivalents. This information may also be used to evaluate the relationships among those activities."

"14 Cash flows from operating activities are primarily derived from the principal revenue-producing activities of the entity. Therefore, they generally result from the transactions and other events that enter into the determination of profit or loss. Examples of cash flows from operating activities are:

(a) cash receipts from the sale of goods and the rendering of services;

(b) cash receipts from royalties, fees, commissions and other revenue;

(c) cash payments to suppliers for goods and services;

(d) cash payments to and on behalf of employees;

(e) cash receipts and cash payments of an insurance entity for premiums and claims, annuities and other policy benefits;

(f) cash payments or refunds of income taxes unless they can be specifically identified with financing and investing activities; and

(g) cash receipts and payments from contracts held for dealing or trading purposes.

Some transactions, such as the sale of an item of plant, may give rise to a gain or loss that is included in recognised profit or loss. The cash flows relating to such transactions are cash flows from investing activities. However, cash payments to manufacture or acquire assets held for rental to others and subsequently held for sale as described in paragraph 68A of Ind AS 16, *Property, Plant and Equipment*, are cash flows from operating activities. The cash receipts from rents and subsequent sales of such assets are also cash flows from operating activities."

"Investing activities

16 The separate disclosure of cash flows arising from investing activities is important because the cash flows represent the extent to which expenditures have been made for resources intended to generate future income and cash flows. Only expenditures that result in a recognized asset in the balance sheet are eligible for classification as investing activities. Examples of cash flows arising from investing activities are:

(a) cash payments to acquire property, plant and equipment, intangibles and other long-term assets. These payments include those relating to capitalised development costs and self-constructed property, plant and equipment;

(b) cash receipts from sales of property, plant and equipment, intangibles and other long-term assets;

(c) cash payments to acquire equity or debt instruments of other entities and interests in joint ventures (other than payments for those instruments considered to be cash equivalents or those held for dealing or trading purposes);

(d) cash receipts from sales of equity or debt instruments of other entities and interests in joint ventures (other than receipts for those instruments considered to be cash equivalents and those held for dealing or trading purposes);

(e) cash advances and loans made to other parties (other than advances and loans made by a financial institution);

(f) cash receipts from the repayment of advances and loans made to other parties (other than advances and loans of a financial institution);

(g) cash payments for futures contracts, forward contracts, option contracts and swap contracts except when the contracts are held for dealing or trading purposes, or the payments are classified as financing activities; and

(h) cash receipts from futures contracts, forward contracts, option contracts and swap contracts except when the contracts are held for dealing or trading purposes, or the receipts are classified as financing activities.

When a contract is accounted for as a hedge of an identifiable position the cash flows of the contract are classified in the same manner as the cash flows of the position being hedged.

"20 Under the indirect method, the net cash flow from operating activities is determined by adjusting profit or loss for the effects of:

(a) changes during the period in inventories and *operating receivables* and payables;

..."

"**31 Cash flows from interest and dividends received and paid shall each be disclosed separately. Cash flows arising from interest paid and interest and dividends received in the case of a financial institution should be classified as cash flows arising from operating activities.** ***In the case of other entities, cash flows arising from interest paid should be classified as cash flows from financing activities while interest and dividends received should be classified as cash flows from investing activities. Dividends paid should be classified as cash flows from financing activities."***

"33. Interest paid and interest and dividends received are usually classified as operating cash flows for a financial institution. However, there is no consensus on the classification of these cash flows for other entities. Some argue that interest paid and interest and dividends received may be classified as operating cash flows because they enter into the determination of profit or loss. *However, it is more appropriate that interest paid and interest and dividends received are classified as financing cash flows and investing cash flows respectively, because they are costs of obtaining financial resources or returns on investments."*

(Emphasis supplied by the Committee.)

From the above, the Committee notes that an entity classifies its cash flows from operating, investing and financing activities in a manner which is most appropriate to its business and allows users to assess the impact of those activities on the financial position of the entity. Cash flows derived from the principal revenue-generating activities are classified as cash flows from operating activities e.g. cash receipts from the sale of goods and rendering of services, royalties, commission, cash payments to suppliers for goods and services etc. The cash flows which represent the extent to which expenditure have been made for resources intended to generate future income and result in a recognised asset in the balance sheet are presented as cash flows from investing activities e.g. cash payments to acquire property, plant and equipment, intangibles, equity or debt instruments of other entities etc. In other words, in case of investing activities, the intent is to make expenditure for or invest in the resources/assets to generate future income and cash flows.

13. The Committee notes from the Facts of the Case and the Concession Agreement that the Company has been set up mainly for the purpose of construction, operation and maintenance of the Project for the Authority and other incidental activities under the concession agreement; and not for the purpose of investment in any asset to generate future income. The primary main revenue of the Company in the extant case arise from the construction, operation and maintenance services provided by the

Company under the Concession Agreement. The Committee further notes that as per the terms of the Agreement, in lieu of the services rendered by the Company, it is entitled to 40% of the bid project cost in five equal instalments during the construction period. The remaining completion cost of the Project, viz., 60% of the bid project cost is payable in 30 biannual instalments over a period of fifteen years commencing from COD. Thus, the Committee notes that the consideration in lieu of rendering construction, operation and maintenance services by the Company is in the form of a financial asset, viz., a contractual right to receive cash. In other words, the financial asset (viz., the receivable due from the Authority) in the extant case is consideration for the services rendered by the Company and represents the outcome of principal revenue-producing activities of the Company. Accordingly, it can be considered as an operating receivable for the Company in the extant case. Consequently, since under indirect method, the net cash flow from operating activities is determined by adjusting profit or loss for the effects of changes during the period in operating receivables as per paragraph 20 of Ind AS 7, changes in non-current financial asset (receivable from the Authority) should be adjusted as 'changes in operating receivables' to determine the cash flow from operating activities under indirect method.

However, the Committee notes from the Facts of the Case and the Concession Agreement that interest shall be due and payable on the reducing balance of Completion Cost at an interest rate equal to the applicable Bank Rate plus 3% (three per cent) and that such interest shall be due and payable biannually along with each instalment. Thus, a portion of the financial asset, viz., receivable from the Authority contains an interest element also which is a financing component in the transaction. The Committee is of the view that such financing component which represents payment due to time value of money should be separated from the financial asset as per the relevant applicable Standard and should be considered and classified as cash flows from investing activities, considering the requirements of paragraphs 31 and 33 of Ind AS 7, as reproduced above.

D. Opinion

14. On the basis of the above, the Committee is of the opinion that in the statement of cash flows of the Company, as per the requirements of paragraph 20 of Ind AS 7, changes in non-current financial asset (receivable from the Authority) should be adjusted as 'changes in operating receivables' to determine the cash flow from operating activities under indirect method. Further, since a portion of the financial asset, viz., receivable from the Authority contains interest element also which is a financing component in the transaction; such financing component which represents payment due to time value of money should be separated from the financial asset as per the relevant applicable Standard and should be considered and classified as cash flows from investing activities, considering the requirements of paragraphs 31 and 33 of Ind AS 7, as discussed in paragraph 13 above.

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 April 13, 2021. 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-nine volumes. This is 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.

"e-Sahaayataa" – A Grievance Resolution Mechanism of ICAI

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- To eliminate the operational bottlenecks and smoothen the flow of education process of Chartered Accountancy

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- E Mail is sent to the user once the query/ complaint and grievance is resolved.
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Input Tax Credit Under GST

A new historical development in Tax regime; especially in Indirect Taxes evolves on 1st July 2017 in the shape of Goods and Service Tax (GST) after number of Constitutional & legislative changes and various Central and State Level Indirect Taxes are merged into a single regime, which is known globally as VAT (Value Added Tax). As the name suggests, GST or VAT means value added tax wherein the tax from taxpayer is expected on the value added portion while the credit is passed on for the taxes paid on purchases used for offering supplies. This is not a new phenomenon. The same was also present in the earlier regimes of Central Excise, Service Tax and even VAT when the same was known as MODVAT or CENVAT Credit. Read on…

CA. Atul Gupta* **CA. Vishal Gill#**

*The author is Board Member of IFAC and past President of the ICAI. #He is member of the Institute. They can be reached at eboard@icai.in

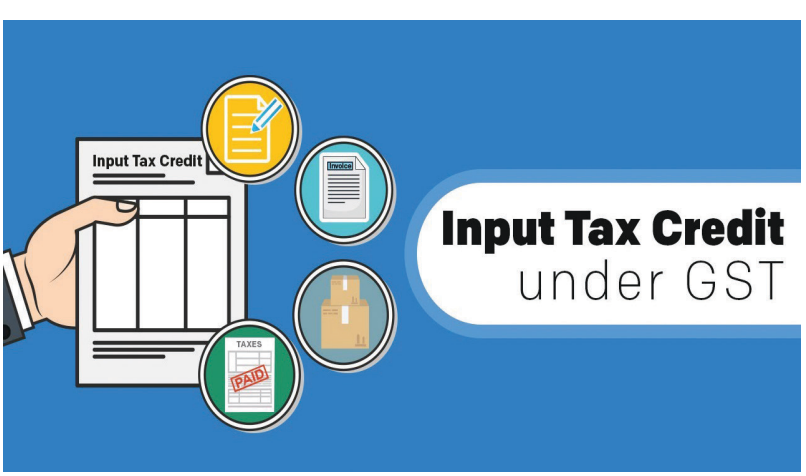
Since the Goods and Services Tax removes the notion of manufacturing, job work, works contract and services and converts all of them into supply; commonality of law at the national level (One Nation – One Tax) further aims to offer ease of doing. Inspite of all

these efforts, understanding the various aspects around Input Tax Credit are still a tiresome job for taxpayers, professionals and even for the authorities. Here, it is an attempt to offer a 360° view around Input Tax Credit (ITC) about the eligibility to claim and retain the credit, while dealing with specific issues like blocked credit, credit in case of taxpayer dealing in taxable and exempted supplies and others.

Eligibility of a Taxpayer to avail the Input Tax Credit

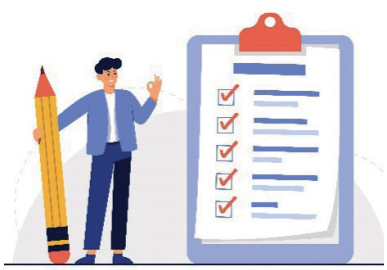
As per Section 16 of CGST Act there are certain eligibility conditions which a taxpayer has to fulfil before becoming eligible to avail credit. The same are:

a. *That supply of goods or services or both should be made to him which are used*



or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

b. *He is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.*



c. *He has received the goods or services or both.*

d. *Details of the invoice has been furnished by the supplier in GSTR-1.*

e. *Tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply.*

f. *He has furnished the return under section 39.*

g. *In case of Capital Goods, either the depreciation or Input credit tax can be availed on the portion of GST paid on purchase of Capital Goods [Section 16(3)].*

h. *Credit on any invoice need to be claimed in a time frame as prescribed under Section 16(4).*

As per the first condition, the taxpayer has to ensure that the goods or services purchased on which he wishes to claim credit should be used for business. In case, the same is neither used nor intended to be used for his business from where further supplies are offered, then such credit should not be claimed by the taxpayer. An illustration of such in-eligible credit can be the processing charges paid by taxpayer on the bank loan related to the education of his son on which GST was paid.

The second condition which has been laid down through Section 16(2) is the availability of a valid tax invoice or tax paying document in the hand of recipient to claim credit. Here two things are mentioned deliberately; one is "**Valid** Invoice/document" and other is "Tax paying document". Now one needs to understand that what all documents are making someone eligible to claim credit. So, as per legal jurisprudence, apart from Tax Invoice/Debit Note issued by supplier, the self invoice raised for supply falling under reverse charge mechanism (subject to payment of tax), bill of entry, invoice issued by input service distributor, invoice issued to transfer common input services to the Input Service Distributor are also the documents on which one can claim the credit but it is important to see the "validity" of such document before we proceed to avail credit. As per Notification No 39/2018-CT, the invoice number, name and address of supplier and recipient along with GST Number, description of goods/services, rate of tax, amount of tax and place of supply are the necessary ingredients without which the document will become invalid to claim credit.

Besides the above, as per third condition, the goods/services mentioned on the invoice should also be received by the recipient who wishes to claim such credit. At times, we can have practical situations when goods are received in lots or instalment, but as clarified through Section 16, the taxpayer will be eligible to claim credit once the final instalment or lot will be received. To illustrate, if Mr. A has ordered certain goods in September and also received invoice in the month of September but the final lot of goods is received in October, then Mr. A cannot avail the credit on such invoice in the month of September and will become eligible only in the month of October. Hence, the role of stock register to verify

"The taxpayer has to ensure that the goods or services purchased on which he wishes to claim credit should be used for business. In case, the same is neither used nor intended to be used for his business from where further supplies are offered, then such credit should not be claimed by the taxpayer.

the delivery of goods is an important eligibility condition.

We may also come across a situation that goods are supplied in bill to ship to model where the original recipient will never receive the goods as the same are further sold before delivery and necessary instructions are issued to original supplier to deliver goods to ultimate buyer. To illustrate, Mr. A purchased certain goods from Mr. B but advised him to deliver goods to Mr. C to whom he sold such goods in advance. Now, Mr. A will never receive the goods in his factory/warehouse, so can he claim the credit? As explained and clarified in Section 16, in case of bill to ship to model, the original recipient will be eligible to claim credit, irrespective of the fact that goods never reached the factory/warehouse of original recipient (here in illustration Mr. A). CGST (Amendment) Act, 2018 has inserted similar provisions for services, where the services are provided by the supplier to any person on the direction of and on account of original recipient.

In the other conditions (fourth and fifth) as mentioned, the taxpayer needs to ensure that tax paid to supplier must have been deposited by the supplier in government exchequer and the same is getting reflected in electronic credit ledger of recipient after filing of GSTR -1 by such supplier. GST law envisages the provision for matching of input tax credit; however this functionality has been suspended since the inception of GST. Later, Finance Act, 2021 has inserted (*effective date yet to be notified*) one more condition for furnishing of invoice details in GSTR-1 filed by supplier.

In case of any credit which is not getting reflected, as per rule 36(4) of CGST Rules, a maximum of 5% (Originally 20% then reduced to 10% & now to 5%) credit can be claimed by the recipient. To illustrate, A purchased goods worth Rs. 10000 from B and paid 1800 as GST and at the same time from C for Rs. 20000 on which GST was paid Rs. 3600 (GST Rate is 18% in both cases). Now Mr. B duly filed his GSTR 1 at the appropriate time and credit reflected in A's Electronic credit ledger, whereas Mr. C failed to file his GSTR-1 and did not pay the tax. Now Mr. A can only take 5% of 1,800 (amount uploaded in GSTR-1) i.e., Rs. 90 till the time Mr. C will not rectify his mistake and complete his compliance. Though this provision was challenged at times and contrary judgments were passed, still it is always a matter of debate among legal sections.

In the sixth and important condition, the recipient of the supply to become eligible needs to file his GST Returns. At times, certain taxpayers may have this perception that they have sufficient credit against output liability so necessary compliance may be deferred, but as prescribed in the Section 16, to be eligible for a credit, the recipient of supply needs to file his return as required under Section 39. In the pre-GST regime, there were judgments to support eligibility of ITC availed in books of accounts however in GST to be eligible to avail ITC, recipient of supply is also required to file return.

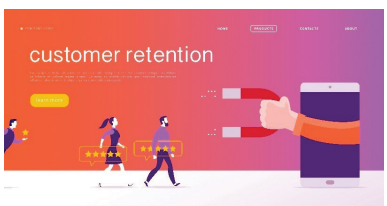
> The taxpayer needs to ensure that tax paid to supplier must have been deposited by the Supplier in government exchequer and the same is getting reflected in electronic credit ledger of recipient after filing of GSTR -1 by such supplier.

Moving further, as prescribed under Section 16(3) of CGST Act, in case of purchase of capital goods which are normally capitalised in the Financial statements following the Accounting Standards (Ind-AS) the taxpayer has to choose one out of available option. In case taxpayer opted to claim deprecation on the full value of capital goods including the GST portion, then on such purchase he will become ineligible to claim any credit. To illustrate, If Mr. A has purchased Capital Goods worth Rs. 1,00,000 and paid GST @18% i.e. 18,000, then he has the option to either claim depreciation of entire value of Rs. 1,18,000 and no Input tax credit of Rs. 18,000 or he can capitalise Rs. 1,00,000 as Capital Goods and claim 18,000 as Input tax Credit.

> In case taxpayer opted to claim deprecation on the full value of capital goods including the GST portion, then on such purchase he will become ineligible to claim any credit.

Lastly, in the condition prescribed under Section 16(4), the taxpayer has the obligation to avail credit of any invoice related to such goods/services within a prescribed period given under section 16(4). As per Section 16(4) the taxpayer can avail credit on or before the due date of filing of GST return under Section 39 for the month of September of the following financial year or actual date of filing of Annual return of previous year, whichever is earlier. To clarify, let us take an illustration— Mr. A who is having operations in 2020-21 makes a number of purchases. Due date for September 2021 GST return is 20th October 2021 and Annual Rerun was filed on 31st Dec 2021. Now, for all such purchases made in financial year 2020-21, Mr. A can avail credit on or before 20th October, 2021 and failure to do so will lead to lapse of credit forever. Here, it needs to be clarified that the above limit is for availing the credit first time and not for utilisation of credit. Once availed within the time limit prescribed under Section 16(4), taxpayer can utilise the credit anytime without any time restrictions.

Eligibility of a taxpayer to retain the Input Tax Credit so availed



In the preceding sections we discussed the conditions which make a taxpayer eligible to avail the credit. Besides this, as prescribed under Section 16 the taxpayer should also fulfil the very important requirement to retain such credit, failure of which will require the taxpayer not only to reverse the credit so availed but also end up paying interest as if he has availed the ineligible credit. Now as per provison inserted in Section 16, every taxpayer who has availed the credit on purchase of goods/services need to pay to such supplier (other than those where he is paying under reverse charge basis) the value of such supply along with applicable GST within 180 days from the date of invoice, else GST availed as Input Tax credit need to be reversed. There are certain provisions which are associated with this provisions, which are:

i. The taxpayer needs to reverse the entire credit of unpaid portion along with interest @18%.

ii. In case of part payment is made that pro-rata credit can be retained and balance credit needs to be reversed along with interest.

iii. 180 days need to be counted from the date of invoice and not on the basis of credit availed.

iv. Credit so reversed can be re-availed based on the payment made to supplier without any time limit irrespective of time period as mentioned in Section 16(4).

Here, it is important to clarify that in the earlier regime of Service Tax/Excise the levy of interest and penalty was on "wrongful availment and utilisation" of input tax credit whereas in the GST regime for undue and excess claim of Input tax Credit under section 42(10) i.e., invoice matching mechanism the word "AND" has been replaced with "OR", meaning thereby that even if the credit is not being utilised the interest and penalty can be imposed on wrongful availment.

> As per provison inserted in Section 16, every taxpayer who has availed the credit on purchase of goods/services need to pay to such supplier (other than those where he is paying under reverse charge basis) the value of such supply along with applicable GST within 180 days from the date of invoice, else GST availed as Input Tax credit need to be reversed.

Illustration

Mr. A purchased goods and / or availed services worth Rs 1,18,000 (1,00,000+ 18,000 GST) from Mr. Y on 01 Mar 2019 and received invoice on the same date and availed the credit in the month of Mar 2019. He paid to Mr. Y against this bill on 01.12.2019. What will be the liability of Mr. A for non-payment to Mr. Y within 180 days?

Solution:

Since we have to calculate 180 days from the date of invoice which falls on 28th Aug 2019 and Mr. A has not paid to the supplier in 180 days, Rs 18,000 should have been added in his outward liability in GSTR 3B for the month of Sep 2019. Now he has to reverse credit so availed along with interest @18% calculated from ***the date of ITC availed*** *i.e. 01.03 .2019 to the date of payment 01.12.2019*

Days on which interest liability to be calculated = 1st March 2019- 30th Nov 2019

*Interest Liability = 18,000*18%*275/365 = 2,441*

Total Liability = 18,000+2,441 = 20,430

Blocked Credit under GST – Inputs on which credit is not available

Since the Service Tax regime, on certain assumption including the assumption that certain goods/services are more of personal use, credit of the few input supplies is blocked under the law books. Section 17(5) of CGST Act 2017 deals with specific expenditure related to consumption of Goods/ Services even if they are used for business purpose, credit of which is generally not available to taxpayer. Such Goods/services on which credits are blocked (taxpayer should not avail credit of these expenditures) are listed below:

a. **Motor vehicles and other conveyances (with seating capacity of up to 13 persons including driver)** except when they are used for further supply of such vehicles or conveyances, transportation of passengers; or imparting training on driving, flying, navigating such vehicles or conveyances;

b. General insurance, servicing, repair and maintenance of motor vehicles and other conveyances except when taxpayer is eligible for Input Tax Credit on motor vehicles and other conveyances or where taxpayer is engaged in manufacture of such vehicle or supply of insurance services in respect of such vehicle. To illustrate, Maruti is eligible to Input Tax Credit of general insurance and repair and maintenance of motor vehicles manufactured by it.

c. Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft on which ITC is blocked except when used for the purposes specified therein, life insurance and health insurance except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply or where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

d. Membership of a club, health and fitness centre except where it is obligatory for an employer to provide the same to its employees under any law for the time being in force;

e. Travel benefits extended to employees on vacation such as leave or home travel concession except where it is obligatory for an employer to provide the same to its employees under any law for the time being in force;

f. Works contract services when supplied for construction of an immovable property (other than plant and machinery)

except where it is an input service for further supply of works contract service;

g. Goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. Whereas the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

h. Goods or services or both on which tax has been paid under section 10 i.e., where supplier has opted composition scheme;

i. Goods or services or both received by a non-resident taxable person except on goods imported by him;

j. Goods or services or both used for personal consumption;

k. Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

l. Any tax paid in accordance with the provisions of sections 74, 129 and 130.

Analysis

While reviewing the exhaustive list of expenditure related to goods/services on which credits are specifically blocked generally, there are various carve outs when credit can still be claimed subject to fulfilment of certain conditions related to a particular class of credit. To illustrate,

a. Credit related to motor vehicle is generally not available. To illustrate, if Mr. A management consultant who is buying a motor vehicle for office use, still the credit will not be available. But if Mr. B has a showroom to buy and sell motor vehicles, then as required, he is using the credit of motor vehicles for further supply of same line of supply i.e., motor vehicle and thus, credit will be available.

b. Similarly, the credit related to food & beverages, outdoor catering, works contract, rent a cab, etc. is also not available unless the same is used for the same line of business. To illustrate again, if Mr. A is providing rent a cab services and to provide services to a customer, takes cab from another vendor Mr. B, then Mr. A can claim credit of GST paid to Mr. B for obtaining rent on cab services.

c. As we are aware that any purchase from dealer opted for composition scheme, the recipient of such supply cannot claim any credit on such purchase (Section 10 of CGST).

d. In case of goods that are stolen or offered as gift whereas on purchase GST was paid, credit of the same will not be available. Here we need to read this provision with schedule 1 of Section 7 which deals with activity classified as supply even without consideration.

e. Section 74, 129 and 130 deals with situation when the duty has been paid to government exchequer after certain provisions were invoked involving evasion of duty under relevant provision of CGST Act.

> While reviewing the exhaustive list of expenditure related to goods/services on which credits are specifically blocked generally, there are various carve outs when credit can still be claimed subject to fulfilment of certain conditions related to a particular class of credit.

Utilisation of GST Input Credit- Rule 42 read with Section 17 of CGST Act 2017

As per Section 17 of CGST Act, once the taxpayer will arrive to

the net credit {Total available credit less blocked credit less credit related to personal (non-business use)}, and the taxpayer may have different supply, some of them are subject to GST and others not, then he needs to follow certain Rules to claim the pro-rata credit related to his taxable/zero rated supply. To arrive at the pro-rata credit, the government has prescribed Rule 42 and 43 to read with Section 17 respectively for Input and Capital Goods. Before we venture into understanding Rule 42 and 43, let us recognise some basic fundamentals for better understanding:

a. Credit specifically attributable to Non-business or personal consumption cannot be availed and classified as T1 in the Rule 42.

b. Credit specifically attributable to NIL Rated Supply (Supply which attract 0% GST) cannot be availed. The same is classified as T2 in the Rule 42. Similarly, credit related to activity classified under Schedule III of CGST Act or Non-Taxable supply like petroleum product also classified as exempted supply for this section cannot be availed.

c. Credit related to exempted activity (Say GST paid on Rental Charges paid for leasing of godown to keep exempted goods) is also not allowed and classified as T2 in the Rule 42.

d. Export related supply are classified as zero rated supply but as they enjoy special benefit, credit related to them is available for utilisation.

e. Exempt supply as defined under Section 2 *means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;* As per Section 17(3) of CGST Act the value of exempt supply includes:

   i. *Outward Supplies on which recipient is liable to pay tax under reverse charge,*

   ii. *Transaction in securities (value shall be 1% of sale value),*

   iii. *Sale of land (value shall be the same as adopted for the purpose of paying stamp duty,)*

   iv. *Sale of building subject to para 5(b) of schedule II (value shall be the same as adopted for the purpose of paying stamp duty).*

Practical Case Study – Rule 42 read with Section 17 of CGST Act

XYZ has a turnover of Rs.10 cr. out of which Rs.7 cr. is taxable supply and Rs.3 cr. is exempted supply. Total Input Tax Credit available is Rs.80 Lakh (Equal amount of CGST and SGST). It includes:

- 5 Lakh GST credit is available for services availed for personal consumption.
- Input tax credit of Rs.5 Lakh is available on rental paid related to exempted goods.
- XYZ paid Rs.20 lakh as GST for purchase of building materials and services for construction of building on his own account for furtherance of business.
- Rs.10 lakhs GST Credit is available for procuring works contract service for further supply of both taxable and exempt works contract service for construction of immovable property. Such works contract service is also used for non-business purposes.
- XYZ has a Motor Vehicle which is used for providing taxable and exempt service of transportation of passengers. The motor vehicle is also used for non-business purposes. The amount of GST paid on servicing for such motor vehicles is Rs. 12 Lakh.
- XYZ paid for Food and Beverages for staff on which Input Tax of Rs.1 Lakh is available.
- XYZ Paid for Servicing of Motor Vehicle (used for director) purchased by it for which 1 Lakh paid as GST

- Goods on which GST Credit of Rs.6 lakhs was paid were stolen from the factory of XYZ
- GST Credit balance of Rs.20 Lakh is available exclusively for taxable purpose.

Calculate the credit which will be available to utilize for the month.

Note:

i. The below calculations are based on Rule 42 read with Section 17 of CGST Act.

ii. As per Rule inspite of Credit directly attributable for personal consumption, clause (j) of Rule 42 requires 5% reversal from common credit.

iii. Banking Companies, NBFC has the option to go for this calculation or reverse 50% of Net Credit (Total credit- credit attributed from services received from branches).

iv. Similarly for Capital Goods, one has to go for calculation as prescribed under Rule 43.

Solution:

Sl. No	Details of Credit (CGST+SGST)	Classification	Amount (in Rs.)
1.	GST Credit of Rs. 5 Lakhs specifically related to Personal Consumption (Not Available)	T1	5,00,000
2.	GST Credit on Rental for Exempted Activity(goods) – Not Available	T2	5,00,000
3.	Building Material and Service for use in Office – Not Available as Blocked Credit U/s 17(5)	T3	20,00,000
4.	GST Credit related to Works Contract – Used partially for taxable works contract service and partially for exempt works contract service – Common Credit	C2	10,00,000
5.	GST Credit on servicing of motor vehicle used for both taxable and exempt service of transportation of passengers – Common credit	C2	12,00,000
6.	GST Credit for Food and beverages for office use – Blocked credit under section 17(5)	T3	1,00,000
7.	GST Credit on Service of Motor vehicle used for office – Blocked credit under Section 17(5)	T3	1,00,000
8.	GST Credit on goods stolen from factory – Credit needs to be reversed	T3	6,00,000
9.	GST Credit exclusively for Taxable activity	T4	20,00,000
10	Total Credit	T	80,00,000
11.	Rule 42 – Calculation of C1 =T-(T1+T2+T3)		42,00,000
12	Calculation of Common credit C2 = C1-T4		22,00,000
13.	Credit related to Exempted Activity from common credit = D1 = C2XE/F where E is the Exempted turnover of 3 Crore and F is the total turnover of 10 Crore	$\frac{22,00,000 \text{ X } 3}{10}$	6,60,000
14.	Credit related to non-business purposes from common credit =D2 = 5% of C2 (refer note (ii) of Rule 42)	22,00,000 X 5%	1,10,000
15.	Common Credit available for Taxable Activity = C3 = C2- (D1+D2)		14,30,000
16.	Total Credit available for XYZ	C3+T4	34,30,000

> A person who takes registration under sub-section (3) of section 25 (Voluntary Registration) shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration.

Input Tax Credit in Special Cases

As per Section 18(1) to 18(3), there will be different situations when taxpayer will look for utilisation of available credit. The same are explained as below:

a. A person who has applied for new registration (within thirty days from the date on which he becomes liable to registration) is entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

b. A person who takes registration under sub-section (3) of section 25 (Voluntary Registration) shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

c. Where any registered person ceases to pay tax under section 10 (Moved from Composition scheme to Normal Tax payment scheme), he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9. Credit on capital goods shall be reduced by 5% Per quarter of Asset used under compositions scheme.

d. Where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable. Credit on capital goods shall be reduced by 5% Per quarter of Asset used under Exemption period.

Note: A registered person in all the four provisions mentioned above shall not be entitled to take input tax credit in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

Input Tax Credit under Merger/Amalgamation etc.

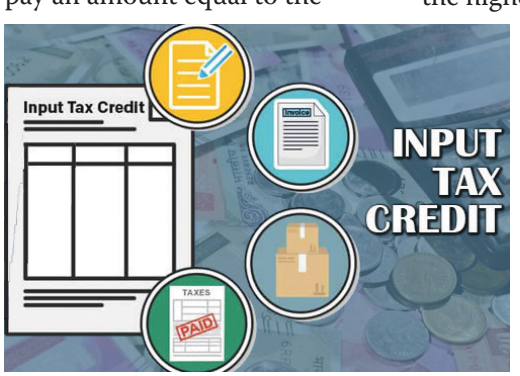
Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific

> Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed. To claim such credit, a company who wishes to transfer credit need to file ITC-02 which need to accompany certificate from a Chartered Accountant/ Cost Accountant and has to be accepted by the entity in whom this entity is merging with.

Reversal of GST Credit in case of Sale/Disposal of Capital Goods

As per Section 18(6) in case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by 5% per quarter used or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:



Illustration

Mr. A Purchased Capital Goods worth Rs. 5,00,000 on 1st Jan 2018 and paid GST@18%, Rs. 90,000. After use of Capital Goods for certain period, now Mr. A wishes to dispose of Capital Goods for Rs. 70,000 in the open market on 31st Dec 2020. GST rate on Capital Goods is still 18%. Calculate the GST liability on the transaction.

Solution

As per Section 18(6), Mr. A has to calculate the two values, (a) GST on Transaction value and (b) Credit need to be reversed as asset is not used for complete 5 years and then take the higher of the two:

a. 70000 X 18% = 12,600

b. Since the asset was used for 12 Quarters As per the provisions, 5% per quarter Mr. A can retain and rest has to be reversed. So 40% of the credit earlier claimed need to be reversed as per option b which will be 90000 X 40% = 36,000

> As per Section 18(6) in case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by 5% per quarter used or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher.

Since, higher of the above two is 36,000 the total liability on this transaction will be Rs. 36,000. Mr. A will charge 12,600 from buyer as GST and rest Rs. 23,400 will be reversed from credit otherwise available.

Note: Where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15 of CGST Act 2017. In the above illustration, if Mr. A has sold moulds as scrap for Rs. 70,000, total tax liability will be Rs. 12,600. ■■■

Compliance Requirements under GST Law

This article attempts to comprehend the compliance requirements under the GST law across the board. GST compliances are amended frequently and staying abreast of the new developments can often be an onerous effort. The types of compliances are assorted with unalike target dates. The author aims to offer a lucid understanding of these new compliance amendments. This compilation entails to cover compliances to be made by numerous taxpayers from pre-registration period till the cancellation of their registration. I hope that this critique would assist the masses who may be in the finance departments of the businesses or in the offices of the practicing members at large. Read on…

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1. Introduction

Aimed to highlight the foremost compliances, the author simplifies the task of handling necessary compliances under GST laws both at pre and post registration. Compliance under these laws plays a pivotal role, both for the taxpayer to mitigate liabilities on account of tax, interest and penalties and for the revenue to fill its exchequer better than before. In the modern fiscal laws, trust on a taxpayer is the kernel while codifying the law and its procedures. Over a period, the stakeholders have achieved an acceptable level of digital compliances from registration to filing of returns, from payment of taxes to assessment and refunds, from advance ruling to appeals, etc. The GSTN e-portal has been successfully handling such compliances with ease. E-way bill and e-invoices portals too have proved to be an immense accomplishment.

Pre-Registration

Section 22 of the CGST Act, makes it necessary for any person supplying goods/ services to seek registration as soon as his aggregate turnover as defined under section 2(6) crosses the threshold limit. The threshold limit is normally 20 lakhs in a financial year subject to some exceptions, like it is 10 lakhs in case of special category States and Rs. 40 lakhs for a person supplying exclusively goods, subject

to a few conditions. Section 24 provides for mandatory registration requirements in certain cases like (i) a person making inter-State supply of goods, (ii) casual taxable person making taxable supply, (iii) persons who are required to pay tax under reverse charge, (iv) persons who are required to pay tax under section 9(5), (v) non-resident taxable person making taxable supply, (vi) persons who are required to deduct tax under section 51, whether or not separately registered, (vii) persons who make taxable supply of goods/ services on behalf of other persons, whether as an agent or otherwise, (viii) ISD, whether or not separately registered, (ix) persons who supply goods/ services or both, other than supplies specified under section 9(5), through such electronic commerce operator who is required to collect tax at source under section 52, (x) every electronic commerce operator (who is required to collect tax under section 52), and (xi) every person supplying OIDAR services from a place outside India to a person in India, other than a registered person.

> Section 22 of the CGST Act, makes it necessary for any person supplying goods/ services to seek registration as soon as his aggregate turnover as defined under section 2(6) crosses the threshold limit.

Ordinarily, a person has to apply for registration within 30 days once it becomes obligatory to seek such registration. Exceptions may be there for voluntary registration, registration of casual taxable person, a non-resident taxable person, etc.

2. Tax invoice and e-way bill

Tax-invoice and bill of supply

Section 31 mandates to issue a Tax-Invoice in case a registered person is making taxable supply and to issue a Bill of Supply in case of exempted supplies or paying tax under the provisions of section 10. In the case of supply of goods, such invoices are to be issued at the time of removal of goods whereas in the case of supply of services, such invoices may be issued within 30 days from the date of provision of such services, subject to some exceptions like banking companies, etc. Rules 46 to 55 specify various mandatory fields to be given in various types of invoices, credit and debit notes, etc. to be issued by a registered person.

E-Invoice

The *Notification No. 5/ 2021-CT, dated 8-Mar-21* tumbled the threshold limit for mandatory issuance of e-invoices in case of B2B taxable supplies by a taxpayer whose aggregate turnover is more than Rs. 50 Cr with effect from 01.04.2021, subject to certain exceptions.

QR Code

One must be cautious regarding the applicability of having a Quick Response (QR) code on B2C invoice issued. Various notifications have been issued by CBIC in this regard.

E-way bill

Rule 138 lays down the provisions for generation of e-way bill. As per the said rule, e-way bill is mandatorily required to be generated before the onset of movement of goods, in case of movement of goods of consignment value worth more than Rs. 50,000, subject to some exceptions. It may also be noted that at occasion, the e-way bills are to be generated even if the consignment value does not exceed Rs. 50,000 like (i) inter-State movement of goods between principal and job-worker, and (ii) inter-State supply of handicraft goods by a person who is exempted from registration requirement. It is also worth mentioning that there are instances when the value of goods may rise above Rs. 50,000/- but e-ways bills are not required to be generated like (i) in case of movement of exempted goods, (ii) goods falling under Schedule-III, (iii) goods being transported through a non-motorised conveyance, (iv) goods being transported from customs port, airport, etc.

3. Reverse charge mechanism

Normally, taxes are to be paid by the supplier of goods and services. However, for varying reasons, in certain cases, the Government decides to shift

this burden on to the recipient. Section 9(3) provides that in case of supply of goods as notified under *Notification No.-4/ 2017-CT(R), dated 28-Jun-2017* and in case of supply of services as notified under *Notification No.-13/ 2017-CT(R), dated 28-Jun-2017*, the tax shall be paid under RCM by the recipient. Section 9(4) provides that "promoters" as class of registered persons shall pay tax under RCM on receipt of goods or services from unregistered persons as notified vide *Notification No.-7/ 2019-CT(R), dated 29-Mar-2019.*

4. Returns and payment of tax

Details of outward supplies (S.37 read with R.59)

Every registered person, other than – (i) an input service distributor (ii) a non-resident taxable person (iii) composition taxpayer (iv) TDS deductor (v) TCS collector (vi) supplier of OIDAR services shall furnish the details of outward supplies in Form GSTR-1 electronically on or before the 11th day of the month succeeding the tax period.

> Section 31 mandates to issue a Tax-Invoice in case a registered person is making taxable supply and to issue a Bill of Supply in case of exempted supplies or paying tax under the provisions of section 10.

