VOLUME 71 | NO. 3 | PAGES -116 | SEPTEMBER 2022 | ₹100

THE CHARTERED ACCOUNTANT

JOURNAL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

GST - Leading the Reforms and Growth

ICAI - SET UP BY AN ACT OF PARLIAMENT

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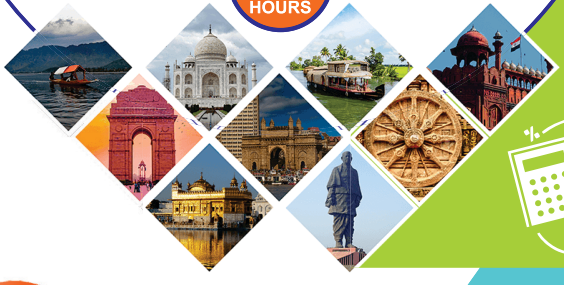

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Transformational five years of GST

When the then Hon'ble President of India, Late Shri Pranab Mukherjee along with the Hon'ble Prime Minister, Shri Narendra Modi, welcomed the new GST regime at the midnight of 30th June 2017, it was more than just a significant tax reform, it was a first ever transformational tax reform since Independence. Today, a tax professional in Madurai can advise a taxpayer undertaking a project in Asansol on the transaction tax impact in the bid document. A decision rendered in Rajkot can now illuminate the interpretation of a similar transaction being examined by an Officer in Guwahati. This is nothing short of miraculous and is possible only because the law is common across the whole Nation and every officer is required to operate within the procedures laid down in the law that runs on a technology backbone.

GST also deserves credit for breaking new ground on transparency and for taking away discretion with any officer to allow or deny a given tax treatment. Ask the experts who have spent decades in the corridors of the tax offices, and they will recount those days because visiting the tax office is now passé. Rule of law stands tall in this new law where taxpayers need to be 'put at notice' and after hearing their objections, 'speaking orders' need to be passed. The 'passion to protect interests of revenue' is not enough to pass orders confirming demand. Timelines are specified not only to 'start' administrative proceedings but also to 'conclude' by passing orders determining liability. Even more remarkable is that taxpayer cannot be compelled to testify or make inculpatory statements. These are some examples that bear the mark of a model tax legislation.

It is commendable to see a resolute Government to encourage trade and support MSME taxpayers in the e-commerce space by actively engaging to understand the support required, while imposing tax on high-end healthcare facilities. Regular review of tariffs has ensured revenue collections maintain healthy growth.

There is work still to be done, and the resolve is unmistakable to press forward and realize the full potential of GST, one where taxpayer interface with Revenue will be minimal, if not absent entirely. GST is set to see the setting up of GST Appellate Tribunal (GSTAT). GSTAT, that will also be a model in itself, is expected by many to be 'virtual by default', from filing to disposal. Tweaks to the law are needed to ensure the desired balance between members of judiciary and members from the executive working together to see taxpayers' grievances are redressed swiftly.

Being a partner in national building, the Institute of Chartered Accountants of India (ICAI) has rendered unflinching support to the Government in ushering in the GST regime in India. Government's recognition of ICAIs contribution in different areas was marked when Hon'ble Prime Minister hailed the role of Chartered Accountants on 1st July 2022, the Chartered Accountants Day.

ICAI through its *GST & Indirect Taxes Committee* has been relentlessly contributing to stakeholder engagement and in dissemination of knowledge of GST through its technical publications, certificate courses, seminars, conferences, e-learning, webinars etc. and regular representation to the Government from time to time. The ICAI has always been a front runner in providing qualitative, innovative and thoroughly researched technical inputs/suggestions to CBIC, GST Council and GSTN during pre and post implementation phases of GST through its *GST & Indirect Taxes Committee*. The Committee has developed 45 technical publications on various aspects of GST which are being updated at regular intervals. The Committee also publishes ICAI-GST Newsletter to keep the stakeholders abreast with the changes in the GST law. The Newsletter contains articles on contemporary topics, recent amendments, and a quiz to keep the readers engaged. Recently, a short video series have been developed for creating awareness and sharing knowledge of GST amongst general public. The series is titled as "10 Point GST Series".

With GST entering the sixth year, this is a time to congratulate the Nation and its people for having come through the transitionary phase of such a transformational tax reform which will not fail to yield the dividends that it promises. GST was birthed by no less than a Constitutional Amendment and guided by the collective wisdom that resides in the GST Council while preserving sovereignty of States and unity of the Country. ICAI applauds the Government for its continuous engagement with stakeholders, unmoved by the times or its perils.

-Editorial Board ICAI: Partner in Nation Building

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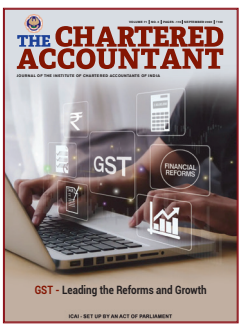

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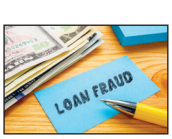

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
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New Delhi-110002, Tel: +91 (11) 39893989.
E-mail: eboard@icai.in, Website: www.icai.org

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Please contact: The Journal Section at ICAI Bhawan, Indraprastha Marg, New Delhi 110 002 or call at +91-11-30110472 or e-mail at eboard@icai.in

EDITORIAL SUPPORT & DESIGN
SAP Print Solutions Private Limited
28A, Lakshmi Industrial Estate, S.N. Path, Lower Parel (W),
Mumbai - 400 013 Tel : 022 - 40741000

ICAI RESERVES THE RIGHT TO REJECT ADVERTISEMENTS.
Printed and published by Jai Kumar Batra on behalf of
The Institute of Chartered Accountants of India (ICAI)
Editor – CA. (Dr.) Debashis Mitra

Published at The Institute of Chartered Accountants of India, I. P. Marg, New Delhi - 110002 and printed at SAP Print Solutions Private Limited, Plot No-3 and Plot No-30 Sector II, The Vasai Taluka Industrial Co-op Estate Ltd., Gauraipada, Vasai (E), District : Palghar - 401208

Total Circulation : 83,626
Total No. of Pages: 116 including Covers
E-Journal circulation (Soft copy): 3,74,840

From the President

CA. (Dr.) Debashis Mitra
President, ICAI

Dear Professional Colleagues,

As we celebrate 75 years of Independence, it is a matter of pride that globally India has grown to become the 6th largest economy as per data released by World Bank. In fact, amidst the global economic turbulence caused due to pandemic, Indian economy relatively remained resilient and will be amongst the fastest growing economy globally in the years to come. Over the period it was impressive to note country's economic progress and our GDP has grown about 10 times in last 20 years. This is an indication that all our efforts are in right direction and inspires us to work with more enthusiasm towards meeting the aspirations of all citizens.

Our nation has slowly and steadily pushed ahead its reform-driven developmental agenda. The introduction of GST was one of the most important tax reforms undertaken post-independence powered by technology to make India into *One Nation, One Market, One Tax* removing layers of indirect taxes to provide a cleaner and refined indirect tax structure. The GST reform has not only increased revenue but also ushered in formalization of economy which will be immensely beneficial for the economy in the long run. With the experience gained changes are being incorporated on regular basis. The institute through its GST & Indirect Taxes Committee has worked in tandem with the Government and its constituents for its smooth rollout across the country by building a knowledge dissemination ecosystem to create awareness and capability. The Institute has worked with Government as enabling partner to improve the GST system through policy inputs and feedback from the stakeholders.

Accountancy profession has a significant role to play in the transition of economy from developing to developed nation. Chartered Accountants must lead the change beyond the traditional functions for professional growth especially the emerging opportunities arising in this transition. The government and its constituents should consider engaging the Chartered Accountants in various capacities for their knowledge, acumen and multifarious skillsets.

Let me present some of the significant professional developments that have taken place since my last communication:

Revised Guidance Note on Tax Audit under section 44AB

It is a pleasure to inform you all that the Direct Taxes Committee of ICAI has released the much awaited and thoroughly revised edition of its flagship publication *'Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 - AY 2022-23'*. The tax audit season is in full swing and I am sure the publication would guide our members in making the compliances under the Income-tax Act, 1961 effectively. This publication has been specifically revised keeping in view the amendments made upto Finance Act, 2022 and tax audit forms applicable as on date for Assessment Year 2022-23. The due date to furnish tax audit forms/reports for AY 2022-23 is 30th September, 2022 and I am sure our members would sincerely work towards meeting this deadline as they have always done in the past.

World Congress of Accountants (WCOA) 2022

The preparations for the upcoming World Congress of Accountants – 2022 are in full swing. We are getting phenomenal response and support from the International fraternity. Till date, delegates from over 75 countries have registered for this "Olympics of Accountants". Around 10 International bodies are supporting this mega event. The WCOA 2022 is an opportune platform to showcase the strength of Indian accountancy profession at global level. The Council had recently allowed participation of Indian CA Firms at WCOA 2022 to showcase the strength of Indian accountancy profession at global level. I would urge all members to take advantage of this opportunity to engage, collaborate, connect and network with world's largest conglomeration of accounting and finance professionals from about 130 countries.

I am sure that with collective efforts of all, we shall be able organize the event in a grand manner as well as enhance brand equity of India and Indian Chartered Accountants globally.

Driving Sustainability Agenda - ESG Roundtable

With the gaining momentum of sustainability across the globe, the ICAI through its Sustainability Reporting Standards Board is organising a series of ESG Roundtables for the Independent Directors (IDs) and the CFOs across India. You may recall that top 1000 listed companies are covered under BRSR framework. In this direction, First Roundtable was held on 2nd August, 2022, at Kolkata wherein Mr. D Badhopadhyay, Regional Director East, MCA and Mr. G Ram Mohan Rao, Regional Director, Eastern Regional Office, SEBI, delivered the keynote address. The second ESG Roundtable was organised on 23rd August, 2022, at Mumbai wherein Mr. Amarjeet Singh, Executive Director, SEBI, was the Chief Guest and the inaugural address was made by CA. (Dr.) Niranjan Hiranandani, Past President - ASSOCHAM, CMD, Hiranandani Group of Companies, and Mr. Hemant Gupta, Managing Director, BIL Ryerson Start-up Incubator Foundation. Both the roundtables were a resounding success and around 150 CFOs/ IDs attended and participated in the deliberations.

Social Audit Standards

ICAI has been working on drafting the framework for Social Audit and the Social Audit Standards on eligible activities for conducting social impact assessments. All the 16 thematic focus areas shall be covered under the social audit framework.

The social audit framework being developed by the ICAI broadly covers the basic principles and elements of the audit of impact reports of projects, programs and activities to be undertaken by a social enterprise listed on the Social Stock Exchange and shall act as a reference document to all the social audit standards.

The Institute has also initiated the steps for establishing a self-regulatory organization for registration of social auditors as envisaged in the SEBI's latest notification. ICAI considers it a privilege to be associated with the project and is making sincere efforts in timely roll out of social audit standards and other related matters.

ICAI International Research Awards 2022

This year, 'ICAI International Research Awards 2022' is being held on 15th October, 2022 organized by the Research Committee to recognize and honour the research scholars from across the world in the field of Accounting, Auditing, Economics, Finance and Taxation. The International Research Awards aims to recognize the research community across the globe and their contribution in fostering innovation and value creation. It aspires to build global research community by promoting research-based ecosystem, sharing learning and solving problems & stimulating debates and dialogues.

I am also delighted to inform that the ICAI International Research Awards this year has received the highest number of 148 nominations from 18 countries across the globe including Italy, Australia, New Zealand, UAE, France, South Africa, Sri Lanka, Nigeria, Oman etc.

Meeting the Stakeholders

I along with the Vice President ICAI CA. Aniket Sunil Talati had the privilege to witness the Country's move towards becoming a global financial services hub with the launch of International Financial Services Centers Authority (IFSCA) headquarters, India International Bullion Exchange (IIBX) and NSE IFSC-SGX Connect by the Hon'ble Prime Minister, Shri Narendra Modi in the GIFT City, Ahmedabad on 29th July, 2022. All these initiatives will empower India to gain its rightful place in the global financial markets. These developments augur well for the profession's future too. On the sidelines we got the opportunity to meet Dr. Bhagwat Kishanrao Karad, Union Minister of State for Finance, Shri Tarun Bajaj, Revenue Secretary, Shri Injeti Srinivas, Chairman, IFSCA, Ms. Madhabi Puri Buch, Chairperson, SEBI and Mr. Ashish Kumar Chauhan, MD & CEO, NSE wherein deliberations and discussions were held to work towards developing India into a global financial services powerhouse and matters related to development of the profession.

We also had a meeting with Ms. Anna Shotbolt, Deputy Trade Commissioner for South Asia, British High Commission who visited ICAI on 5th August, 2022 to discuss way forward on working together and exploring the opportunities to collaborate under the India – UK Free Trade Agreement.

I along with CCM CA. Ranjeet Kumar Agarwal met the Hon'ble Governor of West Bengal & Manipur Shri La. Ganesan on 24th August, 2022. He has kindly consented to be the Chief Guest for the Bhoomi Pujan Ceremony of Centre of Excellence, Kolkata on 4th September, 2022.

ICAI MSME Yatra

The MSME Yatra, an initiative of the ICAI's Committee on MSME and Start-up was flagged of on 18th August, 2022 by Shri Narayan Rane, Hon'ble Minister of MSME in Mumbai as swift responder to MSME needs. The programme aims to coordinate, synergize and leverage the various elements of excellence driving innovation and entrepreneurship & wishes to facilitate the creation of ideas and inventions that benefit MSMEs. The MSME Yatra is a 75 day programme which will conclude on

18th November, 2022 and will cover more than 14000 kms covering cities across India to showcase the MSME ecosystem. Further programmes will be held for knowledge enhancement of the MSMEs on the designated days.

MoUs for Capacity Building and Developing Co-operation

The Institute through the Committee on MSME & Start-up has signed an MoU with the '*Facilitating MSMEs Tamil Nadu*', Government of Tamil Nadu at Tirupur on 25th August, 2022 for the capacity building of MSMEs in the State of Tamil Nadu. The MoU was signed in presence of Hon'ble Chief Minister of the State of Tamil Nadu Shri M.K. Stalin during the Regional MSMEs Meet.

Another MoU has been signed by the ICAI through the Career Counselling Committee with the *School Education Department*, Mizoram, Government of Mizoram for a tenure of 5 years for promoting commerce education and providing career guidance alongwith promoting CA Course amongst Government and Government aided Secondary and Higher/Senior Secondary school students in Mizoram. School Education Department, Mizoram welcomed the initiatives taken by the ICAI for the students of Mizoram and assured full support to ICAI for fulfilling the objective of MoU. The Chief Guest of the programme was Dr. Lalzirmawia Chhangte, IAS, Secretary, School Education, Mizoram. The ICAI has always been very receptive towards the requirements of the students of the North-Eastern States. A concession of 75% in registration course fee for all levels of CA Courses for the candidates/ students from North-Eastern States is already permissible. This MoU with Mizoram State Education Department at the initiative of the Committee on Career Counselling of the ICAI is a step forward in the direction of ensuring that true potential of students belonging to Mizoram is duly recognised.