Filing of return in Form GSTR-3B [S.39 read with R.61(5)]

Every registered person having an aggregate turnover above Rs. 5 crores in the previous financial year shall file return in Form GSTR-3B, on or before the 20th day of the month succeeding the tax period. However, in cases where the aggregate turnover is up to Rs. 5 crores, the due dates are prescribed as given below:

> Normally, taxes are to be paid by the supplier of goods and services. However, for varying reasons, in certain cases, the Government decides to shift this burden on to the recipient.

S. No.	Class of registered persons	Due Date
1.	Registered persons whose principal place of business is in the States of 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.	Twenty-second day of the month succeeding such quarter
2.	Registered persons whose principal place of business is in the States of 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.	Twenty-fourth day of the month succeeding such quarter

QRMP scheme

As a measure of trade facilitation, the Board has introduced QRMP Scheme, i.e., Quarterly Return Monthly Payment Scheme. In this scheme, a registered person having an aggregate turnover up to Rs. 5 crores may be allowed to furnish return on quarterly basis along with monthly payment of tax, w.e.f. 1-Jan-2021. In this respect, the Board has issued *NN-81/ 2020-CT, NN-82/ 2020-CT, NN-84/ 2020-CT, NN-85/ 2020-CT, all dated 10-Nov-2020* along with a *Circular No. 143/ 13/ 2020-GST, dated 10-Nov-2020*. The abovementioned notifications read with the said Circular make it clear about the ins and outs of such scheme. The scheme comprehends as under-

> Every registered person having an aggregate turnover above Rs. 5 crores in the previous financial year shall file return in Form GSTR-3B, on or before the 20th day of the month succeeding the tax period.

i. A registered person who is required to furnish a return in Form GSTR-3B and whose aggregate turnover is up to Rs. 5 crores in the preceding financial year is eligible for the QRMP scheme.

ii. The scheme would be effective from 1-Jan-2021.

iii. In case the aggregate turnover exceeds Rs. 5 crores during any quarter in the current financial year, the registered person shall not be eligible for the scheme from the first month of the quarter during which his aggregate turnover exceeds Rs. 5 crore.

iv. The detailed procedure to opt in and to opt out has been explained in the said Circular.

v. The registered person opting for the scheme would be required to furnish the details of outward supply in Form GSTR-1 on quarterly basis.

vi. For each of the first and second months of the quarter, such registered person will be having the facility, as per his choice, to furnish details of his outward supplies to a registered person under IFF i.e., Invoice Furnishing Facility.

vii. The registered person under the scheme would be required to pay the due tax in each of the first two months of the quarter by depositing the due amount in Form GST PMT-06 by the 25th day of the month succeeding such month. Such payment of taxes can be made by selecting either fixed sum method or self-assessment method as explained in the Circular.

viii. Such registered persons would be required to furnish Form GSTR-3B, for each quarter, on or before 22nd or 24th day of the month succeeding such quarter.

Composition taxpayers (S.39 read with R.62)

Every composition taxpayer shall furnish a statement on quarterly basis containing the details of payment of self-assessed tax in Form GST CMP-08, till the 18th day of the month succeeding such quarter and furnish a return for every financial year in Form GSTR-4 till the 30th day of April, following the end of such financial year.

Return by non-resident taxable person (S.39 read with R.63)

Every registered non-resident taxable person shall furnish a return, giving details of outward and inward supplies, in Form GSTR-5, within 20 days after the end of a tax period or within 7 days after the last day of the validity period of registration, whichever is earlier.

Return by input service distributor (S.39 read with R.65)

Every input service distributor shall furnish electronically, a monthly return in Form GSTR-6, containing the details of tax invoices on which credit has been received and those issued under section 20, on or before the 13th day of the succeeding month.

Return by TDS deductor (S.39 read with R.66)

Every TDS deductor under section 51 shall furnish a return in Form GSTR-7, on or before 10th of the succeeding month along with payment of taxes; else interest shall be paid @18%, for the period tax remains unpaid.

Return by TCS collector (S.52)

Every operator who collects tax at source shall furnish a statement in Form GSTR-8, containing the details of outward supplies affected through it, including the supplies returned through it during a month, within 10 days

> Every TDS deductor under section 51 shall furnish a return in Form GSTR-7, on or before 10th of the succeeding month along with payment of taxes; else interest shall be paid @18%, for the period tax remains unpaid.

after the end of such month. The TCS is also required to be deposited along with furnishing of such return.

Details on inward supplies by UIN holder (R.82)

Every person, who has been issued a UIN and claims refund of the taxes paid on his inward supplies, shall furnish the details of such supplies, in Form GSTR-11, along with an application for such refund claimed.

First return (S.40)

Every registered person who has made outward supplies in the period between the date on which he became liable for registration and the date on which the registration has been granted, shall declare the same in the first return filed by him after grant of registration.

Annual return (S.44 read with R.80)

i. Every registered person, other than an ISD, TDS deductor, TCS collector, a casual taxable person, a non-resident taxable person, a person supplying OIDAR from a place outside India to a person in India, any department of the CG/ SG/ local authority whose books of accounts are subject to audit by CAG of India, an airline company (*NN-9/ 2020-CT, dated 16-Mar-2020*), shall furnish an annual return in Form GSTR-9, for every financial year.

ii. Taxable person paying tax under composition levy shall furnish the annual return in Form GSTR-9A.

iii. Every electronic commerce operator who is required to collect tax at source under section 52 shall furnish the annual statement in the Form GSTR-9B.

iv. Every registered person, whose aggregate turnover during a financial year exceeds Rs. 5 crore, shall furnish a self-certified reconciliation statement in the Form GSTR-9C along with a copy of his audited annual accounts.

v. All such returns are to be filed on or before the 31st day of December, following the end of such financial year. However, taxpayers having AATO upto Rs. 2 crores are exempt from the requirement of furnishing annual return for FY 2020-21.

Final return (S.45 read with R.81)

Every registered person who is required to furnish return under section 39 and whose registration has been cancelled shall furnish a final return in the Form GSTR-10, within three months from the date of cancellation or date of order of cancellation, whichever is later.

5. Payment of taxes

Every taxpayer shall discharge his tax liability on or before the due date of furnishing his return. Under GST law, returns cannot be filed without discharging the applicable liability. Amount available in electronic cash ledger may be used for payment of tax, interest, penalty, fee or any other amount payable in the manner prescribed in rule 87. Amount available in electronic credit ledger may be used for payment of tax in the manner prescribed in the rule 86. Electronic credit ledger cannot be used for making payments on account of interest, fee, penalty or any other payments. The manner of utilization of ITC available in electronic credit ledger is given under section

> Every registered person who is required to furnish return under section 39 and whose registration has been cancelled shall furnish a final return in the Form GSTR-10, within three months from the date of cancellation or date of order of cancellation, whichever is later.

49(5), 49A and 49B of the Act. Interest for delayed payment of taxes shall be charged as per section 50.

6. Job work compliances (S.143)

The word 'job work' has been defined under section 2(68) to mean any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. In case, inputs are sent for job work and are not brought back or supplied within 1 year and if capital goods are sent to a job worker and are not brought back or supplied within 3 years, it would be considered as deemed supply on the date when such inputs/ capital goods were originally sent to the job worker. The details of challans in respect of goods dispatched to a job worker or received from a job worker during a quarter shall be reported in Form GST ITC-04 to be furnished for that period, on or before the 25th day of the month succeeding the said quarter.

> The word 'job work' has been defined under section 2(68) to mean any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly.

7. Accounts and Records (S. 35, 36 read with R.56, 57, 58)

Maintenance of accounts and records

As per the provisions of section 35, every registered person has to maintain accounts and records at principal place of business in respect of- (i) production or manufacture of goods (ii) inward and outward supply of goods/ services (iii) stock of goods (iv) ITC availed (v) output tax payable and paid. In case of more than one place of business, such records are to be maintained at every place of business specified in the certificate of registration. The Central Government vide *Circular No. 23/ 23/ 2017-GST dated 21-Dec-2017* provided clarification on issues in respect of maintenance of books of accounts relating to additional place of business by a principal or an auctioneer for the purpose of auction of tea, coffee, rubber, etc.

Retention of records

Section 36 provides that the period of retention of such accounts and records shall be for 72 months from due date of furnishing of annual return. However, in case of appeal, revision or any other Court proceedings, accounts pertaining to the subject matter of such proceeding are required to be maintained for a period of one year after disposal of such matter or 72 months, whichever is later.

Types of records

Rule 56 gives detailed information about the accounts and records to be maintained by a registered person in a comprehensive manner. This rule talks about various types of records to be maintained, whether stock records are to be maintained, records relating to advances received from customer,

> Rule 57 gives us an understanding about the generation and maintenance of electronic records. This rule comprehensively covers the manner of taking backup of electronic records, production of records before the proper officer along with passwords.

records relating to payment of taxes made, records relating to sundry debtors and creditors, consequences of goods stored at place other than declared places, place where books are to be kept, log of entries edited or removed, serial number of books, presumption of ownership of documents, records to be maintained by an agent, additional records to be maintained by a manufacturer, additional records to be maintained by a service provider, specific records to be maintained by a works contractor, records in electronic form, preservation of records, records by a transporter or clearing and forwarding agent.

Electronic records

Rule 57 gives us an understanding about the generation and maintenance of electronic records. This rule comprehensively covers the manner of taking backup of electronic records, production of records before the proper officer along with passwords.

Rule 58 talks about records to be maintained by the owner or operator of godown or warehouse and transporters. ■■■

Detailed analysis of key issues in 'Interest and Penalties' under GST

For effective implementation of any tax-law and to do justice to tax abiding society, certain provisions to take action against offenders are required. While interest is economic consequence which is compensatory in nature, penal provisions in many cases act as a deterrent and criminal prosecution as a serious punishment against intentional tax evasions. Ignorance is never an excuse in the eyes of law. Hence, all taxpayers, Chartered Accountants and tax professionals are expected to be aware of the severe consequences in the law, which many times may also be due to inadvertent mistakes. In this article, we are going to discuss a few of the key current issues and expected future issues on the topic of interest and penalties under GST. Read on…

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Interest on Net tax liability – Does the retrospective amendment put an end for all the chaos?

After a long deliberation on whether interest is payable on gross tax liability or net tax liability, and whether the amendment is prospective or retrospective basis, finally the battle gets settled when the retrospective amendment of inserting proviso to subsection (1) of section 50 of CGST Act, 2017 gets notified vide *Notification No. 16/2021 – Central Tax dated 1st June, 2021.* While the battle gets settled, the war continues.

The GST council gave an in-principle approval for the amendment in law in its 31st meeting held on December 22, 2018 as below:

'Amendment of section 50 of the CGST Act to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e., interest would be leviable only on the amount payable through the electronic cash ledger.'

However, when the actual amendment was proposed and implemented, the scope got narrowed down to only a specific scenario. A careful reading of the inserted provision in a sequential manner is as below:

- *Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39,*
- *except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period,*
- *shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.*

In simple words, interest is payable only on the liability discharged through cash that too only in the scenario of late filing of return, where such return is filed before initiating proceedings u/s 73 or 74. Let us analyse some practical scenarios where interest is still payable on gross tax liability, even though they are discharged of ITC, despite the retrospective amendment being made effective:

Scenario 1

When liability is omitted to be declared in the previous month.

As per *Circular No. 26/26/2017-GST dated 29th December, 2017*, the same can be rectified by way of including such liability in the current returns to be filed. It is also important to appreciate that the legal eligibility to offset tax liability against ITC is available, only when unutilized ITC is available until the expiry of the period of such liability, either availed in the past or to be availed in the current period. It is not legally valid to discharge current tax liability out of future ITC.

Scenario 2

When nil return has been filed inadvertently and both tax liability as well as ITC has been omitted to be declared in Form GSTR-3B of the previous month

It is important to understand that non-reporting of equivalent ITC does not entail automatic offset against unreported liability. Tax liability and ITC should be separately declared and then offsetting procedure should be made while filing Form GSTR-3B. Accordingly, as per *Circular No. 26/26/2017-GST dated 29th December, 2017*, the error has been rectified by way of including both liability and ITC in the current returns to be filed.

Scenario 3

Tax liability discharged utilizing ITC, either voluntarily or after receiving intimation from the proper officer, through Form DRC-03 before initiation of proceedings u/s 73 or 74.

Inference : In all these scenarios, even if the liability is met out of eligible ITC available to be offset for the period, going by the strict wordings of the newly inserted proviso, since supplies made during a tax period is not declared in the return u/s 39 for the ***said period***, interest would still be payable on the entire gross liability, even though it is discharged fully or partially by way of ITC.

Conclusion

Even though the law has been amended retrospectively for interest to be payable on liability discharged through cash, one has to exercise abundant caution in calculating the interest. A careful understanding of the limited applicability of this proviso would help the taxpayer to be more vigilant in timely tax discharges and to avoid unidentified interest consequences which can arise from department in future.

Excess interest paid on Gross tax liability basis – Can this be claimed as refund and is it bound by the time limitation mentioned under section 54 of CGST Act, 2017?

Since the inception of the GST law, there were unsettled multiple views on whether

> Interest is payable only on the liability discharged through cash that too only in the scenario of late filing of return, where such return is filed before initiating proceedings u/s 73 or 74.

interest is payable on gross or net tax liability basis and even after proposing amendment to the law to make interest applicable on net tax liability, clarity had been lacking on whether it is applicable prospectively or retrospectively. In all these times, many taxpayers have paid excessive interest on gross tax liability, either voluntarily or based on demand from the tax department. However, once the law is settled clearly on retrospective amendment, issue arises on whether such excessive interest paid in the past is refundable.

APPROACH 1: REFUND OF 'INTEREST'

As per section 54(1) of the CGST Act, 2017 *any person claiming refund of any* ***tax and interest****, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from relevant date in such form and manner as may be prescribed.*

Without differentiating the interpretation of 'tax and interest' as against 'tax or interest', a plain reading of section 54 allows refund of interest under GST.

As per explanation 2(h) to section 54 of the Act, 'relevant date' means – *'in any other case, the date of payment of tax.'*

It is important to analyse the applicability of such time limitation of two years, since most of the excessive refund would have been paid during the early days of GST implementation.

In the recent case of *Schlumberger Asia Services Ltd. v. Commissioner of CE & ST, Gurgaon-*I *(Service Tax Appeal No. 60095 of 2021),* Hon'ble CESTAT-Chandigarh, on 24-5-2021, analysed the applicability of time limitation of two years for refund in the case of retrospective amendment to section 140 (Transitional arrangements for ITC) of the Act on 30-8-2018 (w.e.f. 1-7-2017) held that, '*when there was no provision of law existed,* ***when amendment itself takes on 30-8-2018, therefore, the relevant date of filing the refund claim shall be 30-8-2018****. Therefore, refund claim filed within one year of the said date and is not barred by limitation.'*

Based on the aforesaid judgement, it can be inferred that the ***relevant date*** for retrospective insertion of proviso to section 50 ***is 1st June, 2021***, being the date of *Notification No. 16/2021 – Central Tax.* Thus, refund of any excess interest paid can be claimed within two years from 1st June, 2021.

APPROACH 2: REFUND OF 'AN AMOUNT PAID ERRONEOUSLY'

In the recent case of *Comsol Energy Private Limited vs State of Gujarat (order dated 21st Dec 2020), (Special Civil Application No. 11905 of 2020)*, Hon'ble Gujarat High Court **allowed refund of IGST paid on ocean freight beyond limitation period prescribed under GST Law**.

> Since the inception of the GST law, there were unsettled multiple views on whether interest is payable on gross or net tax liability basis and even after proposing amendment to the law to make interest applicable on net tax liability, clarity had been lacking on whether it is applicable prospectively or retrospectively.

M/s Comsol Energy Private Limited filed the refund claims of IGST paid on ocean freight under the RCM after the decision of Hon'ble High Court, Gujarat in *Mohit Minerals (Pvt.) Ltd. v. Union of India and others [Special Civil Application No. 726 of 2018 dated January 23, 2020]* in which it was held that RCM on ocean freight lack legislative competency and the same were declared as unconstitutional.

Department issued Deficiency memo against such refund claim and hence writ application was filed by M/s Comsol Energy, wherein Hon'ble Gujarat High court:

- Observed that, Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. Since, the amount of IGST collected by the Central Government is without authority of law, the Respondent is obliged to refund the amount erroneously collected.

- Further observed that, section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act. The ***amount collected by the respondent without authority of law is not considered as tax collected by them and therefore, section 54*** of the CGST Act is not applicable.

- Noted that, section 17(1) of the Limitation Act is the appropriate provision for claiming the refund of the amount paid to the Respondent under the mistake of law.

- Set aside Impugned Deficiency Memo and directed the Respondent to process the refund claim along with simple interest at the rate of 6% per annum at the earliest.

Based on the aforesaid judgement, it may be argued that the excess amount in the form of interest on gross tax liability is ***merely an amount collected without authority of law***, and hence refundable without time limitation under section 54 of the CGST Act.

Possibility of multiple penalties for two offences in same transaction

Section 122(1) of the CGST Act contains list of 21 offences for which penalty shall be levied. The issue analysed here is whether penalty can be levied under more than one category of offence arising out of the same transaction.

Example: A person liable to obtain registration under GST law has issued tax invoice and supplied goods without obtaining the registration. In this scenario, he is issuing an incorrect invoice since he is not allowed to issue invoice without obtaining registration. Thus, the following two penal provisions are attracted:

Section 122(1) Where a taxable person who

(i) supplies any goods or services or both without issue of any invoice ***or issues an incorrect or false invoice with regard to any such supply****;*

(xi) is liable to be registered under this Act but fails to obtain registration;

Concept of Double Jeopardy

'Double jeopardy' refers the prosecution or punishment of a person twice for the same offence. The rule against double jeopardy is stated in the maxim *nemo debet bis vexari pro una et eadem causa*. It is a significant basic rule of criminal law that no man shall be put in jeopardy twice for one and the same offence.

Reference to legacy law decisions

1. The Hon'ble Kerala High Court in the case of *Asst. Commissioner of Central Excise vs. Krishna Poduval – 2005 (1) S.T.R. 185 (Kerala)* has held that penalty under section 76 of the Finance Act, 1994 can be imposed for mere default/delay in payment of Service Tax in addition to the penalty under section 78 and these penalties are mutually exclusive and even if offences are committed in the course of same transaction or arise out of the same act, penalty is imposable for ingredients of both offences. The rationale explained in the said decision is as below:

'The penalty imposable under Section 76 is for failure to pay service tax by the person liable to pay the same in accordance with the provisions of Section 68 and the Rules made thereunder, whereas Section 78 relates to penalty for suppression of the value of taxable service. Of course these two offences may arise in the course of the same transaction, or from the same act of the person concerned. But we are of opinion that the incidents of imposition of penalty are distinct and separate and even if the offences are committed in the course of same transaction or arises out of the same act, the penalty is imposable

for ingredients of both the offences. There can be a situation where even without suppressing value of taxable service, the person liable to pay service tax fails to pay. Therefore, penalty can certainly be imposed on erring persons under both the above Sections, especially since the ingredients of the two offences are distinct and separate.'

2. In the case of *Ranjit Singh Alias Jeeta vs Union of India and Another (FAO No. 4458 of 2007 (O&M)*, Hon'ble Punjab and Haryana High Court gave a similar verdict on 11th December, 2009. Relevant extracts of the decision are as below:

   In order that the prohibition is attracted, the same act must constitute an offence under more than one Act. If there are two distinct and separate offences with different ingredients under two different enactments, a double punishment is not barred.

> "'Double jeopardy' refers the prosecution or punishment of a person twice for the same offence. The rule against double jeopardy is stated in the maxim *nemo debet bis vexari pro una et eadem causa.*

On the face of it, both the statutes and the provisions thereof operate in different fields. Different ingredients have been provided for levy of penalty for different offences, which do not over-lap each other, even if the facts emanating the proceedings under the two statutes may be common.

If the facts of the present case are considered in the light of enunciation of law on the principles of double jeopardy, as referred to above, the only conclusion which can be arrived at is that the levy of penalty on the appellant under the 1973 Act cannot be said to be barred on account of principle of double jeopardy, as the proceedings initiated either by the authorities under the 1962 Act or under the 1973 Act cannot be held to be on account of prosecution and conviction by a court of law, as is required to be established and further the same being under two different statutes, where ingredients for levy of penalty are altogether different.

Inference: If the ingredients of the two offences are different, then there would be two separate offences and consequently two penalties can be levied. Therefore, as stated in the above example, there are two different offences having two separate ingredients (1) failure to obtain GST registration and (2) issuance of incorrect invoice, thereby collecting tax without authority of the law. Hence, there would be a scenario where two different penalties can be levied on the same transaction. It is not the act rather the ingredient that determines whether penalty is leviable under more than one provision. Though there is no specific rule that more than one penalty shall be levied, there is no bar for such levy of multiple penalties.

> "If the ingredients of the two offences are different, then there would be two separate offences and consequently two penalties can be levied.

Double penalty under Section 129 & 130

The issue of whether proceeding can be carried out by the authorities under section 129 as well under section 130 at a time for the same offence has been deliberated in detail by the Hon'ble High Court of Gujrat in the case of *Synergy Fertichem Private Limited vs. State of Gujarat order dated 23 Dec 2019 (Special Civil Application No. 4730, 6125, 6118, 9105, 10018 of 2019)*. The key observations of the Hon'ble Court are as below:

- *Section 129 of the Act talks about detention, seizure and release of goods and conveyances in transit. On the other hand, Section 130 talks about confiscation of*

goods or conveyance and levy of penalty and fine. Although, both the sections start with a non-obstante clause, yet, the harmonious reading of the two sections, keeping in mind the object and purpose behind the enactment thereof, would indicate that they are independent of each other. Section 130 of the Act, which provides for confiscation of the goods or conveyance is not, in any manner, dependent or subject to section 129 of the Act. Both the sections are mutually exclusive.

- *Even if the goods or the conveyance is released upon payment of the tax and penalty under Section 129 of the Act, later, if the authorities find something incriminating against the owner of the goods in the course of the inquiry, if any, then it would be permissible to them to initiate the confiscation proceedings under Section 130 of the Act.*
- *Section 130 of the Act is not dependent on clause (6) of Section 129 of the Act.*

Section 130 of the Act, which provides for confiscation of the goods or conveyance is not, in any manner, dependent or subject to section 129 of the Act. Both the sections are mutually exclusive.

- *Sections 129 and 130 respectively of the Act are mutually exclusive and independent of each other. If the amount of tax and penalty, as determined under Section 129 of the Act for the purpose of release of the goods and the conveyance, is not deposited within the statutory time period, then the consequence of the same would be forfeiture of the goods and the vehicle with the Government. This does not necessarily imply that the confiscation proceedings can be initiated only in the event of the failure on the part of the owner of the goods or the conveyance in depositing the amount towards the tax and liability determined under section 129 of the Act.*
- *From the plain reading of sections 129 and 130 of the Act, it is clear that the suppliers or receivers of the goods transporting any goods in contravention of provisions of the Act or the Rules made thereunder are liable for the detention or seizure of the goods under Section 129 of the Act and under Section 130 (i)(v) of the Act for confiscation of the goods and conveyance. Thus, for the same breach and/or contravention of the provisions of the Act, there are two types of penalties provided under Section 129 and Section 130(i)(v) of the Act.*
- *There is need to look into both the provisions, i.e., Sections 129 and 130 of the Act and amend the sections accordingly so as to remove certain inconsistencies. Let this aspect be looked into by the Government in accordance with law.*

It is interesting to note that the concluding recommendation of the Hon'ble High Court to revisit the two provisions has been considered by the Government and amendment has been proposed in the Finance Act 2021, delinking Section 129 and Section 130 and is yet to be made effective.

Penalty under Assessment provisions vs Penalty provisions

As per Explanation 1(ii) to Section 74 of the Act, *where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, ~~129 and 130~~ are deemed to be concluded.*

Note: Reference to Section 129 and 130 has been removed from this explanation as per the amendment in Finance Bill 2021. However, the same is not yet notified.

Inference: In such scenarios, where the law explicitly prescribes the restriction, there shall not be any possibility of levy of multiple penalties. Otherwise, where there are multiple ingredients in a single act, it may call for multiple penalties.

Advance Ruling Mechanism under the GST law – A tool for trade facilitation?

Advance Rulings are a means of facilitating trade, promoting transparency, consistency in approach and beyond all, providing certainty of tax liabilities in transactions – as taxes go a long way in determining the profitability of any enterprise. Well implemented advance ruling systems provide certainty to tax payers which are consistent with a taxpayer's expectation that they shall be taxed appropriately in accordance with the law. The tax systems of the United States, the United Kingdom, Netherlands, Germany, Australia, and South Africa and many other developed /developing economies have established advance ruling practices. Read on…

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The implementation of advance ruling in India is in line with the World Trade Organization's Trade Facilitation negotiations. The Authority for Advance Ruling in India is a relatively late entrant. Although the concept of obtaining an advance ruling was conceptualized by the Wanchoo Committee in the mid-1970s, it was only in early 1993 that it was implemented. The facility to obtain a ruling was initially available only to non-residents. However, based on the needs of the domestic industry, the advance ruling system was later made available to even domestic taxpayers. Looking at its growth, the advance ruling system was introduced into the indirect tax laws too viz., Central Excise, Customs and Service Tax laws.

The advance ruling has also found its place in the GST law. On a comparison of this facility with the erstwhile laws, it can be assuredly said that the GST law has given wide applicability to the advance ruling facility. Earlier, it was only w.r.t business transactions which were proposed to be undertaken that an advanced ruling could be applied for or only a certain class of taxpayers could apply for a ruling. But now, in the GST regime, a taxpayer whether or not registered, can apply for a ruling seeking clarification with respect to even its ongoing

business activities as well as proposed business transactions.

Self-assessment is the preferred architype of any taxing statute. And with the onus put on taxpayers to assess and pay taxes, advance ruling systems provide the required facility to the taxpayers and clarity on how tax would apply to their transactions. Since the implementation of GST law in India is relatively new and uncertain, there has been a brisk inflow of applications seeking clarifications on the applicability of the provisions of the law.

The legal framework for the advance ruling mechanism is contained in Chapter XVII of the Central Goods and Services Tax laws. The advance ruling mechanism is uniquely set up in India with the Authority for Advance Ruling (AAR) and the Appellate Authority for Advance Ruling (AAAR) set up in each State/Union Territory through the respective State GST laws. This is a significant departure from the set up in the earlier regimes wherein, only a single advance ruling authority was present. Due to this, there are divergent interpretations for the same legal provision by different State AARs leading to challenges for businesses to gain clarity and adhere to the law. The AAR and the AAAR consists of an officer each from Central and State Tax. The presence of only officials from the tax department with no members having judicial experience drags down the purpose of having the advance ruling mechanism - as the pro-revenue bias is quite evident in the decisions. To address these conflicting decisions taken by the various State AARs/AAARs and also to eliminate the revenue bias, the GST Council notified the creation of a central appellate authority known as the National Appellate Authority for Advance Ruling (NAAAR), with a member having judicial experience. Enabling provisions have been inserted into the GST law since 2019 but the same are yet to be notified, making it a toothless provision without a judicial blessing.

Questions on which advance ruling can be sought

An advance ruling can be sought only on the below mentioned areas as per Section 97(2)–

(a) classification of any goods or services or both;

(b) applicability of a notification issued under the provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

“The legal framework for the advance ruling mechanism is contained in Chapter XVII of the Central Goods and Services Tax laws. The advance ruling mechanism is uniquely set up in India with the Authority for Advance Ruling (AAR) and the Appellate Authority for Advance Ruling (AAAR) set up in each State/ Union Territory through the respective State GST laws.

Questions involving determining ‘place of supply’ have conspicuously been left out of the above provision. Any application seeking clarification on place of supply has been rejected by the AAR citing lack of jurisdiction to pronounce a ruling on the same. In the case of *Sutherland Mortgage Services INC v. Principal Commissioner, [TS-148-HC-2020(KER)-NT]*, the Kerala High Court has recently laid down the correct legal position. In this case, AAR rejected the Advance Ruling application relating

to 'place of supply' issue. The High Court observed that tax authorities must endeavor to provide certainty of tax liability to taxpayers so that they can arrange their business affairs accordingly. The High Court held that place of supply issue squarely falls under the purview of section 97(2) and remitted the case back to AAR for fresh decision.

As discussed above, an advance ruling is for activities being undertaken or proposed to be undertaken. Interestingly, in the case of *Saint-Gobain India Private Limited [2020 (7) TMI 260 - Authority for Advance Ruling, Maharashtra*, the applicants were proposing to manufacture Glass-fibre reinforced Gypsum Board and sought clarification on the GST rate applicable. During the course of the hearing, samples of the products could not be submitted to the authorities. The advance ruling authorities rejected the application on the ground that the product is presently not in existence and therefore the application was rejected. The applicant knocks the doors of the AAR only when it seeks certainty on whether a business shall be viable or not. By stating that the products are not yet in existence is outside the purview of advance ruling. It thus appears that the authorities have not properly applied the provisions of the law.

Though the areas covered under section 97(2) are wide enough, certain crucial areas like ITC reversals, applicability of interest, TRAN-credit, documents to be issued are not covered. Thus, care should be taken that the clarification sought in the application is covered within the boundaries of the above provisions, otherwise the application would be rejected without getting into the merits of the case. It is also to be noted that an appeal cannot be filed with the AAAR on such rejection, as the same is not appealable under section 100 as 100(1) clearly provides that only if the applicant is aggrieved by any advance ruling pronounced under section 98(4) of the Act , the appeal would lie before the AAAR. The applicant can only challenge such rejection by way of judicial review in writ proceedings.

Time limit for pronouncing a ruling

The statutory time limit prescribed is 90 days from the date of filing the application/ appeal. These slim timelines are maintained to ensure that the clarification sought for, is given to the applicant at the earliest keeping up with the essence of having this mechanism. However, the ground reality is that these time limits are bypassed leading to a lot of delay in obtaining the ruling. This sometimes might even cost the applicant the loss of a business opportunity, due to lack of timely redressal.

Divergent rulings

GST being in its nascent stage, taxpayers approach the Advance ruling authorities to understand the scope and meaning of the various provisions of the law. The contradictory advance rulings pronounced by various State authorities add to the woes of the stakeholders and also poses widespread litigation threat to the industry. Some of the divergent rulings are as below -

- The Delhi AAR held that supply of food and beverages in trains would be taxed at the rate applicable on each such item. This decision was passed despite there being a departmental Circular specifically stating that tax at the rate of 5% would be charged in all such cases.

"Though the areas covered under section 97(2) are wide enough, certain crucial areas like ITC reversals, applicability of interest, TRAN-credit, documents to be issued are not covered. Thus, care should be taken that the clarification sought in the application is covered within the boundaries of the above provisions, otherwise the application would be rejected without getting into the merits of the case.

> GST being in its nascent stage, taxpayers approach the Advance ruling authorities to understand the scope and meaning of the various provisions of the law. The contradictory advance rulings pronounced by various State authorities add to the woes of the stakeholders and also poses widespread litigation threat to the industry.

- Another ruling that left the industry confused was the applicability of tax rate on the solar power plants. The Maharashtra AAR applied a rate of 18%, while the Karnataka AAR applied 5%.
- Divergent Rulings in the case of eligibility of ITC on demo cars have been pronounced by Kerala wherein ITC has been held to be eligible whereas the Goa AAR and Maharashtra AAR has denied ITC on demo cars.
- Macro Digital Imaging, sought a ruling from the Telangana AAR on whether supply of printed trade advertisement will be treated as a supply of goods or services. It was held that it will be treated as a supply of goods. Based on the said decision, it applied for a ruling before the West Bengal AAR wherein it was held that the same shall be treated as a supply of service. The AAAR also confirmed the view of the WB AAR. These divergent rulings cause compliance challenges to taxpayers who have multi-State presences which compel them to follow different practices and defeats the purpose of "one nation, one tax".
- In the case of Bajaj Finance, the question posed was whether penal/default interest on dishonour of cheques, delay in repayment of loans etc., should be treated at par with interest due on monthly instalments and thus penal interest should also be exempted from GST. The Maharashtra AAR had ruled that the penal interest will be liable to GST deviating from the provisions of section 15. This divergent view was clarified by the CBIC vide *Circular No. 102/21/2019-GST dated 28th June 2019* that penal interest shall not be liable to GST.
- In Gogte Infrastructure, question raised by the applicant was whether the services provided to employees and guests of SEZ unit within the Hotel premises will be subject to NIL rate of GST. The Karnataka AAR had held that the supply of service is an intra-state service and liable to tax. The CBIC had released a circular dated June 2018 clarifying that the supply is an inter-state supply and subjected to NIL rate of tax.
- Another challenge was created when the Karnataka AAR and Rajasthan AAR had passed contradictory ruling on the question of payment of GST on salaries and consideration payable to Directors of Companies. Though the ruling is binding only on the person who sought the ruling, many taxpayers were issued notices demanding GST on the consideration paid to Directors. The CBIC stepped in and settled the controversy by issuing a circular clarifying the applicability of GST on director's remuneration.

Thus, it is pertinent to note that AAR of various States have not been consistent in its pronouncement and at times has defeated the objective of one nation – one tax and also in enabling certainty in the minds of tax payers. Also, from the above cited rulings, the department had to intervene to provide for clarifications/cover up the divergent rulings provided by the AAR. One proposal here could be, not to publish the rulings as it is binding only by the person who sought for it, and also to avoid confusion to the other audience at large.

Pending proceedings under GST – Advance Ruling not an option

Section 98 does not permit advance ruling applications to be accepted when the

clarification sought in the application is pending or decided in the applicant's case under any of the other provisions of the Act. It has been seen that the term 'proceedings' has been given a wide connotation for the applications to be rejected. In the case of *IN RE: M/S. Tirumala Milk Products Pvt. Ltd [2 020 (9) TMI 353 - Authority for Advance Ruling, Karnataka*, the application was filed seeking clarification on the classification of flavoured milk. The application was rejected on the ground that summons had been issued before the filing of the application and therefore the question on classification cannot be raised now, as there is a proceeding pending under other provisions of the law. Summons, investigations, search, etc., typically being general in nature, cannot be the basis of considering the question of classification as pending proceedings.

Binding nature of ruling

The GST law has created an appeal mechanism against the ruling passed by the Authority for Advance ruling. There is no further mechanism provided to appeal against the order of the AAAR. This has led to many taxpayers approaching the High Court challenging the ruling pronounced by AAAR. In the case of *JSW Energy Limited [2019-VIL-276-BOM]*, the Honorable Bombay High Court refused to interfere with the AAAR's order and specifically noted that merely because the statute has not provided any further remedy of appeal, it does not become a fit case for further appeal before the High Court and any such attempt, would amount to converting the proceedings under Article 226/227 of the Constitution of India, which are essentially proceedings seeking judicial review, into appellate proceedings. In such a review, the Courts only review the correctness of the decision-making process and not the correctness of the decision itself. Thus, to a great extent the orders of the AAAR are considered as final and binding.

> "Being judicious is not the responsibility only of the advance ruling authorities. Professionals also play a solemn role in correct presentation of facts in the application.

Parting thoughts

The advance ruling mechanism was conceived with the objective of providing certainty to taxpayers in transactions, so businesses can progress with certainty factoring in the tax cost. On one hand, the AARs can be desired to act as a facilitator between the taxpayers and the tax administration to provide accurate clarifications with the help of a judicial member as part of its constitution within statutory timelines. Due to the limited applicability of the rulings, it can also be decided to not publish the orders in public domain in order to avoid confusion. On the other hand, being judicious is not the responsibility only of the advance ruling authorities. Professionals also play a solemn role in correct presentation of facts in the application.

> "The advance ruling mechanism was conceived with the objective of providing certainty to taxpayers in transactions, so businesses can progress with certainty factoring in the tax cost.

Presenting the case before the AAR is as crucial as presenting before the Courts. This also calls for meticulous preparation of the application which is complete in all procedural aspects and also demonstrates the complete facts before the authority. Hence, professional craftmanship is extremely essential to ensure that the application fits the completeness criteria and is eligible for due consideration by the AAR. Given the binding nature of the rulings, the professional should exhaust all options of seeking advice on the issue at hand before knocking at the doors for advance ruling as an attempt to disregard the application of the order is unlikely to be viewed lightly. To implement this, it calls for in-depth knowledge and application of principles among tax professionals to address potential issues. ■■■

Liability to Pay in Certain Cases Under GST

Under GST statutes, the liability to pay the tax has been casted on the supplier of goods or services. There are situations where either the effective control of a taxable person is affected by another person or benefits of its property is received by one or more persons. The statute in order to expand the liability of such persons who are in effective control of affairs of business or are in possession of the property of such person has provided their liability under the GST statutes for recovery of any unpaid tax of such taxable person from them. The provisions are absolute in certain cases, but restricted liability is provided in others. This article examines the liability of persons other than the taxable person and limitation of liability in such cases. Read on…

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Understanding the Context

Section 9 is the charging section of the Central Goods and Services Tax Act, 2017 ("CGST Act"). The section provides that every supplier of goods or services is liable to pay GST on every taxable supply effected by him. However, under specific provisions of section 9 of the CGST Act, the liability to pay tax has been shifted from the supplier to the recipient in case of notified goods and services and in certain specified services on the E-commerce operator through whom such services are being supplied. The extension of liability to pay tax by persons other than the supplier finds extension beyond section 9 also. While under section 9, the liability has been shifted absolutely from the supplier to the recipient or the e-commerce company, there are certain occasions where the liability to pay tax has not been shifted absolutely but is co-extended to specified persons other than the supplier. Thus, it becomes pertinent for persons undertaking such transactions to understand the nature and extent of the tax liability which they have become liable for. Chapter XVI of the CGST Act provides for the specified cases where the liability to pay has been co extended to specified persons other than the supplier. We shall now discuss such cases in detail hereunder.