CABF – Empowering the Helping Hand

The Chartered Accountants Benevolent Fund (CABF) scheme since December, 1962 has been extending economic help and support to the ICAI members and their dependents at the time of crises. The fund enables us to help our members through collective support from each other. During the COVID pandemic the CA Benevolent Fund has been very helpful to provide requisite support to our members. Since September 2020, about Rs. 17 Crores have been released as Financial Assistance for treatment of CORONA and also through one-time Ex-gratia/ Monthly/Medical financial assistance to members or their dependents.

However, the present corpus needs to be substantiated, so that continuous assistance could be provided to the families of needy members. It is an appeal to all the members to contribute generously for this noble cause. A dedicated portal https://cabf.icai.org/ is available to provide all information and support at a single window.

Let us all come together to build a huge CABF corpus, so that help and necessary support could be provided to our members in times of despair.

Bye-Election, 2022

The bye-elections to the 25th Council from Western India Regional Constituency are scheduled to be held on 16th and 17th September, 2022. In order to conduct the election 196 polling booths have been set up in 105 cities. I would request to all my eligible professional colleagues in the Western India region to exercise their right to vote.

In Conclusion

Over the years our profession has carved indelible impression amongst the stakeholders. Today our profession commands respect and trust which is gained with continuous learning & performance. In building our brand and legacy of trust, the role of teachers has been phenomenal. We must take opportunity to thank our teachers on this Teacher's Day i.e., our parents, teachers, principals and mentors who have with their guidance shaped our character and nurtured us to excel in all our pursuits in life. The Father of the Nation Mahatma Gandhi had said ***"I have always felt that the true text-book for the pupil is his teacher."***

Our Hon'ble Prime Minister in his Independence Day speech stated that to make India into a developed nation by 2047, we must follow the "Panch Pran" or the five pledges. The Institute would support these initiatives in the interest of national development. Our profession has evolved itself into a position of strategic leadership growing beyond its traditional domain to create value across the economic value chain by continuously innovating itself with the times to build a legacy of trust, excellence, independence & integrity.

I conclude with the words of Dr. A.P.J. Abdul Kalam: ***"India has to be transformed into a developed nation, a prosperous nation and a healthy nation, with a value system."***

Let us all work together towards achieving our dream of transforming India into a nation of our dreams.

CA. (Dr.) Debashis Mitra
President, ICAI
New Delhi, 26th August, 2022

Photographs

ICAI President CA. (Dr.) Debashis Mitra and ICAI Vice President CA. Aniket Sunil Talati meeting with Dr. Bhagwat Kishanrao Karad, Hon'ble Minister of State for Finance at the Foundation Stone Laying of IFSCA HQ Building, Ahmedabad. Also seen in the picture CA. Purushottamlal H Khandelwal Central Council member, ICAI. (29th July, 2022)

ICAI President CA. (Dr.) Debashis Mitra and ICAI Vice President CA. Aniket Sunil Talati along with Mrs. Madhabi Puri Buch, Chairperson SEBI at the launch of NSE IFSC-SGX Connect in Ahmedabad. Also seen in the picture CA. Purushottamlal H Khandelwal Central Council member, ICAI. (29th July, 2022)

ICAI President CA. (Dr.) Debashis Mitra and ICAI Vice President CA. Aniket Sunil Talati along with Shri Injeti Srinivas, Chairperson IFSCA at the Foundation Stone Laying of IFSCA HQ Building at GIFT City. Also seen in the picture CA. Purushottamlal H Khandelwal Central Council member, ICAI. (29th July, 2022)

ICAI President CA. (Dr.) Debashis Mitra and ICAI Vice President CA. Aniket Sunil Talati along with Shri Tarun Bajaj, Revenue Secretary at the Launch of India International Bullion Exchange (IIBX), Ahmedabad. Also seen in the picture CA. Purushottamlal H Khandelwal Central Council member, ICAI. (29th July, 2022)

ICAI President CA. (Dr.) Debashis Mitra inaugurating a programme organized by Asansol branch of EIRC of ICAI. Also seen in the picture CA. Ravi Kumar Patwa Chairman, EIRC, members of the Regional Council, EIRC and Managing Committee members of Asansol branch. (7th August 2022)

ICAI President CA. (Dr.) Debashis Mitra with Ms. Anna Shotbolt, Deputy Trade Commissioner for South Asia, British High Commission on 5th August, 2022 at ICAI, New Delhi. (5th August, 2022)

ICAI President CA. (Dr.) Debashis Mitra along with the Chief Guest Hon'ble Justice Harish Tandon, Calcutta High Court inaugurating the DTPA Annual Tax Conference, Kolkata. Also, seen in the picture CA. Ranjeet Kumar Agarwal, Central Council member, Chairman EIRC CA. Ravi Kumar Patwa and CA. (Dr.) Girish Ahuja, Eminent faculty. (6th August, 2022)

ICAI Vice President CA. Aniket Sunil Talati along with CA. Purushottamlal H Khandelwal, Central Council member, ICAI inaugurating the National Conference on Direct Tax organized by Direct Taxes Committee at Jamnagar. (6th August. 2022)

ICAI President CA. (Dr.) Debashis Mitra and ICAI Vice President CA. Aniket Sunil Talati felicitating Shri Gautam Deb, Hon'ble Mayor, Siliguri Municipal Corporation at the 413th Council meeting at Siliguri. (12th August, 2022)

ICAI President CA. (Dr.) Debashis Mitra meeting with CA independent Directors of Public Sector Banks. (27th August, 2022)

ICAI President CA. (Dr.) Debashis Mitra at the flag off programme of MSME Yatra in the presence of Central Council members CA. Dheeraj K Khandelwal, CA. Rohit Ruwatia Agarwal & CA.(Dr.) Raj Chawla, Adv. Vijay Kumar Jhalani, Govt. Nominee Central Council member, Shri Pravin Raghvendra, Dy. MD, SBI, Shri Sudatta Mandal , Dy. MD, SIDBI, Shri Anant Singhania, President, IMC and CA. Murtuza Kachwala, Chairman WIRC of ICAI. (18th August, 2022)

ICAI President CA. (Dr.) Debashis Mitra felicitating the Chief Guest Shri Narayan Rane, Hon'ble Union Minister of MSME at the flag off programme of MSME Yatra in the presence of Central Council members CA. Dheeraj K Khandelwal, CA. Rohit Ruwatia Agarwal and CA. Durgesh Kumar Kabra. (18th August, 2022)

ICAI President CA. (Dr.) Debashis Mitra and CA. Ranjeet Kumar Agarwal, Central Council member meeting Shri La Ganesan, Hon'ble Governor of West Bengal. (24th August, 2022)

ICAI Vice President CA. Aniket Sunil Talati alongwith Central Council members CA. Ranjeet Kumar Agarwal and CA. Purushottamlal H Khandelwal at the Campus Orientation programme held at Ahmedabad. (9th August, 2022)

Group Photograph of 25th Council taken on the occasion of 413th Council meeting at Siliguri. (12th August, 2022)

ICAI President CA.(Dr.) Debashis Mitra being felicitated at the 18th Karnataka State Level Conference organized by Bengaluru Branch of SIRC of ICAI. Also seen in the picture are Central Council member CA. Cotha S Srinivas and Chairman SIRC of ICAI CA. China T Masthan. (19th August, 2022)

Past Presidents CA. K Raghu and CA. Nilesh Vikamsey being felicitated at the 18th Karnataka State Level Conference in the presence of Guest of Honour ICAI President CA. (Dr.) Debashis Mitra organized by Bengaluru Branch of SIRC of ICAI. Also seen in the picture is Central Council member CA. Cotha S Srinivas. (19th August, 2022)

ICAI President CA.(Dr.) Debashis Mitra along with Shri G Mohan Rao Regional Director (East) SEBI and Shri D Bandhopadhyay, Regional Direcot (East), MCA at the roundtable on ESG Disrupting the Boardrooms at Kolkata. Also seen in the picture are Central Council Members CA. Ranjeet Kumar Agarwal, CA.(Dr.) Sanjeev Kumar Singhal , CA. Priti Savla and CA. Sushil Kumar Goyal. (2nd August, 2022)

ICAI President CA.(Dr.) Debashis Mitra at the inauguration of the Sivasagar Study Chapter of EIRC of ICAI. Also seen in the picture CA. Ravi Kumar Patwa, Chairman EIRC of ICAI. (22nd August, 2022)

ICAI President CA.(Dr.) Debashis Mitra inaugurating the National Conference at Bhopal Branch of CIRC of ICAI. Also seen in the picture are Central Council Members CA. C V Chitale, CA. Pramod Jain and CA. Abhay Chhajed. (20th August, 2022)

ICAI President CA. (Dr.) Debashis Mitra being felicitated at the National Conference held at Jorhat (21st August, 2022)

Independence Day Celebrations at ICAI Noida Office in the presence of Adv. Vijay Kumar Jhalani Govt. Nominee and CA.(Dr.) Jai Kumar Batra, Secretary, ICAI (15th August, 2022)

ICAI signed MoU with the 'Facilitating MSMEs Tamil Nadu', Government of Tamil Nadu in the presence of Hon'ble Chief Minister Shri M. K. Stalin and Central Council members CA. Dheeraj Kumar Khandelwal and CA. Rajendra Kumar P during the Regional MSMEs meet, Tirupur. (26th August, 2022)

ICAI has signed a Memorandum of Understanding (MoU) with School Education Department, Government of Mizoram in the presence of Chief Guest Dr. Lalzirmawia Chhangte, IAS, Secretary, School Education, Mizoram and Central Council members CA. Hans Raj Chugh and CA. Purushottamlal H Khandelwal and Secretary, ICAI CA. (Dr.) Jai Kumar Batra. Also seen in the picture are Chairman EIRC of ICAI CA. Ravi Kumar Patwa. (19th August, 2022)

Group photo taken on the occasion of ESG Roundtable at Mumbai. Seen in the picture are Shri Jeevan Sonparote, CGM, SEBI, Mr. Hemant Gupta, MD BIL Ryerston Startup Incubator Foundation, Central Council members CA. (Dr.) Sanjeev Kumar Singhal and CA. Priti Savla and Chairman WIRC of ICAI CA. Murtuza Kachwala. (23rd August, 2022)

Know Your Ethics

1. Can a practicing Chartered Accountant solicit clients or professional work by, advertisement?

A. No, Clause (6) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 prohibits a practicing Chartered Accountant from soliciting clients or professional work either directly or indirectly by circular, advertisement, personal communication, or interview or by any other means. However, there are following exceptions to it:-

(i) A member can respond to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence. In this regard, attention is invited to Council Guidelines dated 7th April, 2016 which are appearing at Appendix "J" of Volume II of Code of Ethics

(ii) A member may advertise changes in partnerships or dissolution of a firm, or of any change in the address of practice and telephone numbers, the advertisement being limited to a bare statement of facts and consideration given to the appropriateness of the area of distribution of newspaper or magazine and number of insertions.

(iii) A member is permitted to issue a classified advertisement in the Journal/ Newspaper of the Institute intended to give information for sharing professional work on assignment basis or for seeking professional work on partnership basis or salaried employment in the field of accounting profession provided it only contains the accountant's name, address, telephone, fax number, e-mail address and address(es) of Social Networking Sites of members. However, mere factual position of experience and area of specialization, relevant to seek response to the advertisement, are permissible.

2. Whether a member in practice, engaged in Coaching/teaching activities in accordance with general and specific permission of the Council, may advertise such Coaching / teaching activities?

A. A member in practice, engaged in Coaching/ teaching activities in accordance with general and specific permission of the Council should abstain from advertisement of such Coaching / teaching activities, as it may amount to indirect solicitation, as well as solicitation by any other means, and may therefore be violative of the provisions of Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949. However, subject to the above, members

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engaging in teaching activities may display, outside their Coaching/teaching premises, sign board mentioning the name of Coaching/ teaching Institute, contact details and subjects taught therein only. Please refer to paragraph 2.14.1.6 (iv) H under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949, appearing in Volume II of Code of Ethics.

3. Whether member in practice is permitted to respond to announcement for empanelment for allotment of audit and other professional work and quote fees on enquiries being received?

A. It has been clarified by the Council under proviso (ii) to clause (6) of the part-I of the first schedule of the Chartered Accountants Act, 1949, that if announcements are made for empanelment by the Government, Corporations, Courts, Cooperative Societies, Banks and other similar institutions, the members may respond to such announcements provided the existence of panel is within their knowledge. The Council has further clarified that the quotations of fees can be sent if enquiries are received by the members in this regard. Attention is also invited to Council Guidelines dated 7th April 2016 which are appearing at Appendix "J" of Volume-II of Code of Ethics.

4. Whether a member in practice is permitted to have his name published in Telephone Directory?

A. Yes, a member in practice is permitted to have his name published in the telephone directory (in printed and electronic form) subject to certain conditions. Paragraph 3.5 of Council Guidelines for Advertisement, 2008 appearing in the Volume II of Code of Ethics provides for publication of Name or Firm Name by Chartered Accountants in the Telephone or other Directories. The Chartered Accountants and Chartered Accountants Firms may have entries made in a Telephone Directory (in printed and electronic form) either by making a special request or by means of an additional payment. The Council has also considered the question of permitting entries in respect of chartered accountants and their firms under specified groups in telephone/trade directories subject to the following restrictions:

1. The entry should not appear in any other section/category except that of "Chartered Accountants".
2. The member/firm should belong to the town/city in respect of which the directory is being published.
3. The order of the entries should not be in any manner other than alphabetical.
4. The entry should not be made in a different or prominent manner giving the impression of publicity/advertisement.
5. The entries should not be restricted and should be open to all the Chartered Accountants/firms of Chartered Accountants.in the particular city/ town in respect whereof the directory is published.
6. The members can also include their names in trade/social directories.

5. Whether a member in practice can respond to Tenders, Advertisements and Circulars?

A. Yes, it is permitted as per proviso (ii) to clause (6) of part I of the First Schedule to the Chartered Accountants Act, 1949. Please refer to Paragraph 2.14.1.6(iv)C under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949, appearing in Volume II of Code of Ethics. This should be read with the Council Guidelines dated 7th April, 2016 which are appearing at Appendix "J" of Volume-II of Code of Ethics.

6. Can a member in practice indicate in a book or an article, published by him, or a presentation made by him, association with any firm of Chartered Accountants?

A. As per Paragraph 2.14.1.6 (iv) D under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949 as appearing in Volume II of the Code of Ethics, a member is not permitted to mention in a book or an article,

published by him, or a presentation made by him, any professional attainment(s), whether of the member or the firm of Chartered Accountants, with which he is associated.

However, he may indicate in a book, article, or presentation the designation "Chartered Accountant" as well as the name of the firm.

7. Whether the designation "Chartered Accountant" along with the name of Chartered Accountants Firm can be used on the greeting cards or invitations?

A. Yes, as per Paragraph 2.14.1.6(iv)E under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949, as appearing in Volume II of the Code of Ethics, the Council is of the view that the designation "Chartered Accountant" as well as the name of the firm may be used in greeting cards, invitations for marriages and religious ceremonies and any invitations for opening or inauguration of office of the members, change in office premises and change in telephone numbers, provided that such greeting cards or invitations etc. are sent only to clients, relatives and friends of the members concerned.

8. Whether the word "Chartered Accountants" and name of city after the name of the members of the Institute be mentioned in the articles contributed by such members and published in the Institute's Journal?

A. Yes, under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, there is no restriction in the Code of Ethics for mentioning the word "Chartered Accountant" and also the name of city in an article contributed by a member in the Institute's Journal as well as in newspapers and other periodicals.

9. Can a Chartered Accountant in practice solicit professional work by making roving enquiries?

A. No, it is not permissible for a member to address letters, emails or circulars to persons who are likely to require services of a Chartered Accountant. It would be tantamount to advertisement as per Paragraph 2.14.1.6(iv)K under clause (6) of Part-I of the First Schedule to the Chartered Accountants Act, 1949, appearing in Volume II of Code of Ethics.

10. Can a Chartered Accountant in practice seek professional work from his professional colleagues?

A. Yes, in terms of proviso (i) of Clause (6) of Part-I of the First Schedule to the Chartered Accountants Act, 1949, a member is permitted to apply or request for or to invite or to secure professional work from another Chartered Accountant in practice. The issue of advertisement or a circular by a Chartered Accountant, seeking work from professional colleagues on any basis whatsoever is in violation of Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949. However, classified advertisement in the Journal/Newsletter of the Institute is permissible in this regard. A member is permitted to issue a classified advertisement in the Journal/Newsletter of the Institute intended to give information for sharing professional work on assignment basis or for seeking professional work on partnership basis or salaried employment in the field of accounting profession provided it only contains the accountant's name, address, telephone, fax number and E-mail address and address(es) of social Networking sites of members. However, mere factual position of experience and area of specialization, relevant to seek response to the advertisement, are permissible.

11. Whether sponsorship or prizes can be instituted in the name of Chartered Accountants or a firm of Chartered Accountants?

A. Yes, an individual Chartered Accountant or a firm of Chartered Accountants can institute or sponsor prizes, provided that the designation "Chartered Accountant", is not appended to the prize and the provisions of Clause (6) of Part-I of the First Schedule to the Chartered Accountants Act, 1949, regarding advertisement and publicity is complied with.

APPEAL FOR CONTRIBUTION TO THE C.A. BENEVOLENT FUND (CABF)

CHARTERED ACCOUNTANTS' BENEVOLENT FUND (CABF)

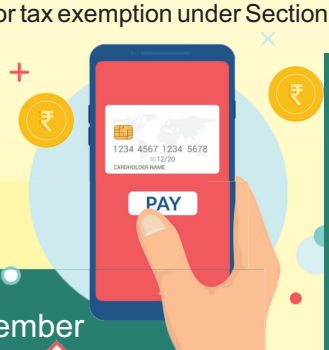
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

The Chartered Accountants' Benevolent Fund (CABF) was established in December, 1962 with the objective to provide financial assistance for maintenance, and other similar purposes to needy members of our Institute, their wives, widows, children and dependent parent(s).

During Covid pandemic, hundreds of our members have lost their battle and many others are struggling hard to pass through this difficult time. The impact is deep and has certainly shattered their dreams. The Institute through the CABF has tried to help our members in distress.

Since September 2020, about Rs. 17 Crores have been released as Financial Assistance for Treatment of CORONA Disease and also through one-time Ex-gratia/Monthly/Medical financial assistance to Members or their dependents.

With a view to provide better financial support to our needy members or to their dependents, our humble appeal to members to kindly enroll themselves as Life Members of the Fund by making one-time payment of Rs. 10,000/- and those who are already life Members can further contribute voluntarily any amount for the noble cause. The Contribution is eligible for tax exemption under Section 80G of the Income Tax Act.



Links for Contribution

Life Member:
https://cabf.icai.org/lifeMember

Voluntary Contribution:
https://cabf.icai.org/voluntaryMember

Contributions can also be made directly through NEFT/RTGS

Name of A/C	:	Chartered Accountants Benevolent fund
Name of Bank & Branch	:	Axis Bank Ltd., Swasthya Vihar Branch
A/C No.	:	913010046844303
IFS code	:	UTIB0000055

Voluntary contributions/ donations are also accepted from the Family Trusts of Chartered Accountants, which are managed and regulated by the members of the ICAI, for meeting the expenditure in connection with grant of financial assistance to the members of the ICAI and to their dependent(s) as per criteria laid down by the CABF.

A small contribution with a big heart from each member would facilitate grant of a good amount of financial assistance to needy and suffering members/ dependents of members of the profession to mitigate their hardship during unfortunate circumstances.

LET'S BE A PART OF THIS NOBLE MISSION FOR EXTENDING HELPING HAND TO OUR MORE AND MORE PROFESSIONAL COLLEAGUES DURING UNFORTUNATE CIRCUMSTANCES

Classification of 'stock of track' as inventory or property, plant and equipment

A. Facts of the Case

1. A Corporation (hereinafter referred to as 'the Corporation' or 'the Company') is a non-listed company incorporated in India with 50:50 equity participation of the Government of India (GOI) and the State Government. The Company was formed as a special purpose vehicle (SPV) on 25th November 2013 to execute Mass Rapid Transit System (MRTS) in city 'L'. The Company has successfully implemented Phase 1A –North South Corridor of the city 'L' Metro Project and commenced commercial operations on 8th March 2019. The Government further mandated it to implement the upcoming projects in other cities of the State. Henceforth, the constitution and name of the company was changed to ABC Metro Rail Corporation Limited on 23rd October 2019. Presently, the Company, apart from running metro rail services in the city 'L', has commenced construction activity of metro projects in city 'K' and city 'A'.

2. The querist has stated that city 'L' Metro Project is in operation from 8th March 2019 and construction activities of city 'K' and city 'A' metro rail projects are under progress. During the construction of city 'L' Metro Project, the Company had entered into various contracts for procurement of tracks having contracts (LKT 01,02,03 and 04) value of INR 131.69 crore and a contract (LKT-05) with M/s XYZ for laying of tracks having contract value of INR 121.82 crore. The materials procured include sleepers, rails, clamps etc. Out of the total stock of these materials, material having total value of INR 12.83 crore was lying in city 'L' metro project and shown under the 'Capital Work in Progress - Track Work' in Note No. 2 of the balance sheet for the financial year (F.Y.) 2020-21, which is to be used in city 'K' and city 'A' metro rail projects, since track work of city 'L' was fully completed and there was no requirement of these materials for any future use at city 'L'.

3. *Accounting treatment adopted by the Company:*

The querist has further stated that the Company has procured the material and parked the expenditure incurred under the head 'Capital Work in Progress'. After the start of operation of the city 'L' metro on 08th March 2019, the Company has capitalised the expenditure incurred on laying down the track under the head Property, Plant and Equipment- Track work (Note No. 1 of the Balance sheet for the F.Y. 2020-21). Out of the total stock, stock having total value of INR 12.83 crore was lying in city 'L' metro project and shown under the 'Capital Work in Progress- Track Work' in Note No. 2 of the balance sheet for F.Y. 2020-21 with the intent to use track materials including rails in other metro project at city 'K' which was scheduled to be made operational in the month-end of December 2021. It may be pertinent to mention that the track is a 'fixed asset' item but capitalised on the commercial commencement of corridor.

Therefore, as a prudent practice, the track rails materials valuing INR 12.53 crore was shown under 'Capital Work in Progress' and since city 'K' Metro is going to start from the month-end of December 2021, the same will be capitalised under the head 'Track Work' in Property, Plant and Equipment (PPE).

Comment issued by C&AG:

4. During the supplementary audit of financial statements for the F.Y. 2020-21, Comptroller and Auditor General of India (C&AG) was of the view that surplus material lying under the head capital work in progress is to be treated as inventory within the ambit of Indian Accounting Standard (Ind AS) 2, 'Inventories'. Comment raised by the C&AG is reproduced below:

> "Capital Work in Progress, city L (Note-2)
>
> Track Work (P-Way) INR 12.83 Crore
>
> The above represents surplus store (Sleepers, Rails, clamps etc.) at city 'L' Metro Project. These items are left over items used for lying of new rail tracks and are not required at city 'L' Project as the project is already completed and commissioned.
>
> This resulted into overstatement of 'Capital Work in Progress (city 'L')' and understatement of 'Inventory' by Rs. 12.83 crore each."

5. *Reply of the Company given to C&AG:*

The Company was formed as a special purpose vehicle (SPV) on 25th November 2013 to execute Mass Rapid Transit System (MRTS) in city 'L' by providing metro rail. The Corporation successfully implemented Phase 1A –North South Corridor (23 Km) within strict timelines and commenced commercial operations on 8th March 2019. The Government further mandated it to implement

the upcoming projects in other cities of the State. Presently, the Company, apart from running metro rail services in the city 'L', has commenced construction activity in city 'K' (32.385 Kms) and city 'A' (30.45 Kms).

As per Indian Accounting Standard (Ind AS) 16, 'Property, Plant and Equipment', **"*Property, plant and equipment* are tangible items that:**

(a) are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and

(b) are expected to be used during more than one period."

Moreover, as per the definition of 'inventories' as given under Ind AS 2, 'Inventories';

"*Inventories* are assets:

(a) held for sale in the ordinary course of business;

(b) in the process of production for such sale; or

(c) in the form of materials or supplies to be consumed in the production process or in the rendering of services."

From the above, it can be noted that the classification of an asset as a 'property, plant and equipment' or 'inventories' depends on its intended primary use for an entity. If an asset is essentially held for using it for the purpose of producing or providing goods or services rather than for sale in the normal course of business, it is classified as 'property, plant and equipment'.

Auditors should appreciate the fact that tracks held by the Company are clearly falling under the definition of 'Property, Plant and Equipment' as stated above and not under the definition of 'Inventories' as per Ind AS 2. As a measure to reduce cost of city 'K' and city 'A' metro projects, management has taken conscious decision to use these materials during the construction of city 'K' and city 'A' metro projects. A part of said materials has already been transferred to the city 'K' metro project and the same will be capitalised as assets once the tracks will be put to use for city 'K' metro Project.

Based on the above facts, it is clear that the above material does not fall in the ambit of inventories as defined in Ind AS 2 and the same is correctly classified by the Company under 'Work in Progress'; hence no corrective action is envisaged on this matter.

6. Matter of Dispute:

As per C&AG, stock of track related items should be classified as inventory. As per the Company, this stock does not fall under the definition of inventories as per Ind AS 2 and the same is held for laying tracks which will form part of PPE only. The Company has already transferred some portion of this material to city 'K' metro rail projects for laying rail track which will be capitalised under the head 'Property, Plant and Equipment' as per Ind AS 16 after commencement of city 'K' metro rail project.

B. Query

7. On the basis of the above, the querist has sought the opinion of the Expert Advisory Committee (EAC) regarding the accounting treatment of stock of track work in view of C&AG observation. Also, whether the treatment adopted by the Company is correct or not.

C. Points considered by the Committee

8. The Committee notes that the basic issue raised in the query relates to accounting treatment of stock of tracks held by the Company, which is surplus material for one of the metro projects but is being held for consumption in other projects. The Committee has, therefore, considered only this issue and has not examined any other issue that may arise from the Facts of the Case, such as, accounting for any other item, viz., sleepers, rails clamps, etc., depreciation of stock of tracks and various such other items, items of property, plant and equipments, metro projects etc., presentation of inter-unit transfers, etc. Further, the Accounting Standards referred hereinafter are Indian Accounting Standards, notified under the Companies (Indian Accounting Standards) Rules, 2015, as amended/revised from time to time.

9. In order to determine the classification of the asset (stock of track), the Committee notes the definition of the term 'inventories' as given in Indian Accounting Standard (Ind AS) 2, 'Inventories':

"*Inventories* are assets:

(a) held for sale in the ordinary course of business;

(b) in the process of production for such sale; or

(c) in the form of materials or supplies to be consumed in the production process or in the rendering of services."

From the above, the Committee notes that classification of an item as 'inventory' depends on its intended primary use for an entity. In the extant case, the 'stock of track' is neither held for sale in the ordinary course of business; nor it is in the process of production for such sale; nor in the form of materials or supplies to be consumed in the production process or in the rendering of services. Therefore, the same does not meet the definition of 'inventories'.

10. The Committee now examines the following requirements of Ind AS 16, 'Property, Plant and Equipment':

"*Property, plant and equipment* are tangible items that:

(a) are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and

(b) are expected to be used during more than one period."

"7 The cost of an item of property, plant and equipment shall be recognised as an asset if, and only if:

(a) it is probable that future economic benefits associated with the item will flow to the entity; and

(b) the cost of the item can be measured reliably."

From the above, the Committee notes that in the extant case, stock of tracks are tangible items, which upon laying/installation as metro tracks will be used for providing services and will be used during more than one period. Therefore, tracks once laid/installed will meet the definition of property, plant and equipment (PPE).

The Committee further notes that the 'Glossary of Terms used in Financial Statements', issued by the Research Committee of the Institute of Chartered Accountants of India defines the term, 'capital work in progress' as follows:

"31. **Capital Work-in-progress**

Expenditure on capital assets which are in the process of construction or completion."

The Committee notes from the Facts of the Case that the stock of tracks is surplus for the time being at the site of one project and is awaiting its use in other project. However, this does not change its basic nature of the materials acquired for construction/creation of an item of property, plant and equipment and therefore, is an expenditure on capital assets which are in the process of construction or completion. Accordingly, the same should be classified under 'capital work in progress'. The Committee is further of the view that since metro project of city 'L' is fully completed and has commenced commercial operations, the stock of tracks should not be termed as capital work in progress (CWIP) of metro project of city 'L'; rather these should be classified under CWIP of metro projects of city 'K' and city 'A' to the extent these will be used for these metro projects.

D. Opinion

11. On the basis of the above, the Committee is of the opinion that the 'stock of track' should not be termed as capital work in progress (CWIP) of metro project of city 'L'; rather should be classified under capital work in progress of metro projects of city 'K' and city 'A' to the extent these will be used for these metro projects.

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 11, 2022. 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 forty one volumes. This is available for sale at the CDS Portal of the ICAI.
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.

No custody, No confiscation-GST Perspective

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A telling example of what the removal of non obstante clause can do to a provision is the amendment to section 129(1) of the Central GST Act which was given effect from 1 Jan 2022. And another amendment in section 129(6) has excluded confiscation proceedings from section 129 of Central GST Act. These two amendments have brought back into focus the need to understand 'confiscatory' powers in GST.

Confiscation cannot be done of 'anything' belonging to offender

While anything can be seized in section 67(2), it's not true of confiscation in section 130(1) of Central GST Act. Power of confiscation is circumscribed by *"where"* that has now come to substitute the more potent *"notwithstanding anything contained in this Act, if"*, in the opening words of section 130(1) of Central GST Act. So now, confiscation must operate in harmony, and not in derogation of, other provisions of the Central GST Act. Section 130(1) of Central GST Act contains five 'situations' and only *"where"* any of these situations are shown to exist, will the consequences spelt out *"then"* can be pressed into service.

Situations 'found to exist' must be 'shown to' exist

It is not an unusual satisfaction of the Proper Officer about the existence of any of the situations listed in section 130(1) of Central GST Act but only when material brought on record establishes all the 'ingredients' listed in each situation, can the exceptional power of confiscation be invoked. Unlike seizure, there is nothing sudden about confiscation. Confiscation is the result of adjudication. And adjudication takes time, it (i) requires Party to be 'put at notice' along with evidence to support the allegations that the ingredients exist and (ii) Party is allowed opportunity to make a reasonable defence (principle of natural justice). Process of adjudication entails opportunity to appeal. And all these remedies take time. Taxpayers need to recognise that confiscation is therefore vastly different from seizure. And clearly confiscation cannot be carried out 'suddenly'.