Liability in case of transfer of business

Section 85 of the CGST Act provides that the transferee in case of transfer of business along with transferor shall be jointly and severally liable to pay the tax, interest or any penalty due from the taxable person (transferor) in respect of such business.

Thus, the transferee along with the acquisition of business from another person, also acquires his liability of GST which remains unpaid for any period prior to date of such transfer. The determination of such liability would ensure the transferee to take adequate precautions in terms of making due diligence of all GST liabilities which remains unpaid on the date of such transfer of business in whole or in part. The transfer of business would include the activity continuing or resuming as it was being undertaken prior to such transfer and such entity or part of entity is capable to function as an unit as a whole. For e.g., M/s ABC enterprises purchasing the entire manufacturing facility of M/s Anything Private Limited shall be liable for any GST liability for any past period which is determined or is determined after such transfer. In case of part of enterprises, for e.g., purchasing the logistics business of M/s Anything Private Limited which can be run as an independent logistics business by the purchaser, the purchaser would be liable for any GST liability of such part of the enterprise only.

> Section 85 of the CGST Act provides that the transferee in case of transfer of business along with transferor shall be jointly and severally liable to pay the tax, interest or any penalty due from the taxable person (transferor) in respect of such business.

Usually, the purchaser prefers to purchase the business as a going concern since the transfer of such business is exempt from levy of GST under Entry No. 2 of *Notification No. 12/2017 dated 28.06.2017*. Thus, GST is not levied on transfer of such business or any part or fixed assets, or stock as part of such business. In alternate, the purchaser can purchase individual assets of the business, in which case the transfer would be that of assets and not of business and in such cases while GST would be applicable on different assets as per their applicable rates and no benefit of exemption would be available. However, in case of individual asset purchase, the transferee would not be liable for any past liability of the transferor under section 85 of GST.

It is also important to note that in case of transfer of business, the transferee will not continue the business on the GST number of the transferor but shall obtain a new GST registration on his own Permanent Account Number (PAN). However, if the transferee is already registered, he shall make amendment to his existing registration to include the newly acquired business.

Liability of agent and principal

Section 86 of the CGST Act provides that where an agent supplies or receives any taxable goods ***on behalf of his principal***, he shall also be jointly and severally liable to pay the tax payable on such goods. The important points worth noting in this case is that it is only applicable to supply of goods and not services. Secondly, it is limited to those cases where such agent undertakes supply or receipt of taxable goods on behalf of the principal. The

> Section 86 of the CGST Act provides that where an agent supplies or receives any taxable goods on behalf of his principal, he shall also be jointly and severally liable to pay the tax payable on such goods.

section is so carefully worded so as to extend the liability of the agent even on goods received from the transferor so as to cover situations like goods lost, stolen, destroyed, or for that matter are not available post such receipt in hands of the agent. The agent shall not be liable for any other liability of the principal under the GST statutes including in respect of any goods which are not received from them. In the opinion of the author, the agent shall also not be liable for any Input Tax credit ("ITC") which was not available in any manner to the Principal even when such ITC can be linked to such goods. The liability of the agent shall only start on the receipt of goods which he receives on behalf of the principal and shall be limited only in respect of such goods.

Liability in case of amalgamation or merger of companies

Section 87 of the CGST Act provides for liability in case of amalgamation and mergers in respect of liability acquired for supply amongst the merging/ amalgamating company(ies). It provides that when two or more companies are amalgamated or merged, from an earlier date (prior to date of order of such merger

or amalgamation) and any of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then, such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly. The liability has been fastened by bringing a deeming fiction that for such period the companies shall be deemed to be distinct companies. The registration of such amalgamating or merging companies shall be cancelled with effect from the date of the said order and not from the date of merger or amalgamation in such order.

Liability in case of company in liquidation

Section 88 of the CGST Act prescribes for determination of liability in case of company in liquidation. It provides that in the case of a company under liquidation, the Commissioner would notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which shall be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

> The liability of tax in case of a private company which is wound up before or during the course of winding up, has been casted on the person(s) who was director of such company at any time during the period for which the tax was due.

The liability of tax in case of a private company which is wound up before or during the course of winding up, has been casted on the person(s) who was director of such company at any time during the period for which the tax was due. Such directors have been made jointly and severally liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company. It is pertinent to mention that the director is responsible for the period during which he was holding the position as a director. This liability under this provision has not been extended on other officers of the Company including CEO, CFO etc.

Liability of directors of private company

Section 89 of the CGST Act makes the directors of a private limited company liable for payment of tax in case such amount cannot be recovered from such company. It provides that where any tax, interest or penalty due from a private company remains unrecovered for any period then any person who was a director during ***such*** period shall, jointly and severally, be liable for the payment of such unpaid amount. The provision specifically renders a Director jointly and severally liable for tax dues assessed against private companies unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company. It is worth noticing

> Section 89 of the CGST Act makes the directors of a private limited company liable for payment of tax in case such amount cannot be recovered from such company.

that such liability has not been affixed on the shareholders of the Company. Thus, relaying on *Nihal Chand v. Kharak Singh Sunder Singh, (1936)* 2 Company Cases 418 wherein it has been held that liability of the company simultaneously is also not the liability of shareholders, it can be said that no liability can be extended to shareholders in GST as well. In normal cases, Courts may not lift the corporate veil unless it is found to be a case of fraud against the state or another person. Thus, while shareholders have not been made party for recovery, the directors have been made liable for payment of unpaid taxes in case of private company. However, there lies a good case to argue that such liability of directors is not absolute but limited to their gross neglect, misfeasance or breach of duty. In the case of *Pepsico India Holdings Private Limited v. Food Inspector [(2011) 1 SCC 176]*, the Apex Court has held that mere bald statement that a person was a Director of the Company is alleged to have committed the offence is not sufficient unless a specific allegation regarding his role in the management is made clear.

Further, no liability shall also lie on the directors in case such private limited company is converted into a public limited company. This Section overrides any provisions of Companies Act,

> Section 90 of the CGST Act extends the liability in case of partnership firm to its partners as well. The Section provides that in case where any tax, interest or penalty cannot be received from the firm, each of the partners of the firm shall be jointly and severally liable for such payment.

2013 (18 of 2013). The reason for such exclusion is that courts have held liability of the Company independent of the directors. Reference on the issue can be made to the *Sunil Parmeshwar Mittal v. Deputy Commissioner (Recovery Cell), Central Excise, Mumbai & Ors [2005 (188) E.L.T. 268 (Bom.)]*, wherein Hon'ble Bombay High Court held that as soon as a company is incorporated, it constitutes an independent juristic person in the eyes of law as distinct from its members constituting it. Thus, considering effect of incorporation of a company and its independent juristic existence, a former director of the company cannot be held responsible for payment of the liabilities of the company in absence of any specific provision and thus, the Court held that directors were not liable to pay outstanding dues of the Central Excise duty payable by the Company. The present provision has been introduced to overcome the above handicap as faced by the revenue in earlier laws.

Liability of partners of firm to pay tax

Section 90 of the CGST Act extends the liability in case of partnership firm to its partners as well. The Section provides that in case where any tax, interest or penalty cannot be received from the firm, each of the partners of the firm shall be jointly and severally liable for such payment. Unlike in the case of directors, the partner(s) is not saved from such liability unless he can prove that he was not liable for any action which led to such non-payment. The liability has been fastened on the partners in an absolute manner by the statute. However, if a person ceases to be partner and he intimates the date of retirement to the Commissioner in writing, then he shall be liable for such liability only up to the date of his retirement. However, he remains liable for tax and other dues up to his retirement date even if the liability is determined at a date post his retirement. If the partner fails to intimate within one month of his retirement to the Commissioner, he shall remain liable till the date of intimation to Commissioner. Thus, it is important for every partner to intimate immediately to the Commissioner of his retirement from any partnership. In the views of the author, the present clause seems to have over stretched the liability of a retired partner since a procedural lapse cannot fasten a liability on a person for a period when he was not in control of the affairs of the firm.

Liability of guardians, trustees, etc

Section 91 of the CGST Act provides that in case of business being carried on by any guardian, trustee or agent of a minor or other incapacitated person where the tax, interest or penalty remains unrecoverable, then in such cases, the liability shall vest on and shall be recoverable from such guardian, trustee or agent in the same manner as that of the owner of such business. It is interesting to note that this section has not carved out any exception to this case and in cases where the fault of non-payment cannot be fastened on the actions of guardian, trustees etc., the liability is, such cases also can be fastened on such guardian, trustees etc. Thus, when a person is acting in a fiduciary capacity, he should make sure that the GST dues are cleared without delay.

Recovery in case of death or dissolution or termination

Section 93 of the CGST Act provides for liability in case of death of a person or dissolution of an entity and it provides for the person(s) liable to pay tax, interest or penalty under the GST Act(s) in such cases. The provision is subjected to the provisions of Insolvency and Bankruptcy Code, 2016. The different cases are summarised as under:

Situation	Person liable to pay tax and other GST dues
In case of death of a person, if a business carried on by the person is continued after his death by his legal representative or any other person.	Such legal representative or other person
In case of death of a person, if the business carried on by the person is discontinued.	His legal representative shall be liable to pay, out of the estate of the deceased.

In case where property of Hindu Undivided Family ("HUF") or an association of persons ("AOP") is partitioned amongst the various members or groups of members.	Each member or group of members shall be jointly and severally liable to pay the tax, interest or penalty due from such HUF or AOP.
In case of dissolution of a partnership firm.	Every person who was a partner shall be jointly and severally liable to pay the tax, interest or penalty due from the firm under this Act.
In case of termination of guardianship or trust.	The ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust.

In *Shabina Abraham v. Collector of Central Excise and Customs - 2015 (322) E.L.T. 372 (S.C.),* the issue was whether a show cause notice under the Central Excises and Salt Tax Act, 1944 could be issued to the legal heirs of a sole proprietor after his death, against whom a show cause notice had been issued raising a demand of excise duty. Hon'ble Supreme Court held that there was no machinery provision under the Central Excise Act which enabled the continuation of such proceedings against the legal heirs of a deceased assessee. The case is important from the present perspective as well as while the liability to pay is different from the continuation of proceedings of determining liability in case of a dead person. Despite the above provisions, in the view of the author, this issue would also find its way to the Apex Court under the GST regime as well.

> "The liability to pay tax under the GST statutes is absolute on the taxable person making the taxable supplies. If the tax dues cannot be recovered from such person, then the government has empowered the recovery of such tax dues from the persons who are benefitted from the estate of such person.

Other cases

Section 92 of the CGST Act provides for similar liability in case of Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court.

Section 94 provides that in case of discontinuation of business owned by a firm or an association of persons or a Hindu Undivided Family and such firm, association or family, and there are unpaid dues of tax, interest or penalty, then, every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall be jointly and severally liable for the payment of such unpaid dues. Such determination of dues can be prior to or after such discontinuance.

Conclusion

From the above discussion, it can be suggested that the liability to pay tax under the GST statutes is absolute on the taxable person making the taxable supplies. If the tax dues cannot be recovered from such person, then the government has empowered the recovery of such tax dues from the persons who are benefitted from the estate of such person. While in some cases the recovery from estate is limited to the value of estate received by the successor, however, in other cases like dissolution or partition, the liability is joint and several. In view of the author, such liability cannot be more than the estate benefits received by the persons who receive such estate on dissolution or partition. In certain cases, the liability is fastened on the persons who were in control of the affairs of the business of such taxable person. Under certain sections, the liability to pay tax may appear to be unlimited, however, in the views of the author, such liability should be fastened on the person who were responsible for such non-payment and not on every person by virtue of his fiduciary position. It is also to be understood that such liability need to be determined in the hands of the taxable person only. It is not a liability of third party, however, due to specific provisions, recovery can be made from such third parties as discussed above. The very provisions of determination of a tax liability shall need to be followed first and first attempt should be made for recovery from the taxable person and only in case when such recovery cannot be made, then only, the provisions of liability of third persons be effected by the revenue. GST law is still in its infancy and thus, it would take some more time to see how courts decipher all the above provisions. ■■■

COVID 19: Sector Wise Analysis of Key Auditing and Accounting Considerations

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The COVID-19 pandemic is a global crisis of dramatic proportions and has resulted in widespread instability and disruption across various sectors. The markets have become volatile across all sectors resulting in financial instability and a liquidity crisis for many organisations. To cope, businesses will have to digitise further, cut costs, find new resources and rearrange their supply chains. The focus will also increasingly shift to products and services which focus on wellness, safety and health. On the supply side, establishment of digital operating models and efforts to shift to local supply chains will influence these sectors. Read on….

In today's environment where many auditors are working remotely, it is their professional responsibility to plan and perform any audit with professional skepticism and with a clear focus on quality and evaluate impact of the various considerations on their audit.

Considering the existing economic environment, this article aims to highlight:

- ***Key auditing and accounting considerations for the auditors across sectors of (i) Consumer and retail (ii) Automotive (iii) Industrial manufacturing (iv) Technology and (v) Hospitality***

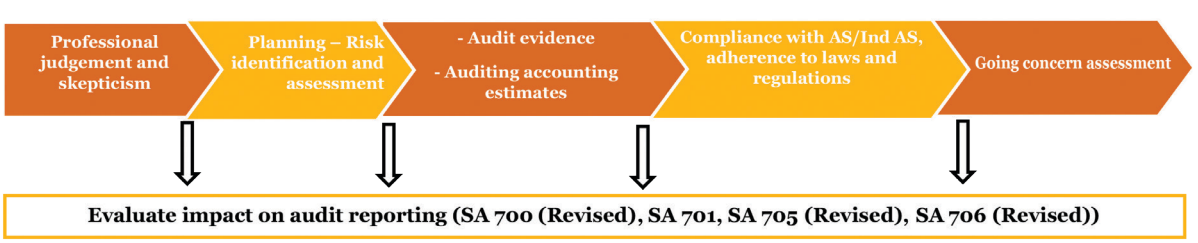
- ***Sector specific challenges for the Companies***

Further, this article includes an illustrative Checklist for auditors to help initiate the evaluation of management assessment of COVID-19 impact.

The issues discussed in this article are illustrative and by no means exhaustive and their applicability depends on the facts and circumstances of each entity.

Management Role and Responsibility

Against the backdrop of COVID-19, it is critical that TCWG *(Those charged with Governance)* and the board of directors understand the scope and extent of their statutory and fiduciary duties. As per *Standard on Auditing (SA) 260*



(Revised), Communication with Those Charged with Governance, it is the responsibility of TCWG to oversee the strategic direction of the entity and obligations related to the accountability of the entity, actively monitor the changing nature of the threat, anticipating and scenario testing how the spread of the COVID-19 is likely to affect their business and its stakeholders for example assessing the business continuity risk, in case a supply chain is disrupted for any critical raw material, evaluating shortage of workforce and its impact, etc.

During COVID - 19, it has been increasingly noticed that entities are struggling to justify this fundamental assumption and resorting to prepare financial statements on non-going concern basis. Section 134(5)(d) of the Companies Act, 2013 makes it obligatory for the Board of Directors to assess the appropriateness of going concern basis of accounting while preparing the financial statements of the company and state so in the Board's report. Thus, it is the management's responsibility to make a judgement on going concern and auditors are responsible in evaluating management's assessment of the entity's ability to continue as a going concern.

Audit Planning

As per SA 300, *Planning an Audit of Financial Statements*, the objective of the auditor is to plan the audit of financial statements to ensure it is performed in an effective manner and in order to achieve the aforesaid results, the auditor is expected to develop a strategy for addressing potential audit risks and plan the intended course of nature, timing and extent of procedures required to discharge the responsibilities. *SA 300* requires that the auditor shall update and change the overall audit strategy and the audit plan as necessary during the course of the audit.

> The purpose of the audit is to obtain reasonable assurance that the financial statements have been prepared, in all material respects, in accordance with the applicable financial reporting framework.

The purpose of the audit is to obtain reasonable assurance that the financial statements have been prepared, in all material respects, in accordance with the applicable financial reporting framework. COVID-19 may result in a rise in modifications to the auditor's opinion due to, for example, issues related to material misstatement of the financial statements or more circumstances where there is an inability to obtain sufficient appropriate audit evidence.

In this context, the auditor must consider the following industry challenges and related considerations to help obtain an understanding of the impact of COVID-19 on the operations and evaluate potential impact on the planning, audit strategy, reporting timelines and audit report.

A. Consumer and Retail Industry

Industry Challenges	Considerations for the Auditor
(i)Tackling change in Consumer Behavior **- Consumers are embracing e-commerce** Consumers have embraced e-commerce to buy groceries, medicines and other goods online and outside-the-store fulfilment options, such as takeaway/ pickup and home delivery in keeping with the necessary lockdown, social distancing and WFH norms. **-Increased Focus on essential buying** The percentage of spending across non-essential categories such as apparel and footwear, consumer durables, automobiles and real estate is likely to decline and there is shift of focus on health, hygiene, and nutrition.	• Whether forecasts and assumptions prepared by the management are reasonable and free from management bias and have been adjusted for reduction in consumer spending, shift in consumption categories, increased price sensitivity and industry trend in light of existing economic environment. Paragraph 125 of *Ind AS 1, Presentation of Financial Statements*, requires an entity to disclose information about the assumptions it makes about the future, and other major sources of estimation of uncertainty at the end of the reporting period, that have a significant risk of resulting in a material adjustment to the carrying amounts of assets and liabilities within the next financial year.

Industry Challenges	Considerations for the Auditor
	• Whether there are any concerns regarding stock-piling of inventory and whether the company has correctly accounted for obsolete inventory. It might be necessary to write-down inventories to net realisable value due to reduced movement in inventory, lower commodity prices, or inventory obsolescence due to lower than expected sales. *(Refer Ind AS 2 and AS 2, 'Inventories)'*. • Whether estimates made by the management in relation to revenue recognition, inventory valuation, allowance for doubtful accounts, and impairment of long-lived assets, goodwill and other intangibles are reasonable *(Refer SA 540, Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures)* • Evaluate the Going concern assumption of the business considering the updated business plans, cash management and forecasts (*Refer SA 570 (Revised), Going Concern*). • Have any lease arrangements undergone any change? (e.g., concession with respect to lease payments, rent free holiday, etc.) Has any lease arrangement become onerous, as a result of COVID-19? A Lessor and a lessee might renegotiate the terms of a lease as a result of COVID-19 or a lessor might grant a lessee a concession of some sort in connection with lease payments. Both lessors and lessees should consider the requirements of *Ind AS 116, Leases in this regard.* Further, paragraph 46A to Ind AS 116 provides that as a practical expedient, a lessee may elect not to assess whether a rent concession that meets the conditions in paragraph 46B of Ind AS 116 is a lease modification. A lessee that makes this election shall account for any change in lease payments resulting from the rent concession the same way it would account for the change applying this Standard if the change were not a lease modification. • Whether the auditor has considered (i) Penalties for any order cancellations, (ii) Reduced potential to receive discounts or allowances from vendors (iii) likely increase in sales returns, (iv) significant uncertainty of collection. Whether revenue has been recognized in accordance with *Ind AS 115, Revenue from Contracts with Customers / AS 9 Revenue Recognition.*

Industry Challenges	Considerations for the Auditor
(ii) Establishing a responsive and flexible Supply Chain Companies should aim at improving supply chain flexibility and resiliency by creation of shorter, more regional supply chains or a more diverse supplier base.	• Has the management communicated any disruptions to the supply chain that could impact sourcing or product costs (e.g., delays/ inability to source product)? Auditor to check whether any of contracts have become onerous and have been accounted as per *Ind AS 37 / AS 29 (Provisions, Contingent Liabilities and Contingent Assets).*
(iii) Embracing Technology and Cybersecurity The pandemic has been particularly challenging for companies that are behind on the digital transformation curve. Companies will need to guide their employees who can work remotely on new ways of working.	• Whether the Company has made the required technology investments to address deficiencies and strengthen cyber security and adopted digital applications such as demand sensing (to understand shifts in consumer behavior), track and trace systems (to drive transparency in supply chain), etc.? • If any breakdowns in internal control and heightened fraud risks have been noted, their potential impact on audit to be evaluated. (Refer Guidance Note on Audit of Internal Financial Controls Over Financial Reporting issued by ICAI)

B. Automotive Industry

The Indian Automotive Industry has been riddled with fundamental economic challenges during the last few years and demand has slowed, credit availability reduced and discretionary spending dropped. Some of the most affected regions are major production hubs and home to key links in the sector's global supply chain.

Industry Challenges	Considerations for the Auditor
(i) Timely crisis management Considering the nature of industry, careful scenario planning for determining likely impact is crucial for Automotive Industry to help it sustain.	Evaluate (i) management plans to address the challenges of reduced production volumes caused by supply chain disruptions , falling consumer demand for new cars, structural and regulatory changes, shift to Shared Mobility and Liquidity Crunch and (ii) impact on Going concern assessment . (*Refer SA 570 (Revised), Going Concern*)
(ii) Impairment triggers Significant disruptions to supply or production, decline in consumer demand, or other relevant impacts may represent events or changes in circumstances that indicate that the carrying amounts of certain assets might not be recoverable (requiring impairment tests for the affected assets).	• The cash flow forecasts used to test for impairment and discount rate should be updated to reflect the potential impact of COVID-19. Due to COVID-19, there might be temporary ceasing of operations or an immediate decline in demand or prices resulting in lowering of revenues and profitability and reduced economic activity. These are the factors that the management may consider as the indicators that may require impairment testing for the purpose of *Ind AS 36 and AS 28, Impairment of Assets.*

Industry Challenges	Considerations for the Auditor
(iii) Inventory valuation Periods of abnormally low production may limit the capitalization of certain costs (e.g., fixed overhead costs) in inventory. Further consumer preferences or demand may affect the valuation of inventory and result in excessive inventory levels.	• Has a management assessment been done – i. to evaluate the nature of costs to be included in fixed production overheads ii. for determination of net realisable value and write-down of inventories. *(Refer Ind AS 2, Inventories / AS 2 , Valuation of Inventories)*
(iv) Management of Workforce A significant share of workforce in the Automotive Industry is employed in factories where components and vehicles are assembled and so cannot perform work remotely.	• Whether the Company has developed robust business continuity plans that can help to address contingencies like complete shutdown due to lockdown or lack of available workforce? *[Refer SA 570 (Revised), Going Concern]* • Companies may implement restructuring actions (e.g., layoffs, contract terminations), the accounting for which can vary depending on the nature of the restructuring activity. Whether the same has been accounted for and disclosed as per *Ind AS 19/ AS 15 (Employee Benefits)?* Also refer Ind AS 37 /AS 29 (*Provisions, Contingent Liabilities and Contingent Assets)*
(v) Operations and Supply chain Company may be required to revisit operations and make changes to vehicle design, where parts are being sourced globally.	• Whether companies with extensive international supply chains have assessed critical components that may be in short supply and considered alternative sourcing strategies. (*Refer SA 570 (Revised), Going Concern*) • Are there any clauses in any customer or supply agreements which may trigger penalties? Due to COVID-19, there is a need for exercising judgement in making provisions for losses and claims. Evaluate accounting and disclosure as per requirements laid out in *Ind AS 37 / AS 29 (Provisions, Contingent Liabilities and Contingent Assets)*
(vi) Financial considerations and liquidity The automotive original equipment manufacturers and suppliers should carefully consider their cash, liquidity and working capital and recoverability of receivables.	• Whether the management has addressed liquidity challenges by performing rigorous, forward-looking stress-testing and sensitivity analyses of the cash-flow statement and evaluated availability of alternative financing sources. (*Refer SA 570 (Revised), Going Concern*) • Whether there is adequate establishment and functioning of the controls to aid in identifying potential accounting and reporting issues in a timely manner. (Refer *SA 315 , Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and its Environment and Guidance Note on Audit of Internal Financial Controls Over Financial Reporting issued by ICAI)*

Industry Challenges	Considerations for the Auditor
(vii) Strategy The economic uncertainty may reduce consumer demand in the short term and trigger a shift in consumer preferences (public transport, shared-mobility options ,privately owned vehicles).	Whether the company has explored diversification into electric vehicles (EVs) and affordable and environment friendly automobile segments as consumers consider new mobility options and the government takes action to stimulate the local economy. Whether there is any material inconsistency between the other information and the auditor's knowledge obtained in the audit and report accordingly. (Refer *SA 720 (Revised), The Auditor's Responsibilities Relating to Other Information*)

C. Industrial manufacturing Industry

Amid plummeting demand, supply chain bottlenecks and spending slowdowns, major industrial companies have closed facilities and are mulling the extent of layoffs. Many manufacturing jobs are on-site and cannot be carried out remotely. Plant closures (full or partial) could continue to be necessary for manufacturers in hard-hit regions for a prolonged period as the country faces another wave of the pandemic.

Industry Challenges	Considerations for the Auditor
(i) Crisis management and response Manufacturers are facing continuous downward pressure on demand and global supply chain disruptions, leading to cash-flow, liquidity challenges and difficulties in managing debt obligations.	• Whether the management has assessed how loans, revolving credit and cash flow reserves can support ongoing operations in a low-revenue environment • Whether the critical issues related to (possible) lack of raw material, productivity loss due to lack of remote working capabilities, limited demand for end products, insufficient staffing/workforce due to spread of infection/restriction on movement etc. have been addressed by the management plans. [Refer SA 570 (Revised), Going Concern] • Cash flows used for impairment testing should be based on a business plan that reflects the expected and most current impacts of COVID-19. The use of forward-looking information is pervasive in an entity's assessment of, among other things, the impairment of non-financial assets (including goodwill), the realisability of deferred tax assets, and the entity's ability to continue as a going concern. [Refer Ind AS 36 and AS 28 (Impairment of Assets), Ind AS 1 (Presentation of Financial Statements) and Ind AS 12 (Income Taxes)] • Is there any loan agreement with financial and/or non-financial covenant which may be breached in the current situation? Due to COVID-19 there may be instances of breach of loan covenants which may trigger the liability becoming due for payment and liability becoming current. However, as per paragraph 74 of Ind AS 1, such a liability shall not be classified as current, if the lender agreed, after the reporting period and before the approval of the financial statements for issue, not to demand payment as a consequence of the breach.

(ii) Workforce management Manufacturers should put in place immediate and contingent safety measures for their employees and should decide which functions can be carried out remotely. The sector may also likely face possible staff reductions.	• Whether the management has considered whether any of the assumptions used to measure employee benefits and share based payments should be revised. • Management should also consider whether it has a legal or constructive obligation to its employees for example sick pay to employees that self-isolate, for which a liability should be recognised. Whether the same has been accounted for and disclosed as per *Ind AS 19/ AS 15 (Employee Benefits)?*
(iii) Financial impact and disclosure Disruption in the sector is expected to lead to numerous financial disclosure implications. Stakeholders are making it clear that they expect transparency from companies and disclosures about actual and anticipated impacts, and, most importantly, the risks and vulnerabilities to the business.	• Whether the management has broadened disclosures considering the impact on the Industry and the business. (e.g., inventory obsolescence, receivables collectability, debt covenants, impairments). Auditors to ensure compliance with *SA 720 (Revised), The Auditor's Responsibilities Relating to Other Information* • Check whether depreciation has been appropriately charged in accordance with *Ind AS 16, Property, Plant and Equipment.*

D. Technology Industry

Indian Technology companies have led the way on a variety of strategies that other industries are now using to cope in this crisis — from remote working to a dispersed supply chain, all while ensuring continuity of critical services to clients. Technology demand has risen on account of surge in need for cloud-based, collaborative workplace technologies and increased awareness about Cybersecurity.

Industry Challenges	Considerations for the Auditor
(i) Evaluate operations and crisis management strategy Remote work, online education and social distancing will create demand for products and services delivered by the technology industry. Organizations will require long-lasting increases in computing power, while also seeking more scalability and built-in cybersecurity and it will be increasingly important to understand and forecast the customers' evolving needs for services in the technology sector.	• Evaluate the nature of business and services offered by the Company and enquire whether the Company has plans to re-evaluate cost structure, optimize operations and diversify? *(Refer SA 570 (Revised), Going Concern and SA 315, Identifying and Assessing the Risks of Material Misstatement Through Understanding the Entity and Its Environment)*

Industry Challenges	Considerations for the Auditor
(ii) Embracing WFH, Increased focus on Cybersecurity and building secure networks As companies transition to WFH, the demand for security software has increased. Spending in this sphere will increase as organisations race to secure endpoints, particularly cloud-based tools, log management and VPNs. IT companies will play a larger role in business continuity planning to help set up resilient, flexible and secure network and disaster recovery systems.	Check whether the remote working practice implemented is secure and whether adequate internal controls are in place. Auditor to evaluate impact on the internal controls and report accordingly. *(Refer Guidance Note on Audit of Internal Financial Controls Over Financial Reporting issued by ICAI)*

D. Hospitality Industry

Social distancing in general and closure of restaurants and restrictions on gatherings have meant the hospitality industry is effectively shuttered.

Industry Challenges	Considerations for the Auditor
(i) Liquidity & operational challenges : • Limited cash reserves and funding available, accumulated negative cash balances from period of shut down. • Intense price competition. • Loss of corporate/tourist bookings. • Staff retention.	• As part of the planning and risk assessment procedures, whether the auditor has obtained an understanding of the entity through management inquiries, analytical procedures, observation and inspection including additional risks arising out of: (i) Operational disruption - Impact on changes to key supplier arrangements, termination of management agreements with operators, lease concessions obtained or given - Changes to existing financing facilities and changes to legal and regulatory environment will need evaluation. (ii) Contractual non-compliances. (iii) Liquidity and working capital issues. *(Refer SA 315 - Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and its Environment)* • Whether impact of new uncertainties and market volatility on accounting estimates and judgements have been considered. *(Refer SA 540, Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures)*

Industry Challenges	Considerations for the Auditor
(ii) Internal Control Due to shortage of staff, there could be a breakdown of controls such as daily revenue reconciliations, verification of rate variance report, review of rebates provided, payment processing and month-end reporting.	Whether auditor has ensured exercise of professional skepticism as there may be instances of increased possibility of recording of fictitious revenue and fraudulent management estimates due to breakdown in segregation of duties and automated controls. *(Refer Guidance Note on Audit of Internal Financial Controls Over Financial Reporting issued by ICAI)*
(iii) Going concern assessment The assessment of going concern basis of accounting is performed for a period of next 12 months from the end of the financial year and while assessing the assumptions, events subsequent to balance sheet date should also be considered. While there may be optimism that more people may choose local holidays providing an opportunity to target this market but lack of consumer confidence is a significant risk.	• Whether auditor has considered increase in risk of default from travel agents and corporates leading to bad debts, impairment of long-lived assets due to significant reduction in the expected future cash flows and the ability of the hotels to continue as a going concern. • Whether auditor has obtained sufficient appropriate audit evidence to conclude on the appropriateness of management's use of the going concern basis of accounting, and whether a material uncertainty exists. *(Refer SA 570(Revised), Going Concern)*

Management Disclosure of the impact of COVID-19

While such a lockdown and disruption is unforeseen and beyond the control of the entities, it is important for entities to ensure that all available information about the impact of these events on the entity and its operations is communicated in a timely manner to its investors and stakeholders.

SEBI vide Circular SEBI/HO/CFD/CMD1/CIR/P/2020/84 dated May 20, 2020, encouraged listed entities to evaluate the impact of the COVID-19 on their business, performance and financials, both qualitatively and quantitatively, to the extent possible and disseminate the same.

Even companies other than listed companies may refer the illustrative list enclosed in the SEBI circular and ensure adequate disclosure is made in the financial statements in respect of impact of COVID-19.

Reporting considerations for Auditor

- Where there are substantive COVID-19 related disclosures in the financial statements made by the management of the entity and the auditor is satisfied that these disclosures are appropriate and adequate, then based on the professional judgment of the auditor, an Emphasis of Matter (EOM) paragraph may be included in the auditor's report. (SA *706 (Revised), Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report)*

- Identify scope limitations and cases of non-compliance with laws and regulations which may warrant modification of the audit report. These may be on account of inability to perform

physical inventory observations, lack of access to client records, inability to confirm account balances /obtain external confirmations, lack of adequate audit evidence to forecast Going concern assumption, inability to perform subsequent event procedures, inability to obtain management representations. (SA 705 *(Revised), Modifications to the Opinion in the Independent Auditor's Report)*

- Going concern is one of the fundamental assumptions referred in paragraph 10(a) of Accounting Standard (AS) 1 Disclosure of Accounting Policies/paragraph 25 of Ind-AS 1. This requires significant judgement by the management, as no statement about the future can be guaranteed. Auditor to check whether Going concern basis of accounting in the preparation of the financial statements is determined to be appropriate and whether there is any material uncertainty related to going concern. *(Refer SA 570 (Revised), Going Concern and SA 706 (Revised), Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report)*

- The impact of COVID-19 on specific areas of the financial statements needs to be evaluated for the purpose of reporting KAM. Language of KAM should bring out clearly the complexities arising from COVID-19 and the matter should be considered for inclusion as KAM only when the auditor has concluded that it does not warrant modification of the auditor's opinion and also does not indicate a material uncertainty related to Going concern. Further, EOM is not a substitute for KAM. (Refer *SA 701, Communicating Key Audit Matters in the Independent Auditor's Report*)

> While such a lockdown and disruption is unforeseen and beyond the control of the entities, it is important for entities to ensure that all available information about the impact of these events on the entity and its operations is communicated in a timely manner to its investors and stakeholders.

Conclusion

Companies across the sectors will agree that digital transformation is integral to building fit-for-future organisations and driving key aspects of business growth. The management should evaluate financial reporting requirements, revisit key assumptions in financial projections and communicate current and potential future impacts to shareholders. It is imperative for businesses to evaluate the impact of COVID-19 on economy and industry as a whole and not on the business in isolation, as the situation is extremely dynamic and continuously evolving.

The uncertainty arising from the current environment may increase the challenge in obtaining the sufficient appropriate audit evidence needed to form an independent view about the reasonableness of the management's estimates and judgments. Across industries, challenges may be faced on account of various restrictions arising out of lock down or otherwise to perform audit procedures to observe physical inventory, accessing client records, understanding and testing internal control, confirming accounts balances and performing subsequent event procedures. The auditor will need to ensure compliance with the Standards on Auditing and report accordingly. ■■■

Schedule III- Challenges and Opportunities

Schedule III to the Companies Act 2013, provides guidance with respect to preparation and presentation of Financial Statements (i.e., balance sheet, statement of profit and loss, statement of changes in equity, cash flow statement and notes) of a company. Earlier, the Schedule III was revised or amended on April 6, 2016 to include general instructions on preparation of financial statements of a company, whose financial statements have to comply with Indian Accounting Standards (Ind AS). Read on….

CA. Raj Mullick

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On March 24, 2021, the Ministry of Corporate Affairs (MCA) revised or amended the requirements of Schedule III. The latest amendment is made with an objective of enhancing the existing disclosure requirements while preparing the financial statements of a Company. Though there are amendments in all three segments or divisions, this article focuses on key developments in Division II to Schedule III of the Companies Act 2013.

OVERVIEW OF SCHEDULE III

The applicability of Schedule III has been divided into the following three segments. These are :

1. **Division I:** Applicable to Companies whose financial statements are drawn up with the **Companies (Accounting Standards) Rules, 2006.**

2. **Division II:** Applicable to Companies whose financial statements are drawn up in compliance with the **Companies (Indian Accounting Standards) Rules, 2015.**

3. **Division III:** Applicable to Companies who fall in the scope of **Non-Banking Financial Company (NBFC)** whose financial statements are drawn up in compliance with the Companies (Indian Accounting Standards) Rules, 2015.

KEY AMENDMENTS IN DIVISION II, SCHEDULE III TO THE COMPANIES ACT 2013

For the sake of simplicity, amendments in Division II have been further classified into three categories:

A. DISCLOSURES ON THE FACE OF BALANCE SHEET

There are three changes on the face of Balance sheet. These are :

1. Current maturities of long-term borrowings [Regrouping from Other Financial Liabilities to Borrowings].

2. Security Deposit [Regrouping from Loan to Other Financial Assets, both current and non-current].

3. Lease Liabilities [Regrouping from Other Financial Liabilities to Lease Liabilities, both current and non-current].

There are no amendments affecting the disclosures on the face of Statement of Profit and Loss.

B. DISCLOSURES IN ALIGNMENT WITH CARO REQUIREMENTS

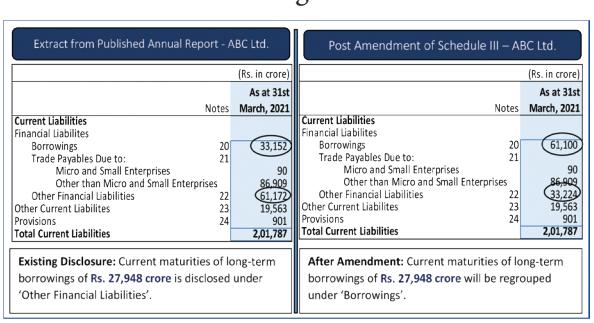
One of the very important characteristics of Schedule III is that it has adopted an "Integrated Approach" i.e., there is a strong alignment between the disclosures of Companies (Auditor's Report) Order, 2020 (CARO 2020) and Schedule III. This will facilitate the auditors in reporting CARO 2020, as they are also required to report similar matter in their Audit Report.