One key 'ingredient' for confiscation

Confiscation is not a form of penalty imposed for committing an offence. It is to deny the Party 'title' to the offending articles. It is for this reason that great care is to be exercised in identifying the offending articles and establish the offenders' title to those articles. Confiscation results in the 'passing of title' in offending articles in favour of the State. When title is to be passed, custody must first be held by the State or on behalf of the State by any bailee.

Let's say a person 'X' has supplied certain articles with intent to evade payment of tax and the articles so supplied have reached the recipient 'Y' who has consumed them in their own business. And if, confiscation proceedings were to be initiated against 'X' (the offending taxpayer), he could simply withdraw all defence and let the Proper Officer proceed with confiscation. What will the Proper Officer confiscate? Where are the (offending) articles for the State to receive title? Since the title is no longer with 'X', confiscation would be effective against 'Y' who is not the offender in these proceedings at all.

> **"Confiscation is not a form of penalty imposed for committing an offence. It is to deny the Party 'title' to the offending articles."**

Therefore, where custody is lost, confiscation is barred, that is, 'no custody, no confiscation'. In order to confiscate, the key ingredient is to gain physical custody over articles (allegedly) involved in the said offence. All other ingredients listed in section 130(1) of Central GST Act may be shown to exist but nothing further needs to be done if physical custody is lost. Gaining physical custody, even contrary to taxpayer's wishes, is 'seizure'.

Pre-requisites for seizure

Seizure is not limited to 'goods liable to confiscation' in Central GST Act. Seizure is permitted in section 67 and in section 129 of Central GST Act. Pre-requisites to seize any offending articles, are contained in section 67(2) of Central GST Act where (i) Proper Officer must have 'reasons to believe' that offending articles 'are secreted' and (ii) must issue an authorisation in INS-01 Part C to conduct a search. During the search, if (i) offending articles are found (ii) secreted in the premises identified in the authorisation issued, then either actual seizure can be done and INS-02 issued or constructive seizure done by issuing prohibitory orders in INS-03.

For purposes of section 67(2) of Central GST Act, 'offending articles' are (a) goods liable to confiscation and (ii) documents, books or things that may be useful for or relevant to any proceedings, and no others. And either of these to be liable to confiscation "must be secreted". But confiscation is only of articles that are liable to such confiscation although seizure is permitted of more.

'Secreted' is the employment of an artificial device or a step that does not have any commercial necessity to exist but does exist only to elude simple observation. For example, accounting records containing incriminating information / documents found in the cupboard in the accounting department is not 'secreted', but it would be, if those records were found in the cupboard of the marketing department. Other more ingenious devices for concealment would include all electronic drives or cloud storage spaces that are intended to evade detection by a person of ordinary prudence.

> **"Seizure is not limited to 'goods liable to confiscation' in Central GST Act. Seizure is permitted in section 67 and in section 129 of Central GST Act."**

Detention or seizure of goods under section 129 of Central GST Act are limited to 'deviations in documents' prescribed in Rule 138A of Central GST Rules. With the current amendment, proceedings under section 129 operate as a self-contained code independent of section 130 of Central GST Act. Therefore, the 'statutory twins' for lawful seizure and confiscation can be found conjointly in section 67 and then 130 of Central GST Act. It would therefore be safe to say that confiscation is not permissible without proceedings being initiated under section 67(2) of Central GST Act.

Provisional release of seized articles

Where offending articles are seized, taxpayer is permitted provisional release under section 67(6) of Central GST Act on execution of bond. Provisional release does not result in loss of custody by the State over the offending articles. It only permits better care and protection by taxpayer without altering constructive custody held by State.

Provisional release under section 67(6) is no longer a part of the due process in section 129 of Central GST Act. Release of detained goods vide order in MOV-05 is not provisional but actual release subject to continuation of proceedings against consignor / consignee / transporter under section 129 of Central GST Act, secured by the execution of bond in MOV-08.

Time to issue notice on seizure

Going back to seizure of offending articles, where certain offending articles are seized, Proper Officer is on a clock to complete investigation and issue show cause notice under section 74(1) of Central GST Act. It is not permissible for INS-02/INS-03 to be issued and proceedings left inconclusive. Where 'goods' are seized, show cause notice must be issued within the time permitted in section 74(2) failing which, the demand will abate as provided in section 75(10) of Central GST Act. And once the show cause notice is issued, seized goods being 'documents, books or things', which have not been relied upon for issue of such notice, must be released within 30 days as mandated in section 67(3) of Central GST Act. And where show cause notice is not issued within six months from date of seizure, the seized goods being 'goods liable to confiscation' must be released as per section 67(7) of Central GST Act.

Situations when confiscation can occur

To understand when goods are liable to confiscation, it is specified that they must be where (i) supplies (outward or inward) of goods have been made in contravention of Act with intent to evade payment of tax (ii) goods which are liable to tax are left unaccounted (iii) supplies are made without obtaining registration (iv) any other form of contravention of the Act with intent to evade payment of tax or (v) by the use of conveyance to transport goods in contravention of Act.

Unless these situations are shown to exist, Proper Officer's actions will suffer from lack of jurisdiction. Jurisdiction is the bulwark against confiscation as an 'after thought' in any other proceeding even when discrepancies are noticed during audit under section 65 of Central GST Act.

Seizure v. Confiscation

A quick overview would help lay out the salient features to better appreciate the gulf that lies between seizure and confiscation, namely:

Description	Seizure	Confiscation
Authority for action	67(2) or 129(3)	130(1)
Pre-condition	Authorization by JC in INS-01 Part C	Seizure under 67(2)
Object involved	Secreted articles	Goods listed in 130(1)
Result of action	Custody only with State	Title vests with State
Exercise of authority	Exceptional and sudden exercise without adjudication	After issue of SCN and due adjudication
Appellate remedy	Not allowed	Allowed
Alternate remedy	None	Mandatory option to pay 'redemption fine'
Release of articles	On issuance of SCN	On payment of redemption fine
Rejection of alternate remedy by Taxpayer	Not applicable	Confiscation on finality of order of adjudication

Discovery of comparable situations in audit

During the course of audit under section 65 of Central GST Act, Proper Officer discovers that there is a shortfall in the stock of finished goods. As per section 35(6) of Central GST Act, presumption operates in favour of supply to evade payment of tax. Proper Officer issues DRC-1A under section 74(5) of Central GST Act demanding payment of tax along with interest and 15 per cent penalty on the (i) quantity of short-fall (ii) at their open market value (iii) on the prescribed rate and (iv) time and place of supply permitted in law. And then, the taxpayer discharges the same. This ends the proceedings as well as the demand.

If the Proper Officer were to then proceed to issue a show cause notice, proposing action under section 130(1) of Central GST Act, the taxpayer could withdraw from resisting this action and leave the Proper Officer wondering how to go about adjudicating this notice and then execute the order confirming confiscations. Therefore, just because the situation exists, Proper Officer cannot proceed with confiscation.

Nature of redemption fine

Taxpayer is allowed, as a matter of right, an option to pay fine *"in lieu of"* confiscation in section 130(2) of Central GST Act. The expression 'in lieu of' can be construed as – option to pay fine – is a 'substitute' for confiscation. When taxpayer avails this option, Proper Officer must allow it as there are no exclusions provided in section 130(2) of Central GST Act. After all, State is not a hoarder and if the fine matches the NRV (net realisable value) of the offending articles, the purpose stands served. Therefore, taxpayer must document this 'election' to pay fine in lieu of confiscation and prevent haste in conducting auction. Once the election is documented, Proper Officer will carry the burden of safekeeping until restoration of possession. Thus, option to pay fine will 'redeem' the offending articles and halt confiscation action.

> **"Where 'goods' are seized, show cause notice must be issued within the time permitted in section 74(2) failing which, the demand will abate as provided in section 75(10) of Central GST Act."**

Leniency in imposing fine

Fine, by its very nature, cannot be nominal and the taxpayer must focus on establishing 'Net Realizable Value' during adjudication and not beg for leniency. In fact, State will expect the Proper Officer to impose and collect no less than its NRV when taxpayer elects to pay fine. *Proviso* to section 130(2) of Central GST Act specifies the 'maximum fine' that may be imposed on taxpayer and herein lies the limit. And unless it is financially prudent to secure release of offending articles (on payment of fine), taxpayer would consider forfeiting the offending articles. If the experience in Customs law is anything to go by, which holds the grandfather provisions in respect of confiscation in section 111, 113 and 115 of Customs Act, taxpayers have shown a proclivity to avail this option and appeal the quantum of fine imposed.

Finality of provisional release and payment of fine

Where offending articles are provisionally released, once taxpayer's election to pay redemption fine is accepted by Proper Officer, it will become final. However, Proper Officer is allowed up to three (3) months after adjudicating the notice for confiscation to collect fine and only then unequivocally discharge the offending articles from actual or constructive custody. When taxpayer avails the option – to pay redemption fine – but resiles from actually making payment, section 130(6) of Central GST Act permits Proper Officer to withdraw the order of release and repossess the offending articles and proceed with their confiscation.

Conclusion

Having accepted that when power to do a particular thing is permitted in law, then that thing must be done in that manner only or not at all, Proper Officer cannot rely on 'secret information' gathered to proceed with confiscation. Confiscation does not survive without seizure. And with detention on interception of conveyance being separated from confiscation proceedings by the amendment in section 129(6) of Central GST Act, all confiscation proceedings must be traceable to any lawful seizure of offending articles. And lawful seizure is permitted only of 'offending articles' which 'are secreted', for valid reasons that pre-exist and pre-date the authorisation issued in Form GST INS-01-Part C. In the light of these statutory safeguards, taxpayers will resist any and all unlawful confiscation proceedings attempted in haste or due to misplaced enthusiasm. If for any reason custody is lost, confiscation will remain only a wish!

Ambit of tolerance and refrain under GST

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Sec 7(1) of the CGST Act[1] defines "supply" in an inclusive manner and Sec 7(1A) which is relevant for the present purpose states that where certain activities or transactions, constitute a supply in accordance with the provisions of Section 7(1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II. There is a deeming principle involved since, the expression employed is that "they shall be treated….." Sl. No 5(e) to Schedule II reads thus: *"Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act"*. The nature of supply will be one of supply of services.

Under the erstwhile Finance Act, 1994 (which administered Service Tax) with the introduction of the negative list, certain services were designated as "declared services" with effect from July 1, 2012. This measure was adopted to remove ambiguity with regard to certain activities and transactions and the applicability of service tax on the same. Schedule II to the CGST Act now incorporates the enumeration of certain transactions and activities with respect to their nature of supply either as goods or as services.

The entry in Schedule II through Sl. No 5(e) provided scope for roping in any and every activity or transaction even in the absence of a 'supply' in the first place. This had led to dispute under the GST regime[2]. The issue has been addressed after insertion of Section 7(1A) which states that Schedule II will come into operation only after an activity or transaction qualifies as 'supply' under Section 7(1).Some of the other disputes have had their origin in the service tax regime[3] wherein more or less similar entry was laid down as part of the declared services for purpose of service tax.

At this stage, it may be useful to take stock of the view taken in this context in VAT/GST jurisdictions in UK and Australia and under the erstwhile service tax regime. There are rulings of the AAR[4]and there is a recent circular of the CBIC[5] under the GST regime.

Consideration

The concept of "money flow" or pure transaction in money has been adopted in the recent CBIC Circular to show that there is no consideration as defined in Section 2(31) of the CGST Act. It must be noticed that the words employed in the Model GST Law under Section 2(28) was: *(28) "**consideration**" in relation to the supply of goods and/or services **to any person**, includes…..*The words "to any person" are singularly absent in the current definition of "consideration" in the CGST Act.

Overseas Jurisprudence

With this background, we may notice the Australian High Court decision in A.P. Group Ltd versus FC of T Federal Court (18-9-2013) where in the context of dealer incentives being received from the manufacturer, it was held as follows:

'The fact that the dealer receives a payment as an incentive when certain thresholds associated with running the business in this way does not mean that the dealer is supplying a service to the manufacturer for consideration. If the incentive payment were not available there is no basis to infer that the dealer would not behave in the same way for free. For

1 *Central Goods and Services Tax Act, 2017*
2 *Period after 01July 2017*
3 *Period prior to 01 July 2017*
4 *Authority for Advance Ruling*
5 *Central Board of Indirect Taxes and Customs*

these reasons there cannot be said to be any supply for consideration in these arrangements'

In the matter of Reliance Carpet Co Pty Ltd[6] (**Reliance Carpet**) the facts were that Reliance Carpet entered into a contract of sale to sell a commercial property. Reliance Carpet and the purchaser under the contract were both registered for GST. The purchaser paid a deposit of $297,500 but failed to pay the balance of the purchase price when required. Because of this default, the contract was rescinded. The Commissioner assessed Reliance Carpet for GST on the forfeited deposit. The Federal Court held in favour of Reliance Carpet. When the matter reached the High Court, it held that the payment of the deposit by the purchaser was "in connection with" a supply by Reliance Carpet and was within the meaning of the definition of "consideration" in section 9-15(1)(a) of the GST Act. The payment by the purchaser of the deposit was to be treated as "consideration" for a "supply" only if and when the deposit was forfeited because of the failure by the purchaser to perform its obligation to complete the Contract. The High Court held that this followed from section 99-5 of the GST Act.

In the case of Qantas the dealings between Qantas and passengers were such that there was no more than one projected "taxable supply", namely the supply of air travel; this supply did not come to pass; and it was claimed that no GST was exigible. On the other hand, the Commissioner argued that the unused fares were received pursuant to the making of a contract between the airline and the customer under which the airline supplied rights, obligations, and services in addition to the proposed flight and that these rights, obligations etc. comprised a payment in connection with a supply. The majority of the High Court agreed with the Commissioner. In doing so, they first examined the contractual arrangement between Qantas and its passengers (which emphasized that Qantas would "take all reasonable measures necessary to carry you and your baggage and to avoid delay in doing so") and the definition of "supply" in the GST Act as including, *inter alia*, "a supply of services", "a creation of any right", and "an entry into an obligation".

They then concluded that the contractual arrangement "did not provide an unconditional promise to carry the passenger and baggage on a particular flight. They supplied something less than that. This was at least a promise to use best endeavors to carry the passenger and baggage, having regard to the circumstances of the business operations of the airline. This was a 'taxable supply' for which the consideration, being the fare, was received." ([2012] HCA 41 (High Court)).

The view of not considering Liquidated Damages as supply for tolerating an act has also been supported by ruling GSTR 2001/4 (GSTR 2003/11 issued by the Australian Tax Office, where it has been clarified that damage or loss or injury does not constitute a supply under the provisions of Australian GST. The European Court of Justice in the case of Societe Thermale v. Ministere de l'Economie [2007] S.T.I 1866, Celex No. 650J0277 has held that where the client exercises the cancellation option available to him as compensation for the loss suffered and which has no direct connection with the supply of any service for consideration, the same would not be subject to tax. The Court of Appeal (UK) in the case of Vehicle Control Services Limited (2013) EWCA Civ 186, has said that payment in the form of damages/ penalty for parking in wrong places/ wrong manner is not a consideration for services as the same arises out of breach of contract with the parking manager. A contract is usually entered for performance and to benefit the parties involved.