C. OTHER NEW DISCLOSURES

There are several new disclosures that has been mandated in the revised Schedule III. These disclosures will result in transparency and enhance the quality of the financials, thus will facilitate the readers of the financial statements.

A. DISCLOSURES ON THE FACE OF BALANCE SHEET

1. **Current maturities of long-term borrowings:** Prior to amendments, 'Current maturities of long-term borrowings' were part of 'Other Financial Liabilities'. Pursuant to amendments, these are to be shown as part of 'Current Borrowings'.



Extract from Published Annual Report - ABC Ltd.

	Notes	(Rs. in crore) As at 31st March, 2021
Current Liabilities		
Financial Liabilites		
Borrowings	20	33,152
Trade Payables Due to:	21	
Micro and Small Enterprises		90
Other than Micro and Small Enterprises		86,909
Other Financial Liabilities	22	61,172
Other Current Liabilites	23	19,563
Provisions	24	901
Total Current Liabilities		2,01,787

Existing Disclosure: Current maturities of long-term borrowings of **Rs. 27,948 crore** is disclosed under 'Other Financial Liabilities'.

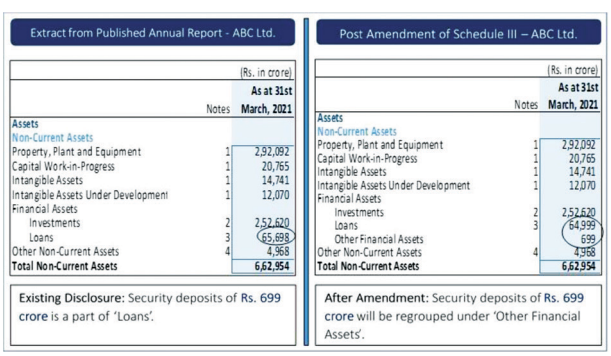
Post Amendment of Schedule III – ABC Ltd.

	Notes	(Rs. in crore) As at 31st March, 2021
Current Liabilities		
Financial Liabilites		
Borrowings	20	61,100
Trade Payables Due to:	21	
Micro and Small Enterprises		90
Other than Micro and Small Enterprises		86,909
Other Financial Liabilities	22	33,224
Other Current Liabilites	23	19,563
Provisions	24	901
Total Current Liabilities		2,01,787

After Amendment: Current maturities of long-term borrowings of **Rs. 27,948 crore** will be regrouped under 'Borrowings'.

> One of the very important characteristics of Schedule III is that it has adopted an "Integrated Approach" i.e., there is a strong alignment between the disclosures of Companies (Auditor's Report) Order, 2020 (CARO 2020) and Schedule III.

2. **Security Deposit:** Pursuant to amendments, 'Security deposits' are required to be disclosed under 'Other Financial Assets' as against 'Loans' prior to amendments.



Extract from Published Annual Report - ABC Ltd.

	Notes	(Rs. in crore) As at 31st March, 2021
Assets		
Non-Current Assets		
Property, Plant and Equipment	1	2,92,092
Capital Work-in-Progress	1	20,765
Intangible Assets	1	14,741
Intangible Assets Under Development	1	12,070
Financial Assets		
Investments	2	2,52,620
Loans	3	65,698
Other Non-Current Assets	4	4,968
Total Non-Current Assets		6,62,954

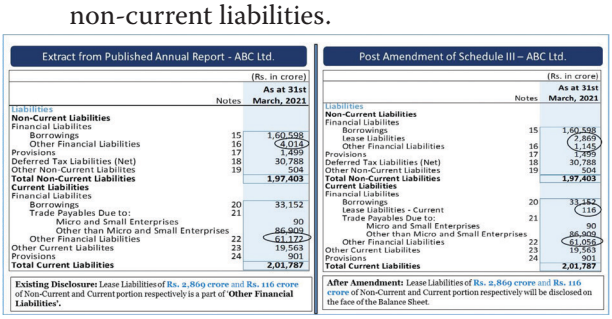
Existing Disclosure: Security deposits of **Rs. 699 crore** is a part of 'Loans'.

Post Amendment of Schedule III – ABC Ltd.

	Notes	(Rs. in crore) As at 31st March, 2021
Assets		
Non-Current Assets		
Property, Plant and Equipment	1	2,92,092
Capital Work-in-Progress	1	20,765
Intangible Assets	1	14,741
Intangible Assets Under Development	1	12,070
Financial Assets		
Investments	2	2,52,620
Loans	3	64,999
Other Financial Assets		699
Other Non-Current Assets	4	4,968
Total Non-Current Assets		6,62,954

After Amendment: Security deposits of **Rs. 699 crore** will be regrouped under 'Other Financial Assets'.

3. **Lease Liabilities:** 'Lease Liabilities', which were a part of 'Other Financial Liabilities' prior to the amendments, will be shown separately on the face of the Balance sheet under 'Financial Liabilities' both under current and non-current liabilities.



Extract from Published Annual Report - ABC Ltd.

	Notes	(Rs. in crore) As at 31st March, 2021
Liabilities		
Non-Current Liabilities		
Financial Liabilites		
Borrowings	15	1,60,598
Other Financial Liabilities	16	4,014
Provisions	17	1,499
Deferred Tax Liabilities (Net)	18	30,788
Other Non-Current Liabilites	19	504
Total Non-Current Liabilities		1,97,403
Current Liabilities		
Financial Liabilites		
Borrowings	20	33,152
Trade Payables Due to:	21	
Micro and Small Enterprises		90
Other than Micro and Small Enterprises		86,909
Other Financial Liabilities	22	61,172
Other Current Liabilites	23	19,563
Provisions	24	901
Total Current Liabilities		2,01,787

Existing Disclosure: Lease Liabilities of **Rs. 2,869 crore** and **Rs. 116 crore** of Non-Current and Current portion respectively is a part of '**Other Financial Liabilities**'.

Post Amendment of Schedule III – ABC Ltd.

	Notes	(Rs. in crore) As at 31st March, 2021
Liabilities		
Non-Current Liabilities		
Financial Liabilites		
Borrowings	15	1,60,598
Lease Liabilities		2,869
Other Financial Liabilities	16	1,145
Provisions	17	1,499
Deferred Tax Liabilities (Net)	18	30,788
Other Non-Current Liabilites	19	504
Total Non-Current Liabilities		1,97,403
Current Liabilities		
Financial Liabilites		
Borrowings	20	33,152
Lease Liabilities - Current		116
Trade Payables Due to:	21	
Micro and Small Enterprises		90
Other than Micro and Small Enterprises		86,909
Other Financial Liabilities	22	61,056
Other Current Liabilites	23	19,563
Provisions	24	901
Total Current Liabilities		2,01,787

After Amendment: Lease Liabilities of **Rs. 2,869 crore** and **Rs. 116 crore** of Non-Current and Current portion respectively will be disclosed on the face of the Balance Sheet.

B. DISCLOSURES IN ALIGNMENT WITH CARO REQUIREMENTS

This section covers, amendments in Schedule III which are in line with the changes carried out in CARO 2020. Now the companies are required to provide information in the financial statements which will align with information given in Auditor's report - CARO 2020.

Disclosures in Notes in alignment with CARO	Relevant Clauses in CARO 2020
Details of immovable property (other than properties where the Company is the lessee and the lease agreements are duly executed in favour of the lessee) where **title deeds are not held in the name of the Company** in a specified format.	Reporting on Property, Plant & Equipment [Clause – 3(i)(c)]
In case if **fair valuation of investment property** is carried out, disclosure is required whether the fair value of investment property is **based on the valuation by registered valuer** as defined under rule 2 of Companies (Registered Valuers and Valuation) Rules, 2017.	Reporting on Property, Plant & Equipment [Clause – 3(i)(c)]
In case if **revaluation of Property, plant and equipment & intangible assets** is carried out, disclosure is required whether the revaluation is **based on the valuation by registered valuer** as defined under rule 2 of Companies (Registered Valuers and Valuation) Rules, 2017.	
Where **revaluation of property, plant and equipment and intangible assets** is carried out, **separate disclosure** is required in reconciliation of gross carrying amount and net carrying amount **if the amount of revaluation exceeds 10% of net carrying amount of such class of asset.**	Reporting on Property, Plant & Equipment [Clause – 3(i)(d)]
Loans and advances in nature of loans to promoters, directors, KMPs and related parties: Disclosure is required if ***loans and advances in nature of loans are repayable on demand or are given without specifying any term or period of repayment*** in a specified format.	Reporting on Loans given by Company, Loans to Director [Clause – 3(iii) and 3(iv)]
Where the company **has not complied with the number of layers of investment** prescribed under clause (87) of section 2 of the Act read with the Companies (Restriction on number of Layers) Rules, 2017, the name and CIN of the **companies beyond the specified layers and the relationship or extent of holding of the company in such downstream companies shall be disclosed.**	Reporting on Investments, loans and advances given [Clause – 3(iv)]
Any income which the Co. has not been recorded but **which arises** during the course of Income Tax assessment or other **tax assessments, shall be disclosed** unless any scheme exempts this disclosure. Also, any previously unrecorded income or assets have been properly recorded in the books of accounts.	Reporting on Transactions not recorded [Clause – 3(viii)]
The amendment requires a disclosure if the **Company has been declared as a "willful defaulter"** by any bank, financial institution or other lender about date of declaration and details of defaults.	Reporting on Repayment of Loan [Clause – 3(ix)(b)]
Utilisation of borrowed funds: Where funds are given/received by a Company which are to be given as loan, investment, security or guarantee to a third company **via an intermediary company to the ultimate beneficiary,** the Company & the intermediary company shall make a disclosure of details of funds exchange, details of ultimate beneficiaries & compliance with FEMA & PMLA.	Reporting on Repayment of Loan [Clause – 3(ix)(c)]
If any **proceedings** has been initiated or pending against the Company **under the Benami Transactions (Prohibition) Act, 1988,** the Company shall disclose the details of property, amount, beneficiary details, whether it is recorded in the books of accounts or not, nature of proceedings and company's view on the same.	Reporting on Property, Plant & Equipment [Clause – 3(i)(e)]
If funds borrowed from banks and financial institutions are not used for the specified purpose for which they are raised, disclosure of where the funds have been used is required to be made.	Reporting on Repayment of Loan [Clause – 3(ix)(c)]
For CSR expenditure, in case of shortfall, details of shortfall for current year and cumulative shortfall amount are to be given along with reasons thereof.	Reporting on CSR [Clause – 3(xx)]

C. OTHER NEW DISCLOSURES

1. Share Capital: To provide ***details of promoter holdings*** as per the following format –

Sr. No.	Promoter Name	FY 2021-22		% Change during the FY 2021-22
		No. of Shares	% of total shares	

Comments: In case of listed entities, as per Regulation 31 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR), such disclosures are already disclosed on Stock Exchange Website. With this amendment, now such disclosures will be shown in the Notes to Financial Statements.

2. Trade Payables: To provide ***ageing schedule*** as per the following format (**only overdue** cases, including where no due date of payment is specified) :

Particulars	Outstanding for following periods from due date of payment				
	< 1 year	1-2 years	2-3 years	> 3 years	Total
(i) MSME					
(ii) Others					
(iii) Disputed dues – MSME					
(iv) Disputed dues - Others					

Comments: Disclosure of trade payables ageing analysis has been introduced for the first time in the Notes to Financial Statements. This is an example of reporting by exception and only certain class of creditors are required to be reported.

3. Trade Receivables: To provide ***ageing schedule*** as per the following format (**only overdue** cases, including where no due date of payment is specified) :

Particulars	Outstanding for following periods from due date of payment					
	< 6 months	6 months - 1 year	1-2 years	2-3 years	> 3 years	Total
(i) undisputed trade Receivables – considered good						
(ii)undisputed trade Receivables – which have significant increase in credit risk						
(iii) undisputed trade Receivables – credit impaired						
(iv) disputed trade Receivables – considered good						
(v)disputed trade Receivables – which have significant increase in credit risk						
(vi) disputed trade Receivables – credit impaired						

Comments: Disclosure of trade receivables ageing analysis has been introduced for the first time in Notes to Financial Statements. This is an example of reporting by exception and only certain class of debtors are required to be reported.

4. Statement of current assets filed with banks and financial institutions for borrowing facilities:

The Company is required to disclose whether the ***statements of current assets filed with bank and financial institutions*** for borrowings ***are in agreement with books of accounts***. If they are not in agreement with books of accounts, the reconciliation and description of material discrepancies are required to be given.

Comments: Such detailed disclosure has been introduced for the first time in the Notes to Financial Statements.

5. Capital work in progress (CWIP) and Intangible assets under development (IAUD): To provide ***ageing disclosure*** for CWIP and IAUD as per following format:

CWIP / IAUD	Amount in CWIP for a period of				Total
	< 1 year	1-2 years	2-3 years	> 3 years	
Projects in progress					
Projects temporarily suspended					

For CWIP and IAUD, whose completion is **overdue** or **has exceeded its cost** compared to its original plan, following details shall be given:

CWIP/IAUD	To be completed in			
	< 1 year	1-2 years	2-3 years	> 3 years
Project 1				
Project 2				

Note: *Separate disclosure is required for projects which are suspended.*

Comments: Disclosure of ageing analysis of CWIP and IAUD has been introduced for the first time in notes to financial statements. This is one of the focus area for amendment in Schedule III. The industry and the auditors will require clarity in this matter as it will be difficult to decide the parameter of each project. Also cost overrun and time over run will be against the project plan and same have not been shared with the auditors and general public. Thus, it may be challenging to ensure its compliance.

6. Accounting for Scheme of Arrangements

The Company shall disclose that the effect of such Scheme of Arrangements have been accounted for in the books of account of the Company 'in accordance with the Scheme' and 'in accordance with accounting standards' and any deviation in this regard shall be explained.

Comments: Such disclosure is also given in the Auditor's Report, now it is also required to be given in the Notes to Financial Statements. Additionally, while filing the Scheme of Arrangement with National Company Law Tribunal (NCLT), Companies required to file a certificate from Auditors stating that the terms of the scheme are in accordance with the applicable Accounting Standards. Accordingly, disclosure in notes would be in addition to disclosure given in auditors certificate.

7. Disclosure of Ratios: Following ratios will be required to be disclosed –

1. Current Ratio	5. Net profit ratio	9. Net capital turnover ratio
2. Debt Service Coverage Ratio	6. Debt-Equity Ratio	10. Return on Capital employed
3. Inventory turnover ratio	7. Return on Equity Ratio	11. Return on investment
4. Trade payables turnover ratio	8. Trade Receivables turnover ratio	

There is a requirement to disclose the elements forming part of numerator and denominator. Additionally, in case if there is more than 25% change in any ratio as compared to the preceding year, additional explanation is required to be given.

Comments: As per Schedule V of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR), details of significant changes (i.e., 25% or more) in key financial ratios to be given in the Management, Discussion & Analysis section in the Annual Report. Also, details of change in Return on Net Worth to be disclosed irrespective of percentage change compared to previous year.

8. Relationship with Struck-off companies: If Company has any transaction with stuck off companies, they shall disclose the following details:

Name of the Struck off Company	Nature of transactions with struck-off Company	Balance out-standing	Relationship withthe Struck off company
	Investments in securities		
	Receivables		
	Payables		
	Shares held by stuck off company		
	Others		

Comments: This is one of the requirements where Corporates and Auditors will find it difficult to meet the requirement. Amidst huge number of debtors, creditors it will be difficult to link to details of struck off companies unless there is strong IT support.

9. Registration of charges or satisfaction with Registrar of Companies: The Company shall disclose whether any charge or satisfaction of charge is pending to be registered with ROC beyond the statutory period, details, and reasons thereof.

> If there is more than 25% change in any ratio as compared to the preceding year, additional explanation is required to be given.

10. Inclusion of prior period errors: Format of statement of changes in equity changed, to include prior period errors column in equity share capital reconciliation.

11. Details of Crypto Currency or Virtual Currency: For entities investing and trading in crypto and virtual currencies during the year, details of amount of gain/loss, amount of currency held at the reporting date, and deposits or advances taken for trading/investing in crypto currencies need to be given.

Comments: The Regulator has not yet come up with clear guidelines on Crypto Currency. Hence, by mandating such disclosure it will enhance the transparency in financial statements.

KEY TAKEAWAYS

- It appears that corporate failures in past few years urged the Regulator to include some of the amendments in Schedule III to the Companies Act 2013.
- The requirement of disclosure has been strengthened and the trajectory will go up in the years to come.
- One of the purposes of amendment of Schedule III is to **align with** amendments in CARO reporting.
- Amendment in Schedule III is to enhance the transparency in disclosure. [Promoter shareholding, ageing analysis, ratio disclosures etc.]
- The responsibility and the scope of the auditor are at all time high and will continue to increase.
- The auditors and the auditee both must resort to IT tools and techniques for auditing and reporting.
- The revision will result in higher level of corporate governance and close monitoring of financials by Regulators.

We may summarize that the new Schedule III will pose challenges to the corporate and auditors as the disclosure requirements have been strengthened significantly and the scope of the auditors widens significantly. On the other hand, it is an opportunity to the investors and other stakeholders as it will facilitate analysis on account of quality disclosures.

Contracts Enforceability and COVID-19- A Review of Extant Legal Opinion

One of the essential features of a contract is its enforceability. Failure of a party to live up to their contractual obligations, amounts to a breach and would invite the natural consequences of such a breach. However, the performance of a contract may at times be hampered by supervening impossibility that is beyond the control of the parties. Law provides relief in such cases where the contract is unfulfilled for unforeseen or unanticipated reasons that are external to the contract. For more than a year, the global economy is witnessing unprecedented crises affecting lives and livelihoods due to the COVID-19 pandemic. Issues relating to enforceability of contracts and remedies under law have been the most visited provisions since the pandemic. Drawing from existing works and recent case judgements in India, this paper studies the jurisprudence that has evolved from the COVID induced litigation. Read on…

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Background

Consenting parties enter into contracts to bring definiteness and certainty into their business transactions. One of the essential features of a contract is its enforceability and the courts will seek to enforce the terms of the contract in a suit for its performance. Failure of a party to live up to their contractual obligations amounts to a breach and it would invite the consequences of such breach. Performance of a contract is a smooth way of extinguishing mutual obligations arising from the contract.

However, it is common knowledge that the performance of a contract may at times be hampered by supervening impossibility that is beyond the control the parties. Sec 56 of the Indian Contract Act, 1872 states that when the performance of the contract is impossible, such contracts need not be performed. Law provides relief in such cases where the contract is frustrated for reasons that are external to

the contract, either unforeseen or unanticipated. The relief under the 'doctrine of frustration' is invoked when the essence or purpose of the agreement is frustrated or rendered impossible or even illegal to perform. Under such eventualities that upset the very foundation of the contract, the contract is discharged and the party is excused from non-performance.

Uncertainty is an integral part of life and is mostly factored by the parties while signing contracts. The Contract Act, 1872 provides for contingent contracts under section 32, where a contract may be contingent upon the happening or non-happening of an uncertain event. Parties to contingent contract make provision for anticipated uncertainties and such contracts come to their natural ending when the said contingency strikes. Parties may protect themselves from the incidence of breach by explicit inclusion of a clause to that effect, absolving themselves from performance. This clause termed as 'Force majeure Clause' is incorporated in contracts to cater to events which are unanticipated or uncontrollable. While the Indian contract Act 1872 does not make a specific mention of the term 'Force majeure', it is defined as an event that can neither be anticipated nor controlled (The Black's Law Dictionary, 2019).

Since 2020, the global economy is witnessing unprecedented crises affecting lives and livelihoods due to the COVID-19 pandemic. The Indian government has classified COVID-19 as a disaster under the Disaster Management Act, 2005 to make way for uniform lockdown regulations all over the country to spread the control of the pandemic (Chauhan Chetan, 2020). Owning to disruptions in the production, manufacture, distribution, delivery of goods and services, a bulk of business transactions are being suspended, delayed or terminated, with parties defaulting in adhering to the contract terms. This large-scale disruption that hampered business continuity has also compelled businesses to relook into their contracts, to assess the impact of the pandemic on their dealings. There has also been a renewed interest in academia regarding issues of enforceability of contracts and the remedies available under the statutes. Sections 32 and 56 of the Indian Contract Act, 1872 have been the most visited provisions in this context. Recent works have studied the concepts of force majeure and the doctrine of frustration. Drawing from these existing works and recent case judgements, this paper studies the jurisprudence that has evolved from COVID induced litigation. The nature of the study is doctrinal, analysis of legal propositions and extant case laws being the primary source of information for the study.

> "Uncertainty is an integral part of life and is mostly factored by the parties while signing contracts.

Doctrine of frustration

Fundamentally, all contracts need to be performed. Non-performance of a contract amounts to breach and will invite legal action. Under the common law underpinnings, the enforceability of contracts was stringent and absolute. The possibility of non-performance of the contract due to supervening events rendering it impossible to perform was first acknowledged in the case of Taylor v. Caldwell (1863). As a departure from the extant doctrine of absolute obligations, the doctrine of frustration that emerged from the case of Taylor v. Caldwell (1863), enabled parties to seek refuge from the consequences of non-performance, if their case so merits. Doctrine of frustration could be invoked when, subsequent to the contract, the performance has been rendered impossible, illegal or impractical (Sen, G. 1972). A fit case under this doctrine is one when, the contract is frustrated by occurrence of a events or a change in the circumstances subsequent to formation of the contract as has been reiterated in the case of Krell v. Henry (1903). The essence of the contract is lost in such cases. Courts have also held that mere difficulty in performance cannot be pleaded as an excuse and the change in the circumstances owing to the subsequent eventuality, must bring about a radical or fundamental change in the circumstances shaking the premise on which the contract rests, as held in Davis Contractors v. Fareham (1956).

> "Doctrine of frustration could be invoked when, subsequent to the contract, the performance has been rendered impossible, illegal or impractical

The maxim "Non haec in foedera veni" which means "This was not what I promised to do" explains the parties' inability to

perform the contract owing to changed circumstances rendering the contract radically different from what has been undertaken by the contract. The rationale behind doctrine of frustration was applied to cases involving 'destruction of subject matter', failure of the implied condition in the contract and in cases where it was just and equitable to excuse the performance. It applied to cases where the parties did not contemplate such eventualities and have not expressly addressed them in their contracts. Studies (M. P et al, 2020) explain that the evolution of such theories was the result of the courts' endeavour to take a realistic stance in such cases. Section 56 of the Indian Contract Act, 1872, states—when the performance of the contract becomes impossible, it need not be performed. Studies explain that the decisive wording and the express provision of section 56 under the Act have made it easier for courts to apply this in cases involving supervening impossibility. The doctrine of frustration comes under the ambit of section 56. In the case of Satyabrata Ghose v. Mugneeram Bangur and Co. (1954), it was held that, for section 56 to apply, the subsequent event must render the performance of the contract impossible. Impossibility can be physical or legal. Events that render the contract impracticable or upset the foundations of the contract are also considered impossible to perform.

> Impossibility can be physical or legal. Events that render the contract impracticable or upset the foundations of the contract are also considered impossible to perform. Section 56

Section 56 would apply in cases when the performance of an existing contract has been interrupted by an event that has occurred subsequently frustrating the contract. This is a natural outcome of the event which is involuntary. As has been held in the case of Satyabrata Ghose v. Mugneeram Bangur and Co. (1954), for application of section 56, a substantial portion of the contract must be impacted, changing its basic premise. Cases where the performance is rendered burdensome or commercially impossible in view of additional costs or inconvenience do not merit consideration under this doctrine as has been held in the case of Tsakiroglou & Co. Ltd v. Nablee Thorl Gmbl (1962). The construction of the contract is primarily looked at by the courts before deciding whether the contract is frustrated or not. Contracts that provide for subsequent eventualities as an express clause in the contract also called 'Force majeure' are decided as per the terms of the contract. Section 56 would apply when there is no such express provision in the contract. Section 56 is invoked when the subject matter of the contract is destroyed or the performance has become illegal or the purpose for which the contract has been entered is lost. However, when the risk is inherent in the contract, then it is self-induced and held to be in contemplation of the parties. Therefore, it does not merit consideration under section 56 as has been held in the case of Maritime National Fish Limited v. Ocean Trawelers Ltd (1935). Impossibility of performance

> The construction of the contract is primarily looked at by the courts before deciding whether the contract is frustrated or not. Contracts that provide for subsequent eventualities as an express clause in the contract also called 'Force majeure' are decided as per the terms of the contract.

cannot be used as a defence in all cases. If the party knew of the facts that made the performance impossible when the contract is executed, or assumed, the risk of impossibility or could have acted to prevent its occurrence, the defence would not hold well.

Force majeure clause in contracts

A contract emerges out of consensus after a careful consideration of all the terms and conditions by the parties. It is common practice for parties to define the limits of their obligations and absolve themselves from performance, in view of external unforeseen events beyond their control. A force majeure clause is incorporated in contracts catering to unforeseen events such as war, epidemics or natural disasters also termed as 'acts of god'. Force majeure, a French term that means "Superior force" covers unusual or extra ordinary events that may unexpectedly occur. Force majeure clauses are inserted in the contract to

provide for externalities that are unforeseeable or uncontrollable by the parties. While the occurrence of the force majeure event may not completely release the parties of all liabilities arising from the contract, they offer relief from absolute adherence to the terms of the contract.

Force majeure clauses may be exhaustive or inclusive (Batas and Shah, 2020). The exhaustive clauses expressly spell out specific events which will excuse the performance of the contract. The language of the inclusive clauses is broad and is intended to cover any circumstances that are beyond reasonable control of the parties. Studies (International Bar Association, 2020) explain that parties that have gone ahead with an inclusive approach may stand a strong chance of accommodating COVID-19 as a force Majeure event.

Force majeure clause in contract is covered under section 32 of the Contract Act dealing with contingent contracts, the performance of which is dependent on the happening or non-happening of an event. Section 32 states that "Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void". On the face of it, while section 32 and section 56 both appear to be similar, the difference lies in the conditions when they can be invoked. Section 32, dealing with contingent contracts is invoked when the said contingency occurs and would be decided as per the terms of the contract, section 56 comes into play when the contract becomes impossible to perform and relies on the positive rule laid out by the law for want of an express or implied provision in the contract to that effect. In the Satyabrata Ghose v. Mugneeram Bangur case, the Supreme Court cleared the difference between the two, stating that a case under section 56 will hold good only when a force majeure is not inserted in the contract. For section 56 to apply, the nature of the contact must be executory.

> If the party knew of the facts that made the performance impossible when the contract is executed, or assumed, the risk of impossibility or could have acted to prevent its occurrence, the defence would not hold well.

An essential requirement of the force majeure is to give due notice to the other party regarding the circumstances that have rendered the contract impossible to perform. The burden lies with the party seeking to be relieved from performance, to establish that the excluded event actually prevented it from performing its obligations under the contract. For a claim to be successful under force majeure, there ought to be no alternate ways of performance of the contract.

In the case of Energy Watchdog v. Central Electricity Regulatory Commissions & Ors (2017), the petitioner invoked force majeure on account of increase in coal prices. The plea was dismissed by apex court stating that price increase did not render the contract unforeseeable, only commercially difficult. Force majeure cannot be invoked when alternate means of performance are available and the initial premise of the contract is intact subsequent to the event. The Contract Act, 1872 explicitly states under section 56, that commercial impossibility is not an excuse for non-performance. Akin to the doctrine of frustration, relief under force majeure can be sought as a matter of last resort after exhausting all the means of performance of the contract.

> A contract emerges out of consensus after a careful consideration of all the terms and conditions by the parties. It is common practice for parties to define the limits of their obligations and absolve themselves from performance, in view of external unforeseen events beyond their control.

In the case of National Agricultural Cooperative Marketing Federation of India v. Alimenta S.A (2020), the apex court clarified on the scope of applicability of section 56 and section 32 of the Indian Contract Act, 1872. It observed that "If a contract contains impliedly or expressly stipulation according to which it would stand discharged on happening of particular circumstances. The dissolution of the agreement would take place under the terms of the contract itself. Such cases would

be outside the purview of section 56 of the Indian Contract Act altogether. They would be dealt with under section 32 of the Contract Act, which deals with contingent contracts."

Analysis of case judgements

The question whether COVID-19 is a fit case of force majeure or not has been the most debated issue since the pandemic. Reports state that the earliest mention of COVID-19 as a case of force majeure in India, was the Office Memorandum issued by Ministry of Finance, Government of India that recognised 'the pandemic' as a force majeure event in relation to a procurement of goods manual (Bandyopadhyay and Ray, 2021) and subsequently granted certain reliefs and extension of time in that regards. Government departments and market regulators including RBI and SEBI also provided relief measures in view of the large scale disruption caused due to the pandemic.

"Government departments and market regulators including RBI and SEBI also provided relief measures in view of the large scale disruption caused due to the pandemic. While these initiatives have set the ground, the judicial decisions by the courts helped to develop the jurisprudence on the issue.

While these initiatives have set the ground, the judicial decisions by the courts helped to develop the jurisprudence on the issue.

The earliest legal stand on the matter about the pandemic was given in the case of Standard Retail Pvt Ltd. v. Global Corp (2020). The Bombay high court held that the lockdown caused due to the pandemic could be treated as a case of Force Majeure only if one could establish a direct nexus between the occurrence of the event and the non-performance of the contract. The Delhi High Court in the case of South Delhi Municipal Corporation v. MEP Infrastructure Developers Ltd. (2020) granted relief with respect to toll collection from the contractor to SDMC, until such time that 90% traffic stands resumed, thereby acknowledging the effect of the pandemic on business functioning.

While dismissing to treat the case under Force Majeure, the court in the case of Standard Retail Pvt Ltd. v. Global Corp (2020), examined the nature of the contract in question which involved delivery of an essential service. Movement of essential services not being restricted during the pandemic, the court held that the contract was not substantially impacted by the lockdown.

Similar reasoning was expressed by the Delhi High Court in the case of Indrajit Power Pvt. Ltd. v. Union of India (2020) where it was held that despite an extension of 12 months granted to the petitioner, it was unable to fulfil the contractual obligations and therefore cannot seek refuge under force majeure. The pandemic cannot be used as a shield to cover up for the pre-existing negligence of the defaulting party, the court held.

"The economic consequences of the COVID-19 pandemic have been felt across sectors. Business slowed down drastically. With the slowdown in the business, retail outlets and commercial establishments faced the challenge of paying rent under commercial lease agreements albeit loss of earnings.

In the case of Halliburton Offshore Services Ltd v. Vedanta Ltd (2020), the Delhi High Court held that breach of any contract has to be examined on the basis of the facts and circumstances of the case. A mere inclusion of the force majeure clause in the contract does not automatically guarantee relief from performing the contract. Past non-performance of the party cannot be condoned due to the COVID pandemic. Force majeure has to be interpreted narrowly and not liberally. In the case of Halliburton Offshore Services Ltd, the court did not intervene in the invocation of a bank guarantee in response to non-performance of the contract, thereby maintaining the sanctity of a contract.

The economic consequences of the COVID-19 pandemic have been felt across sectors. Business slowed down drastically. With the slowdown in the business, retail outlets and commercial establishments faced the challenge

of paying rent under commercial lease agreements albeit loss of earnings. The question whether the tenants of commercial establishments could seek a waiver or exemption from the payment of rent was examined in the case of Ramanand and others v. Dr Girish Soni and others. The Delhi High Court clarified that,

"In contracts where there is a profit- sharing arrangement or an arrangement for monthly payment on the basis of sales turnover, the tenant/lessee may be entitled to seek waiver/ suspension, strictly in terms of the clause. Such cases would be purely governed by the terms of the contract itself, and the tenant's claim could be that there were no sales and no profits and thus the monthly payment is not liable to be made. Thus, the entitlement of the client in such a situation is not governed by any overriding force majeure event but by the consequence of the said event, being that there were no sales or profits".

"While COVID-19 has disrupted the normal course of business functioning, sheer difficulty in the performance of the contract or additional burden in terms of increased costs owing to the pandemic situation do not merit invocation of force majeure or relief under section 56.

The terms of the lease contract are the determining factors to decide the on the admissibility of the pandemic as a force majeure event as held by the court.

Conclusion

The applicability of COVID-19 as a force majeure event is dependent on the terms of the contract, with the specific language of the contract being the single most important factor. If expressly provided in the exclusion clause of the contract, the plea for relief has been considered by the courts favourably. Contractual breaches that have occurred prior to the COVID-19 pandemic have not been condoned by the courts.

While COVID-19 has disrupted the normal course of business functioning, sheer difficulty in the performance of the contract or additional burden in terms of increased costs owing to the pandemic situation do not merit invocation of force majeure or relief under section 56. The disruption to the contract ought to be the direct result of the pandemic situation. In other words, disruptions to the contracts which cannot be directly and substantial attributed to the pandemic do not merit consideration section 56 and section 32. The parties need to establish that, but for the supervening event, they would have performed the contract. The impossibility to perform must be not self-induced or attributed to any negligence of the party. Duty to mitigate losses ought to have been taken. Courts have also considered the degree of hardship imposed on a party due to the pandemic. An analysis of case judgements arising from the COVID-19 induced litigation reveals that relief under the doctrine of frustration is provided after due consideration of the terms of the contract, the past behaviour of the parties, the construct of the contract, and as a matter of last resort. The courts have applied this in a narrow sense, thus reinforcing the absolute obligations the contract imposes.

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Pre-Packaged Insolvency Resolution Process For MSMEs

The Micro, Small and Medium Enterprises (MSMEs) are susceptible to distress and failures on account of variety of factors such of undiversified business portfolio, supply chain issues, overdependence on key markets and limited availability of fresh credit. Pre-Packaged insolvency resolution process is a hybrid framework that empowers stakeholders to resolve the stress in MSMEs. It is quick and discreet way of completing the insolvency resolution process with a blend of formal and informal framework. In the process promoters remain in possession of assets and the business is run by them, however creditors decide commercial matters. Read on…

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Pre-Packaged insolvency resolution process (PPIRP) or Pre-pack, as known globally, has emerged as an innovative method to revive the stressed enterprises that blends the benefits of both informal (out-of-court) and formal (judicial) insolvency processes. It is quick and economical method to resolve the stress before the enterprise value deteriorates. Business continues as a going concern by the existing promoters, hence there is no business disruption unlike other insolvency resolution process. The process is initiated with an informal understanding between the promoters and stakeholders and concludes with a judicial blessing. Many countries, including the United Kingdom (UK) and the United States of America (USA), permit pre-packaged insolvencies. According to a report "majority of pre-packs in the U.K. have been successful in preserving jobs". Research in USA credits pre-packs for reducing the time taken by courts and confirming a reorganization plan to half. Pre-Packaged Insolvency Resolution Process as introduced in India works within the basic structure of the Insolvency and Bankruptcy Code, 2016. The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 was promulgated on 4th April, 2021 which introduced Pre-Packaged Insolvency Resolution Process

for MSMEs in the country. The Ordinance is now repealed by The Insolvency and Bankruptcy Code (Amendment) Act, 2021 and it shall be deemed to have come into force on the 4th day of April, 2021.

It is expected that the incorporation of Pre-Packaged insolvency resolution process in the Insolvency and Bankruptcy Code 2016 will alleviate the distress faced by MSMEs due to the impact of the COVID-19 pandemic. Pre-packaged process duly recognize the contribution of MSMEs in the economic development of the country.

The benefit of pre-pack resolution process is that a significant part of the resolution process is done informally, including preparation of the base resolution plan. PPIRP is an alternative resolution framework for MSMEs. The objective of PPIRP is cost-effective, timely, efficient resolution of distress thereby ensuring positive signal to debt market, ease of doing business, job preservation, and preservation of enterprise value. Other objectives of this amendment in IBC is lesser burden on Adjudicating Authority which are already overburdened with Corporate Insolvency Resolution Process (CIRP) cases, assured continuity of business operations of MSME without any interruption, less insolvency process costs and maximization of value for financial creditors and rights protection for operational creditors.

Pre Packaged Insolvency process in other countries

Pre-packaged Insolvency process finds its roots in United States of America (USA) and United Kingdom (UK). Both in UK and in USA, the bankruptcy code allows initiation of Pre-pack process by any stakeholder of the corporate debtor and the corporate debtor negotiates the reorganization plan with all the classes of creditors. The substantial insolvency laws of the UK and the US are contained in the Insolvency Act, 1986 and in the Chapter 11 of the United States Bankruptcy Code respectively. Corporate reorganization is governed by Chapter 11 of US Bankruptcy Codeand it is the counter part of the corporate insolvency resolution process (CIRP) under the IBC. One of the two pre-pack routes in the US is contained in Chapter 11 and the other is contained in section 363 of the US Bankruptcy Code. The UK Insolvency Act provides for three routes to formal rescue which include administrative receivership, Company Voluntary Agreements (CVAs), and administration. Schedule B1 of the Insolvency Act 1986 governs administration through which most pre-packs in the UK are affected.

A review from Wolverhampton University identified the several criticisms of pre-pack sales in UK. According to their review report "There is a general concern that the pre-pack administrator favours the interests of the management and secured creditors ahead

"The benefit of pre-pack resolution process is that a significant part of the resolution process is done informally, including preparation of the base resolution plan.

of those of the unsecured creditors. The speed and secrecy of the transaction often lead to a deal being executed, about which the unsecured creditors know nothing and offers them little or no return. There is often a suspicion that the consideration paid for the business may not have been maximized due to the absence of open marketing. Credit may have been incurred inappropriately prior to the pre-pack and this may not be fully investigated".

Pre-pack can be completed without creditors' approval in UK. This makes unsecured creditors a vulnerable stakeholder in the insolvency resolution process. In the US, pre-packs can be implemented through two routes, one requires creditors' approval and the other does not. Globally it is considered that Pre-pack sales were a valuable tool for revival of business enterprises and can often help to preserve the jobs. However, for unsecured creditors it highlighted the lack of transparency around pre-pack sales therefore leaving them feeling aggrieved and evicted from the process.

Amendment made in Insolvency and Bankruptcy Code (IBC), 2016

A new Chapter namely **Chapter III A (Pre-Packaged Insolvency Resolution Process)** has been inserted in the Insolvency and Bankruptcy Code, 2016 providing sixteen sections – 54A to 54P. Further, three new sections have been inserted – 11A in Chapter II (Corporate Insolvency Resolution Process), 67A in Chapter VI (Adjudicating Authority For Corporate Persons) and 77A in Chapter VII (Offenses and penalties)of IBC 2016 under Part II of IBC.

Definition of Micro Small & Medium Enterprises (MSME)

The definition of MSME that was given in MSME Development Act in the year 2006 was revised after 14 years in the Atmanirbhar Bharat package on 13th May, 2020 as the economy has undergone significant changes. Also, a new composite formula of classification for manufacturing and service units has been notified. Now, there will be no difference between manufacturing and service sectors. Also, a new criterion of turnover is added.

Classification Of Enterprise	Investment in Plant & Machinery or Equipment	Turnover (Rs.)
Micro Enterprises	Not exceeding Rs. 1 crore	Not exceeding Rs. 5 crore
Small Enterprises	Not exceeding Rs. 10 crore	Not exceeding Rs. 50 crore
Medium Enterprises	Not exceeding Rs. 50 crore	Not exceeding Rs. 250 crore

For classification of an enterprise as micro, small or medium, a composite criteria of investment in plant & machinery and turnover is applied.

Calculation of investment in plant and machinery or equipment.—

- Investment in Plant & Machinery or equipment as reported in previous year Income Tax Return (ITR).
- The Invoice value of a plant and machinery or equipment, whether purchased first hand or second hand excluding Goods and Services Tax (GST).

Calculation of turnover

- Exports of goods and/or services are excluded.
- Turnover as reported in ITR or GST returns.

Filing of application for Initiating PPIRP

Application for initiating pre-packaged insolvency resolution process is filed in Form1 (as prescribed in Insolvency and Bankruptcy (prepackaged insolvency resolution process) Rules, 2021 accompanied with affidavit, documents or records as referred in Annexures therein, in electronic form, along with a fee of Rs. 15000/-.

Copy of Application is also submitted to Insolvency & Bankruptcy Board of India (IBBI) before filing it with the Adjudicating Authority (AA).

Documents to be attached with the Application

- In case of financial debt, record of default obtained through the Information Utility (IU) or documents to prove existence of Financial debt.
- In case of operational debt, (i) copy of invoice / demand notice served by an operational creditor on the corporate debtor and (ii) record of default obtained through the Information Utility or documents to prove existence of Financial debt.
- Approval of creditors for appointment of the proposed resolution professional (RP) [Form P3].
- Written consent by the proposed RP [Form P1].
- Latest & Updated Udyam Registration Certificate, or proof of MSME classification
- Declaration of the majority of the directors/partners [Form P6].

- Copy of Special resolution.
- Approval of creditors [Form P4].
- Report of the proposed RP [Form P8].
- Declaration from directors/ partners regarding the existence of any avoidance transactions (Preferential, Undervalued, Extortionate, Fraudulent) of the corporate debtor (Form P7).
- Affidavit stating eligibility of the corporate debtor (CD) under section 29A of IBC.
- Copy of the relevant books of account evidencing the default to creditors.
- Copies of audited financial statements of the CD for the last two financial years.
- Provisional financial statements for the current financial year made up to a date not earlier than 14 days from the date of the application.
- A statement of affairs of CD made up to a date not earlier than 14 days from the date of application to initiate PPIRP including the following document, namely:—

> The timeline is the essence of IBC. PPIRP should be completed within 120 days from its commencement date.

(a) A list of assets and liabilities with estimated values.

(b) Particulars of the claim mentioning amount, detail of security, date of security creation.

(c) Detail of Financial creditors and operational creditors mentioning their name, address and claim amount.

(d) Particulars of debts owed by or to the CD.

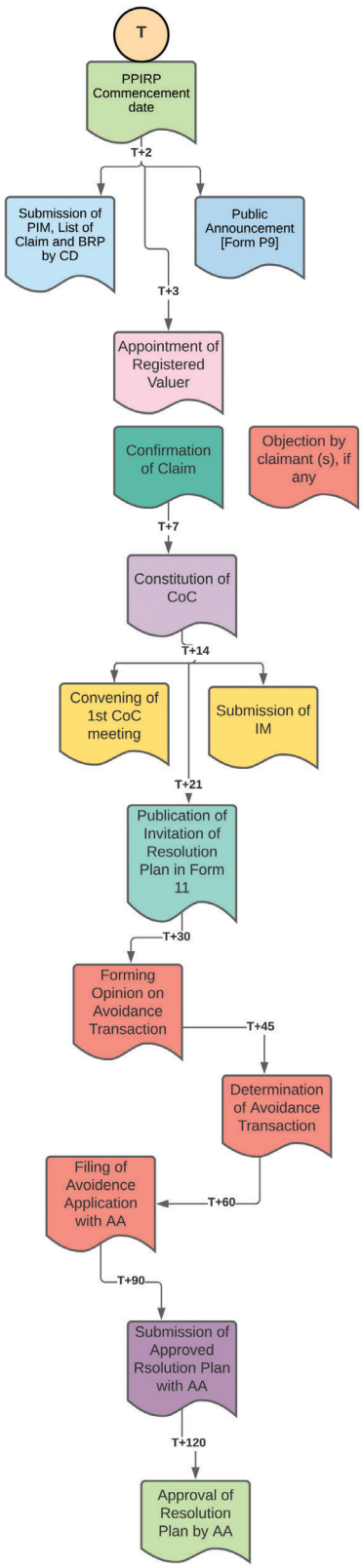
(e) Particulars of guarantees given in relation to the debts of CD specifying which guarantors is a related party to the CD.

(f) Detail of shareholders/ partners mentioning their name, address and shareholding.

- A copy of Memorandum of Association and Articles of Association of CD or LLP Agreement.
- A Copy of Board resolution or resolution passed by the partners.

Pre Packaged Insolvency Resolution process (PPIRP) Timeline

The timeline is the essence of IBC. PPIRP should be completed within 120 days from its commencement date. Unlike CIRP, there is no provision for extension of time period. AA shall approve the resolution plan within 30 days. However, like CIRP, there is no compulsion on AA to pass an order within 30 days. See Chart



Corporate Insolvency Resolution Process (CIRP) Vs. Pre Packaged Insolvency Resolution Process (PPRIP)

Parameter	CIRP	PPIRP
Initiation by	Financial Creditor, operational creditor or CD	CD, with consent of 66% of unrelated FCs
Default Amount	Default above Rs. 1 crore	Minimum Default Rs. 10 lakh
Appointment of IP	IRP proposed by the applicant, thereafter CoC approved RP	RP approved with the consent of 66% Unrelated FCs
Role of IP and AA	Relatively More	Relatively Less
Claim Collation	IRP to Invite and collate	CD to invite and RP to confirm the claims
Moratorium	Yes	Yes
Management of CD	IRP/RP in possession of CD with Creditors in Control	CD in possession with Creditors in control
Valuation of Assets	Yes	Yes , but no concept of third valuation
Avoidance Transaction	Yes	Yes
Information Memorandum	Prepared by RP	Draft prepared by CD and finalised by RP
Approval of Resolution Plan	With 66% of Voting Share	With 66% of Voting Share
Regulatory Benefits	All Regulatory benefits are available to Resolution Applicant	All Regulatory benefits are available to Resolution Applicant
Clean Slate	Yes	Yes
Timeline	180 days	90 days + 30 days for AA to approve it

Pre-requisites for initiation of PPIRP

Existence of debt and default

Approval of Shareholders with Special Resolution

Declaration and disclosures by board of directors

Consent of unrelated FCs having 66% of value of debt for approving the terms of appointment of IP and initiation of PPIRP

Unrelated FCs having at least 10% of the value of debt may propose the name(s) of RP

Eligibility & Conditions for initiation of PPIRP

- Classified as MSME under MSME Development Act, 2006.
- Minimum Default of Rs.10 Lakhs.
- Not Undergoing under CIRP.
- No Order of Liquidation passed.
- No PPIRP or CIRP conducted during 3 years preceding the initiation date.
- MSME Company should be eligible under section 29A of IBC 2016 to submit the Base Resolution Plan

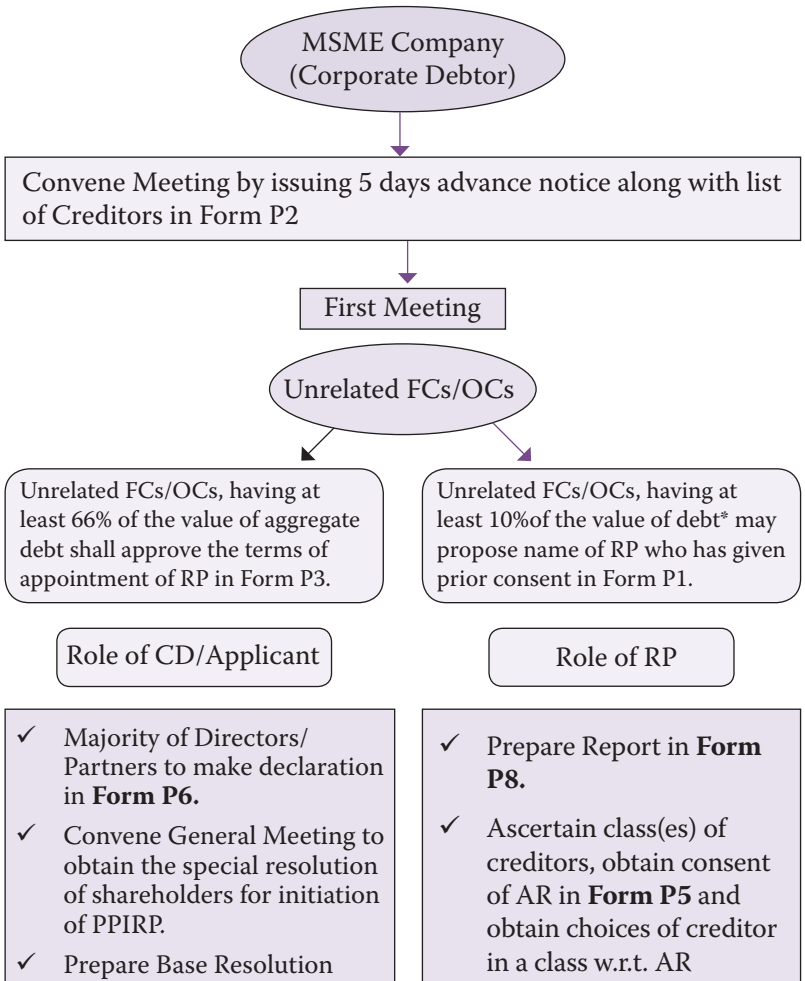
No Parallel Proceedings

CIRP ongoing	X	No PPIRP
PPIRP Ongoing	X	No CIRP

Pre-Initiation Process

Pre-initiation process of Pre Packaged Insolvency Resolution Process is not entirely codified. It is an informal process and Resolution Professional has to ensure pre-initiation due diligence. There is limited time for initiation after creditors' consent.

Pre Packaged Insolvency Resolution process (PPIRP) commences from the date of admission order passed by the Adjudicating Authority.



Post Initiation Pre-Packaged Insolvency Resolution process

(i) Moratorium

A Moratorium comes into the effect on the pre-packaged insolvency commencement date by the order of Adjudicating Authority prohibiting Institution of suits or continuation of pending suits or proceedings against the corporate debtor

Moratorium shall not be applied to a personal guarantor to the CD. Unlike CIRP, Moratorium does not cover the supply of essential goods or services to the corporate debtor.

(ii) Management of affairs of corporate debtor

Unlike CIRP, the management of the affairs of the CD shall continue to vest in the Board of Directors or the partners.

However the CD shall not undertake any of the following actions without obtaining prior approval of the Committee of Creditors (CoC):-

- transaction above a threshold limit as decided by the CoC
- any other matter as decided by the CoC

(iii) Public announcement

The RP shall make a public announcement within 2 days of the commencement of PPIRP. The public announcement is sent to every creditor , as listed in the list of claims provided by the CD, Information Utility and published on the website of the CD, if any, and the IBBI.

(iv) Collation of claims

The CD shall submit a list of claims in Form P10 to the RP. Thereafter RP shall confirm the claim from the records of the CD and other relevant material available on record.

(v) Committee of Creditors (CoC)

RP shall constitute committee of creditors. CoC shall consist of unrelated FCs.

- Where the CD has no financial debt or all financial creditors are related parties, the committee shall consist of unrelated operational creditors (OCs) as under:

(a) ten largest OC by value, and if the number of OC is less than ten, the committee shall include all such OCs;

(b) one representative elected by all workmen other than those workmen included under clause (a); and

(c) one representative elected by all employees other than those employees included under clause(a).

- Authorized representatives of each class of creditors
- CoC members shall have the voting share in proportion to the value of total debt.

(vi) Valuation of Assets of Corporate Debtor

The RP shall within 3 days of

his appointment, appoint two registered valuers to determine the fair value and the liquidation value of the CD.

(vii) Preparation of Information Memorandum

The preliminary information memorandum (IM) shall be prepared by CD. The RP shall finalize the IM submit to CoC within 14 days of the pre-packaged insolvency commencement date.

(viii) Preferential and other transactions.

The RP shall form an opinion on whether the CD has been subjected to any preferential, undervalued, extortionate or fraudulent transaction by 30th day of Pre Packaged insolvency commencement date and where the RP is of the opinion that the CD has been subjected to any such transactions covered he shall make a determination and apply to the AA for appropriate relief.

Since the time frame given under the regulation for determining the preferential and other transaction is very tight, it is advisable to make an estimate of such transactions during the informal stage of Pre-Packaged Insolvency Resolution process.

(ix) Resolution Plan

The CD shall submit the **Base Resolution Plan** (BRP) to the RP within 2 days of the commencement of PPIRP, and the RP shall present it to the CoC. CD may submit the base resolution plan either individually or jointly with any other person. The CoC may provide the CD an opportunity to revise the BRP prior to its approval or invitation of prospective resolution applicants. The CoC may approve the BRP for submission to the AA if it does not impair any claims owed by the CD to the operational creditors.

The RP shall present the resolution plan which confirm to the requirements referred to in section 30 (2) before the CoC. If such resolution plan is significantly better than the BRP, such resolution plan may be selected as **Base Alternative Plan** by the CoC. CoC shall decide in advance about the tick size to shortlist the Resolution plan which may be considered significantly better than the BRP. Thereafter Base Resolution plan shall compete with Base Alternative Plan.

RP shall disclose the scores of Base Resolution Plan and Base Alternative Plan to the submitters of these plans, who have an option to improve their resolution plan at least tick size. The process of improvement shall be continuous process until either of the applicant fails to use the option within the time frame specified in the invitation of the resolution plan. The process of improvement shall be completed within 48 hours. The resolution plan with highest score shall be selected by the CoC for its approval.

The resolution plan shall be approved by CoC by a vote of at least 66% of the voting shares after considering its feasibility and viability. Where the resolution plan does not provide for the full payment of the confirmed claims, the CoC may require the promoters of the CD to dilute their shareholding or voting rights in the CD. Where the resolution plan does not provide for such dilution, the CoC shall record reasons for its approval. The resolution plan approved by the committee of creditors shall be submitted to the Adjudicating Authority (AA) by the RP along with Compliance Certificate in Form P12. Resolution plan approved by AA shall be binding on all the stakeholders.

Conclusion

Much of the preparatory work needs to be done by Insolvency Professionals along with the Corporate Debtor and creditors before submitting pre-pack insolvency resolution application to Adjudicating Authority. Corporate Debtor has to bring a lot to the table of creditors to get their prior approval. The speed and confidentiality offered by pre-packs have made them prevalent in UK and the USA, however, these advantages come with trade-offs. It is also pertinent to mention that pre-packs have been successful in UK and USA for corporate debtors with concentrated debt and a small group of creditors. In India, pre-packs have not evolved through the present regime as it does not allow for the assets of a debtor to be sold without its creditors' approval. Formats of most of the documents needed in PPIRP are formally prescribed in PPIRP Regulations. The new mechanism provides an opportunity to MSMEs to restructure and start with a clean slate. Over time, the process should turn out to be an effective mechanism to arrive at a quick resolution for distressed MSMEs.

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Tonnage Tax Scheme – Chapter XIIG of Income-tax Act, 1961

According to the Ministry of Shipping, around 95% of India's trading by volume and 70% by value is done through maritime transport. India is the 16th largest maritime country in the world with a coastline of about 7,517 kms. India has 12 major and 205 notified minor and intermediate ports. For taxation of shipping profit, Chapter–XIIG was introduced under the Income-tax Act, 1961 which is a self-contained code. It consists of chargeability of tonnage income and methodology for computation of tonnage income. The method of computation of income does not depend on income or expenses of the assessee. Tonnage income is to be computed based on tonnage capacity of ship and the number of days in operation. In case of loss in financials statement of tonnage of the tax company, it must pay tax on its tonnage income as it is presumptive method of computation of taxable income under profits and gains from business and profession. Read on …

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To promote the Indian shipping industry and make it more competitive with the global market, a Tonnage Tax Scheme ("TTS") for taxation of shipping profits was introduced vide Finance Act (No. 2), 2004 w.e.f 01/04/2005.

Chapter XIIG was inserted in the Income-tax Act, 1961 ("the Act") containing sections 115V to 115VZC which provides for special provisions relating to the taxation of the income of shipping companies.

In this article, the author has made attempt to understand major provisions governing TTS under the Act.

Registration under TTS (Section 115VP to 115VR)

A qualifying company may opt for TTS by applying through **Form 65** to the jurisdictional Joint Commissioner within period of 3 months from the date of incorporation or date on which it become a qualifying company.

The application shall be signed and verified on behalf of the company by the managing director of the company, or

> A qualifying company may opt for TTS by applying through Form 65 to the jurisdictional Joint Commissioner within period of 3 months from the date of incorporation or date on which it become a qualifying company.

where for any unavoidable reason such as the managing director is not able to sign and verify this Form, or where there is no managing director, by any director of the company.

While applying, the company shall give, apart from other general details, the details of all ships owned or chartered by it, whether the ship is qualified or not.

Further, the company should enclose to the application for registration, in respect of each of the ships' details of which are being given in application, a copy of the following certificates,

i) **Certificate of registration** under the Merchant Shipping Act, 1958 and **certificate** under Merchant Shipping (Tonnage Measurement of Ship) Rules, 1987 made under the Merchant Shipping Act, 1958.

ii) **Certificate of registration** under the Merchant Shipping Act, 1958 and **international tonnage certificate** issued under the provisions of the Convention on Tonnage Measurement of Ships, 1969 as specified in the Merchant Shipping (Tonnage Measurement of Ship) Rules, 1987 made under the Merchant Shipping Act, 1958.

iii) In case of ships registered outside India, permission obtained from the Director-General of Shipping to charter in a ship.

An option for TTS, once approved by the Jurisdictional Joint Commissioner, shall remain valid for period of 10 assessment years from the assessment year relevant to previous year in which the option is exercised.

The company may renew an option to opt for TTS by making an application as discussed above within one year from the end of the previous year in which the option ceases to have effect.

Which is a Qualifying Company (Section 115VC)?As discussed above, only a qualifying company may opt for TTS. A company is a qualifying company if,

- It is an **Indian Company**,
- **Place of effective management** of company is in India,
- It owns at least one **qualifying ship**, and
- Main objective of the company is to carry on the **business of operating ships**.

For this section, "place of effective management of the company" means—

(A) the place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or

(B) in a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions.

What is Qualifying Ship (Section 115VD)?

As discussed above, to be a qualifying company, it must own at least one qualifying ship. A ship is qualifying ship if

- It is a sea-going ship with 15 Net tonnage or more,
- It is a ship registered under Merchant Shipping Act, 1958 or a ship registered outside India in respect of which license has been issued by Director-General of Shipping under Merchant Shipping Act, 1958, and
- Has a valid certificate in respect of such ship indicating its net tonnage is in force.

> To be a qualifying company, the main object of company is to conduct the business of operating ship.

However, there are some exclusions of a qualifying ship:

- a sea going ship if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land,
- fishing vessel,
- factory ship,
- pleasure craft,
- harbour and river ferries,
- offshore installation,
- a qualifying ship which was used as a fishing vessel for a period more than 30 days during a previous year.

Vide Finance Act, 2005 w.e.f 01.04.2006, dredgers were omitted from exclusion to a qualifying ship. Hence, a dredger is considered as qualifying ship subject to having 15 net tonnage or more, registration under Merchant Shipping Act, 1958 and having valid tonnage certificate.

What is Operating ship (Section 115VB)? As discussed above, to be a qualifying company, the main object of company is to conduct the business of operating ship. The characteristics of an operating ship are: A company shall be regarded as an operating a ship if it operates any ship whether owned or chartered by it.

Hence, where the company has taken ships on charter/ lease, whether dry or wet, is covered by term operating ship.

Further, it also includes a case where even a part of the ship has been chartered in by company in an arrangement such as slot charter, space charter or joint charter.

However, it excludes the case where, a ship which has been chartered out by company on bareboat charter-cum-demise terms or on bareboat charter terms for a period exceeding 3 years.

"bareboat charter" means hiring of a ship for a stipulated period on terms which gives the charterer possession and control of the ship, including the right to appoint the master and crew.

"bareboat charter-cum-demise" means a bareboat charter where the ownership of the ship is intended to be transferred after a specified period to the company to whom it has been chartered.

Further, to prevent misuse of the above provision (chartered in to be regarded as operating ship), there is a limit provided for chartered in amount of tonnage which is discussed as below.

Limit for charter in of tonnage (Section 115VV)

A company which has opted for TTS, **shall not charter in** more than 49% of the net tonnage of the qualifying ships operated by it during any previous year.

Here, it excludes a ship chartered in by the company on bareboat charter-cum-demise terms as same has been excluded from operating ship for the case of charted out on bareboat charter-cum-demise terms.

Interestingly, it does not exclude a ship chartered in by the company on bareboat charter terms for period exceeding 3 years though same has been excluded from the operating ship for case of charted out on bareboat charter terms for period exceeding 3 years.

Where limit for charter in of tonnage exceeds 49% in any previous year, then income of such company, for that previous year, is computed as if the option for TTS does not have effect for that previous year.

Where limit for charter in of tonnage exceeds 49% in two consecutive previous years, the option for TTS shall cease to have effect from the 3rd year onward.

Further, where the option for TTS ceases to have effect as discussed above, the company has been prohibited to opt for TTS for period of 10 years **(Section 115VS).**

> A company which has opted for TTS, shall not charter in more than 49% of the net tonnage of the qualifying ships operated by it during any previous year.

Computation of profits and gains from the business of operating qualifying ships (Section 115VA)

Section 115VA overrides the provision of section 28 to 43C. Income from business of operating qualifying ship shall be computed in accordance with provision of TTS (which is discussed in later para) and income so computed shall be deemed to be Income chargeable under the head Profits and gains of Business or profession ("PGBP").

Relevant Shipping Income (Section 115VI)

Relevant shipping Income of Tonnage Tax Company means,

- Profit from core activities.
- Profit from incidental activities (turnover of incidental activities should not exceed 25% of turnover of core activities, else excess shall not be from part of the relevant shipping Income and shall be taxed as per normal provision of the Act).

Core Activities of Tonnage Tax Company

- Activities from operating qualifying ship.
- Other ship related activities such as :
  - Shipping contract in respect of
    - (i) earning from pooling arrangement or
    - (ii) contract of affreightment
  - Specific shipping trade such as
    - On-board or on-shore activities of passenger ships comprising of fares and food and beverages consumed on board.
    - Slot charters, space charters, joint charters, feeder services, container box leasing of container shipping.

Incidental Activities of Tonnage Tax Company

The incidental activities shall be the activities which are incidental to the core activities which are as below,

- aritime consultancy charges,
- income from loading or unloading of cargo,
- ship management fees or remuneration received for managed vessels; and
- maritime education or recruitment fees.

In case the relevant shipping income of a tonnage tax company is a loss, then, such loss shall be ignored for the purposes of computing tonnage income.

Tonnage Income (Section 115VF) & Computation of Tonnage Income (Section 115VG)

As per section 115VF, tonnage income to be computed as per section 115VG (discussed in later para) and income so computed shall be deemed to be profit chargeable under the head PGBP and relevant shipping Income (as discussed above) shall not be taxable.

The tonnage income of tonnage the tax company shall be the aggregate of tonnage income of each qualifying ship.

Tonnage income of each qualifying ship shall be daily tonnage income multiplied by,

- No of days in previous year or.
- No of days in part of previous years in case company has operated ship as a qualifying ship for only part of previous year.

Daily tonnage income shall be as per following table:

Qualifying ship having net tonnage	Amount of daily tonnage income
(1)	(2)
up to 1,000	₹ 70 for each 100 tons
exceeding 1,000 but not more than 10,000	₹ 700 plus ₹ 53 for each 100 tons exceeding 1,000 tons
exceeding 10,000 but not more than 25,000	₹ 5,470 plus ₹ 42 for each 100 tons exceeding 10,000 tons
exceeding 25,000	₹ 11,770 plus ₹ 29 for each 100 tons exceeding 25,000 tons.

Example of computation of tonnage income: Co A, tonnage of tax company, owned qualifying ships details of which are as follows:

Name of Ship	Net tonnage as per valid certificate	No of days in operation during previous year
Ship – B	751	365
Ship – C	1749	180
Ship – D	3579	280

Computation of Tonnage Income:

Name of Ship	Net tonnage as per valid certificate	Net tonnage Rounds off nearest to '100	Daily tonnage Income (Rs)			No of days in operation during previous year	Tonnage Income for previous year (Rs)
			up to 1000 Tons	> 1000 Tons but < 10000 Tons	Total		
			(Rs.70 * tonnage / 100)	Rs.700 + (Rs. 53 * tonnage / 100)			
(A)	(B)	(C)	(D)	(E)	(F)=(D)+(E)	(G)	(H)=(F)*(G)
Ship – B	751	800	560	0	560	365	204,400
Ship – C	1749	1700	700	371	1071	180	192,780
Ship – D	3579	3600	700	1378	2078	280	581,840
Total Tonnage Income for previous year							**979,020**

TTS is a presumptive taxation scheme where taxable income is computed based on net tonnage of qualifying ship operated by company for number of days during the previous year. Hence, as per provision of section 115VL,

- For every loss, allowance or deduction under section 30 to 43B, deemed to have given full effect in that year itself.
- No loss shall be allowed to be carried forward or set-off.
- No deduction allowed under chapter – VIA.
- Claim of depreciation deemed to have been computed and allowed.

Exclusion from provisions of section 115JB (Section 115VO)

Book profit or loss derived from the activities of a tonnage tax company, referred in section 115VI (as discussed above in relevant shipping income), shall be excluded from the book profit of the company for the purposes of section 115JB.

For incomes other than income taxed under TTS, provision of section 115JB is an applicable subject to company which has not opted for concessional tax regime under section 115BAA.

Transfer of profits to Tonnage Tax Reserve Account (Section 115VT)

Tonnage tax company shall require to credit to reserve account ("Tonnage Tax Reserve") ("TTR") an amount not less than 20% of books profit derived from activities referred in section115VI (relevant shipping income as discussed above) for each previous year.

TTR so created shall be utilized by the company within a period of the next 8 years for the purpose of,

> TTS is a presumptive taxation scheme where taxable income is computed based on net tonnage of qualifying ship operated by company for number of days during the previous year.

- Acquisition of new ship for the purpose of business of company (New ship shall not allowed be sold or otherwise transferred, other than in any scheme of demerger by the company to any person at any time before the expiry of three years from the end of the previous year in which it was acquired).
- Until acquisition of new ship, for the purpose of business of operating qualifying ship.
- TTR shall not be utilized for the purpose of.
- Distribution by way of dividend or profit.
- For remittance outside India as profit.
- For creation of any assets outside India.

Where TTR so created for a previous year has not been utilized within a period of 8 years or utilized for a purpose other than as stipulated, then relevant shipping income for that previous year in proportion of unutilized reserve/ mis-utilized reserve bears to total reserve so created for that previous year, shall be taxable in accordance with normal provision of the Act.

Where amount credited to TTR is less than 20% for a previous year, then relevant shipping income for that previous year in proportion to shortfall of TTR bears to minimum amount required to credited TTR for that previous year, shall be taxable in accordance with normal provision of the Act.

If TTR is not created for 2 consecutive previous years, as discussed above, then the option for TTS shall cease to have effect from the 3rd year onward.

Further, where the option for TTS ceases to have effect as discussed above, company has been prohibited to opt for TTS for period of 10 years **(Section 115VS).**

Maintenance and audit of accounts (Section 115VW)

An option for TTS shall not be effective for the previous year unless :

- Separate books of accounts in respect of business of operating qualifying ship are maintained, and
- Furnished Audit Report in Form 66 from Chartered Accountant before specified date as per section 44AB.

Minimum training requirement (Section 115VU)

Tonnage of the tax company shall comply with minimum training requirement in respect of its trainee officer in accordance with guideline framed by the Director-General of Shipping.

Tonnage of the tax company shall be required to furnish a copy of the certificate issued by the Director-General of Shipping along with the return of income under section 139 to the effect that company has complied with the minimum training requirement for the previous year.

If the minimum training requirement is not complied with for any five consecutive previous years, the option of the company for TTS shall cease to have effect from the 6th year onward.

Further, where the option for TTS ceases to have effect as discussed above, company has been prohibited to opt for TTS for period of 10 years **(Section 115VS).**

Applicability of Transfer Pricing Provision to Tonnage Tax Company

Mumbai ITAT, the case of Van Oord India Private Limited v. ACIT – 5(3) Mumbai, [ITA: 7228/Mum/2012] [AY 2007-08] had the occasion to deal with the question whether transfer pricing provision contained in Chapter–X of the Act can also apply to tonnage income determined in accordance with TTS under Chapter – XIIG of the Act.

“If the minimum training requirement is not complied with for any five consecutive previous years, the option of the company for TTS shall cease to have effect from the 6th year onward.

Wherein, ITAT has held that, tonnage income is to be computed based on tonnage capacity and no of days in operation and not at arm's length price. Section 92C prescribed method for computation of arm's length price and no method prescribed which can have application to tonnage income. Thus, machinery provided under Chapter – X to compute arm's length price has failed and in such circumstances, applicability of Chapter – X has to fail.

Accordingly, Chapter–X is invoked in this case to alter rental charges paid to associated enterprise, but it is an item which does not have any effect on income computed under Chapter – XIIG. Hence, Chapter–X has no application in computing the income of assessee chargeable under Chapter – XIIG of the Act.

Deduction u/s 80G for Donation in Kind – Whether Provision Requires a Revisit?

On April 8, 2020, the news was flooded with headlines of Twitter CEO setting aside $1 billion in equity (shares/ securities) to support global relief efforts towards COVID-19. This was in USA. India also has many philanthropists; however, we often do not see Indian donors offering donations in kind (in form of securities, immovable properties, etc.). It results in fewer funds available to charitable organizations. The author in this article analyses the 'why' aspect and concludes that provisions of section 80G require a revisit to allow the Indian donors a tax deduction for donation in kind. Read on …

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Background of section 80G

The term 'donation' has been defined by the Hon'ble Supreme Court in the case of E.T. Commissioner v. P.V.G. Raju AIR 1976 SC 140, 142 as, an act by which the owner of a thing voluntarily transfers the title and possession of the same from herself to another, without any consideration.

The benefit of deduction under section 80G is available to all types of assessees (Individual, HUF, Company, LLP and Partnership Firm) irrespective of their residential status. An assessee can claim deduction for donation of a sum of money to charitable institutions while computing the total income. The amount of deduction would differ depending upon the type of charitable institutions:

1. 100% deduction without any limit
2. 50% deduction without any limit
3. 100% deduction with upper limit
4. 50% deduction with upper limit

The upper limit in case of 3 and 4 will be restricted to 10 % of the adjusted gross total income.

Money has not been defined under Income Tax Law. Section 2(75) of CGST, 2017 defines, "money" means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

Judicial precedents

There had been a diverse set of views on whether donation in kind is permissible for deduction under section 80G or not.

The following judgments held that donation in kind is permissible as a deduction:

- CIT v. Associated Cement Co. Ltd. (1968) 68 ITR 478 (Bom).

> The courts felt that the contention of revenue permitting deduction only for donation in cash is too technical to which the courts could accede. On the other hand, several High Courts have taken a contrary view.

- CIT v. Bangalore Woollen, Cotton and Silk Mills Co. Ltd. (1973) 91 ITR 166 (Mys).
- Saurashtra Cement & Chemical Industries Ltd. v. CIT (1980) 123 ITR 669 (Guj).

It was held that one must look at the substance of the transaction and the underlying purpose of the section. Any other construction of the provision would unnecessarily limit the language of the section and its purpose. The courts felt that the contention of revenue permitting deduction only for donation in cash is too technical to which the courts could accede.

On the other hand, several High Courts have taken a contrary view:

- CIT v. Amonbolu Rajiah (1979) 102 ITR 403 (AP).
- CIT v. Gopal Krishna Singhania (1980) 121 ITR 260 (All).
- CIT v. Smt. Dhirajben R. Amin (1983) 12 Taxman 75 (Guj).

The keywords in the section are "any sum paid by the assessee……..as donations". According to Chamber's 20th Century dictionary, the word "sum" means a quantity of money. It can admit of no meaning which would include within its fold property or a thing also. The plain reading of the provision would mean that only if any sum is paid by way of donation, that the assessee would be entitled to deduction. On the other hand, if the assessee donates a thing or property which may have monetary value, it cannot be claimed as deduction.

In CIT v. Amonbolu Rajiah, Andhra Pradesh HC read down Bombay HC's judgment in the case of CIT v. Associated Cement Co. Ltd. The facts in brief for the case before Bombay High Court was that on 26th December, 1962, the University of Bombay wrote to the chairman of the board of directors of the assessee-company saying that their professor of chemical engineering was carrying out important laboratory experiments on certain chemicals and for that purpose he desired to institute pilot plant experiments on the problem. One of the items of the pilot plant was a "rotary experimental kiln". Since the assessee fabricated all their rotary kilns for cement making in its own workshop, the university requested the assessee to persuade the directors of the Associated Cement Company to arrange for the fabrication of a small rotary experimental furnace for the department which will enable the university to complete an investigation of national importance. Pursuant to this request, the board of directors sanctioned a sum of Rs. 5,000 for the pilot kiln Department of Chemical Technology, University of Bombay. The pilot kiln was then prepared at a cost of Rs.

6,600. By another resolution, the board of directors sanctioned a further sum of Rs. 1,600. The Income-tax Officer was of the view that the rebate under section 15B was not admissible. The Appellate Assistant Commissioner as well as the Tribunal reached a contrary conclusion. The Tribunal observed:

> "It is learnt that the department is inclined to allow donations which take the shape of stock-in-trade as the only exception to the legal requirement of cash. If so, the instant claim too is eligible by a slight extension of the same principle. The materials and labour have gone out of what otherwise would have gone into cost of production. The Appellate Assistant Commissioner's order is upheld".

Before the learned judges of the Bombay High Court, it was contended that the manner in which the donation was given showed that it was not a sum of money which the assessee paid but the donation was of movable property, *viz.*, the kiln. Characterising the said contention as technical in the extreme, the learned judges observed that if one were to look at the substance of the transaction, there could be no doubt that in substance what the assessee-company gave to the University of Bombay was ultimately a sum of Rs. 6,600. That amount ultimately went out of its coffers and in another shape was received by the University of Bombay. The learned judges said [1968] 68 ITR 478 , 486 (Bom).:

> "In substance, therefore, the amount was paid to the University, though ultimately because of the exertions of the assessee the kiln came to be prepared out of that amount and was handed over to the University. In our opinion, looking to the substance of this transaction there is no doubt that the sum of Rs. 6,600 was paid by the assessee-company as a donation to the University of Bombay. Any other construction upon this transaction would, in our opinion, be unnecessarily limiting the language of the section as well as its purpose".

The Andhra Pradesh HC observed that it cannot conclude from the reading of the Bombay High Court's judgment that donation in kind can also be claimed as deduction. Instead the Bombay HC looked into the substance of the transaction and based on which it was concluded that it was the amount which was donated and not the kiln.

The fact of the case before the Andhra Pradesh High Court was that the assessee had entered into an agreement with the Zilla Parishad to donate necessary funds in order to construct a school building. The contractor was appointed under an arrangement made between the Zilla Parishad and the assessee. The assessee was advancing,

"The Andhra Pradesh HC observed that it cannot conclude from the reading of the Bombay High Court's judgment that donation in kind can also be claimed as deduction. Instead the Bombay HC looked into the substance of the transaction and based on which it was concluded that it was the amount which was donated and not the kiln.

from time to time, various amounts to the contractor to construct the school building. The arrangement was made to ensure that the amount was actually spent for the construction of building and nothing more. The Zilla Parishad, took possession of the building from the contractor and commenced the functioning of the High School in that building. It was held that the arrangement itself indicates that the intention was to donate the money earmarked to construct a girls' school building. The Tribunal, therefore, was right in concluding that it was a donation of money and not in kind.