Situation in India

Under the erstwhile law in India, the Hon'ble CESTAT Allahabad in the case of KN FOOD INDUSTRIES PRIVATE LIMITED V. COMM OF CGST - 2019-VIL-731-CESTAT-ALH-ST dealt with a case involving delay in delivery of project or breach of any other terms of the contract, which were expected to cause some damage or loss to the appellant. The contract itself provided for compensation to make good the possible damages owing to delay, or breach, as the case may be, by way of payment of liquidated damages by the contractor to the appellant. The ex-gratia charges paid to the appellant were towards making good the damages, losses or injuries arising from "unintended" events and does not emanate from any obligation on the part of any of the parties to tolerate an act or a situation and cannot be considered to be the payments for any services.

[6] *Federal Commissioner of Taxation v Reliance Carpet Co Pty Ltd [2008] ATC 20-028*

There are Advance rulings under GST law on liquidated damages for delay in commissioning the plant; amounts forfeited in tenders; penal charges in terms of the loan agreements; notice pay recovery under employment contracts; cheque dishonor fees etc. These rulings have upheld the recovery of tax employing Schedule II Entry 5(e) as a supply for purpose of GST.

“There are Advance rulings under GST law on liquidated damages for delay in commissioning the plant; amounts forfeited in tenders; penal charges in terms of the loan agreements.”

The recent Circular of the CBIC No. 178/10/2022 dated 03.08.2022 has clarified with regard to liquidated damages, compensation, penalty, cancellation charges, late payment surcharge etc. It has also provided some examples of where the entry could be attracted such as in non-compete agreements; restraint from construction in building contracts; etc.

Is every act or forbearance of any kind, a supply? The decisions from the other jurisdictions show that UK treats the issue of supply as a question of law. Australia treats the same as one of fact. UK emphasises terms of the contract (Refer *Secret Hotels*[7]). EU and Australia stress commercial and economic reality. In UK/EU, it is necessary that there must be consumption to qualify as a supply (Refer *Mohr*[8]). There must be reciprocity (Refer *Tolsma*[9]). EU has a policy agenda in the preamble of the VAT Directives to guide them.

In Australia, there is less policy guidance and a wide view taken, just making an agreement to supply can be a supply (Refer *Qantas*[10]). In *AP Group* by Federal Appeal Court, recognition was shown that some limits are required to be placed against this wide view. All GST/VAT systems are built on three conceptual pillars: Concept of Supply, Concept of Consideration and Concept of Input tax deduction. These, and especially the last, are the hallmarks of a true GST/VAT system. But they can and do differ in their application from one country to the next. The boundary between paying for a supply and paying money to someone other than for a supply can be uncertain. UK/EU requires a ‘direct link’ between the payment and the supply. This excludes payments made for uncertain descriptions of goods or for activities that cannot really be measured, or things actually described as ‘free’. There has to be reciprocity (See *Tolsma*). Australia has a looser link and less stress on reciprocity: *for* or *in connection with*. The nexus can be indirect.

In most systems, there needs to be a consideration before a ‘supply’ can exist. Australia is an exception (save for financial services). Consideration can be in cash or kind, in all systems. It can come from the customer or a third party, in most systems. Valuation issues cluster around barter or ‘in kind’ consideration (which is also a supply in its own right, except where it is merely ‘facilitation’, e.g. lending the hammer to the plumber). Nexus issues are the most common: i.e., was the payment for the supply? In a complex transaction, it is not always easy to say who paid what for which supply.

Various tests have been evolved in other jurisdictions to make meaning of transactions combining disparate elements. Some of these are:

- Necessity test
- Top-down test - overall label, no analysis of detail
- Bottom-up test – look at the basic elements, ask how they interact, and slowly build a model going upwards from detailed level to see which elements dominate over others, and which elements simply function in parallel to others.
- Dominant elements impose their GST status onto the ancillary ones.
- All elements coalesce into a unique and different whole
- Historic trend towards taxing every element separately, more recently replaced by trend to seek to find unity and/or coalescence.
- No one test is absolute

In India under the erstwhile law, the CESTAT in Repco Finance Ltd 2020 (117) taxmann.com 755 (LB) dealt with the question whether the foreclosure charges collected by banks from customers would be subjected to service tax under the category of banking

[7] *2014 UKSC 16*
[8] *VAT SC 06344*
[9] *C-16/93(1994 STC 509*
[10] *[2012] HCA 41 (High Court)).*

and other financial services. Reference was made to the European Court of Justice in the case of C-277/2005 in Societe Thermaled'Eugenic-les- Bains (supra).The other decision of the CESTAT is in South Eastern Coal fields (2021)124 taxmann.com 174 (Delhi) where it was held that compensation or penalty from contractors for material breach was not taxable under provisions of the service tax law namely Sec 66E (e) which is similar to Entry at Sl No 5(e) of Sch II to CGST Act.

What emerges from the above and the recent Circular No 178 (supra) is that there is a distinction between "condition of the contract" and consideration for the supply. This is referred to as the "event" in the recent circular No 178. This principle has been adopted in the context of examination of the contractual terms under the Central Excise Law in Racold Appliances[11] upheld by the Supreme Court in 1998(100) ELT A64(SC). This principle was also applied by the CESTAT in McDonalds India Private Ltd[12] in the context of whether there is consideration flowing from the franchisee to the franchisor when the franchisee is conditioned to incur certain expenses to mainly augment his business. It was held that such a condition shall not constitute consideration for purpose of service tax.

Holding of Shares by Holding Company – Tolerate an Act?

There are cases outside the instances covered by the CBIC circular (supra) such as the holding of shares by the overseas holding company in the Indian subsidiary being treated as an act of tolerance by the subsidiary for tax under reverse charge in the hands of the subsidiary invoking Sl No 5(e). (Service Code 997171). Given the reasoning in the Circular that there is requirement for an independent contract the mere holding of shares in the subsidiary should not attract tax.

> **"In most systems, there needs to be a consideration before a 'supply' can exist. Australia is an exception (save for financial services). Consideration can be in cash or kind, in all systems."**

Reward Schemes and Reward Points

Next would be with regard to reward schemes and reward points held as actionable claims which are in any case neither supply of services nor supply of goods under Schedule III to the Act. The forfeiture of such points in the event of non-redemption should also not attract any tax since the principal supply itself is not taxable.

Similarly in the case of forfeiture of ESoPs issued to an employee pursuant to the employment contract, the same principle as in case of reward points should apply. The payment towards the employment being covered by Schedule III the principal supply itself will be not taxable in this case and hence the same should follow with respect to the ESoPs forfeited.

Arbitration Amounts

Another area could be whether the amounts awarded pursuant to arbitration proceeding that is enforceable in a court of law could be taxed under GST. This was held taxable by AAR in North American Coal Corporation India [(2018) 98 taxmann.com 331 AAR – Mah]. But now given the fact that this is in the nature of contractual term and there is no separate settlement or compromise, one should be able to say that there is no tax when there is no independent contract. However, when there is an independent compromise arrangement whereby several civil and criminal litigation already pending in various courts is withdrawn (criminal proceeding cannot be settled without the permission of court of competent jurisdiction) and payments are made, then this may give rise to an independent supply except in the case of a decree passed after filing of the memo of compromise in court.

Conclusion

From a survey of the judgments in other jurisdictions and under the erstwhile indirect tax law and the clarification in Circular No 178, it could be said that as long as there is an independent and identifiable supply the amounts paid in respect of the same may amount to consideration and be subjected to tax. However, the nagging question that will of course evolve in terms of an answer would be as to what the line of demarcation is when the payment made under a contract would be treated as for an ancillary or an incidental supply to the principal supply. And the real ambit of this entry at Sl No 5 (e) of Schedule II is yet to come. ■■■

[11] *1994(69) ELT 312*

[12] *2019 (9) TMI 1141 (Delhi)*

Classification under GST: Role of HSN

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Since the introduction of GST many WhatsApp groups have been created by all and sundry and the most common query that one would find in such groups is "what is the rate of GST for such and such product" and you find as many answers as are the rates in the law. Little does the querist know about the huge risk involved in converting a classification question into a mere question of rate of tax.

What is classification?

There are thousands of tradable commodities chargeable to different rates of tax. Then how does one ascertain the applicable rate of tax on a particular product. The answer to this question is by classifying goods in different groups sub-groups according to their nature, composition etc. and then specifying rate for each such group of commodities. One may think that it would take some logical understanding and trade knowledge to classify goods, but this is easier said than done. For example, how would a gold pen be classified – as an item of gold or as a pen? The HS comes to rescue here by providing a uniform and standardized system of classification. The HS Code and the description of the commodity may not always be in tandem with the general commercial parlance and may throw surprises e.g., a commodity which should be charged at 5% as per general understanding, may either be exempted or charged at a higher rate given the HS code and the Chapter under which the same is found.

What is HS?

The Harmonized Commodity Description and Coding System generally referred to as "Harmonised System" or "HS" is an international product nomenclature developed by World Customs Organization (WCO) to ensure uniform classification of goods in international trade. In addition to its use in customs, HS is also used by the Governments across the globe as a statistical tool in economic research and devising trade policies. HS comprises of more than 5,000 commodities grouped under Sections and then Chapters, which are arranged in a logical structure. Under a chapter, each commodity is identified by a 6 digit code and a uniform classification is ensured by way of well-defined rules to read and interpret the HS.

The Harmonized System Convention entered into force on January 1, 1988. India too adopted the Convention as one of the founder-Contracting Party. With 13 countries on Board, 4 more countries were required by September 30, 1987, so that the HS could be rolled out on January 1, 1988. On September 22, 1987, 15 new countries joined, thus enabling the roll out on the determined date. Today more than 200 countries have adopted HS in formulating their customs tariff.

"The International Convention on the Harmonized Commodity Description and Coding System" governs the HS. The Explanatory Notes published by WCO provide the official interpretation of the HS. The Harmonized System Committee (representing the Contracting Parties to the HS Convention) of WCO is entrusted with the task of providing uniform interpretation of the HS and updating the same every 5-6 years to keep pace with the technological developments and evolving trade patterns. The other functions of the Harmonized System Committee include examining policy matters, deciding classification questions, settling disputes, preparing amendments to Explanatory Notes and the like.

In May 2019, the World Customs Organisation (WCO) held the 1st ever public consultation on the revision of HS. Since 1996, HS has been amended 7 times, the 7th such amended version became applicable from January 1, 2022. International Convention on

Harmonized System requires the contracting parties to amend their Tariff Schedules in alignment with HS. Therefore, the classification of products may not be static; it may change over a period of time and thus, correlation tables showing the corresponding new classification for an old classification under HS and *vice versa* may be referred to for knowing the changes, if any.

> **"HS" is an international product nomenclature developed by World Customs Organization (WCO) to ensure uniform classification of goods in international trade.**

How has the HS kept the World Nations bound by its terminology? How the trade has been facilitated through codes?

The WCO Preamble to HS is reproduced hereunder:

"Desiring to facilitate International Trade

Desiring to facilitate the collection, comparison and analysis of statistics, in particular those on international trade

Desiring to reduce the expense by re-describing, reclassifying and recoding of goods as they move from one classification system to another in the course of international trade and to facilitate the standardization of trade documentation and the transmission of data"

As seen from the Preamble to the HS, the aim is to assist member countries of the WCO in facilitating international trade, collecting data and ensuring uniform codes so as to reduce the expenditure involved in recoding of internationally traded goods.

The HS aims to establish taxonomy system for goods. A hierarchy is provided under which goods can be classified to ensure standardization across the member countries. For example, a balloon, being a toy, is understood to be classifiable under HSN 9503 uniformly across all the member countries.

How is HS adopted in India?

In India, the classification of imported and export goods is governed by Customs Tariff forming part of Customs Tariff Act, 1975. By classification, it is meant the specific heading/ tariff entry of the Schedules of the Customs Tariff under which a particular product/ commodity falls. The Customs Tariff is divided into two Schedules – First Schedule is Import Tariff (specifying goods liable to import duty) and Second Schedule is Export Tariff (specifying goods liable to export duty). As customs duty rates (Tariff) are also specified against the classification (heading/entry) of a commodity in a Schedule, it is called the "Indian Customs Tariff" or "Tariff Schedule".

Initially, the Import Tariff was based on the Customs Co-operation Council Nomenclature, also known as "Brussels Tariff Nomenclature". However, with effect from 28.2.1986, the said Tariff was revised basis the HS adopted by WCO. The "Harmonised Commodity Description and Coding System" developed by WCO came into effect in the Harmonised System Convention from 01.01.1988.

> **In India, the classification of imported and export goods is governed by Customs Tariff forming part of Customs Tariff Act, 1975.**

As mentioned above, commodities are coded up to 4 (Heading) and 6 (Sub-heading) digits in HS. However, the WCO member countries have been provided the flexibility to extend the codes up to any level as per their requirement provided that they do not change the codes at the 4-digit or 6-digit levels. Until 31st January, 2003, the Customs Tariff consisted of 6 digit code. However, with effect from 1.2.2003, India adopted 8-digit level classification to monitor trade data and provide specific statistical codes for domestic products.

The Customs Tariff has 21 Sections and 98 Chapters. Chapters covering a class of goods are grouped under one Section. Every Section and Chapter has Section Notes and Chapter Notes respectively which explain the scope of Chapters/headings etc. In each Chapter, brief description of commodities is given at 4, 6 and 8 digits where 4 digits denote a heading, 6 digits denote a sub-heading and 8 digits denotes a tariff item. Rate of duty is specified against each tariff item. All the commodities/ products are arranged in a definitive pattern in the Tariff which is increasing order of their manufacture – first natural products,

then raw materials; then semi-finished goods, and in the last fully finished goods/article / machinery, etc.

> **The 8-digit HS code is the basis of the code that is contained in the GST Rate Notification.**

Therefore, now it can be inferred that classification is a process of determining the specific heading (4 digit) or a sub-heading (6 digit) or the tariff entry (8 digit) for a given product/commodity so as to know the applicable rate of duty chargeable on it. The titles of Sections, Chapters etc. provided in the Tariff are solely for the ease of reference and do not have any legal authority. A legally correct classification can be determined by using texts of Section Notes, Chapter Notes, Headings, Subheadings, and the General Rules for Interpretation of Import Tariff (GIR). There are 6 rules in the GIR which provide guidance for determining classification of goods in different scenarios. These rules are to be applied sequentially.

Why is HS applicable to GST in India?

Notification No. 1/2017 - CT (Rate) dated 28.6.2017, popularly called as GST Rate Notification, contains the schedules of rate of tax to be levied on goods supplied under the GST law. Originally there were 6 schedules; the 7th was added with effect from July 18, 2022.*Notification No. 2/2017 – CT (Rate) dated 28.6.*2017 enlists the goods which are exempt from GST. In both the above notifications goods are classified basis Chapter/ Heading/Sub-heading/Tariff Item and then applicable rate of tax/exemption is provided against each goods.

Clauses(iii) and (iv) of the explanations to both the above Notification are reproduced hereunder:

(iii) "Tariff item", "sub-heading", "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

The above explanation clearly lays down the importance of Customs Tariff Act in classifying a commodity under GST and consequently determining the rate at the which the same is taxed.