In Smt. Dhirajben R. Amin case, the assessee donated shares to two charitable trusts and claimed deduction under

section 80G on the ground that even donations in kind qualified for deduction. The Gujarat High Court after referring to aforesaid decisions observed that it is crystal clear that the provisions of section 80G of the Act would be attracted only if the donation is in cash and not in kind. However, to decide whether a donation is in cash or kind, the court must look to the substance of the donation and not merely the form in which it is made. If on facts, having regard to the substance of the transaction, the court is satisfied that is essentially a donation is in cash, the rebate under section 80G would be admissible to assessee. If it is a donation is in kind, it would clearly fall outside the purview of section 80G of the Act.

All the three judgments CIT v. Amonbolu Rajiah, CIT v. Gopal Krishna Singhania and CIT v. Smt. Dhirajben R. Amin (1983) 12 Taxman 75 (Guj) were subsequently affirmed in H. H. Sri Rama Verma v. CIT (1991) 57 Taxman 149 (SC).

Further, Explanation 5 was inserted with effect from April 1, 1976, *"For the removal of doubts, it is hereby declared that no deduction shall be allowed under this section in respect of any donation unless such donation is a sum of money".*

The memorandum explaining the provisions clarifies that the deduction under this section is available in respect of "sums" paid by the taxpayer to funds, charitable institutions, etc., referred to in that section, and not to donations in kind. The provisions of section 80G before the amendment were interpreted in certain judicial pronouncements to include even donations in kind. As donations in kind were not intended to qualify for this concession, it was proposed to make a provision for the removal of doubts clarifying that no deduction will be allowed under section 80G unless the donation is a sum of money, that is to say, it is made in cash (or by cheque, bank draft, etc.) and not in kind.

Furthermore, explanation 5 does not mandate that the payment should be made directly to the donee.

We can summarize the above discussion as under:

Nature of Donation	Eligible for deduction u/s 80G
Donation in cash	Yes
Donation where substance of transaction is essentially a sum of money (e.g., Payment for Zilla Parishad Building as discussed in CIT v. Amonbolu Rajiah)	Yes
Donation in kind (e.g., Donation of shares, painting, buildings, clothes, etc.)	No

Fixed Deposit – whether a 'sum of money'

In Leena A. Sarabhai v. ITO [1986] 18 ITD 177 (AHD.) (TM), the assessee had claimed deduction under section 80G in respect of the donation of fixed deposit receipt.

The Accountant member took the view that the fixed deposit receipt could be treated as 'a sum of money', while the Judicial Member held that it could not be so treated. So, the matter was referred to the Third Member and it was held that in order to qualify for deduction under section 80G, the donation has to be 'a sum of money'. However, the expression 'a sum of money' does not always mean 'cash' and it is desirable to consider the substance of the transaction.

Although it has been held that donation of a fixed deposit will not be allowed as deduction under section 80G. However, there was an interesting remark by the Accountant Member, relevant extract reproduced:

"Incidentally, a question was put to the learned departmental representative as to what can be the intention behind denying the benefit of

> Since deduction of donation in kind is not allowed to the donor, the charitable institute has lesser funds at its disposal to undertake charitable activities.

section 80G, to donation in kind? No convincing reasons came to be advanced except that of difficulty in putting the value in money terms of the donation in kind. I have tried to find out convincing reasons for the same but in vain. Even no light could be drawn from judicial pronouncements or notes on clauses of amending Act. *This further fortifies the views that substance theory of donation in cash still holds good. To put it simply, if the donation is convertible into money or is required to be converted into money at future date because of the characteristic of donation as put in contradistinction to donation in kind simpliciter which cannot be converted into money unless something in the nature of transfer involving sale or exchange takes place consequent to decision of the trustees of the charitable institution, the donation still retains the character of donation in cash for the purpose of benefit under section 80G".*

Case Study to understand tax impact under different scenarios

Since deduction of donation in kind is not allowed to the donor, the charitable institute has lesser funds at its disposal to undertake charitable activities. For e.g., Mr. A is holding 50,000 shares of a listed company purchased 10 years ago at a price of Rs. 100 per share. The share value has risen to Rs. 1200 per share. Since the donation of shares is not eligible for deduction under section 80G, Mr. A decides to sell the shares and then donate the sum of money.

Scenario A: Deduction available under section 80G is 100%

Particulars	**(i)- Mr. A Sell shares and then donate sum of money**	**(ii)-Mr. A donate shares under existing provisions-deduction not available for donation in kind**	**(iii)-Mr. A donate shares and presuming deduction is available u/s 80G**
Sale Consideration (A)	60,000,000	-	60,000,000
Less: Cost of Acquisition	5,000,000	-	
Capital Gain	55,000,000	-	-
Tax to be paid on CapitalGain @11.96% (presuminglimit of Rs.1 Lakhs has already been utilised and tax payer falls under the highest tax bracket)(B)	6,578,000	-	-
Amount available to Mr. A for donation/Funds at disposal for charitable purpose (C)	**53,422,000**	**60,000,000**	**60,000,000**
Tax Benefit under section 80G@ 35.88% (presuming 100% deduction is available)[(D)= (C)*35.88%*100%]	**19,167,814**	**-**	**21,528,000**
Net Tax Benefit to assessee [E=(D)-(B)]	**12,589,814**	**-**	**21,528,000**
Effective% Tax Benefit [(E)/(A)]	20.98%		35.88%

On comparison of the above, we can summarize that:

a. in scenario A(i), the assessee effectively enjoys a tax benefit 21% only despite falling in the highest tax bracket of 35.88%.

b. in scenario A(ii), the assessee enjoys no tax benefit for doing charity.

c. in scenario A(iii), the charitable institution will have more funds for disposal [approx. 12% more as compared to scenario A(i)] and the assessee enjoys a tax benefit of 35.88% equalling the tax bracket in which the assessee falls.

Scenario B: Deduction available under section 80G is 50%

Particulars	**(i)-Mr. A Sale shares and then donate sum of money**	**(ii)- Mr. A donate shares under exisiting provisions-deduction not available for donation in kind**	**(iii)-Mr. A donate shares and presuming deduction is available u/s 80 G**
Sale Consideration(A)	60,000,000	-	60,000,000
Less:CostofAcquisition	5,000,000	-	
CapitalGain	55,000,000	-	-
Tax to be paid on Capital Gain @ 11.96% (presuming limit of Rs.1 Lakhs has already been utilised and tax payer falls under the highest tax bracket) (B)	6,578,000	-	-
Amount available to Mr. A for donation/ Funds at disposal for charitable purpose (C)	**53,422,000**	**60,000,000**	**60,000,000**
Tax Benefit under section 80 G @ 35.88% (presuming 50% deduction is available) [(D)= (C)* 35.88% *50%]	**9,583,907**	**-**	**10,764,000**
Net Tax Benefit to assessee [E=(D)-(B)]	**3,005,907**	**-**	**10,764,000**
Effective% Tax Benefit [(E)/(A)]	5%		18%

On comparison of the above, we can summarize that:

a. in scenario A(i), the assessee effectively enjoys a tax benefit 5% only.

b. in scenario A(ii), the assessee enjoys no tax benefit for doing charity.

c. in scenario A(iii), the charitable institution will have more funds for disposal [approx. 12% more as compared to scenario A(i)] and the assessee enjoys a tax benefit of 18% equalling 50% of tax bracket in which the assessee falls.

Laws of other countries - whether permit deduction for donation in kind?

If we refer to the tax laws of other countries like the USA, UK, Canada etc. all such countries allow deduction for donations in kind (subject to various conditions and valuation rules).

USA tax laws allow deduction for donation of a) household goods b) Jewellery and Gems c) Paintings, Antiques and other objects of art d) Cars, Boats and aircraft e) Inventory f) Patents

g) Stocks and Bonds h) Real Estate etc.

According to Cocatalyst research, in the USA, stock donations reached $21 billion in 2018, up 62% annually from the previous year[1].

Similarly, UK Tax Laws allow deduction for donation of a) shares or securities b) land or buildings. UK Tax laws permit deduction for donation in kind even in cases where shares are transferred to a charity at a concessional tax amount. An example as available on UK Government website has been reproduced below[2]:

John owns 1,000 shares in XYZ plc, a company quoted on the London Stock Exchange. The shares are valued at £4.50 each. He would like to give the shares to a charity but needs to realise some money from them. So, he agrees to sell them to the charity for £2 each. As a token of gratitude, the charity gives him a book worth £25.

The deduction that the John can make is:

- the value of the shares - £4,500
- less the amount the charity pays - £2,000
- equals - £2,500
- less the value of the benefit received - £25
- total - £2,475

Also, Canada Tax laws allows deduction for donation of property such as capital property [(a) cottages, (b) securities such as stocks, bonds, and units of a mutual fund trust (c) lands, buildings, and equipment used in a business or a rental profession] and personal-use property [(a) prints, drawings, paintings, sculptures, or other similar works of art (b) jewellery (c) rare folios, rare manuscripts, or rare books (d) stamps (e) coins[3]. The treatment of capital for donation in kind would depend on the nature of assets and the nature of donee[4].

Proposed way forward

The government, to ensure, that genuine charitable activities are being undertaken has taken various measures under different Acts resulting in increased compliance for Charitable organizations:

- Charitable organizations receiving CSR funds from Corporates need to file form CSR-01 with the Ministry of Corporate Affairs. The MCA portal shall generate a unique CSR registration number on submission of the form. Only such charitable organizations will be eligible to receive CSR funds.
- The designated bank account, in which all the foreign contributions are received, should be opened with the specified branch of SBI at New Delhi only.
- Registration/approval under section 12AB, 10(23C)(vi), 80G has to be obtained every five years.
- Filing of statement of donation received with the Income Tax Department.

> If we refer to the tax laws of other countries like the USA, UK, Canada etc. all such countries allow deduction for donations in kind (subject to various conditions and valuation rules).

According to a Brookings India report - The promise of Impact Investing in India (July 2019) - India faces an annual financing gap of $565 billion in meeting its Sustainable Development Goals. According to the British Council (2018), The State of Social Enterprises in Bangladesh, Ghana, India and Pakistan, in a survey of Indian social enterprises, 57% identified access to debt or equity as a barrier to growth and sustainability.

To ensure that more funds are available for disposal to charitable organizations and

[1] *https://www.cocatalyst.org/articles/stock-donations-reach-21-billion-and-up-62-annually*

[2] *Chapter 5: Giving land, buildings, shares and securities to charity - https://www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-5-giving-land-buildings-shares-and-securities-to-charity#chapter-522-a-qualifying-interest-in-land*

[3] *https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/p113/p113-gifts-income-tax.html*

[4] *https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4037/capital-gains.html*

> USA tax laws allow deduction for donation of a) household goods b) Jewellery and Gems c) Paintings, Antiques and other objects of art d) Cars, Boats and aircraft e) Inventory f) Patents g) Stocks and Bonds h) Real Estate etc.

encouraging philanthropic sentiments, the Government may consider permitting deduction under section 80G for donation in kind. The main issue while allowing deduction for donation in kind is to arrive at the fair value of assets transferred to ensure provisions are not misused. To start with, it can be considered to permit deduction for donation in securities with following conditions:

- Securities are listed on a recognized stock exchange.
- Securities are long term capital asset.
- Securities must be transferred in Demat form and the purpose code for off-market transfer has been correctly mentioned.
- Prescribed statement is filed by donee organization with the Income Tax authority.

We can understand that in earlier decades, it would not have been possible for the Tax Department to keep track of donation of securities. However, lately, the securities market has developed and there are adequate controls in place by SEBI, NSDL and other agencies. Some of the relevant controls in the context of discussion are:

a) Shares are compulsorily to be held in Demat form.

b) PAN is compulsory for trading and Demat account.

c) If shares are transferred for donation purpose through off-market then as per NSDL guidelines,[5] the purpose code "93-Donation" has to be mentioned while submitting the Delivery Instruction Slip to the Depository Participant.

d) ISIN (International Securities Identification Number) a unique code is being used to identify securities.

Further, the Income Tax Department from April 1, 2021, has made it mandatory for charitable institutions to file a statement containing donation details to the prescribed income tax authority. The statement

> The main issue while allowing deduction for donation in kind is to arrive at the fair value of assets transferred to ensure provisions are not misused.

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form prescribed has the column on whether donation has been received in cash/banking channels or in kind. The Government may add relevant columns to collect further details, in case, donation is received in kind, like ISIN of the securities (shares, government bonds, etc.), quantity, date of receipt in the Demat account of the charitable institute, etc.

The Hon'ble Finance Minister in her maiden budget presented in July 2019 proposed to initiate steps towards creating an electronic fund raising platform - a social stock exchange - under the regulatory ambit of SEBI for listing social enterprises and voluntary organizations working for the realization of a social welfare objective so that they can raise capital as equity, debt or as units like a mutual fund. The proposal is a radical experiment to provide new and cheaper sources of financing.

To ensure that new sources of finances are available to charitable organizations, the Government proposes to have social enterprises listed on exchanges. Thus, in the near future, it can become possible to encourage charitable sentiments of Indian people and to ensure maximum benefit is available to the charitable institution, the Government will rationalize tax provisions permitting deduction of donation in kind under section 80G. ■■■

[5] *NSDL Participant Interface Circular No. NSDL/POLICY/2019/0041 dated July 15, 2019*

Fraud Risk in Technology led Finance Function

In age of technological advancement, every organisation either try to set up their own captive SSC or outsources processes to BPOs to take the benefits of cost savings and process efficiencies. Organisations use cutting-edge technologies to improve the quotient of savings. The evolving technologies coupled with high volume of transactions increases the potential risk of fraud, which occur in almost all organizations. More than half of the frauds occur in operations, accounting, executive/ upper management and sales functions. Considering the high volume of transactions, it is not possible to check every transaction and the traditional checker or controls are not adequate in present scenario. This creates the need for an improved controls framework and fraud analytics. From ineffective implementation of policies and procedures to lack of awareness among employees about anti-fraud controls, what can be the major reason behind the frauds and what can be done as a solution. Read on....

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Introduction and depth of fraud

Fraud is one of the biggest threats to every organisation. The manner, depth and scale of fraud differ according to industry and function. Some of the frauds like duplicate payments, payment to dummy or non-existent employees are common across every organization while revenue related frauds would depend on the type of industry. Every organisation suffers from fraud. Some admit it while others do not admit in order to avoid negative publicity. While the owners and senior management are experts in managing business, they are not aware of the fraud mechanisms. Some even know the mechanisms but still ignore this risk, assuming fraud cannot impact their organisation. Organisations lose significant amounts of money simply because of lack of anti-fraud controls.

The size of the organisation and the complexity of the business are also relevant from a fraud risk perspective. Smaller organisations often lack robust internal controls and segregation of duties. This makes smaller organisations more susceptible to fraud risk.

It is difficult to measure the exact scale of fraud. Many of the frauds go undetected. In some

cases, frauds are not reported even after detection due to fear of negative publicity. Due to this, any study conducted is not able to provide an exact amount of fraud; but can only present an indication to the extent of the problem. The Association of Certified Fraud Examiner(ACFE) survey based on 2504 real cases of occupational fraud that were investigated between January 2018 and September 2019 across 125 countries and 23 industries caused total losses of 3.6 Billing USD. Some of the following key findings:

- Typical fraud cases last 14 months before detection and caused a loss of USD 8300 per month.
- ACFE estimates that organizations lose 5% of revenue to fraud each year with average loss per case of 15,09,000 USD.

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- Corruption was the most common scheme in every global region.
- Asset misappropriation schemes are most common but least costly.
- Financial statement frauds are the least common and the most costly frauds.
- 43% of fraud schemes were detected by tips and half of these tips came from employees.
- A lack of internal controls contributed to nearly one-third of frauds.
- Billing, payroll and payment tampering fraud risks were more likely in small business as compared to large organizations.
- Presence of anti-fraud controls is associated with lower fraud losses and quicker detection.
- More than half of the occupational frauds came from operations (15%), Accounting (14%), Executive/upper management (12%) and Sales (11%).
- Owners / executives committed only 20% of frauds but they caused the largest losses.
- 46% of victim organisations declined to refer cases to law enforcement because their internal discipline was sufficient.

According to the ACFE, there are three main categories of fraud: asset misappropriation, fraudulent financial statements and corruption. While a majority of frauds are a result of inadequate anti-fraud controls, ethics or governance, it is very difficult to identify corruption related frauds as many transactions may be in cash and outside the books. Hence, this article primarily focuses on the first two categories of fraud, causes leading to such frauds and potential solution. Further, it is also observed that accounts/finance function is directly or indirectly involved in most of the frauds. Considering this, we will focus on the finance function which is primarily shared services function or external BPO company.

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Many people feel that by outsourcing the process, they outsource the fraud risk as well to the other organization but is not true in reality. The outsourcing partner takes care of the process as per the agreed process, but the client

organization management is accountable for fraud risk. Finance function has a key role in transaction processing and reporting. Considering this, it is critical to understand the shared services / BPO environment who are key players from the process delivery perspective.

Shared service centre / BPO environment: past and present

Today, almost every organisation either has their own shared services centres (SSC) or outsources their routine processes to reduce the cost. The SSC / BPO model is cost effective but at the same time there are certain risks associated with such delivery models. A huge number of transactions are processed in shared services or outsourcing company for various clients. Considering the volume of the transactions, it is not possible to check each transaction thereby, increasing the risk of fraud. Further, BPOs generally employ low skilled resources to minimise the cost and are not adequately trained on anti-fraud controls. Hence, the potential risk of fraud is higher in such an environment.

> Fraud is possible in every business process although some processes/ functions are more vulnerable based on historical data. For example, Executive/ Upper management, Finance & Accounting, Sales, and Operations.

Consider the following few examples of simple changes in shared services environment:

Past	Present
Minimal use of applications. Most of the data in hard copy paper format.	Multiple applications and most of the data are in digital form.
Hard copy invoices physically stamped as paid, rejected or amended.	All invoices are digital and controlled on ERP/ Workflow tools.
Payments made by cheque and storing cheque book in lock.	Approvals and payments are online with defined role- based access controls.
Original receipts / invoices were attached with expense claims.	Scanned images of the expense receipts / invoices are attached with expense claim.
Purchase orders were signed and sent to suppliers.	Computer output / scanned image of purchase order sent to suppliers.
Hard copy of purchase invoices.	Purchase invoices are booked directly in computer system through Electronic Data Interchange (EDI).

Today's finance functions are executed using advanced enterprise resource planning (ERP) applications, robotics process automation (RPA), artificial intelligence (AI) and other cutting-edge technologies for business. Due to this, the inherent risk of fraud by manipulating these technologies is very high. While the risk of fraud is inherent in most of the processes, many organisations still use the traditional manual controls like maker-checker controls, audit by team lead, control testing by internal/ statutory audit team, etc. However, these control mechanisms are not secure enough due to today's technological environment.

Fraud susceptible processes and Inherent fraud risk

Fraud is possible in every business process although some processes / functions are more vulnerable based on historical data. For example, executive/upper management, finance & accounting, sales, and operations. Billing and payment processing have a higher risk of fraud as compared to payroll and expense reimbursements. Further, expense claims are the most common example of fraud in every organisation but its impact is miniscule if we compare them against other frauds like the supplier payments and change of revenue numbers in financial statements. The following are common transactional processes (except financial services) and sample fraud risks:

Procure to Pay

- Duplicate/ dummy invoice processing/ payment.
- Payments exceeding price variance tolerance.
- Multiple payments to one-time vendors.
- Alteration to payment batches before approval on bank site.
- Splitting PO to bypass approval limits.
- Post-facto purchase orders.
- Order to cash
- Unrecorded sales or receivables.
- Unusually high credit limits.
- Billing to fictitious customers.
- Unusually high discounts and waivers to related parties.
- Overbilling to customers.
- False rebates or refunds to customers.

Travel and Expenses

- Expense claims by terminated or non-existent employees.
- Duplicate expense claims (of same expense item) on different dates.
- Hire to retire
- Salary payments to terminated/ non-existent employees.
- Excessive over-time hours.
- Major variations in gross pay, deductions, hourly rates, salary amounts, etc.
- Record to analyse
- Journal entries impacting supplier and customer control accounts.
- Unauthorized Journal entries.
- Journal entries impacting Cash / Bank account.
- Aged open items in balance-sheet reconciliations.
- Huge old balances in clearing accounts.

Key reasons leading to frauds

Why do frauds go undetected?

- Business models are becoming complicated and processes are being carried out with the help of technology, in some cases with minimal manual intervention. However, controls do not keep pace with changing technology risks.
- Assumption that internal and statutory audits will detect fraud; while in reality, they might be focusing on

Some key reasons	Examples of related fraudulent transactions
Absence or ineffective implementation of policies and procedures.	• Unauthorised approval of transactions. • Approval of payments by single person as against company policy of joint / multiple approvals.
Lack of awareness among employees about anti-fraud controls.	• Altering bank details and making payment to wrong accounts. • Ignoring system alerts about potential duplicate expense claim or invoice.
Lack of segregation of duties (SoD) and excessive controls.	• Invoice processing and payment by same person. • Payment processing and reconciliations by same person.
Inadequate/ ineffective application and process controls.	• High price tolerance limits between PO and invoice, leading to potential excess payment. • Issue more than existing inventory (Negative inventories). • Payment without adjusting advance.

> Review of payment batches by an authorised person appears to be enough but it is very difficult to check critical fields for each payment. Further, manual controls are person specific.

manual controls rather than application controls.

- Absence of fraud analytics solution.
- Sample testing of transactions provide limited assurance.
- Review of payment batches by an authorised person appears to be enough but it is very difficult to check critical fields for each payment. Further, manual controls are person specific.

What needs to be done to minimise fraud risk?

It is not possible to eliminate fraud risk. Organisations can certainly reduce it by creating a strong control environment and enforcing comprehensive fraud prevention policies. Traditional control mechanisms are clearly not adequate. Mitigation of today's technology led fraud risks can be achieved through:

- educating employees,
- creating fraud risk awareness,
- deploying robust digital application controls,
- restricting access controls,
- strengthening general controls environment,
- implementing segregation of duties, etc.

While strong control environment is essential, organizations also need a strong technology solution which can provide assurance to management on the entire population of data rather than comfort on sample tested transactions.

Fraud Monitoring and Analytics

Fraud risk monitoring and analytics can be carried out through customized technology solutions, or use of Computer Assisted Audit Techniques (CAAT) tools. Whichever tool or solution is used by organisation, the solution should be able to help management to :

- Identify suspicious patterns in the entire population of data.
- Test entire population of data as fraudulent transactions may not be captured in samples selected for testing.

Conclusion

- In today's technology led environment, it is advisable to place maximum reliance on automated controls rather than testing and relying only on manual controls.
- It is strongly advised to develop a technology-based fraud analytics solution which can provide assurance on the entire population of data rather than sample tested transactions.
- Last but not the least, it is critical to have a strong governance, to perform root cause analysis on an on-going basis and to rectify the errors to minimize repetition of the same.

Using these measures the organisations will be able to reduce the chances of frauds. The measures will enable organisations to have sustainable processes and strong control environment. ■■■

Initial Public Offerings–Unlocking Values of a Company

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Trends indicate that a number of initial public offerings (IPO) hitting the market this year are high. The valuations are high as investor sentiment is positive and expectation is that economy would rebound with vigour as the second wave of COVID – 19 is over. CFOs are more sought after resource during IPOs and are being offered handsome remuneration alongwith wealth creating esops. Read on…

What is an IPO?

Initial Public Offer (IPO) is an event where the value of an Issuer or Company is unlocked. Typically, IPO is carried out when the valuation of the business reaches at least Rs.1000 Crore so as to attract investors' interest. It is that stage of the growth process of the issuer, where the organisation is mature enough to face the rigors of Securities and Exchange Board of India (SEBI) Issue of Capital and Disclosure Requirements (ICDR) Regulations, 2018 (as amended from time to time), and has the potential to grow further along with the benefits and responsibilities to the public shareholders. It is an event where the management of the Company invites the public to participate in the business to be part of the future growth. The funds raised during the IPO would fuel growth and significantly transform the business trajectory of the Issuer Company.

Why IPO is Done?

Generally, there are two kinds of issues, Primary and Secondary. The primary issue is where funds are raised into the Company for various purposes and fresh Equity Shares are issued. Secondary issue or Offer for Sale is where existing shareholders are given exit and interested investors who believe in the business are offered for sale. In this issue, the existing shares would be offered for sale for subscriptions. Issuer can either make primary issuance or secondary issuance or a combination of the both. Primarily, IPO is carried out due to the following factors:

- To raise money from public for business expansion so as to maintain optimum capital structure

- To retire existing debt and deploy the cash flows effectively into the business.
- To give exit to the early investors who believed in the business, when the business was small.
- Listing provides liquidity to the Equity Shares of the Company which enables promoters and investors to monetise the investment on exchange platforms.

History of IPO

Securities and Exchange Board of India (SEBI) was first established in 1988 as a non-statutory body for regulating the securities market. It became an autonomous body on 12 April 1992 and was accorded statutory powers with the passing of the SEBI Act 1992 by the Indian Parliament.

Earlier, prior to the setting up of SEBI, the Capital Issues (Control) Act, 1947 (CCI) governed capital issues in India. The main objectives of this Act were: (i) to ensure that investment in the private corporate sector does not violate priorities and objectives laid down in the Five Year Plans or flow into unproductive sectors; (ii) to promote the expansion of private corporate sector on sound lines in general, and further the growth of particular corporate enterprises having sound capital structure; and (iii) to distribute capital issues time-wise in such a manner that there is no overcrowding in a particular period. CCI used to fix the size and price of the offer. CCI was repealed by Capital Issues (Control) Repeal Act, 1992 and SEBI Act, 1992 which has come into force on 29th May, 1992.

However, following the introduction of disclosure based regime under the aegis of SEBI, companies can now determine issue price of securities freely without any regulatory interference, with the flexibility to take advantage of market forces.

The public offer issuances are governed by SEBI in terms of SEBI (ICDR) Regulations, 2009. SEBI framed its Disclosures and Investor Protection (DIP) guidelines initially for public offerings which were later converted into Regulations, i.e., in 2009 by way of ICDR Regulations. The SEBI DIP Guidelines, and subsequently ICDR Regulations, over the years have gone through many amendments in keeping pace with the dynamic market scenario. SEBI (ICDR) Regulations, 2018 (as amended from time to time) provide a comprehensive regulatory framework which governs the various aspects of issuing of securities by the companies to the public.

Process of IPO

Before a company approaches the capital markets for listing either to raise money by the fresh issuance of securities or by offer for sale, it has to make sure that it is in compliance with all the requirements of SEBI (ICDR) Regulations, 2018 (as amended from time to time) and meets the eligibility criteria for issuing securities.

“Securities and Exchange Board of India (SEBI) was first established in 1988 as a non-statutory body for regulating the securities market. It became an autonomous body on 12 April 1992 and was accorded statutory powers with the passing of the SEBI Act 1992 by the Indian Parliament.

The senior management team prepares the five-year business plan and initiates discussions with merchant bankers regarding the feasibility of launching the issue. The Merchant Bankers are those specialised intermediaries registered with SEBI, who perform due diligence on the Issuer business and ensures compliance with ICDR Regulations before the offer document which is called Draft Red Herring Prospectus (DRHP) is filed with the SEBI. Merchant Bankers position the Issuer Business to the investors and play a vital role in assisting management to select the right Qualified Institutional Investors who believe in the business model of the Issuer.

The Board passes the resolution to launch the IPO process.

The IPO process begins with the appointment of SEBI registered merchant bankers. The Management briefly specifies their IPO objectives to the bankers. Based on the inputs from merchant bankers, Management decides on the size and objectives of the offer. Size of the offer depends upon various factors like whether it is primary or secondary offer. In case of primary offer, the management has to specify the utilisation of proceeds precisely and only 10% can be utilised for general corporate purposes. The size of the offer and mix of the offer play a vital role in successful IPO and listing. The offer can be primary or secondary or a combination of both. In the recent past, complete secondary (offer for sale by promoters/investors) offers have been well received by the investors and market.

Once the merchant bankers are appointed, other intermediaries like domestic and international lawyers, advertisement agencies, Industry Experts, Registrar to the issue, Printers to the issue are on-boarded.

Appointment of various committees' required under SEBI (LODR) Regulations, 2015 are required to be appointed. Independent Directors if not already appointed, would need to get appointed. Certain mandatory committees like Audit Committee, Nomination and Remuneration Committee, CSR committee and Risk Committee need to be formed with majority of members being independent directors.

> "In case of primary offer, the management has to specify the utilisation of proceeds precisely and only 10% can be utilised for general corporate purposes.

The initial document to be filed with SEBI is called Draft Red Herring Document (DRHP). It is a draft document as the name indicates it. The DRHP provides important information about the Company, its business, and the Industry it is operating in, pre and post capital structure, financial information, risk factors amongst other important information which is otherwise not available to the public. All the information in the DRHP is vetted by lawyers appointed by Lead Managers and a due diligence certificate would be submitted by the Lead Managers as per Form A of Schedule V of SEBI (ICDR) Regulations, 2018 (as amended from time to time) which inter-alia mention the process followed for disclosures required to be made in DRHP.

The DRHP document also provides the reasons why the Company is raising funds and where these funds will be utilised. The DRHP however does not include key details about the issue like the price at which the securities will be offered and size of the issue.

Schedule VI of SEBI (ICDR) Regulations, 2018 provides the list of disclosures categorised into various sections, to be made in DRHP. The disclosures broadly are as follows:

> "Certain mandatory committees like Audit Committee, Nomination and Remuneration Committee, CSR committee and Risk Committee need to be formed with majority of members being independent directors.

1. Disclosures to be given on cover pages
2. Table of contents
3. Definitions and Abbreviations related to Conventional or general terms, Issuer related terms, Industry related terms and Abbreviations.
4. Summary of the offer document
5. Risk Factors
6. Introduction
7. General Information
8. Capital Structure
9. Particulars of the Issue
    a. Objects of the Issue
    b. Requirement of funds
    c. Funding Plan (Means of Finance)
    d. Appraisal

e. Schedule of implementation

f. Deployment of funds

g. Interim use of Funds

h. Expenses of the Issue

i. Basis for Issue Price

j. Tax Benefits

10. About the Issuer

a. Industry Overview

b. Business Overview

c. Key Industry Regulations

d. History and Corporate structure of the Issuer

e. Shareholders' agreements and other agreements

f. Management

i. Board of Directors

ii. Compensation of Whole-time Directors

iii. Shareholdings

iv. Interest of Directors

v. Management Organisation Structure

vi. Corporate Governance

vii. Key-Managerial Personnel

viii. Promoter/Principal Shareholders

ix. Dividend Policy

11. Financial Statements

12. Legal and Other information

a. Outstanding litigations and material developments

b. Government Approvals

13. Information with respect to group companies

14. Other regulatory and Statutory Disclosures

15. Offering Information

16. Any other material disclosure as considered necessary

17. Other Information

> The initial document to be filed with SEBI is called Draft Red Herring Document (DRHP). It is a draft document as the name indicates it.

CFO plays a vital role in providing the information accurately and positioning the Company to Lead Managers, so that no information is excessively highlighted or omitted in the DRHP document. More importantly, sections like Risk Factors, Capital Structure, Financial Statements, Legal and other information and information with respect to group companies are key sections where the CFO needs to pay attention while disclosing the information.

Financial information in the offer document is divided into two parts viz., restated financial information and other Information. The restated consolidated financial information for the last three preceding financial years and for stub period if any, are to be submitted, which shall be based on the same set of accounting policies as those followed in the current year, provided that in case, there are changes in the accounting policies, the results of previous years shall be restated as per the present accounting policies, to make it comparable with current year results; This is a crucial milestone for any company to achieve and CFO's play a significant role in getting this information prepared and audited by statutory auditors. Unless a robust financial close process is in place, one cannot achieve timely submission of financial information to form part of the offer document.

> CFO plays a vital role in providing the information accurately and positioning the Company to Lead Managers, so that no information is excessively highlighted or omitted in the DRHP document.

The Financial Information disclosed in the offer document is extracted from the Board approved, signed and audited financial statements of the Company of various years. Lead Managers require Comfort

Letters or a circle ups from statutory auditors for all the financial information disclosed in DRHP. Some of the additional certificates need to be issued by Statutory Auditors which otherwise do not form a part of the financial statements are as follows:

1. Auditors' Examination Report on Restated Consolidated information for the last three financials years and for stub period if any.
2. Restated Consolidated Balance Sheet
3. Restated Consolidated Profit and loss
4. Restated Consolidated statement of cash flows
5. Restated Consolidated Statement of changes in equity
6. Statement of Significant Accounting Policies
7. Notes to financial statements
8. Reconciliation of audited CFS equity and restated CFS equity and profit/(loss) should be presented in columnar format

> The Financial Information disclosed in the offer document is extracted from the Board approved, signed and audited financial statements of the Company of various years.

Other Information

9. Earnings per share – basic and diluted
10. Return on net worth
11. Net Asset Value per share
12. EBIDTA
13. If the proceeds of the offer, are to be utilised for the acquisition of one or more material (contributing more than 20% of turnover, profit before tax or net worth) business, the audited financial statements of the last three years and stub period if any of that business are to be included in the offer document.
14. The issuer is to provide proforma financial statements as certified by the statutory auditor, of all the subsidiaries or businesses material to the consolidated financial statements where the issuer or the subsidiaries have made an acquisition or divestment including deemed disposal after the latest period for which the financial information is included in the offer document.
15. Statement on Impact of Audit Qualifications in the format specified by SEBI from time to time in case of any audit qualifications of last three financial years and stub period.

Officials of SEBI at various levels examine the compliance with SEBI (ICDR) Regulations, 2018 (as amended from time to time) and ensure that all necessary material information is disclosed in the draft offer documents. The initial document is prepared by the underwriters of the issue which is called Draft Red Herring Prospectus (DRHP), which does not contain complete particulars of the price at which the Equity Shares are issued and the size of the Offer. The DRHP document acts as a source of information so that investors can get insights on why they should even consider investing in the company IPO. This document is filed with the Securities and Exchange Board of India (SEBI), which has made it mandatory for companies to file a DRHP. The SEBI then would review this document and ensure that adequate disclosures are made. It must be remembered that the document is a draft document, reviewing which the SEBI may ask the merchant bankers to make adequate disclosures if needed. The SEBI does this in the interest of the investors as otherwise, the DRHP prepared may present the company too favourably.

SEBI provides comments on DRHP filed with them, which are clarified by Lead Managers and the Issuer. Necessary changes would be carried out so as to satisfy the regulator and comply with SEBI (ICDR) Regulations, 2018. SEBI after receiving responses, provides its approval to DRHP which is called "SEBI CARD" and is valid for 12 months from the date of approval.

Underwriters and Management after approval of the DRHP, commence the road shows

to the investors to gain momentum. Road shows are held for Retail Investors, High Net-worth Individuals and Qualified institutions.

As per SEBI (ICDR) regulations 2018 (as amended from time to time), 35% of issue is allocated to retail investors, 15% is allocated to Non institutional investors and High net-worth individuals and 50% is allocated to Qualified Institutional Investors. Qualified Institutional Investors are those investors whose net worth is more than Rs. 500 Crore and are registered with SEBI.

Based on the growth of the business, investors' interest gained during road shows, the issue is launched to the public within 12 months. The DRHP is updated with further information and an RHP would be filed with SEBI. RHP also does not include details about the issue like size, the price at which the securities are offered to the public. The final prospectus filed with Registrar of Companies would contain the price information.

Subscription window for public issues shall be kept open for at least 3 working days and not more than 10 working days. In case of Book built issues, the minimum and maximum period for which bidding will be open is 3 - 7 working days extendable by 3 days in case of a revision in the price band.

The issuer to apply for in-principle approval as per regulation 28 of SEBI (LODR) Regulations, 2015 (as amended from time to time) for listing the securities on the recognized stock exchanges. The issuer is to complete the prelisting formalities within the time limits specified by the Board from time to time and such application is to be made within 21 days of from the date of allotment.

Every issuer desirous of listing its securities on a recognized stock exchange shall execute a listing agreement with such stock exchange and comply with regulations listed under SEBI (LODR) Regulations, 2015 (as amended from time to time).

Most Favoured Sectors of IPO

Given the stage of development in India, the growth is expected in the businesses of E-Commerce, Health Care, Pharma, EduTech ventures, Fin Tech and retail sectors as they are the popular sectors of investors in recent years. There are several unicorn valued companies (valuations of $1 billiion and above) in India, like Byjus, Swiggy, Paytm etc., looking for appropriate time to hit the Indian Capital Markets with initial public offers.

Post IPO

SEBI regulates listed companies and mandates to follow the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 (as amended from time to time). The listing agreement provides for continuous listing obligations to be made by listed companies. The compliances range from certifications from CEO and CFO to quarterly, half year results and material developments in the business of the issuer on a continual basis. Apart from the compliances, management has to meet the expectation of investors who have invested in the Company as part of IPO. The quarterly earning calls are to be taken by the management following quarterly results for every company so as to maintain investor interest in the stock. Transparency, business performance, timely communication to the stakeholders and meeting the compliance requirements are important for successful post listing of the company so that investors' interest is always maintained. The increased transparency and share listing credibility shall also play a vital role in obtaining borrowed funds at beneficial terms and optimum cost in future.

Recent Phenomena of Investors/Public

Around 1 Crore Demat accounts were opened during last couple of months during COVID times. The online presence of public due to prolonged lockdowns and due to ease of investing in smaller lots and online trading has attracted many retail investors to capital markets. As more and more retail participation increased, lack of opportunities in other investment classes has increased liquidity flow into the markets.