As already premised above, India has adopted the HS and consequently the Customs Tariff Act contains the HS and the commodity descriptions released by the World Customs Organisation. The 8-digit HS code is the basis of the code that is contained in the GST Rate Notification. Hence, whenever there arises a need to find the rate of GST, it is the Customs Tariff Act which should first be referred to instead of the GST rate Notification. Having done the same, the result should be compared with the GST rate Notification and if there is a difference between them, then the GST Rate notification shall prevail. However, such difference should be brought to the notice of the Fitment Committee, so that the anomaly can be addressed suitably. If the same is not addressed, commodity imported would fall under the respective HSN as per Customs Tariff Act and if the same is supplied domestically, it would merit classification as per the relevant entry in the GST rate notification. Thus, it is quite possible that there will be a difference between the rate of tax under IGST and the rate when charged for domestic supplies.

> **The Scheme of Classification of Services under GST along with the Explanatory Notes are based on United Nations Central Product Classification.**

In matters relating to classification, the process that goods pass through may also have a bearing and in thus, the concept of manufacture as prevalent during the excise times may be referred to. The decisions of the Supreme Court can act as guidance while deciding whether a commodity is X or whether it is Y and under which HSN the same would fall. The product under question may be the same but the ingredients added to it may give rise to differential rates. For example, flavoured milk in plain form is different from the flavoured milk added with nuts. Similarly, commodities can be differentiated when the same are 'ready-to -cook' or 'ready-to-eat'. The GST Rate Notification is brought in to facilitate the trade that entered the HS domain for the

first time. Hence, there is bound to be a mismatch with Customs HS. One may find mention of products in Customs HS but the same may be missing in GST rate notification e.g., mango Pulp finds a specific mention in Customs HS whereas the same is missing in GST rate notification which gave rise to issues relating to its taxability.

> **Accurate classification of goods and services is vital for determining the correct GST liability.**

With revenue considerations, Department is duty bound to look into the rate issues and the differences between GST and Customs HS will throw up interesting and probably avoidable legal tussles. Professionals should visit the place of production, read literature related to the product, relevant details on the packaging, marketing strategiesetc. which emanate a lot of information on the nature of the product. This will help the professionals to strike a balance between both the laws, and instead of getting into protracted litigation, reach a conclusion. They should also look into decisions of the Courts in the past as the same may throw light on the exact nature of the product and its entry under the relevant Heading.

How are services classified in GST?

GST is levied on supply of both goods and services. Therefore, after establishing that an activity falls within the four corners of the term 'supply', the taxpayer needs to first classify the supply as supply of goods or supply of services with the help of the relevant definitions provided in section 2 and scheme of classification provided in Schedule II to section 7 of the CGST Act, 2017. Once it is established that the particular activity is supply of goods, the classification, as mentioned above, is determined basis Chapters 1 to 98 of Customs Tariff.

However, if the activity is classified as supply of services, the Customs Tariff does not provide any aid in classification of services as it does not have any Chapter to cover services. Therefore, service codes (tariff) for services are provided by way of a 'Scheme of Classification of Services' given as an Annexure to *Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017,* which is the rate notification for services. The said Annexure contains entries under Chapter 99 as also the Explanatory Notes to provide guidance for interpreting the said entries. It may be noted that there is no Chapter 99 for services in the Customs Tariff.

The Scheme of Classification of Services under GST along with the Explanatory Notes are based on United Nations Central Product Classification. The Preface to the Scheme of Classification of Services under GST lays down that where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description. *Notification No. 12/2017 CT (R) dated 28.6.2017,*which enlists the services that are exempt from GST and *Notification No. 13/2017 CT (R) dated 28.6.2017,* which enlists the services, GST on which is payable under reverse charge, also make use of the service codes as provided in Scheme of Classification of Services under GST.

To summarise the discussion, accurate classification of goods and services is vital for determining the correct GST liability. Classification can be done accurately by following the Rules of Interpretation in case of goods and Explanatory Notes to the Scheme of Classification in case of services; logical understanding, common sense or experience alone would not suffice for determining the correct classification of goods and services. Classification is not only relevant for ascertaining the rates of tax, but also the availability of exemptions and taxability under reverse charge. Appropriate classification is *sine qua non* to avoid legal disputes and demands from the tax authorities. ■■■

Is levy of GST guaranteed on Corporate Guarantee?

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A corporate guarantee is an agreement between a borrower, lender and guarantor, whereby the guarantor takes on the responsibilities of debt repayment, if the borrower defaults. While providing corporate guarantee is a routine business activity among corporates to support and sustain their subsidiary / associate companies by guaranteeing their funding requirements. However, from the perspective of GST, the same is open to interpretation regarding its taxability. "Guarantee" has been defined in Black's Law Dictionary as "The assurance that a contract or legal act will be duly carried out"; "To assume a suretyship obligation; to agree to answer for a debt or default."

In simpler terms, a guarantee means the promise for doing of something or a promise to make payment of certain debt or performance of certain duty of another person's contractual obligation if that other person fails to make good the performance or pay his debt or fulfil his obligation, as the case may be.

The term "guarantee" or to be precise "contract of guarantee" has been defined in section 126 of the Indian Contract Act, 1872,which provides that a contract of guarantee is a contract to perform the promise, or discharge the liability, of a third party in case of his default.

Guarantee contract includes three parties namely; Creditor, Principal Debtor and Surety. The person who gives the guarantee is called the "surety"; the person in respect of whom the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

As per section 2(11) of The Companies Act, 2013 a "body corporate" or 'corporation' includes a company incorporated outside India but does not include-

(i) a co- operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act) which the Central Government may, by notification in the official Gazette, specify in this behalf;

On a joint reading of section 126 of the Indian Contract Act, 1872 and section 2(11) of The Companies Act,2013, a Corporate Guarantee can be inferred as an affirmation usually made by a larger company (flagship, related or holding company), on behalf of another business entity which usually would be a smaller company. It is a guarantee to a lender that a loan will be repaid, guaranteed by a company other than the one who took the loan.

Further, Companies Act, 2013, allows for inter-corporate guarantees among related parties subject to specified conditions. As such nature of transactions do not have any financial implication on the surety / guarantor assuming that no fees / commission has been charged for providing the said guarantee (unless of course the guarantee is invoked) they do not have any consequential impact.

It is a usual presumption in case of related party transactions that the said transaction has not been carried out at arm's length price. This brings in the provisions in law which specify that transactions between related persons when undertaken at the market value are based on the common commercial terms, and thus, will be considered as a transaction made with an unrelated party.

From the perspective of GST, it becomes relevant to examine the transaction from the point of view of supply & its consequential

taxability. The term "supply" is defined under section 7 of the CGST Act to include all forms of supply such as sale, transfer, barter, exchange, license, rental, lease or disposal of goods or services or both, made or agreed to be made in the course or furtherance of business and for a consideration and includes activities mentioned in Schedule I to the Act which are made or agreed to be made without consideration.

The term "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged. By providing guarantee against any loan / credit facility, the guarantor basically assists the principal debtor in availing such facility, which has an element of service.

The principle of valuation in case of GST is that the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. When such supply is between related persons, its value will be determined by the valuation rules as prescribed.

From the perspective of GST Law, two key terms are relevant in this context being – "distinct persons" and "related persons", where a person having multiple registrations across the same state or multiple states is classified as a distinct person, and the following shall be deemed to be related persons, if:-

i. such persons are officers or directors of one another's businesses;

ii. such persons are legally recognised partners in business;

iii. such persons are employer and employee;

iv. any person directly or indirectly owns, controls or holds twenty-five percent. or more of the outstanding voting stock or shares of both of them;

v. one of them directly or indirectly controls the other;

vi. both of them are directly or indirectly controlled by a third person;

vii. together they directly or indirectly control a third person; or

viii. they are members of the same family;

ix. persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other.

The term "person" also includes legal persons.

Specific provisions are in place for determining the value of supply of goods or services or both between distinct or related persons, which provides that the value of supply shall –

a) be the open market value of such supply

b) if the open market value is not available, value of supply of goods or services shall be of like kind and quality;

(c) if the value is not determinable as above, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services, and thereafter the same shall be determined using reasonable means consistent with the principles and the general provisions of GST Law. However, there is a proviso to the above provisions which lays down that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer, not being a related person.

"By providing guarantee against any loan / credit facility, the guarantor basically assists the principal debtor in availing such facility, which has an element of service."

It is further provided that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Chennai CESTAT had on 19th February, 2019, in the matter of *Sterlite Industries India Ltd. Vs Commissioner of*

GST and Central Excise, Tirunelveli held that providing corporate guarantee is not a taxable service in relation to bank and other financial services and since the issue of corporate guarantee by the appellants was only to facilitate issue of bank guarantee by the bank, the activity by the appellant is nothing but a service in relation to issue of banking and other financial services. The activity of issue of corporate guarantees by the appellant from their associate / subsidiary companies in India and also the procurement / receipt of corporate guarantee from their parent / associate company abroad will not come within the fold of section 65(12)(a) ibid and in particular sub-clause (ix) of that provision of Service Tax law. It is noteworthy to observe that this judgment was given from the viewpoint of Banking and Other Financial Services. However, the decision could have been different had the point of view of taxation been from the perspective of Business Auxiliary Services or Business Support Services.

> **"Where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services."**

The same can be seen in the case of *Olam Agro India Ltd. Vs Commissioner of Central Excise* wherein CESTAT Delhi has recorded that a corporate guarantee is used when a corporation agrees to be held responsible for completing the duties and obligations of debtor to a lender, in case the debtor fails to comply with the terms of the debtor- lender contract and a bank guarantee is a promise from a bank that the liability of the debtor will be met in the event the debtor fails to favour his contractual obligations. Therefore, the nature of corporate guarantee as well as of bank guarantee is one and the same i.e., for facilitation of the lending facilities. Merely because the name of the guarantee has been changed from 'Bank' to 'Corporate', it cannot be said that it will not fall under 'Business Auxiliary Service' as defined under section 65 (105) of the Finance Act, 1994 and upheld the demand of Service Tax on the Corporate Guarantee Commission.

It is pertinent to note that the Ministry of Finance (CBIC)vide *Circular No. 34/8/2018-GST, dated 1st March 2018* had already clarified that the services provided by Central/State Government to any business entity including PSUs by way of guaranteeing the loan taken from financial institutions against consideration in any form including guarantee commission, is taxable.

However, later on, services supplied by Central/State Government/Union territory to their undertakings/ PSUs by way of guaranteeing the loans taken by such undertakings/PSUs from the banking company and financial institution were exempted from GST. The Ministry of Finance (CBIC) has issued another *Circular No.154/10/2021-GST, dated the 17th* June, 2021 to re-iterate that guaranteeing of loans by Central or State Government for their undertaking or PSU is specifically exempt.

> **"Bank guarantee is a promise from a bank that the liability of the debtor will be met in the event the debtor fails to favour his contractual obligations."**

Hence, it supports the view that transaction of guaranteeing loan with consideration qualifies as supply and therefore, is leviable to GST.

Further, meaning of the term "consideration" under section 2(31) of the CGST Act, 2017, in relation to supply of goods or services or both includes––

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Thus, in respect of providing guarantee, consideration in the form of commission may or may not be charged.

In cases, where any consideration in the form of commission is charged by the guarantor against the guarantee provided to the creditor for loan

provided to the borrower, the said activity being an agreement to the obligation to do an act, qualifies as a service.

> **A holding and a subsidiary company are regarded as related parties under GST.**

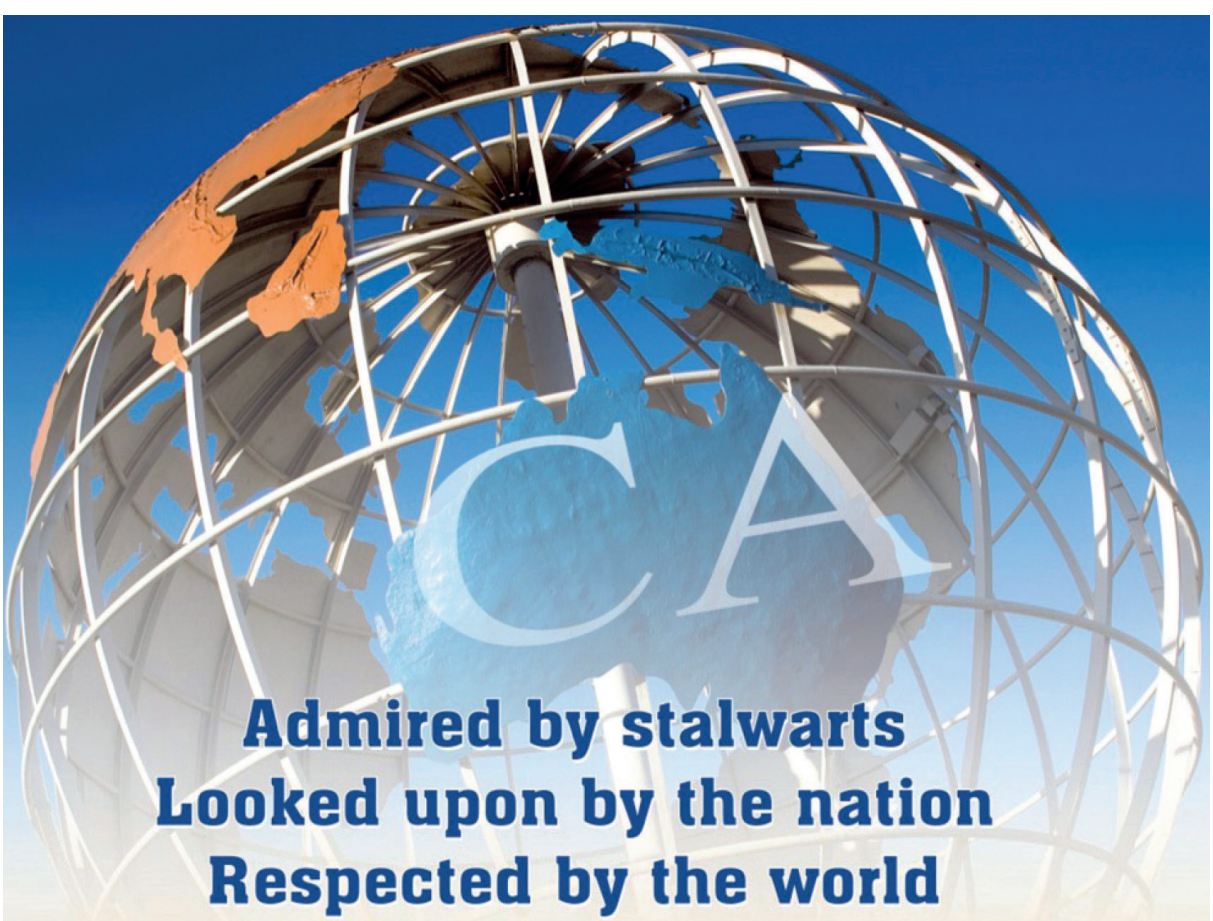
It is also pertinent to note and understand that merely by not charging any "consideration", shelter cannot be taken to escape the chargeability, as parallelly para 2 of Schedule I also comes into play for this given supply, which specifically covers that supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business, are to be treated as supply even if made without consideration.

A holding and a subsidiary company are regarded as related parties under GST. Therefore, any supply of goods or services by the holding to the subsidiary or *vice-versa* will be taxable according to Schedule I para 2, even in cases where there is no consideration between the two of them for the said supply.