"SEBI regulates listed companies and mandates to follow the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 (as amended from time to time). The listing agreement provides for continuous listing obligations to be made by listed companies.

More than INR 87000 Crore was raised since January, 2020 and the performance of the share price after listing is given below:

	Issue Details		Price					
Date	IPO Name	Issue Size (in crores Rs.)	Issue Price (Rs.)	Listing Open (Rs.)	Listing Close (Rs.)	Listing Gains (%)	Market Price as on 26 August, 2021	Current Gains (%)
23-08-21	Nuvoco Vistas	5,089.29	570	471.00	531.30	-6.79	527.45	-7.46
20-08-21	CarTrade Tech	2,998.00	1,618	1,600.00	1,500.10	-7.29	1,429.05	-11.68
16-08-21	Windlas Biotech	405.95	460	439.00	406.70	-11.59	344.45	-25.12
16-08-21	Devyani Int	1,858.00	90	141.00	123.35	37.06	112.05	24.5
16-08-21	Krsnaa Diagnost	1,222.00	954	1,025.00	990.75	3.85	905.15	-5.12
16-08-21	Exxaro Tiles	161.09	120	126.00	132.25	10.21	125.70	4.75
08-09-2021	Rolex Rings	732.27	900	1,249.00	1,166.55	29.62	1,100.00	22.22
08-06-2021	Glenmark Life	1,513.00	720	752.00	748.20	3.92	670.75	-6.84
29-07-21	Tatva Chintan	500.00	1,083	2,111.80	2,310.25	113.32	2,129.70	96.65
23-07-21	Zomato	9,375.00	76	115.00	125.85	65.59	125.85	65.59
19-07-21	Clean Science	1,546.00	900	1,784.40	1,585.20	76.13	1,426.05	58.45
19-07-21	G R Infra	963.28	837	1,700.00	1,746.80	108.70	1,577.35	88.45
07-07-2021	India Pesticide	800.00	296	360.00	335.45	13.33	308.70	4.29
07-05-2021	Krishna Inst.	2,146.00	825	1,009.00	1,096.80	32.95	1,288.65	56.2
28-06-21	Dodla Dairy	521.00	428	550.00	609.10	42.31	554.60	29.58
24-06-21	Shyam Metalics	909.00	306	380.00	375.85	22.83	385.10	25.85
24-06-21	Sona BLW	5,550.00	291	302.40	362.85	24.69	471.70	62.1
14-05-21	PowerGrid InvIT	7,734.99	100	104.00	102.98	2.98	122.22	22.22
19-04-21	Macrotech Dev	2,500.00	486	439.00	463.15	-4.70	869.00	78.81
04-07-2021	Barbeque Nat	453.60	500	492.00	590.40	18.08	1,088.00	117.6
30-03-21	Nazara	582.91	1,101	1,971.00	1,576.80	43.22	1,686.75	53.2
26-03-21	Suryoday Small	582.34	305	274.75	276.20	-9.44	156.70	-48.62
26-03-21	Kalyan Jeweller	1,175.00	87	73.90	75.30	-13.45	62.95	-27.64
25-03-21	Craftsman	823.70	1,490	1,440.00	1,433.00	-3.83	1,927.70	29.38
25-03-21	Laxmi Organic	600.00	130	173.00	164.60	26.62	382.35	194.12
24-03-21	Anupam Rasayan	760.00	555	534.70	525.90	-5.24	736.10	32.63
19-03-21	Easy Trip	510.00	187	182.00	208.30	11.39	437.00	133.69
15-03-21	MTAR Tech	596.41	575	990.05	1,082.25	88.22	1,266.45	120.25

03-05-2021	Heranba	60.00	627	900.00	812.25	29.55	786.15	25.38
26-02-21	Railtel	819.24	94	109.00	121.40	29.15	125.80	33.83
25-02-21	Nureca	100.00	400	634.95	666.65	66.66	1,589.85	297.46
02-05-2021	Stove Kraft	412.63	385	498.00	445.95	15.83	820.50	113.12
02-03-2021	Home First	1,153.72	518	612.15	527.40	1.81	559.65	8.04
02-02-2021	Indigo Paints	1,170.56	1,490	2,607.50	3,118.65	109.31	2,533.00	70
29-01-21	IRFC	4,633.00	26	25.00	24.85	-4.42	22.90	-11.92
01-01-2021	Antony Waste	300.53	315	430.00	407.25	29.29	340.65	8.14
24-12-20	Bectors Food	540.54	288	501.00	595.55	106.79	394.00	36.81
14-12-20	Burger King	796.50	60	115.35	138.40	130.67	170.20	183.67
20-11-20	Gland	6,479.55	1,500	1,710.00	1,820.45	21.36	3,879.30	158.62
11-02-2020	Equitas Bank	517.60	33	31.00	32.75	-0.76	58.50	77.27
10-12-2020	UTI AMC	2,159.88	554	476.20	476.60	-13.97	1,144.50	106.59
10-12-2020	Mazagon Dock	443.69	145	216.25	173.00	19.31	233.80	61.24
10-05-2020	Angel Broking	600.00	306	275.00	275.85	-9.85	1,106.00	261.44
10-01-2020	Chemcon Special	318.00	340	731.00	584.80	72.00	441.15	29.75
10-01-2020	CAMS	2,244.33	1,230	1,535.00	1,401.60	13.95	3,241.05	163.5
21-09-20	Route	600.00	350	708.00	651.10	86.03	1,912.00	446.29
17-09-20	Happiest Minds	702.02	166	351.00	371.00	123.49	1,436.75	765.51
23-07-20	Rossari	496.25	425	670.00	742.35	74.67	1,320.05	210.6
16-03-20	SBI Card	10,286.20	755	658.00	683.20	-9.51	1,088.40	44.16

Closing Thoughts

The broader economy and the stock markets are sending out conflicting signals. Economists are lowering the GDP estimates, however the stock markets are ignoring all these factors and scaling newer peaks. The current trend of stock markets is driven more by liquidity as retail investor interest in the stock market shows no sign of waning and growth in other asset classes is below benchmark returns.

Investors prefer companies with sound business fundamentals, robust financial model and good quality management team. While IPO is the most preferable avenue for going public, in recent times, REIT'S (Real Estate Investment Trusts) and INVIT's (Investment Trusts) and SPACs (Special Purpose Acquisition Companies) issues are also gaining importance.

CFOs shoulder higher responsibility and accountability in managing compliances, Governance, transparency, reporting requirements, business growth and Investor relations. With adequate delegation of authority, a well-rounded, intellectually courageous, business facilitating CFO is often the spokesperson of the Issuer. ■■■

National Update

RBI holds rates steady, inflation forecast now close to 6% limit

Unveiling the bi-monthly monetary policy, the RBI panel raised the projection for retail inflation to 5.7 per cent in the financial year 2021-22 from 5.1 per cent earlier, close to its upper tolerance limit in the 2-6 per cent band. The Monetary Policy Committee (MPC) of the Reserve Bank of India (RBI) left the key policy rate, the repo rate, unchanged for the seventh time in a row while retaining its accommodative stance to "revive and sustain growth on a durable basis and continue to mitigate the impact of Covid-19 on the economy". It also underlined that the recovery "remains uneven across sectors and needs to be supported by all policymakers". The panel has "prioritised revival of growth" to mitigate the impact of the pandemic, and has retained its projection for real gross domestic product (GDP) growth for FY22 at 9.5 per cent, the same as two months ago. It has also upgraded its forecast for the April-June quarter of the current financial year to 21.4 per cent.

(https://indianexpress.com/article/business/economy/monetary-policy-committee-reserve-bank-of-india-repo-rate-unchanged-7442373/)

CSR credit has to be used in 3 years: MCA

The credit that businesses earn for spending on corporate social responsibility (CSR) beyond their annual obligation will lapse unless adjusted against the spending requirements in the subsequent three years, the ministry of corporate affairs (MCA) said. The flexibility of adjusting excess CSR spending in a given year against the spending obligation in the subsequent three years introduced in January this year is applicable prospectively. No carry forward will be allowed for any excess amount spent in financial years prior to FY21. The set of clarifications has been issued to guide businesses as many changes have recently been made to CSR rules. In January, the government notified sections of the Companies Act prescribing financial penalties for violation of CSR obligations and made sweeping changes to rules to make companies more accountable and to offer some flexibility in spending.

(https://www.livemint.com/companies/news/credit-for-excess-csr-spending-has-to-be-used-in-three-years-mca-11629983513405.html)

Experienced advocates, accountants can become independent directors without proficiency test: MCA

Experienced advocates, chartered accountants, cost accountants and company secretaries are exempt from the requirement of a proficiency test in order to qualify for appointment as independent directors on the board of companies. Further, the ministry has made the norms more flexible for officials of central and state governments with expertise to be appointed as independent directors.

(https://www.livemint.com/politics/policy/experienced-advocates-accountants-can-become-independent-directors-without-proficiency-test-mca-11629416940764.html)

SEBI comes out with modalities for accredited investors

Markets regulator SEBI came out with detailed modalities for implementation of the accredited investors framework, a move expected to open up a new channel of raising funds from sophisticated investors. The regulator has issued guidelines on eligibility criteria for accredited investors (AIs), procedure as well as validation for accreditation, procedure to avail benefits linked to accreditation and flexibility to investors to withdraw "consent", according to a circular. SEBI had earlier this month introduced the concept of "accredited investors" in the Indian securities market. A person will be identified as an accredited investor on the basis of net worth or income. Individuals, HUFs, family trusts, sole proprietorships, partnership firms, trusts and body corporates can get accreditation based on financial parameters specified by the regulator.

(https://economictimes.indiatimes.com/markets/stocks/news/sebi-comes-out-with-modalities-for-accredited-investors/printarticle/85667933.cms)

E-tailers can't store your card data, says RBI

In terms of the new guidelines for payment gateways and payment aggregators, online merchants will not be able to store credit card data, forcing customers to enter their 16-digit numbers manually. According to sources, the central bank has said that it will not allow any online merchant to store debit or credit card information, no matter how secure their systems are. Online businesses are already working to meet RBI's deadline on recurring payments, which kicks in from September 2021. These guidelines require that customers issue mandates for recurring payments to banks, and online firms cannot on their own debit charges. The solution, according to the RBI, is the tokenisation of payment data. This would mean that the e-commerce sites would need to tie up with the card network who will issue them 'tokens' linked to each card number. These tokens cannot be used by anyone else.

(https://timesofindia.indiatimes.com/business/india-business/e-tailers-cant-store-your-card-data-says-rbi/articleshowprint/85581684.cms)

IMF Managing Director Announces the US$650 billion SDR Allocation Comes into Effect

Ms. Kristalina Georgieva, Managing Director of the International Monetary Fund (IMF) made a statement about the largest allocation of Special Drawing Rights (SDRs) in history—about US$650 billion. The allocation is a significant shot in the arm for the world and, if used wisely, a unique opportunity to combat unprecedented crisis. The SDR allocation will provide additional liquidity to the global economic system – supplementing countries' foreign exchange reserves and reducing their reliance on more expensive domestic or external debt. Countries can use the space provided by the SDR allocation to support their economies and step up their fight against the crisis. SDRs are being distributed to countries in proportion to their quota shares in the IMF. This means about US$275 billion is going to emerging and developing countries, of which low-income countries will receive about US$21 billion – equivalent to as much as 6 percent of GDP in some cases.

(https://www.imf.org/en/News/Articles/2021/08/23/pr21248-imf-managing-director-announces-the-us-650-billion-sdr-allocation-comes-into-effect)

IFAC Welcomes IFRS Foundation Constitutional Amendments to Establish a New ISSB

In the way forward roadmap toward a global system for reporting on sustainability-related information, IFAC called on the IFRS Foundation to establish a new International Sustainability Standards Board (ISSB). With its independence, good governance, and track record of due process, the IFRS Foundation is uniquely positioned to establish an independent ISSB within existing IFRS governance—comprised of the Monitoring Board, IFRS Foundation Trustees, and IFRS Advisory Council. The proposed multi-stakeholder expert consultative committee will also be crucial to bringing the right stakeholders to the table in support of the standard-setting activities of the new Board. IFAC's response strongly supports the four-point strategy put forth in the Trustees' proposals:

- The ISSB will have an investor focus on enterprise value
- The ISSB will prioritize climate-related reporting first
- The ISSB will build on the work of existing initiatives
- The ISSB will take a Building Blocks Approach

(https://www.ifac.org/)

IFAC Welcomes UK BEIS's Consultation on Restoring Trust; Urges Holistic Approach

In its response to the UK Department for Business, Energy & Industrial Strategy (BEIS) consultation on restoring trust in audit and corporate governance, IFAC emphasized high-level themes that should govern any future reforms, including the importance of a well-functioning ecosystem, a clear focus on audit quality, and an appreciation for the global context.

IFAC's response draws on its previously published framework for Achieving High-Quality Audits—based on the right process, the right people, the right governance, the right regulation, and the right measurement. Achieving high-quality audits requires a well-functioning ecosystem built upon ethics and independence, preconditions to achieving high-quality audits. This ecosystem involves a number of factors and participants including the right people, the right governance, and the right regulation. These elements must all work together to produce the right audit that meets the expectations of stakeholders. The quality of audit must be assessed by the right measurements. In the absence of any of these components, the audit may not meet the expectations of stakeholders.

(https://www.ifac.org/)

IAASB Public Consultation Opens for Proposed New Standard For Audits Of Financial Statements Of Less Complex Entities

The International Auditing and Assurance Standards Board (IAASB) published an exposure draft of its new, stand-alone standard for audits of financial statements of less complex entities. This landmark new draft standard responds to demands to have a set of high-quality requirements tailored for the needs of less complex entities (LCEs). The new standard for audits of financial statements of LCEs will provide a globally consistent approach at a time where several jurisdictional-specific LCE standards or related initiatives are arising. The release of the exposure draft is part of a broader effort to reduce complexity, improve understandability, and make International Standards on Auditing (ISAs) more scalable and proportionate to circumstances of audited entities.

(https://www.iaasb.org/)

Legal Decisions

Income Tax

LD/70/27; ITAT Delhi: I.T.A. No. 5399/Del/2015 The Dy. Commissioner of Income Tax Vs. Newbury Oil Company Limited 20th July 2021, Income Tax

Assessment orders u/s 153C held as bad in law by the ITAT since being initiated without proper satisfaction recording and for not following the procedure u/s 144C; Assessee a subsidiary of an Indian company acquired 25% participating interest in oil exploration rights in another company M/s Focus Energy Ltd for oil blocks in Rajasthan; Pursuant to a search operation conducted on Focus Group, notice u/s 153C was issued to assessee and assessee filed Loss returns which were disallowed by the Revenue by assessing the income at NIL; CIT(A) allowed Assessee's appeal by holding that the Assessee, being a foreign company, was an "eligible assessee" u/s 144C and AO ought to have issued a draft assessment order; ITAT also noted that there was no proper satisfaction recorded by the AO.

LD/70/28; ITAT Delhi: I.T.A. No. 2481 & 2482/Del/2011 The Dy. Commissioner of Income Tax Vs. Sahara India Sahkari Awas Samiti Ltd 19th July 2021, Income Tax

Deduction u/s 80-IB(10) allowed to assessee-society on construction and development work outsourced to its group company; AO had held that assessee had not complied with the conditions of section 80-IB(10) as amended by Finance (No. 2) Act 2004, w.r.t. maximum area allocable to commercial units; ITAT held that the amendment to 80-IB(10) limiting the proportion of commercial space, was not applicable to projects approved prior to April 2005; Assessee having contracted the construction and development work, bore the risk and responsibilities of the project and holds Assessee as a developer of the project.

LD/70/29; ITAT Bangalore: I.T.A. No. 882/Bang/2019 I Brands Beverages P. Ltd. Vs. The Dy. Commissioner of Income Tax 13th July 2021, Income Tax

Assessee-company allotted 480000 shares of Rs. 10/- face value at a premium of Rs. 365/- per share as per the valuation report based on discounted cash flow method; AO held that value per share as per projections was Rs.37.49/share and made an addition u/s 56(2)(viib); Assessee submitted a corrigendum to the valuation report as additional evidence, contending it to be read with the original valuation report, which showed the total fair market value at Rs.374.95/- per share; CIT(A) held that additional evidence in the form of corrigendum was not admissible; ITAT held that the corrigendum could not be treated as an additional evidence by CIT(A) and there was no reason to reject it; ITAT restored the matter back to the AO.

LD/70/30; ITAT Delhi: I.T.A. No. 3681/Del/2017 Raj Veer Singh Vs. The Asst. Commissioner of Income Tax 08th July 2021, Income Tax

Assessee filed his TDS statements for the quarter ending Mar 31/03/2015 on 31/10/2015 and a demand for late fees u/s 234E was raised, which was confirmed by the CIT(A); ITAT observed that prior to amendment to section 200A(1) by Finance Act, 2015 there was no enabling provision for making adjustments on account of levy of late fee u/s 234E; ITAT held that late fees u/s 234E imposed for defaults for the period prior to 01.06.2015, was not sustainable; ITAT relied on various case laws in support of such ruling.

LD/70/31; ITAT Delhi: I.T.A. No. 3644/Del/2016 V3S Infratech Limited Vs. The Asst. Commissioner of Income Tax 08th July 2021, Income Tax

Assessee claimed a deduction of Rs.1.71 Cr. as unrealised rent in its computation of income, which was disallowed by the AO on the ground that the rent pertained to earlier years; ITAT noted that the assessee had offered the annual lettable value for the property on accrual basis in the earlier years and referring to provisions of section 23 r.w.r 4, ITAT held that assessee was eligible for deduction of unrealised rent.

LD/70/32; ITAT Pune: I.T.A.No. 427/Pun/2019 Amit Vishnu Pashankar Vs. The Dy. Commissioner of Income Tax 07th July 2021, Income Tax

Addition made by adopting the fair market value of property as full value consideration instead of actual sale consideration for computing capital gains in case of a Joint Development agreement (JDA), deleted by ITAT; The AO adopted ready reckoner rate (RR) of saleable area which was objected by

Contributed by CA. Sahil Garud, GST & Indirect Taxes Committee (CA. Mandar Telang), Disciplinary Directorate and ICAI's Editorial Board Secretariat. For details please visit Editorial Page webpage at https://www.icai.org/post/editorial-board. 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.

the assessee stating that the RR value was inclusive of value of land and appellant never parted with the share of land appurtenant to the built-up area; As per assessee, full value of consideration was needed to be arrived at by adopting value of money received plus cost of construction of saleable area to be received; As per ITAT, AO is not empowered to substitute the agreed consideration by Fair Market Value except in situations envisaged u/s 50C of the Act; Reliance was placed on High Court decision in the case of Nirman Grovver [223 ITR 572]

LD/70/33; ITAT Delhi: I.T.A. No 5909/Del/2017 The Asst. Commissioner of Income Tax Vs. Nilkanth Concast Pvt. Ltd 06th July 2021, Income Tax

Assessee claimed deduction of interest on capital borrowed for acquisition of plant, pertaining to the period from installation of the plant up to the commencement of commercial production; AO disallowed the interest pertaining to period prior to date of commercial production; ITAT referred to certain judicial pronouncements and noted that setting up means ready to commence while actual commencement is when the business activity actually commences, and expenses incurred during the gap between set up and commencement are allowable deductions; ITAT also referred ICDS-IX related to Borrowing Costs, and ruled in favour of assessee.

LD/70/34; ITAT Mumbai: ITA NO.5752/MUM/2019 Stalwart Impex Pvt. Ltd Vs. The Income Tax Officer 02nd July 2021, Income Tax

ITAT held that proviso to section 43CA prescribing tolerance band of 5% and its subsequent enhancement to 10% to be made applicable retrospectively from April 2014; Assessee engaged in construction of commercial and residential housing projects, entered into transaction for three flats with the stamp duty value of Rs.1.09 Cr against agreed value of Rs.97.11 Lacs and contended that difference was less than 10%; CIT(A) had upheld the additions made by the AO however ITAT ruled in favour of assessee holding that said amendment in section 43CA relates back to the date on which the said section was made effective i.e. 01/04/2014.

LD/70/35; ITAT Jaipur: ITA No. 533/JP/2019 Dholumal Alias Dholan Das Khatwani. Ltd Vs. The Income Tax Officer 30th June 2021, Income Tax

Assessee, a broker was subjected to reassessment proceedings on the basis of statement of a third party u/s 132(4) wherein the party accepted loan of Rs. 8 lacs was given to the assessee in cash and the AO therefore noted violation of section 269SS for the assessee; ITAT noted that no valid addition can be made on the basis of the material found from the custody of 'Third Party'; ITAT held that copies of the alleged 'Prints Outs' received from the Investigation Wing, Ahmedabad and forwarded to the assessee subsequently in the assessment proceedings were 'deaf and dumb document' for all the purposes and carried no evidentiary value in absence of the 'corroborative evidences'; ITAT ruled in favour of assessee.

LD/70/36; Karnataka High Court: I.T.A. No 92 of 2015 The Commissioner of Income Tax Vs. Shri N.S. Narendra 29th June 2021, Income Tax

Assessee, being a shareholder of a company, had received an advance from his company for purchasing an apartment on individual name, in recognition of his contribution to the company's business; AO made an addition of Rs. 5.39 Cr u/s 2(22)(e) as deemed dividend; Assessee had provided his personal property as collateral to Banks and personal guarantee for the credit facility of over 200 Cr. availed by the company and thus the company had derived benefit from the Assessee and therefore granted the loan/ advance to Assessee; High Court held that such advance was not deemed dividend and ruled in favour of assessee.

GST

LD/70/37 [2021-TIOL-1703-HC-MUM-GST] FINE EXIME PVT LTD Vs UNION OF INDIA 10-08-2021

The powers to provisionally attach the bank account can be exercised only if the proceedings mentioned u/s 83 of the CGST Act are pending. In the absence of proceedings under the relevant provisions of the law, if any provisional attachment order is made, the same shall be held as null and void. Further, once the said proceedings are taken to their logical conclusion and adjudication orders are issued, and the assessee takes recourse to the appeal mechanism by making necessary pre-deposit in terms of section 107 of the CGST Act, the order of provisional attachment is deserved to be set aside.

LD/70/38 [2021-TIOL-1597-HC-TRIPURA-GST] EAST INDIA INFOTECH PVT. LTD. Vs State of Tripura and Ors 8-07-2021

Where the ambulance vans purchased by a petitioner for its own use were seized and detained by the department in the absence of e-way bills, Hon'ble High court ordered the provisional release

of the same after noting that the petitioner is not a registered dealer nor is he dealing in purchase and sale of vehicles and the ambulances have been purchased by the petitioner only for its own use and purpose since the petitioner wants to start a business of proving ambulance service and that even otherwise, the GST authorities have power to provisionally release the goods.

LD/70/39 [2021-TIOL-1654-HC-TELANGANA-GST] M/s DEEM DISTRIBUTORS PVT. LTD. Vs UOI 03-08-2021

The department cannot coerce the assessee to pay tax demands or issue threatening advice and no tax demand can be issued or raised when the investigation is still in progress. Such action would be wholly arbitrary and without jurisdiction. The department cannot be allowed to put the cart before the horse and collect any tax, interest or penalty before they determine, in an inquiry, after putting the petitioner/assessee of notice. The Court ordered the department to refund the entire amount deposited by the petitioner during inquiry with 7% interest.

LD/70/40 [2021-TIOL-442-CESTAT-MAD] M/s CENTRAL WAREHOUSING CORPORATION Vs COMMISSIONER OF CENTRAL TAXES AND CENTRAL EXCISE 20-07-2021

Where the assessee reversed the CENVAT credit treating the outward supply as exempt supply and subsequently paid tax on such supply along with interest and also suo-motu reclaimed the CENVAT Credit to the extent it was reversed treating the taxable supply as exempt supply, the Tribunal held that there is no impediment in taking suo-motu credit if it is otherwise eligible. Relying upon the decision of M/s. ICMC Corporation Ltd., the appeal is allowed.

Disciplinary Case

Issuance of net worth certificate -- Computation of net worth -- Inclusion of share application money (pending allotment of shares) while computing net worth -- Share application money since not created out of profits of the Company, same cannot be considered as free reserves nor it forms part of paid up capital pending share allotment -- Held, Respondent is guilty of professional misconduct within the Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

Held

The charge in the extant matter was that Respondent was negligent in certifying the net worth certificate of the Company on which the Complainant relied upon and admitted the Company as member of the Complainant Exchange and earmarked an incorrect limit based on the said net worth certificate resulting in default by the Company. The Committee noted that out of total value of Rs. 8,22,17,748/- net worth certified by the Respondent as on 31.03.2011, the share application money was of Rs.6,00,00,000/-. In view of definition of the term 'networth' as given in Sec 2(29A) of the Companies Act, 1956, it was noted that in extant case, the share application money was not created out of profits of the Company, so, it could not be considered as free reserves and that it was also not a part of paid up capital pending share allotment. Accordingly, as on the date of issuing net worth certificate, inclusion of share application money pending allotment for the purpose of computation of net worth was against the provisions of Companies Act, 1956. It was, accordingly, viewed that the Respondent had certified a networth certificate wherein the paid up capital was materially misstated. In view of above noted facts, the Committee held that Respondent is grossly negligent in performing his duty and did not exercise his due diligence while issuing net worth certificate is GUILTY of professional misconduct falling within the meaning Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949(as amended).

Sh. Niraj Sharma Vice President NSEL Vs CA.Vikas Kumar Khaitan PR/219/2014-DD/237/2014/DC/569/2017

Circulars/Notifications

Given below are summarised important Circulars and Notifications issued by the CBDT, CBIC-GST and FEMA 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. *Amendment in Rule 12 vide the Income-tax (20th Amendment) Rules, 2021 - Notification No. 82/2021, dated 27-07-2021*

Rule 12 pertains to return of income provisions. Vide this notification, sub-rule (1) and (5) have been amended to provide reference to 'section 148' and year '2020' in place of 'sub-section (1) of section 148' and year '2019' respectively.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification_82_2021.pdf

2. *Insertion of Rules 130 and 131 vide the Income-tax (21st Amendment) Rules, 2021 - Notification No. 83/2021, dated 29-07-2021*

Vide this Notification, CBDT has omitted certain Rules and Forms as specified therein Rule 130. Further, it has also been, *inter alia,* specified that any proceeding pending before any income-tax authority, any Appellate Tribunal or any court, by way of appeal, reference or revision, shall be continued and disposed of as if rules and forms specified have not been omitted. Also, Rule 131 specifies that the PDGIT (Systems) or the DGIT (Systems), as the case may be, may with the approval of the CBDT specify that any of the Forms, returns, statements, reports, orders, by whatever name called, prescribed in Appendix II, shall be furnished electronically.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification_83_2021.pdf

3. *Central Government notifies 'the 2726247 Ontario Inc.' u/s 10(23E) - Notification No. 84/2021, dated 03-08-2021*

Vide this notification, the Central Government has specified the pension fund, namely, the 2726247 Ontario Inc. as the specified person for the purposes of section 10(23FE) in respect of the eligible investment made by it in India on or after 03.08.2021 but on or before 31.03.2024 subject to the fulfilment of conditions specified therein.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification_84_2021.pdf

4. *Various assessees notified u/s 10(46) - Notification No. 85&86/2021, dated 04-08-2021*

'National Council of Science Museums', Kolkata (PAN AAAAN2541C) and 'Real Estate Regulatory Authority', Himachal Pradesh, Shimla are notified for the purposes of section 10(46) in respect of specified income subject to specified conditions for FYs 2021-22 to 2025-26 & FYs 2020-21 to 2024-25 respectively as specified in the respective notifications.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification_85_2021.pdf

https://www.incometaxindia.gov.in/communications/notification/notification_86_2021.pdf

5. *Insertion of Rules 21AI and 21AJ & Form No. 10IG and 10IH vide the Income tax Amendment (22nd Amendment), Rules, 2021 - Notification No. 90/2021, dated 09-08-2021*

The CBDT has inserted Rule 21AI prescribing manner of computation of exempt income of specified fund for the purposes of section 10(4D). Further, rule 21AJ prescribes the method for determination of income of a specified fund attributable to units held by non-

Matter on Direct and Indirect Taxes, is contributed by Direct Taxes Committee, GST & Indirect Taxes Committee and Corporate Laws and Corporate Governance Committee of ICAI respectively. FEMA updates by CA. Manoj Shah, CA Hinesh Doshi and CA. Sudha G. Bhushan

residents under section 115AD(1A). Also Form No. 10IG (Statement of Exempt income under section 10(4D)) and Form No.10IH (Statement of income of a Specified fund eligible for concessional taxation under section 115AD) are notified.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification_90_2021.pdf

6. *Central Government establishes Interim Board of Settlements u/s 245AA(1) - Notification No. 91/2021, dated 10-08-2021*

The Finance Act 2021 inserted section 245AA w.e.f. 01.02.2021 prescribing constitution of one or more Interim Boards for Settlement for the settlement of pending applications. Accordingly, vide this notification, 7 Interim Board for Settlement has been established at Delhi, Kolkata, Mumbai and Chennai.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification_91_2021.pdf

7. *Rule 10RB and Form No. 3CEEA notified u/s 115JB(2D) vide the Income-tax (23rd Amendment), Rules, 2021 - Notification No. 92/2021, dated 10-08-2021*

The Finance Act 2021 inserted sub-section (2D) in section 115JB to provide that in cases where past year income is included in books of account during the previous year on account of an APA or a secondary adjustment, the AO shall, on an application made to him in this behalf by the assessee, recompute the book profit of the past year(s) and tax payable, if any, during the previous year, in the prescribed manner. Rule 10RB prescribes the manner of claiming relief in tax payable u/s section 115JB(1) due to operation of provisions of section 115JB(2D).

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification_92_2021.pdf

II. CIRCULARS

1. *CBDT extends due dates for electronic filing of various Forms under the Income-tax Act,1961 - Circular No. 15/2021, dated 03-08-2021*

On consideration of difficulties reported by the taxpayers and other stakeholders in electronic filing of certain Forms under the provisions of the Income-tax Act,1961 read with Income-tax Rules,1962, the CBDT vide this Circular has further extended the due dates for electronic filing of such specified Forms i.e Form No. 15CC, 64D, 64C, 10BBB etc. It is also clarified by the CBDT that the specified forms, e-filed, after the expiry of time limits provided as per Circular No.12/2021 dated 25.06.2021 or as per the relevant provisions, till date of issuance of this Circular, will stand regularised accordingly.

The detailed Circular and Order can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/circular/circular_no_15_2021.pdf

https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/955/PressRelease_CBDT_extends_due_dates_for_electronic_filing_3_8_21.pdf

III. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM/ORDER

1. *CBDT grants further relaxation in electronic filing of Income Tax Forms 15CA/15CB - Press Release, dated 20-07-2021*

In view of the difficulties reported by taxpayers in electronic filing of Income Tax Forms 15CA/15CB on the portal www.incometax.gov.in, it had been decided by CBDT that taxpayers could submit Forms 15CA/15CB in manual format to the authorized dealer till 15.08.2021. Authorized dealers are advised to accept such Forms till 15.08.2021 for the purpose of foreign remittances.

The complete text of the above Press Release can be downloaded from the link below:

https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/949/PressRelease_CBDT_grants_further_relaxation_in_electronic_filing_of_IT_Forms_15CA_15CB_20_7_21.pdf

2. *Income Tax Department conducts searches PAN-India in a prominent group having diversified businesses - Press Release, dated 24-07-2021*

ITD carried out a search operation u/s 132 on 22.07.2021 on a prominent business group, which is involved in businesses in various sectors, including Media, Power, Textiles and Real Estate, with a group turnover of more than Rs. 6,000 crore p.a. 20 residential and 12 business premises spread over 9 cities including Mumbai, Delhi, Bhopal, Indore, Noida and Ahmedabad have been covered.

The complete text of the above Press Release can be downloaded from the link below:

https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/952/PressReleaseITD_conducts_searches_PAN_India_in_a_prominent_group_24_7_21.pdf

3. *Income Tax Department conducts searches in Uttar Pradesh - Press Release, dated 24-07-2021*

ITD carried out a search operation on 22.07.2021 on a group in Uttar Pradesh dealing in Mining, Hospitality, News Media, Liquor and Real Estate. The search began in Lucknow, Basti, Varanasi, Jaunpur and Kolkata.

The complete text of the above Press Release can be downloaded from the link below:

https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/951/PressRelease_ITD_conducts_searches_in_Uttar_Pradesh_24_7_21.pdf

4. *161st Income Tax Day: A journey towards Nation Building - Press Release, dated 24-07-2021*

The 161st anniversary of Income Tax Day was observed by CBDT and all its field offices across India on 24.07.2021. As part of the observance, the field formations held a range of activities. Reflecting the ITD's spirit of cohesion, competence, cooperation and constructive engagement, the activities included Webinars with external stakeholders including regional chapters of ICAI, trade associations etc, tree plantation drives, vaccination camps, issuing commendation letters to officers who worked for Covid relief and connecting with families of officers/officials who lost their lives to Covid in the line of duty.

The complete text of the above Press Release can be downloaded from the link below:

https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/950/Press-Release-161st-Income-Tax-Day-A-journey-towards-Nation-Building-dated-24-07-2021.pdf

5. *Income Tax Department conducts searches in Jharkhand - Press Release, dated 29-07-2021*

ITD carried out a search operation on 28.07.2021on a prominent group in Jharkhand dealing in building construction and real estate. The search began on 28.07.2021 in Ranchi and Kolkata. More than 20 premises were covered.

The complete text of the above Press Release can be downloaded from the link below:

https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/953/PressRelease_ITD_conducts_searches_in_Jharkhand_29_7_21.pdf

6. *Income Tax Department conducts searches in Kanpur - Press Release, dated 30-07-2021*

The ITD carried out a search action on 29.07.2021on a large group based in Kanpur and Delhi. The group is in the business of manufacturing Pan Masala and in real estate. A total of 31 premises were searched spread across Kanpur, Noida, Ghaziabad, Delhi and Kolkata.

The complete text of the above Press Release can be downloaded from the link below:

https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/954/PressRelease_ITD_conducts_searches_in_Kanpur_30_7_2021.pdf

Circulars & Notifications

- **Amendments in the Companies (Incorporation) Rules, 2014 w.e.f. 01st September, 2021**

  The Ministry of Corporate Affairs pursuant to the commencement notification of section 4 of the Companies (Amendment) Act, 2020 has inserted Rule 33A in the Companies (Incorporation) Rules, 2014 for prescribing provisions for allotment of a new name to the existing company under section 16(3) of the Act which shall be effective from 01st September, 2021.

  Accordingly, if company has failed to change its name or new name, as the case may be, in accordance with the direction issued under section 16(1) of the Companies Act, 2013 within a period of three months from the date of issue of such direction then the Registrar shall issue a fresh certificate of incorporation to the company in Form No.INC-11C (newly inserted).

  [Notification No. GSR 503 (E)]

  Details are available at:

  https://mca.gov.in/bin/ebook/dms/t?doc=MjgxNzA=&docCategory=Notifications&type=open

- **Commencement notification of the provisions of Companies (Amendment) Act, 2020**

  The Central Government vide notification dated 22.07.2021 has appointed the 01 September, 2021 as the date on which the provisions of Section 4 of the Companies (Amendment) Act, 2021 i.e. amendment in

Section 16 of the Companies Act, 2013 relating to Rectification of name of company shall come into force.

[Notification No. S.O. 294 (E)]

Details are available at:

https://mca.gov.in/bin/ebook/dms/t?doc=MzMzMjQ=&docCategory=Notifications&type=open

➢ Clarification on Spending of CSR funds for COVID-19 Vaccination

The Ministry of Corporate Affairs has clarified vide its circular dated 30 July, 2021 that spending of CSR funds for COVID-19 vaccination for persons other than the employees and their families is an eligible CSR activity under item no (i) and (xii) of Schedule VII of the Companies Act, 2013.

[Circular No: 13/2021]

Details are available at:

https://mca.gov.in/bin/ebook/dms/t?doc=MzEwMTU=&docCategory=Circulars&type=open

➢ The Limited Liability Partnership (Amendment) Bill, 2021

The Limited Liability Partnership (Amendment) Bill, 2021 has been passed by both the Houses of the Parliament, by Rajya Sabha on 4th August 2021 and by Lok Sabha on 9th August 2021.

The Bill aims to facilitate the Ease of Doing Business and enable the startup ecosystem across the country. The Foremost Objectives of the bill are as follows:

- De-criminalisation of monetary penalties
- Accounting Standards for classes of LLPs
- Compounding of offence
- Establishment of Special Court for speedy trial of offences
- Establishment of the Appellate Tribunal

➢ Companies (Specification and definitions details) Third Amendment Rules 2021

The Ministry of Corporate Affairs has amended the Companies (Specification of definitions details) Rules, 2014 by inserting an explanation in clause (h) of sub-rule (1) of rule 2 that electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005 (28 of 2005) shall not be construed as 'electronic mode' for the purpose of clause (42) of section 2 of the Act."

[Notification No. S.O. 539(E)]

Details are available at:

https://mca.gov.in/bin/ebook/dms/t?doc=MzMzMjM=&docCategory=Notifications&type=open

➢ The Companies (Registration of Foreign Companies) Amendment Rules, 2021

The Ministry of Corporate Affairs has amended the Companies (Registration of Foreign Companies) Rules, 2014, vide notification dated 5th August, 2021, with insertion of an explanation to the Rule 2(1)(c) which states that electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005 (28 of 2005) shall not be construed as 'electronic mode' for the purpose of clause (42) of section 2 of the Act."

[Notification No. S.O. 538(E)]

Details are available at:

https://mca.gov.in/bin/ebook/dms/t?doc=MzMzMjI=&docCategory=Notifications&type=open

➢ Exemption notification – Section 393A

The Ministry of Corporate Affairs has issued a notification to exempt foreign companies and companies incorporated or to be incorporated outside India (whether the company has or has not established, or when formed may or may not establish, a place of business in India) from the provisions of section 387 to 392 of the Companies Act, 2013.

This notification relaxes the burden of requirements as per the Act, insofar as they relate to the offering for subscription in the securities, requirements related to the prospectus, and all matters incidental thereto

in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005 (28 of 2005).

[Notification No. S.O. 3156(E)]

Details are available at:

https://mca.gov.in/bin/ebook/dms/t?doc=MzMzMjQ=&docCategory=Notifications&type=open

Circulars & Notifications

➢ Holding of Annual General Meeting (AGM) by top 100 listed entities by market capitalization

In view of the continuous impact of COVID-19, SEBI vide its circular dated 23.07.2021 has extended the timeline for conduct of AGM by top 100 listed entities by market capitalization by a period of one month.

Accordingly, such entities shall hold their AGM within a period of six months from the date of closing of the financial year for 2020-21.

[Circular No. SEBI/HO/CFD/CMD1/P/CIR/2021/602]

Details are available at:

https://www.sebi.gov.in/legal/circulars/jul-2021/extension-of-time-for-holding-the-annual-general-meeting-agm-by-top-100-listed-entities-by-market-capitalization_51318.html

➢ Disclosure of shareholding pattern of promoter(s) and promoter group entities

Regulation 31(4) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR") mandates that all entities falling under promoter and promoter group be disclosed separately in the shareholding pattern on the website of stock exchanges, in accordance with the format(s) specified by the Board.

In the interest of transparency to the investors, SEBI has modified the format of table disclosing the shareholding pattern of promoters and promoter group entities. Accordingly, all listed entities shall provide such shareholding, segregated into promoter(s) and promoter group. The revised format of aforementioned table II is placed at Annexure A.

[Circular No. SEBI/HO/CFD/CMD/ CIR /P /2021/1616]

Details are available at:

https://www.sebi.gov.in/legal/circulars/aug-2021/disclosure-of-shareholding-pattern-of-promoter-s-and-promoter-group-entities_51847.html

➢ Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) (Third Amendments) Regulations, 2021

SEBI, vide notification no SEBI/LAD-NRO/GN/2021/45 dated 13th August 2021, has amended the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 by omitting/inserting various sub-regulations, sub-clauses and explanations/substitution to some clauses of respective regulations in exercise of powers conferred under section 30 of Securities and Exchange Board of India Act, 1992.

[Circular No. SEBI/LAD-NRO/GN/2021 /45]

Details are available at:

https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-third-amendment-regulations-2021_51884.html

➢ Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirements) (Third Amendment) Regulations, 2021

SEBI has amended the SEBI (LODR) Regulations, 2015 by making omission as well insertion of sub-regulations and substitution to clauses of respective sub regulations.

The summary of the abovementioned amendments are as follows:

- Amendment in definition, appointment, resignation of Independent Director.

- Clarification provided for definition of pecuniary relationship or transaction.
- Appointment of Director to be regularised by the Shareholders in General Meeting.
- Amendment in Composition of Audit Committee and Nomination & Remuneration Committee.
- Amendments in Documents and Information to Shareholders in case of appointment or re-appointment of a director.

[Circular No. SEBI/LAD-NRO/GN/2021/35]

Details are available at:

https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2021_51719.html

➢ **Securities And Exchange Board Of India (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2021**

SEBI has amended the SEBI (LODR) Regulations, 2015 by making omission as well insertion of sub-regulations and substitution to clauses of respective sub regulations.

The summary of the abovementioned amendments are as follows:

- Omission of requirement to disclose certain line items to be presented in the financial statements while submitting half yearly/annual financial statements by the Listed Entity under Regulation 52(4).
- Amendment in Regulation 57 which now reads as "Intimation/Other submissions to Stock Exchange(s)".
- Amendment in Regulation 58, the heading has been amended from "Documents and information to holders of non-convertible debt securities and non-convertible preference shares" to "Documents and information to holders of non-convertible securities". Concomitant changes have been made in the sub regulations.
- Amendment in regulation 61 to include the words "non-convertible debt securities in sub regulation 1 of 61" and omission of proviso from the said sub regulation.

[Circular No. SEBI/LAD-NRO/GN/2021/42]

Details are available at:

https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fourth-amendment-regulations-2021_51885.html

Summary Information on few Compounding Orders issued after 1st March 2020

Sr. No.	Party Name	Nature of Contravention	Date of Order	Compounding Fees (Rs.)
1.	Sunseries Travel Technology Private Limited	Contravention under Regulation 3.1(I)(A) of FEMA 395 for mode of payment other than those permitted in the regulation.	03-06-2021	50,500
2.	Aijal Handicrafts Private Limited	Contravention under Regulation 15 and Regulation 9 of FEMA Notification 23R for non realization of export proceeds within prescribed time period and receiving advance against exports and not making export within 1 year of receipt of such advance.	24-06-2021	5,65,569
3.	TV2Z India Development and Support Pvt. Ltd.	Contravention under Rule 4 of FEM NDI Rules 2019 whereby unless otherwise permitted an Indian entity shall not receive foreign investment from person resident outside India or record such investment in its books.	01-06-2021	51,343

Ethical Standards Board
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

CA CONNECT
Search Engine Portal for CA Firms and Individual Practitioners

CA Connect Portal of the Institute is an indigenous system of listing of CA Firms on the platform of the Institute. The objective of this portal is to provide an effective platform for listing due to limitations on such listing through online aggregators. Registered User (Firms / Members) will get an opportunity to meet clients/stakeholders requiring professional services on the single platform, wherein the services offered by Firms / Members may be searched, based on their area of expertise and locality.

Therefore, CA Connect Portal shall provide the essential bridge between clients and Chartered Accountants.This portal is in addition to the existing modes of listing, which will continue to be functional.

CA Connect Portal is accessible at caconnect.icai.org

Features of CA Connect Portal

- To place credential of practicing members/ firm of Chartered Accountants including location and resources
- Provide an essential bridge between clients and Chartered Accountants
- Prospective clients can search the services offered by Firms / Members based on their area of expertise under one roof irrespective of their geographical locations.
- The choice to clients for selection of CA Firms / Members as per their need.

Key information of practicing members/firms of Chartered Accountants are available at CA Connect Portal

- Member/Firm Name
- Firm Constitution Year
- No. of Partners
- Locality
- Area of Expertise

esb@icai.in @icaiesb| 0120-3876857 | esb.icai.org/

ICAI News

Applicable date of certain deferred provisions of Volume-I of Revised Code of Ethics, 2019

As the members are aware, the revised 12th edition of Code of Ethics has come into effect from 1st July, 2020. It is accessible on www.icai.org at the following links:-

Code of Ethics Volume – I

https://resource.cdn.icai.org/55133CodeofEthics-2019.pdf

Code of Ethics Volume – II
https://resource.cdn.icai.org/60018code-of-ethics-2020vol2.pdf

Code of Ethics Volume –III (Case Laws Referencer)
https://resource.cdn.icai.org/59111esb48239.pdf

It may further be recalled that the Council at its 393rd Meeting held on 30th June and 1st July, 2020 decided that due to the prevailing situation due to COVID-19, the effective date of the following provisions of Volume-I of Code of Ethics, 2019 be deferred till further notification and an Announcement dated 1st July, 2020 was accordingly hosted on the Website of the Institute :-

1. Responding to Non-Compliance with Laws and Regulations (NOCLAR) [Sections 260 and 360]

2. Fees - Relative Size [Paragraphs 410.3 to R410.6]

3. Tax Services to Audit Clients [Subsection 604]

The Council has recently decided that the provisions namely, Responding to Non Compliance with Laws and Regulations (NOCLAR) (Sections 260 and 360), Fees-Relative Size (Paragraphs 410.3 to R410.6) and Tax Services to Audit Clients (Sub-section 604) contained in Volume-I of Code of Ethics, 2019, the applicability of which was deferred earlier, **be made applicable and effective from 1st April, 2022.**

CA. (Dr.) Jai Kumar Batra

Acting Secretary, ICAI

Classifieds

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI – 110 002

31st August, 2021

NOTIFICATION

(Chartered Accountants)

No. 54-EL(1)/1/2021: In pursuance of sub-rules (3) and (5) of rule 6 of the Chartered Accountants (Election to the Council) Rules, 2006 read with Clauses (iv) and (v) of sub-regulation (4) and sub-regulation (10) of regulation 134 of the Chartered Accountants Regulations, 1988, it is hereby notified that the printed copy of the list of members eligible to vote (i.e., List of Voters) from the various regional constituencies for elections to the Twenty Fifth Council and Twenty Fourth Regional Councils of the Institute will be available on payment of Rs.2000/- per copy for any of the five regional constituencies from the office of the Institute at ICAI Bhawan, Indraprastha Marg, New Delhi - 110 002 and from its on-line Centralised Distribution System (CDS) i.e., www.icai-cds.org; effective from 1st September, 2021. Copies of the List of Voters pertaining to relevant regional constituency will also be available for sale at the said rate in the concerned Regional Councils at Mumbai, Chennai, Kolkata and Kanpur. The list of voters will also be available for reference only at the respective Branches of the Regional Councils. The soft copy of the List of Voters will be available at a cost of Rs. 500/- online from the CDS Portal of the Institute, i.e. www.icai-cds.org; only.

(CA. (Dr.) Jai Kumar Batra)
Returning Officer and Acting Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA, EXTRAORDINARY DATED 1st SEPTEMBER, 2021]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEW DELHI – 110 002

1st September, 2021

NOTIFICATION

(Chartered Accountants)

No. 54-EL(1)/2/2021: In pursuance of sub-rule (2) of rule 4 of the Chartered Accountants (Election to the Council) Rules, 2006 read with sub-regulation (10) of regulation 134 of the Chartered Accountants Regulations, 1988, the Institute of Chartered Accountants of India is pleased to notify the following important dates relating to the next elections of members to its Council and Regional Councils:-

Sl. No.	Stages of Election	Dates Fixed
1.	The last date and time for receipt of nominations	22.9.2021 – 6.00 P.M.
2.	(i) Date(s) and place of scrutiny of Nominations; and (ii) Last date for scrutiny of nominations	29.9.2021 to 6.10.2021 (New Delhi)

3.	The last date and time for withdrawal of nominations	18.10.2021 – 6.00 P.M.
4.	The date or dates of polling for - (i) Agra, Ahmedabad, Bengaluru, Bhayandar, Bhilwara, Bhopal, Bhubaneswar, Chandigarh, Chinchwad, Chennai, Coimbatore, Delhi/New Delhi, Dombivali, Faridabad, Ghaziabad (including Indirapuram, Sahibabad and Vaishali), Gurugram, Guwahati, Hyderabad, Indore, Jaipur, Jodhpur, Kalyan, Kanpur, Kochi, Kolkata, Kota, Lucknow, Ludhiana, Mira Road, Mumbai, Nagpur, Nashik, Navi Mumbai, Noida, Patna, Pune, Raipur, Rajkot, Ranchi, Surat, Thane, Udaipur, Vadodara, Vijayawada and Visakhapatnam (ii) Other cities/towns	3 & 4.12.2021 4.12.2021
5.	The last date for receipt of applications for permission to vote by post under rule 28 of the Chartered Accountants (Election to the Council) Rules, 2006	1.10.2021
6.	The last date and time for receipt by post of ballot papers back from voters	10.12.2021 – 5.00 P.M.
7.	Dates of Counting of Votes	16.12.2021 to 31.12.2021
8.	The date of declaration of results	Latest by 3.1.2022*

* The date to be reckoned for the purpose of determining the limitation period for filing election dispute application shall be the date on which the declaration of results is eventually notified in the Gazette of India.

(CA. (Dr.) Jai Kumar Batra)
Returning Officer and Acting Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA, EXTRAORDINARY DATED 1st SEPTEMBER, 2021]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEW DELHI – 110 002.

1st September, 2021

NOTIFICATION

(Chartered Accountants)

No.54-EL(1)/3/2021: In pursuance of sub-rule (1) of rule 9 of the Chartered Accountants (Election to the Council) Rules, 2006 read with Schedule 4 thereto, the Institute of Chartered Accountants of India is pleased to notify that nominations of candidates who desire to stand for election to its Twenty Fifth Council, to be held in December, 2021 should be forwarded in the manner specified in rule 9 of the said Rules (details of which will be found printed in the Nomination Form also) addressed to CA. (Dr.) Jai Kumar Batra, Returning Officer and Acting Secretary to the Council (by name), at ICAI Bhawan, Indraprastha Marg, New Delhi – 110 002 so as to reach him not later than 6.00 P.M. on 22.9.2021.

The nomination shall be in the Form approved by the Council of the Institute under sub-rule (3) and in the

manner specified in rule 9 of the said Rules. While filing the nominations, candidates should keep in mind the provisions of the Chartered Accountants (Election to the Council) Rules, 2006, particularly those contained in rules 9, 10, 11 and 12 of the said Rules. The nomination forms can be had from the Office of the Institute at ICAI Bhawan, Indraprastha Marg, New Delhi-110002 as well as from the Regional Offices at Mumbai, Chennai, Kolkata and Kanpur and major Branches at Ahmedabad, Bengaluru, Chandigarh, Ernakulam (Kochi), Hyderabad, Indore, Jaipur, Nagpur, Pune, Surat, Thane and Vadodara w.e.f. 1st September, 2021. The nomination forms will however be accepted by the Returning Officer and Acting Secretary to the Council at the above address at New Delhi only, effective from the said date.

The number of persons to be elected from each Regional Constituency is shown below in column (3) against the respective Constituency:

Sl. No.	Name of the Regional Constituency	No. of persons to be Elected
(1)	(2)	(3)
1.	**Western India Regional Constituency** The States of Goa, Gujarat and Maharashtra and the Union Territories of Dadra & Nagar Haveli and Daman & Diu.	11
2.	**Southern India Regional Constituency** The States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu, Telangana and the Union Territories of Lakshadweep and Pondicherry.	6
3.	**Eastern India Regional Constituency** The States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, Tripura, West Bengal and the Union Territory of Andaman & Nicobar Islands.	3
4.	**Central India Regional Constituency** The States of Bihar, Chattisgarh, Jharkhand, Madhya Pradesh, Rajasthan, Uttarakhand and Uttar Pradesh.	6
5.	**Northern India Regional Constituency** The States of Haryana, Himachal Pradesh and Punjab and the Union Territories of Chandigarh, Delhi, Jammu & Kashmir and Ladakh.	6

The fee of election and security deposit required to be paid under rules 10 and 11 of the said Rules must be by way of demand draft drawn in favour of the Secretary, the Institute of Chartered Accountants of India, payable at New Delhi.

(CA. (Dr.) Jai Kumar Batra)

Returning Officer and Acting Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA, EXTRAORDINARY DATED 1st SEPTEMBER, 2021]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEW DELHI – 110 002.

1st September, 2021

NOTIFICATION

(Chartered Accountants)

No.54-EL(1)/4/2021: In pursuance of sub-regulations (5) and (6) of regulation 134 of the Chartered Accountants Regulations, 1988 read with rule 9 of the Chartered Accountants (Election to the Council) Rules, 2006 and Schedule 4 thereto, the Institute of Chartered Accountants of India is

pleased to notify that nominations of candidates who desire to stand for election to its Twenty Fourth Regional Councils, to be held in December, 2021 should be forwarded in the manner prescribed/ specified therein (details of which will be found printed in the Nomination Form also) addressed to CA. (Dr.) Jai Kumar Batra, Returning Officer and Acting Secretary to the Council (by name) at ICAI Bhawan, Indraprastha Marg, New Delhi – 110 002 so as to reach him not later than 6.00 P.M. on 22.9.2021.

The nomination shall be in the Form approved by the Council. While filing the nominations, candidates should keep in mind the provisions of sub-regulations (6A), (7) and (7A) of the said regulation read with the Chartered Accountants (Election to the Council) Rules, 2006, particularly those contained in rules 9, 10, 11 and 12 of the said Rules. The nomination forms can be had from the Office of the Institute at ICAI Bhawan, Indraprastha Marg, New Delhi as well as from the Regional Offices at Mumbai, Chennai, Kolkata and Kanpur and major Branches at Ahmedabad, Bengaluru, Chandigarh, Ernakulam (Kochi), Hyderabad, Indore, Jaipur, Nagpur, Pune, Surat, Thane and Vadodara w.e.f. 1st September, 2021. The nomination forms will however be accepted by the Returning Officer and Acting Secretary to the Council at the above address at New Delhi only, effective from the said date.

The number of persons to be elected to each Regional Council is shown below in column (3) against the respective Regional Council :

Sl. No.	Name of the Regional Council	No. of persons to be Elected
(1)	(2)	(3)
1.	Western India Regional Council	21
2.	Southern India Regional Council	13
3.	Eastern India Regional Council	5
4.	Central India Regional Council	12
5.	Northern India Regional Council	13

The fee of election and security deposit required to be paid under regulation 134 of the said Regulations read with rule 10 of the said Rules must be by way of a demand draft drawn in favour of the Secretary, the Institute of Chartered Accountants of India, payable at New Delhi.

For the purpose of elections to the Regional Councils, subject to the provisions contained in Chapter VII of the Chartered Accountants Regulations, 1988, the provisions relating to elections as contained in the Chartered Accountants (Election to the Council) Rules, 2006, shall 'mutatis mutandis' apply.

(CA. (Dr.) Jai Kumar Batra)

Returning Officer and Acting Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA, EXTRAORDINARY DATED 1st SEPTEMBER, 2021]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEW DELHI – 110 002

1st September, 2021

NOTIFICATION

(Chartered Accountants)

No. 54-EL(1)/5/2021 : In exercise of the powers conferred by sub-rule (1) of rule 10 of the Chartered Accountants (Election to the Council) Rules, 2006, the Institute of Chartered Accountants of India has decided that in respect of election to its Twenty Fifth Council to be held in December, 2021, a candidate for election shall pay in all a fee of Rs. 25,000/- (Rupees Twenty Five Thousand only)

for his candidature, irrespective of the number of nominations that may be filed.

The said fee is required to be paid by way of a demand draft drawn in favour of Secretary, the Institute of Chartered Accountants of India, payable at New Delhi.

(CA. (Dr.) Jai Kumar Batra)
Returning Officer and Acting Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA, EXTRAORDINARY DATED 1st SEPTEMBER, 2021]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEW DELHI – 110 002

1st September, 2021

NOTIFICATION

(Chartered Accountants)

No. 54-EL(1)/6/2021 : In exercise of the powers conferred by sub-regulation (7) of regulation 134 of the Chartered Accountants Regulations, 1988 read with sub-regulation (10) of the said regulation and rule 10 of the Chartered Accountants (Election to the Council) Rules, 2006, the Institute of Chartered Accountants of India has decided that in respect of election to its Twenty Fourth Regional Councils to be held in December, 2021, a candidate for election shall pay in all a fee of Rs. 12,500/- (Rupees Twelve Thousand Five Hundred only) for his candidature, irrespective of the number of nominations that may be filed.

The said fee is required to be paid by way of a demand draft drawn in favour of Secretary, the Institute of Chartered Accountants of India, payable at New Delhi.

(CA. (Dr.) Jai Kumar Batra)
Returning Officer and Acting Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA, EXTRAORDINARY DATED 1st SEPTEMBER, 2021]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEW DELHI – 110 002

1st September, 2021

NOTIFICATION

(Chartered Accountants)

No. 54-EL(1)/7/2021 : In pursuance of sub-rule (1) of rule 11 of the Chartered Accountants (Election to the Council) Rules, 2006, the Institute of Chartered Accountants of India hereby notifies that in respect of election to its Twenty Fifth Council to be held in December, 2021, a candidate shall pay an amount of Rs.20,000/- (Rupees Twenty Thousand only) as security deposit, for his candidature, irrespective of the number of nominations that may be filed. The security deposit so paid shall be forfeited, if he fails to secure not less than 2% (two percent) of the original votes, as defined in rule 35 of the said Rules, polled in the concerned Regional Constituency.

The said deposit is required to be paid by way of a demand draft drawn in favour of Secretary, the Institute of Chartered Accountants of India, payable at New Delhi.

(CA. (Dr.) Jai Kumar Batra)
Returning Officer and Acting Secretary

ICAI Elections

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA, EXTRAORDINARY DATED 1st SEPTEMBER, 2021]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEW DELHI – 110 002

1st September, 2021

NOTIFICATION

(Chartered Accountants)

No. 54-EL(1)/8/2021 : In pursuance of sub-regulation (7A) of regulation 134 of the Chartered Accountants Regulations, 1988 read with sub-regulation (10) of the said regulation and the Chartered Accountants (Election to the Council) Rules, 2006, the Institute of Chartered Accountants of India hereby notifies that in respect of election to the Twenty Fourth Regional Councils to be held in December, 2021, a candidate shall pay an amount of Rs.10,000/- (Rupees Ten Thousand only) as security deposit, for his candidature, irrespective of the number of nominations that may be filed. The security deposit so paid shall be forfeited if he fails to secure not less than 1% (One percent) of the original votes, as defined in rule 35 of the said Rules, polled in the concerned Regional Constituency.

The said deposit is required to be paid by way of a demand draft drawn in favour of Secretary, the Institute of Chartered Accountants of India, payable at New Delhi.

(CA. (Dr.) Jai Kumar Batra)

Returning Officer and Acting Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA, EXTRAORDINARY DATED 1st SEPTEMBER, 2021]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEW DELHI – 110 002

1st September, 2021

NOTIFICATION

(Chartered Accountants)

No. 54-EL(1)/9/2021: In pursuance of rules 21 and 29 of the Chartered Accountants (Election to the Council) Rules, 2006 read with Schedule 6 thereof and sub-regulation (10) of regulation 134 of the Chartered Accountants Regulations, 1988, it is hereby notified that 3rd and 4th December, 2021 have been appointed as the dates for the recording of votes for elections to the Twenty Fifth Council and Twenty Fourth Regional Councils of the Institute of Chartered Accountants of India for Agra, Ahmedabad, Bengaluru, Bhayandar, Bhilwara, Bhopal, Bhubaneswar, Chandigarh, Chinchwad, Chennai, Coimbatore, Delhi/ New Delhi, Dombivali, Faridabad, Ghaziabad (including Indirapuram, Sahibabad and Vaishali), Gurugram, Guwahati, Hyderabad, Indore, Jaipur, Jodhpur, Kalyan, Kanpur, Kochi, Kolkata, Kota, Lucknow, Ludhiana, Mira Road, Mumbai, Nagpur, Nashik, Navi Mumbai, Noida, Patna, Pune, Raipur, Rajkot, Ranchi, Surat, Thane, Udaipur, Vadodara, Vijayawada and Visakhapatnam. At all other places, 4th December, 2021 has been appointed as the date for recording of votes.

All polling booths will remain open from 8.00 a.m. to 8.00 p.m. on the respective date(s).

(CA. (Dr.) Jai Kumar Batra)

Returning Officer and Acting Secretary

ICAI in Media : Glimpses of July- August, 2021

BusinessLine

New Delhi, July 20, 2021

MANAGEMENT COMMENTARY

CA Institute invites stakeholders' views

Aims to meet information needs of investors

KR SRIVATS

New Delhi, July 19

The CA Institute has now sought stakeholders comments on International Accounting Standards Board's (IASB's) new exposure draft of revised "Practice Statement on Management Commentary" that is intended to help entities provide management commentaries meet the information needs of investors and creditors in a better way.

This exercise is seen as useful, given that investors and creditors these days ask for information that complements an entity's financial statements to provide more insight into its long-term prospects. Stakeholders have been asked to send in their comments by October 1 this year, sources close to the development said..

Stakeholders asked to send comments by October 1

IASB's aim

The IASB's main aim in revising the practice statement is to develop comprehensive requirements that focus on information that investors and creditors need and guidance to help management identify that information and present clearly.

IASB's proposals are designed to provide a sufficient flexibility for a company to be able to tell its unique story, focusing on what is important to the company's long-term prospects.

BusinessLine New Delhi, July 24, 2021

CG Power fraud: ICAI asks CBI for case details on 'signing partners' of auditors

Seeks from SBI the plaint it filed and forensic audit reports to decide on action against the auditors

KR SRIVATS

New Delhi, July 23

Audit regulator ICAI has written to the Central Bureau of Investigation (CBI) and State Bank of India (SBI) seeking information on the signing partners of three statutory auditors between FY'2014-15 and FY' 2018-19 in the CG Power & Industrial Solutions matter.

The allegation is that the signing partners of these three audit firms — Sharp & Tannan, Chaturvedi & Shah(joint auditor for FY16 to FY18), and KK Mankeshwar & Co (joint auditor for FY18 and FY19) — signed off on the audited balance-sheets for these years without highlighting any of the fraudulent transactions in CG Power of over ₹5,000 crore.

Nihar Jambusaria, President, ICAI

"We have today written to the CBI and SBI seeking specific information on the CG Power matter. Based on their response, we will take a decision on whether ICAI will initiate disciplinary proceedings against the signing partners of these audit firms," Nihar Jambusaria, President, Institute of Chartered Accountants of India, told *BusinessLine*.

Jambusaria said that the CBI has not shared with the CA Institute any information on the action taken against the three statutory auditors.

The CBI had filed a case against the three audit firms based on a complaint from the State Bank of India, the lead lender to CG Power. The ICAI, in its letter to the CBI, sought details on the case filed by the agency and also a copy of its chargesheet, if any, sources said.

Also, the ICAI has asked SBI to share the complaint it filed with the CBI and the two forensic audit reports (SBI had commissioned two firms) on CG Power, they added. The SBI complaint, it is learnt, identified Milind Phadke (FY15 and 16) and Vinayak Padwal (FY17) of Sharp & Tannan; Parag D Mehta (FY17) of Chaturvedi & Shah; and Ashwin Mankeshwar of KK Mankeshwar & Co (FY18 and FY 19) as the signing partners.

Sharp & Tannan is understood to have had a long association with CG Power as statutory auditor till FY2016-17. it is only in recent years that policy makers have been strict about auditor rotation and brought changes to the company law to implement auditor rotation, say corporate observers.

BusinessLine New Delhi, July 28, 2021

CA Institute expresses concern over NFRA consultation paper's 'overreach'

KR SRIVATS

New Delhi, July 27

The CA Institute and the National Financial Reporting Authority (NFRA), the new audit regulator of auditors of listed and large companies, are not on the same page when it comes to the recently issued NFRA consultation paper.

The Institute of Chartered Accountants of India (ICAI) has conveyed to the government its serious concerns on the fundamental viability of the report of the Technical Advisory Committee (TAC) of NFRA and in turn the consultation paper issued on this report, Nihar Jambusaria, President, ICAI, has

Nihar Jambusaria, President, ICAI

said. Speaking to *BusinessLine* on the NFRA consultation paper, which is open for stakeholders' comments till July 30, Jambusaria said the consultation paper travels beyond what is permitted by NFRA Rules.

He highlighted that the consultation paper was issued without consulting ICAI regarding the factual accuracy of the audit matters. The report of TAC contains charges on all the stakeholders viz auditors, preparers, management, regulators and the government.

"ICAI discussed the consultation paper issued by NFRA and has reservations with regard to comments made in the Consultation Paper and the report of TAC. We have conveyed our serious reservations in our letter to the Corporate Affairs Ministry," Jambusaria said.

He said the TAC report issued without consulting the NFRA Board members and the ICAI will have a negative impact on the overall image of the nation.

BusinessLine

New Delhi, July 25, 2021

COVID-19 BLUES

Nearly 40,000 students opted out of July exams: ICAI chief

KR SRIVATS

New Delhi, July 25

Nearly 3.3 lakh students appeared for the July edition of the CA exams braving the threat of Covid-19 and fears around its impact while putting their career on priority, a top Institute of Chartered Accountants of India (ICAI) official confirmed.

"Roughly about 40,000 students out of registered 3.7 lakh students had opted out on the ground of Covid-19. About 3.3 lakh students appeared for the exams," Nihar Jambusaria, President, ICAI, told *BusinessLine*.

Both the final and intermediate examinations for July edition are now over, and the foundation course exams are expected to be completed this week (July 24-31), he said.

Jambusaria said that he had informed the Central council that ICAI was "well prepared (in terms of adopting Covid protocols) to conduct the exams" even as some activists had approached the Supreme Court.

He pointed out that SC had allowed the CA Institute to go ahead with the exams as planned while passing directions on providing the opt-out facility for students. It may be recalled that the CA Institute had to recast its earlier announced opt-out option for Chartered Accountant aspirants taking the July examinations so as to bring it in tune with the directions of the Supreme Court.

Nihar Jambusaria, President, ICAI

Post the recast, an examinee was entitled to exercise the option of opting out if he/she personally, or any of his/her family member (residing at the same premises), has suffered Covid-19 in the recent past - on or after April 15.

Moreover, in line with the SC directives, the ICAI had said that it will go by the certificate of the registered medical practitioner for this purpose, and there won't be any need to produce the RT-PCR test result along with the request for opting out.

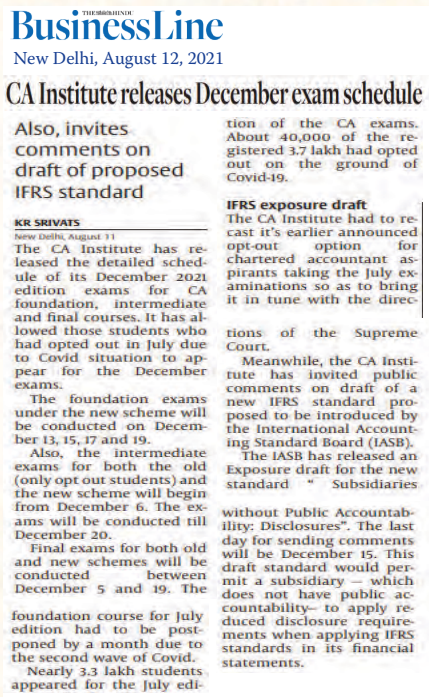
Earlier, the ICAI had stipulated that the provision of opt-out would be available only if the examinee were to furnish Covid positive RT-PCR report, along with the Aadhaar card of the infected person (examinee or the relative as the case maybe).

ICAI in Media

हमारा महानगर Mumbai, July 26, 2021

सीए उम्मीदवारों के लिए बड़ी राहत

मुंबई। महाराष्ट्र में लगातार हो रही भारी बारिश के कारण कई इलाकों में जलभराव और बाढ़ की स्थिति बनी हुई है। ऐसे मेंआईसीएआई ने अपनी परीक्षाओं के कार्यक्रम में बदलाव करते हुए सीए उम्मीदवारों को बड़ी राहत प्रदान की है। दरअसल, भारी बारिश से जलभराव और बाढ़ के कारण सैकड़ों विद्यार्थीइंस्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया की 24 जुलाई, 2021 को आयोजित परीक्षा में शामिल नहीं हो पाए थे। ऐसे मेंआईसीएआई ने इन्हें एक और अवसर प्रदान करने का एलान किया है। इंस्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया (आईसीएआई) ने घोषणा की है कि महाराष्ट्र के कुछ शहरों में 24 जुलाई को मौसम की खराबस्थिति के कारण परीक्षा में शामिल नहीं हो पाने वालेसीए उम्मीदवारों को बाद की तारीख में परीक्षा में बैठने की अनुमति दी जाएगी।



BusinessLine
New Delhi, August 12, 2021

CA Institute releases December exam schedule

Also, invites comments on draft of proposed IFRS standard

KR SRIVATS
New Delhi, August 11

The CA Institute has released the detailed schedule of its December 2021 edition exams for CA foundation, intermediate and final courses. It has allowed those students who had opted out in July due to Covid situation to appear for the December exams.

The foundation exams under the new scheme will be conducted on December 13, 15, 17 and 19.

Also, the intermediate exams for both the old (only opt out students) and the new scheme will begin from December 6. The exams will be conducted till December 20.

Final exams for both old and new schemes will be conducted between December 5 and 19. The foundation course for July edition had to be postponed by a month due to the second wave of Covid.

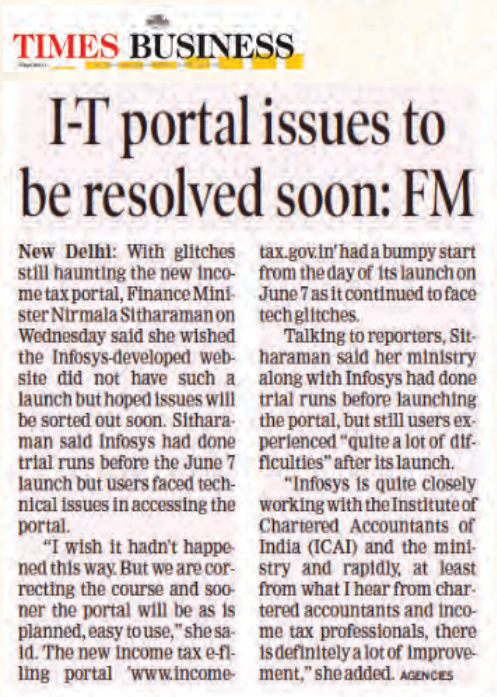
Nearly 3.3 lakh students appeared for the July edition of the CA exams. About 40,000 of the registered 3.7 lakh had opted out on the ground of Covid-19.

IFRS exposure draft

The CA Institute had to recast it's earlier announced opt-out option for chartered accountant aspirants taking the July examinations so as to bring it in tune with the directions of the Supreme Court.

Meanwhile, the CA Institute has invited public comments on draft of a new IFRS standard proposed to be introduced by the International Accounting Standard Board (IASB).

The IASB has released an Exposure draft for the new standard " Subsidiaries without Public Accountability: Disclosures". The last day for sending comments will be December 15. This draft standard would permit a subsidiary – which does not have public accountability– to apply reduced disclosure requirements when applying IFRS standards in its financial statements.



TIMES BUSINESS

I-T portal issues to be resolved soon: FM

New Delhi: With glitches still haunting the new income tax portal, Finance Minister Nirmala Sitharaman on Wednesday said she wished the Infosys-developed website did not have such a launch but hoped issues will be sorted out soon. Sitharaman said Infosys had done trial runs before the June 7 launch but users faced technical issues in accessing the portal.

"I wish it hadn't happened this way. But we are correcting the course and sooner the portal will be as is planned, easy to use," she said. The new income tax e-filing portal 'www.incometax.gov.in' had a bumpy start from the day of its launch on June 7 as it continued to face tech glitches.

Talking to reporters, Sitharaman said her ministry along with Infosys had done trial runs before launching the portal, but still users experienced "quite a lot of difficulties" after its launch.

"Infosys is quite closely working with the Institute of Chartered Accountants of India (ICAI) and the ministry and rapidly, at least from what I hear from chartered accountants and income tax professionals, there is definitely a lot of improvement," she added. AGENCIES

Reference

ACCOUNTANT'S BROWSER

"PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE"

Index of some useful articles taken from Periodicals received during July-August 2021 for the reference of Faculty/Students & Members of the Institute.

1. Economics

Macroeconomic view of the shape of India's Sovereign Yield Curve. *R. B. I Bulletin,* Vol.75/06, June 2021, pp.49-65.

Practical guide to economic nexus: Sales compliance takes shape in a transformed landscape by Antonio Di Benedetto, J.D. *Journal of Accountancy,* June 2021, pp.20-27.

Reviews the impact of the latest anti-money laundering regulations in the Republic of Ireland by David Potts. *International Accountant,* May- June 2021, pp.20-23.

2. Management

Covid-19 impact on buying behaviour by Meghna Verma and B. R. Naveen. *Vikalpa,* Vol.46/01, 2021, pp.27-40.

How to design an AI marketing strategy: What the technology can do today- and what's next by Thomas H. Davenport and Abhijit Guha. *Harvard Business Review,* Vol.99/4, July-August 2021, pp.42-47.

3. Taxation and Finance

International Tax: The impact of Brexit by Mark Taylor. I*nternational Accountant,* May- June 2021, pp.24-25.

Full Texts of the above articles are available with the Central Council library, ICAI, which can be referred on all working days. For further inquiries please contact on 011-30110419 and 011-30110420 or by e-mail at library@icai.in.

Board of Studies-Operations (SSEB)
The Institute of Chartered Accountants of India

Take pride in using the prefix CA- The two alphabet of TRUST.

ONE TIME GOLDEN OPPORTUNITY FOR CA FINAL QUALIFIED STUDENTS - BECOME A MEMBER OF ICAI

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FEATURES OF VIRTUAL COURSE

- The student can complete the course through online mode anytime anywhere (Flexible Time).
- The course can be attended session wise in seriatim.
- Not required to attend any Physical /Online Classes.

Students can complete the course by 31st December, 2021.

The qualification of ACA and use of prefix CA is allowed only for the members of ICAI and not for CA Final qualified students.

If opportunity missed, students will have to attend regular classes for MCS/Advanced ITT.

Students who want to undergo the course can register online at **https://virtualmcs.icai.org/**

The last date of registration - **30th September, 2021.**

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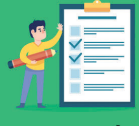

Assessments to evaluate learning outcomes

Communities to share Ideas

Web Cast Channels for Professional Updates

Virtual Coaching Classes Recorded Lectures for Students

Course Access to Government Officials, Bank Officials, MRA/MOU/SAFA Members

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