Therefore, to conclude, the service of provision of guarantee is understandably a service falling under HSN 9971 – Financial and related services, and is exigible to GST. Such service is covered under para 2 of Schedule I, if made without any consideration between related or distinct persons.

References used:

- *The Central Goods and Services Tax(CGST)Act, 2017*
- *The Central Goods and Services Tax (CGST) Rules, 2017*
- *Circulars & Notifications issued under the GST Law*
- *Indian Kanoon*
- *The Economic Times*



Analysis of new provision allowing filing of Updated Tax Return

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The Finance Act, 2022 has introduced a new provision in the Income Tax Act, 1961 viz. section 139(8A) allowing the taxpayers who have failed to file the return within the outer limit of 3 months prior to the end of the assessment year to file return on payment of additional tax (over and above the normal tax applicable) within an extended period of 2 years from the end of the assessment years which means 27 months from the outer limit to file tax return. Similarly, the new provision allows a taxpayer to correct the return already filed within the above extended period if it notices any understatement of income upon payment of additional tax. CBDT vide notification no 48/2022 dated 29th April,2022 has notified Rule 12AC and Form ITR-U for filing the 'Updated' income tax return under this newly inserted Section 139(8A). The intent of the present write up is to analyse the nitty-gritty of this new provision.

Updated return can now be filed for AY 2020-21 and subsequent assessment years

The new provision has been made applicable w.e.f 01.04.2022. Accordingly, the Taxpayers who have missed to file ITRs for Financial Year 2019-20 (Assessment Year 2020-21) and Financial Year 2020-21 (Assessment Year 2021-22) can now file ITR for such years by paying additional tax. Also, taxpayers can file Updated Returns for these years if they have omitted to include any income or to declare any income by paying additional tax. However, the updated return can't be filed for earlier assessment years as availability of this window is only for two years from the end of the relevant assessment year.

Requirement to pay 'additional tax'

In order to file an updated return, payment of additional tax is also required. An amount equal to 25 per cent of the tax and interest due on the additional income reported is required to be paid where the updated return is being filed within 12 months from the expiry of the assessment year. In case the updated return is being filed after expiry of 12 months from expiry of the relevant assessment year but before 24 months from expiry of the assessment year, then an amount equal to 50 per cent on the tax and interest due on the additional income reported is required to be paid.

Thus, such taxpayers filing returns for FY 2020-21 (AY 2021-22) will need to pay the balance tax due after taking credit of taxes already paid by way of advance tax, tax deducted at source, Minimum Alternate Tax (MAT) credit and any relief under section 89 or under Double Taxation Avoidance Treaty (DTAA) together with interest there on till date and late fee along with an additional amount of 25 per cent of such balance tax and interest before filing updated return. For FY 2019-20 (AY 2020-21), the additional amount will be 50 per cent of the tax payable and interest. The additional tax also with balance tax and interest there on and late fee is to be deposited before filing the return. The entire tax liability along with additional tax is to be paid before filing the updated return.

Further per the Updated Return Form ITR-U, taxpayers filing the Updated Return need to specify any one of the following reasons for filing Updated Return:

1) Return previously not filed
2) Income not reported correctly
3) Wrong heads of income chosen

4) Wrong rate of tax
5) Reduction of carried forward losses or unabsorbed depreciation
6) Reduction of Minimum Alternate Tax
7) Others

Updated return can be filed whether or not a return has been filed earlier

The objective of introducing this new provision is to give opportunity not only to the taxpayers who have failed to file the return but also an opportunity to those taxpayers who having filed the return, later on notices understatement of income consequent to data being collected and uploaded by Income tax department on the portal by way of 26AS, AIS or TIS. A taxpayer having filed the return, in case later on notice any such information, then he can update his return. However, such updation is possible only once for that assessment year . Having updated the return for an assessment year, the same can't be updated again.

Immunity from penal consequences

By filing this updated return along with payment of additional tax, the taxpayers will get immunity from prosecution under section 276CC for failure to furnish return of income.

Though the amendment doesn't explicitly provide for immunity from levy of penalty under section 270A in respect of under reporting and misreporting of income in the original return filed, however, considering the provisions of sub section (2) of Section 270A, it can be inferred that no penalty shall be leviable under this Section 270A as well. This assumption gets corroborated from perusal of the Memorandum explaining the introduction of this provision whereby the amendment has been captured under the heading *'promoting voluntary tax compliance and reducing compliance'* and itself states that the existing timeline provided in Section 139 for filing a revised/belated return is not adequate considering utilisation of huge information and data available coupled with the "nudge approach" that motivates the taxpayer towards the desired objective of voluntary tax compliance, starting with filing of correct tax returns.

> **"In case the updated return is being filed after expiry of 12 months from expiry of the relevant assessment year but before 24 months from expiry of the assessment year, then an amount equal to 50 per cent on the tax and interest due on the additional income reported is required to be paid."**

As regards immunity from prosecution under section 276C for wilful evasion of taxes, again, there is no explicit provision providing for any such immunity. However, based on the intent of introduction of the provision (as noted above) and considering the fact that taxes, interest along with additional tax liability already stands paid, one may argue that there should be no consequences under section 276C of the Act as well.

It would be ideal if CBDT issues a clarification that there shall be no penal consequences under section 270A or section 276C in case the income is declared in updated return under section 139(8A) to allay any kind of apprehensions of taxpayer. This will help encourage more taxpayers to opt for such new scheme.

High rate of additional tax of 25%/50% for filing updated return may not encourage taxpayers to file updated return where income inadvertently not declared is in the nature of under-reporting and not mis-reporting

It may be relevant to point out that in case the updation of return is in respect of an income which falls within the meaning of 'under-reporting' but do not fall within the meaning of 'mis-reporting' of income, the total liability on account of tax and interest and additional tax in case of updation of return may be higher than the tax which otherwise may be payable in consequence of assessment/ reassessment where such addition or disallowance is made. In this regard, it may be relevant to point out that under section 270AA of the Act, where there is under-reporting of income, a taxpayer is given complete immunity from penalty and prosecution in case the taxpayer pays the demand as per the notice of demand issued in consequence of the assessment order and files declaration in prescribed formation that it shall not challenge the assessment order in appeal. It may be further relevant to highlight that such immunity is granted without the taxpayer having to pay any additional tax or fee. The taxpayer is only required to pay tax and interest in such cases

and is entitled to immunity from penal consequences. As against this, in case an updation of return is sought, then in addition to the normal tax and interest, there is a requirement to pay additional tax of 25% or 50% as the case may be.

To explain the above by way of an example, take a case of a company which has opted for 115BAA and had declared income of Rs. 50 lakh in the return filed under section 139(1) of the Act. Say subsequently, the company notices that inadvertently, the amount of disallowance under section 14A to the tune of Rs. 20 lakh was not made in the return filed earlier. In such a case, the total liability arising in consequence of disallowance being made in reassessment proceedings, total liability arising in case updated return is filed within 12 months from expiry of relevant assessment year and tax liability arising in case updated return is filed after 12 but before 24 months from expiry of relevant assessment year shall be as under:

Particulars	Details	Reassessment (under-reporting)	Reassessment (mis-reporting)	Updated return – 12 months	Updated return – 24 months
Income returned by the Company	A	50,00,000	50,00,000	50,00,000	50,00,000
Tax rate (assumed that company has opted for 115BAA)	B	25.17%	25.17%	25.17%	25.17%
Tax amount	C= A*B	12,58,500	12,58,500	12,58,500	12,58,500
Additional income of Company	D	20,00,000	20,00,000	20,00,000	20,00,000
Tax on the above (assumed @ 25.17%)	E= D*B	5,03,400	5,03,400	5,03,400	5,03,400
Months for computing S. 234B interest (assuming 3 yr. limitation for reassessment notice, exclusion for enquiry under 148A and 1 year for completion of assessment)		72 months	72 months	24 months	36 months
Interest under Section 234B	F = C*1% for each month	3,62,448	3,62,448	1,20,816	1,81,224
Interest under Section 234C	G	-	-	25,422	25,422
Total tax liability	**H = E + F + G**	**8,65,848**	**8,65,848**	**6,49,638**	**7,10,046**
Additional tax for updated return	**I = H *25% or 50%**	**-**	**-**	**1,62,409**	**3,55,023**
Total liability including additional tax	**J = H+I**	**8,65,848**	**8,65,848**	**8,12,047**	**10,65,069**
Penalty u/s 270A					
@ 50% on under-reporting	K = I*50%	2,51,700	NA	-	-
@ 200% on misreporting	K = I*200%	NA	10,06,800	-	-
Total tax payment with Addl. Tax/penalty	**L= J+K**	**11,17,548**	**18,72,648**	**8,12,047**	**10,65,069**

- *It has been assumed that the updated return is filed on the last date falling as per 12 month window or 24 month window, as the case may be*
- *It has been assumed that advance tax has been appropriately paid as per the original return of income*

On going through the above table, it may be noted that total liability (ignoring penalty) arising pursuant to reassessment shall be Rs. 8.65 lakhs. As against the same, the total liability (including additional taxes) arising upon filing the updated return under section 139(8A) shall be Rs. 8.12 lakhs in case the updated return is filed within 12 months from expiry of the relevant assessment year and Rs. 10.65 lakhs in case updated return is filed after 12 months but within 24 months from expiry of

the relevant assessment year. Keeping in view the same, it appears that where a taxpayer furnishes the updated return within 12 months, the taxpayer may have a lower tax liability vis-à-vis the liability arising in case tax is required to be paid in consequence of disallowance being made in the reassessment proceedings. As against this, in case the taxpayer is not able to file the updated return within 12 months from the expiry of the relevant assessment year, then the taxpayer is worse off under the updated return option and in fact has to pay lesser amount in consequence of reassessment proceedings.

Thus, in such cases where nature of additional income left to be declared in the original return falls within the meaning of under-reporting for which immunity from penalty under section 270AA can be sought and 12 months have already elapsed (AY 2020-21 as on date), then the taxpayer may not be encouraged to file the updated return. However, in case it is not possible to claim immunity on account of say multiple additions having been made in reassessment which warrants the order to be challenged further in appeal, then the tax liability under the updated return shall be lower as the total liability (including penalty) arising in consequence of reassessment shall then be Rs. 11.17 lakhs (as against Rs. 8.12 lakhs payable in case the updated return is filed within 12 months from expiry of the relevant assessment year and Rs. 10.65 lakhs payable in case updated return is filed after 12 months but within 24 months from expiry of the relevant assessment year). Similarly, in case the nature of income not declared is in the nature of mis-reporting, then the total liability being substantially higher i.e. Rs. 18.72 lakhs, the filing of updated return shall be beneficial.

> **"Where a taxpayer furnishes the updated return within 12 months, the taxpayer may have a lower tax liability vis-à-vis the liability arising in case tax is required to be paid in consequence of disallowance being made in the reassessment proceedings."**

In view of the above, in some situations, a taxpayer may be better off paying taxes after assessment proceedings than by disclosing the same by way of filing Updated Return whereas in some situations, the taxpayer may be better off by filing the updated return. The impact will depend upon the facts of each case.

However, it may be noted that filing updated return may also be beneficial in cases where multiple issues are involved and the taxpayer wishes to accept liability on some issues while choosing to litigate on the rest.

It may be also be relevant to highlight that the above said immunity is available only in case of under-reporting of income and not in cases of mis-reporting of income. As per provisions of section 270A of the Act, any difference between income determined under intimation under section 143(1) and income assessed is treated as under reporting. Such under-reporting is said to constitute 'mis-reporting' in the following cases:

(a) misrepresentation or suppression of facts;

(b) failure to record investments in the books of account;

(c) claim of expenditure not substantiated by any evidence;

(d) recording of any false entry in the books of account;

(e) failure to record any receipt in books of account having a bearing on total income; and

(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

In the above stated cases, the benefit of immunity under section 270AA is not available. However, it may be noted that in the following cases, penalty even for under reporting of income is not leviable in terms of section 270A(6):

(a) the amount of income in respect of which the assessee offers an explanation and the AO or CIT(A) or CIT or Pr. CIT, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered;

(b) the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete

to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom;

(c) the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;

(d) the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and

(e) the amount of undisclosed income referred to in section 271AAB.

Thus, if the penalty is not leviable on any of above grounds, then too, a taxpayer may find filing updated return voluntarily costlier as compared to total additional liability arising on addition made consequent to assessment or reassessment.

Benefit of filing updated return is available to all category of taxpayers

It may be noted this facility of updation is open for all taxpayers whether an individual, HUF, AOP, Firm, Company or A Cooperative Society.

Restriction on filing updated return in certain circumstances

In certain circumstances, there is a bar that a taxpayer shall not be entitled to file an updated return. These are as under:

i. Restriction on filing updated return in case of search/survey

As per the second proviso to section 139(8A) of the Act, updated return cannot be filed:

1. Where a Search has been initiated under Section 132 or Section 132A or a survey has been conducted under section 133A other than survey for verifying TDS/ TCS compliance under sub section(2A) then such taxpayer is prohibited from filing updated return of search year and any earlier assessment year.

2. Where a notice has been issued to the effect that money, bullion, valuable article, books of accounts or documents seized or requisitioned in a search of another person belongs to or relates to or pertains to the taxpayer, then such taxpayer is prohibited from filing updated return for the search year and earlier assessment year.

In the above cases, the taxpayer is not eligible to file updated return for the search year/year of requisition as well as for any earlier assessment years. On-going through this restriction, it will be important to note that a person who gets searched or surveyed immediately becomes ineligible to file updated return. As against this, if any money, bullion or valuable article or thing or books of accounts or documents are found belonging to another person in such search or survey, then ineligibility of such other person is only after a 'notice' has been issued to such other person. Accordingly, such other person post search or survey on the first mentioned person can file an updated return of current assessment year and last two assessment years so as to declare or include income likely to be taxed in his income consequent to money, bullion, valuable article, books of accounts or documents belonging to him being found in the search or survey of the first mentioned person.

ii. Updated return can only be filed once for relevant assessment year

Another restriction is that updated return cannot be filed for the relevant assessment year by any person if an updated has been filed earlier for such assessment year. Thus, once an updated return is filed for any assessment year, the taxpayer is barred from filing another updated return for the same year even if time for filing the updated return is still available for that assessment year.

iii. Updated return cannot be filed where information available with the AO under certain Acts and the same has been

communicated to the taxpayer

Updated return cannot also be filed for the relevant assessment year by any person if;-

1. The AO has information in his possession in respect of such person for the relevant assessment year under PMLA, 2002, SAFEMA, 1976, Black Money Act, 2015 or Prohibition of Benami Property Transactions Act, 1988 and such information has been communicated to such person, prior to the date of furnishing this updated return.
2. Information has been received under Section 90 or 90A (DTAA/Exchange of Information) for the relevant assessment year in respect of such person and the same has been communicated to such person prior to filing of this updated return.

On going through the above restriction, it may again be relevant to point out that the restriction gets triggered only when **such information has been communicated to the taxpayer, prior to the date of furnishing this updated return.** Thus, the person can file updated return in respect of income likely to be taxed in current assessment year and preceding two assessment years consequent to information under SAFEMA, 1976, PMLA, 2002, Black Money Act, 2015, Prohibition of Benami Property Transactions Act, 1988 or under section 90/90A of Income Tax Act before the same is communicated by the AO to such person.

It may be further noted that the restriction triggers as and when the information is 'communicated' to the taxpayer. Normally, under the new reassessment regime, communication may take place when a notice under section 148A(b) is issued on the basis of such information to conduct enquiry for reassessment proceedings. However, there may be other instances of 'communication' as well such as where notice under section 133(6) is issued in pursuance to receipt of information. Before communication of the information for the relevant assessment year, the taxpayer is eligible to file updated return.

> **"Once an updated return is filed for any assessment year, the taxpayer is barred from filing another updated return for the same year even if time for filing the updated return is still available for that assessment year."**

iv. Assessment/reassessment/ re-computation/revision is pending or completed

Another restriction is that an updated return cannot be filed for the relevant assessment year by any person if any proceeding for assessment or reassessment or re-computation or revision is pending or completed for that assessment year. Thus, where return has been filed earlier, the taxpayer will not be eligible to file updated return once the notice under section 143(2) has been issued. As against this, a taxpayer who has not filed the return, its eligibility to file updated return shall continue to be available till notice under section 148 is issued for assessment.

Another issue may arise as to whether issuance of notice under section 148A(b) under the new reassessment regime may said to constitute *'pendency'* of assessment/ reassessment proceedings thereby triggering the restriction to file updated return. The said issue may be debatable. Legally the reassessment proceedings get initiated only upon issuance of notice under section 148 and thus, a person on receipt of notice under section 148A(b) may be eligible to file updated return provided the assessment year for which such notice has been issued is falling within 24 months from the end of that assessment year and the information provided in such notice is not relating to restricted matters such as search, survey, Black Money, Benami etc. As noted earlier, in prescribed cases where the restriction triggers upon communication of information such as in matters pertaining to Black Money, Benami, etc, issuance of notice under section 148A(b) may itself trigger the restriction as the communication may said to have taken place.

v. Updated return cannot be filed where prosecution has been initiated

Another restriction is that updated return cannot be filed for the relevant assessment year by any person if any prosecution proceedings, under Chapter XXII of the Income Tax Act, have been initiated for the relevant assessment year in respect of such person prior to filing of updated return. It is to be noted that the taxpayer shall not be eligible to file an updated

return for a relevant assessment year in a case where prosecution has been initiated under Chapter XXII of the Income Tax Act in respect of such year even if the grounds on which prosecution has been initiated has no relation with income/evasion of taxes (such as prosecution for technical breach, delay in payment of taxes deducted at source, etc).

> **"An updated return cannot be filed for the relevant assessment year by any person if any proceeding for assessment or reassessment or re-computation or revision is pending or completed for that assessment year."**

Updated return cannot be a return of loss

It is important to point out that this updated return cannot be filed if it is a return of loss. Accordingly, if a person has earlier filed a return declaring loss, such person cannot file an updated return reducing such loss, in case it has missed to include certain income or loss has been computed in excess. A loss return can be updated only if it gets converted to a return of positive income meaning thereby entire loss should get wiped out and thereafter there should be some positive income.

Updated return to be filed for subsequent years where there is reduction in losses/ unabsorbed depreciation/ MAT credit

If by virtue of filing an updated return under the new provision, losses/unabsorbed depreciation/MAT Credit carried forward is to be reduced for any subsequent previous year, then it is mandatory that an updated return shall be furnished for each such subsequent previous year. Consequently, there is a requirement to pay additional tax in respect of each such subsequent year also.

In a case where return for subsequent year has been filed whereby enhanced losses have been claimed (which are required to be reduced as a result of filing updated return for any preceding year) and time limit to file revised return under section 139(5) is available, then there may be an issue as to whether filing of updated return for such subsequent year shall still be mandatory or not; or whether the same can be corrected by way of filing revised return. However, in case time period for filing original return for subsequent year is yet to expire, return for such subsequent year has not been filed and consequently, enhanced losses have not yet been claimed in such return for subsequent year, then it may not be necessary to file an updated return and the taxpayer may claim reduced losses in the original return for such subsequent year itself.

Updated return cannot result in decrease in tax liability or increase in refund

It may be important to point out that an updated return cannot be filed to decrease the tax liability as per the return already filed for the relevant assessment year. So one cannot reduce income while filing updated return. Similarly, updated return cannot be filed for claiming refund and also for claiming increased refund as compared to the refund as per the return already filed.

Accordingly, in case a taxpayer has paid excessive tax by way of advance tax or TDS and his liability of tax on the income actually earned is less than the tax paid by way of advance tax and/or TDS, he will not be eligible to file this updated return for the relevant assessment year unless the income is increased to such a level where there is an additional tax liability over and above the taxes paid by way of advance tax and TDS.

From the above prohibition imposed on filing Updated Return, it is interesting to note that a taxpayer is allowed to file updated return of past years only in case there is an additional Tax liability and not in case where there is a claim for refund. A taxpayer having deposited tax much more than its liability is ineligible to file updated return, whereas a taxpayer who is in arrear of paying taxes on income earned by him, is eligible to file updated return and get immunity under the Act.

A taxpayer can update the return if he has omitted to declare or under declared any income but he can't revise and file an update the Return, if he has overstated its income or by mistake included any income which either was not to be included or was exempt or where a taxpayer has omitted to claim any deduction permissible under the law. This apparently is not fair and equitable to the taxpayers.

Set off of losses permissible against additional income declared in updated return

Another issue may arise as to whether setting off losses against additional income is permitted or not. In this regard, it may be relevant to mention that the same is not specifically barred. Thus, the taxpayers may be able claim set off losses while declaring additional income in the updated return, subject to the rider that the set off should not result in decrease in tax liability or increase in refund.

Filing of updated return should be allowed even where there is decrease in tax liability

The apparent objective of this new provision is additional revenue, then only one is eligible otherwise the person is not eligible. Though one may appreciate this objective, however, law should be fair and equitable to both tax administration as well as taxpayers. The law today give authority to tax administration to rectify, revise and reassess any under assessment and that too with limitation going up to as much as 10 years from the end of the relevant assessment years. As against this, the law gives option to a taxpayer to rectify or revise its return within a period ranging from merely 5 months to just 1 month.

It may be relevant to point out that the time limit for filing a revised return (whereby a claim for deduction omitted to be made in the original return may be claimed) used to be two year from the end of relevant assessment year and was reduced to one year from the end of relevant assessment year. This period of one year was initially reduced by Finance Act, 2017 from expiry of 1 year from end of relevant assessment year to end of assessment year itself. Subsequently, this time limit was further reduced by Finance Act, 2021 from expiry of assessment year to 3 months before the expiry of relevant assessment year. Thus, a taxpayer who is required to file the return by 31st October can furnish the revised return only by 31st December i.e. within 2 months. Not only that, a taxpayer to whom Transfer Pricing provisions are applicable, is required to file return by 30th November, get only 1 month to file revised return, if any.

Thus, the period to file revised return within 5 months to 1 month is too low. In fact, in the Memorandum Explaining the introduction of new provision, it has been acknowledged that this period of 5 months to 1 months may not be adequate and hence the new provision for filing updated return is being introduced. Relevant extract reads as under:

"3. This provision provides an additional time of approximately 5 months to an individual assessee, 2 months to a company/ auditable case and 1 month to an assessee who enters into an international transaction or specified domestic transaction respectively, in a financial year to file belated or revised return. ***This additional timeline for filing a revised/belated return may not be adequate when we factor in utilization of huge information and data available coupled with the "nudge approach" that motivates the taxpayer towards the desired objective of voluntary tax compliance, starting with filing of correct tax returns.***

4. Hence, it is proposed to introduce a new provision in section 139 of the Act for filing an updated return of income by any person, whether he has filed a return previously for the relevant assessment year, or not. The proposal for updated return over a period longer than that is provided in the existing provisions of Income-tax Act would on the one hand bring use of huge data with the IT Department to a logical conclusion resulting in additional revenue realization and on the other hand, it will facilitate ease of compliance to the taxpayer in a litigation free environment."

> **"An updated return cannot be filed to decrease the tax liability as per the return already filed for the relevant assessment year."**

Once the legalisation itself acknowledges that the time period for filing revised return may not be adequate, there is no reason as to why only additional taxes should be a criteria for eligibility to file the updated (revised) return and why one should not be eligible to file updated (revised) return to claim deduction inadvertently not claimed earlier. After all, the mandate of Article 265 of Constitution of India is to bring to tax correct income.

Nobody can dispute the fact that tax laws are quite complex and there is bound to be some

mistakes and omissions here or there both by tax administration as well as taxpayers. More so when every day judgements are being delivered by various courts interpreting this complex income tax law. The administration has the authority under the law to use these interpretations to its advantage, to revise and/or reassess the income but the taxpayer has no right to seek advantage of such interpretation as time period for filing revised return is too short. Even during assessment proceedings, a taxpayer is denied the right to make a legitimate claim of deduction or exemption before the assessing officer on the ground that the same can't be entertained without return being revised and time period of revision stands expired by that time.

Considering the above, it would have been ideal if this option of updating return had been provided for the benefit of taxpayers as well. To protect the interest of the Revenue, a similar condition may have been imposed that in case a deduction is being claimed in the updated return for the first time, then 25% of tax benefit will have to be forgone in case the tax return is being filed within 12 months and 50% of the tax benefit will have to be forgone in case the updated return is being filed after 12 months.

Need to allow filing of updated return beyond two assessment years

The objective of introducing this new provision is to encourage voluntary compliance, to promote ease of doing business in India and to reduce litigation. Hence the restriction of updating return within two years from the end of the assessment years should also be relaxed. It would be ideal that time period for filing updated return be further increased with a requirement to pay higher amount of additional tax. This will help encourage more voluntary compliance and also ensure increased collection of taxes which otherwise is a challenge even for the tax administration with best of enforcement machinery. To ensure that taxpayers don't take undue advantage of such relaxation, the additional tax to be paid may be increased in proportion for each year, may be 75% in case updated return it is filed beyond 2 years but within 3 years from the end of relevant assessment year and 100% in case it is filed beyond 3 years and before 4 years from the end of relevant assessment year and so on. The eligibility criteria for filing updated return of assessment not being pending and/or assessment not being made at the time when updated return is filed with heavy additional taxes (more than the penalty otherwise leviable) will ensure that only bonafide cases of omissions and errors will be able to file the updated returns and hence, there shouldn't be any apprehension that it may lead to misuse by the taxpayer.

Condonation of delay under section 119 in cases involving genuine hardships

Under section 119 of the Income Tax Act, CBDT has the power to condone the delay in filing return to avoid genuine hardships. Prior to insertion of section 139(8A), in cases involving genuine hardships, the taxpayers used to approach CBDT to seek condonation of delay in filing return beyond the due date prescribed under section 139(1) of the Act. Even after insertion of section 139(8A), in cases involving genuine hardships, one may consider approaching CBDT under Section 119 for condonation of delay in filing the ITR rather than filing updated return. ■■■

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Revaluation Model of PPE under Indian Accounting Standard 16 "Property, Plant and Equipment"

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Indian Accounting Standards (Ind ASs) were introduced in India with effect from 01st April 2016 on a mandatory basis to converge with high quality Global Financial Reporting Standards, i.e. IFRS Standards. These Ind ASs have been implemented by the class of companies as per the roadmap issued by the Ministry of Corporate Affairs (MCA). MCA has issued the Companies (Indian Accounting Standards) Rules, 2015 vide Notification dated February 16, 2015 including the roadmap of implementation of Ind ASs for companies other than Banking companies, Insurance companies and Non-banking financial corporations (NBFCs). As per the said Notification, Ind ASs converged with IFRS may be implemented on voluntary basis from 1st April, 2015 and shall mandatorily be applicable from 1st April, 2016. Further, the MCA on March 30, 2016, had also notified the Roadmap for implementation of Ind ASs for Scheduled Commercial banks, Insurance companies and NBFCs from 1st April, 2018 onwards, NBFCs had started phase-wise implementation of Ind AS beginning, April 1, 2018 but banks and Insurance companies are yet to implement Ind AS.

This article enumerates the accounting aspects in the event of revaluation of "Property, Plant and Equipment" (PPE). The relevant Ind AS and Indian GAAP both prescribe revaluation of PPE for subsequent measurement. As per paragraph 36 of Ind AS 16 and paragraph 39 of AS 10 on "Property, Plant & Equipment, if an item of property, plant and equipment is revalued, the entire class of property, plant and equipment to which that asset belongs needs to be revalued.

Introduction

An entity has an option to either chose 'revaluation model' or the 'cost model' as its accounting policy in terms of Ind AS 16. If an entity choses to adopt the revaluation model, an item of property, plant and equipment whose fair value can be measured reliably shall be carried at a revalued amount, being its fair value at the date of the revaluation less any subsequent accumulated depreciation and subsequent accumulated impairment losses. Ind AS 113 "Fair Value Measurement" shall be used for arriving at the fair value of PPE. The frequency of revaluation would largely depend on the changes in fair value of items of PPE being revalued, paragraph 31 of Ind AS 16 says "revaluations shall be made with sufficient regularity to ensure that the carrying amount does not differ materially from that which would be determined using fair value at the end of the reporting period".

Fair value as defined in Paragraph 9 of Ind AS 113 "Fair Value Measurement" is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

Cost Model

Cost	XXXXX
Less : Depreciation	XXXXX
Less : Impairment	XXXXX
Carrying Amount	**XXXXX**

Revaluation Model

Fair Value on Revaluation	XXXXX
Less : Depreciation	XXXXX
Less : Impairment	XXXXX
Carrying Amount	**XXXXX**

As mentioned earlier, in terms of Paragraph 29, 36 and 37 of Ind AS 16, when an item of PPE is revalued, the entire class of PPE to which that asset belongs needs to be revalued. This is done to

avoid selective revaluation of assets and the reporting of amounts in the financial statements that are a mixture of costs and values as at different dates. Some examples of separate classes are as follows:

- Land
- Land and buildings
- Machinery
- Ships
- Aircraft
- Motor Vehicles
- Furniture and Fixtures
- Office Equipment

The aforementioned is a broad illustration of the classes of assets and it is possible that there may be other classes of assets as well based on their similar nature and use. It is a matter of judgement in the context of the specific operations of an individual entity. However, the entity needs to provide the disclosures as required by paragraph 73 of Ind AS 16 for each class of property, plant and equipment.

Revaluation

In terms of paragraph 39 of Ind AS 16, if an ***asset's carrying amount is increased as a result of a revaluation***, the increase shall be recognised in other comprehensive income (OCI) and accumulated in equity under the heading of revaluation surplus. However, the increase shall be recognised in profit or loss to the extent that it reverses a revaluation decrease of the same asset previously recognised in profit or loss.

In terms of paragraph 40 of Ind AS 16, if an ***asset's carrying amount is decreased as a result of a revaluation***, the decrease shall be recognised in profit or loss. However, the decrease shall be recognised in other comprehensive income (OCI) to the extent of any credit balance existing in the revaluation surplus in respect of that asset. The decrease recognised in other comprehensive income reduces the amount accumulated in equity under the heading of revaluation surplus.

> **"An entity has an option to either chose 'revaluation model' or the 'cost model' as its accounting policy in terms of Ind AS 16."**

First Time Revaluation	
↑	**Revaluation Profit to be recognised in Other Comprehensive Income (OCI)**
↓	**Revaluation Loss to be recognised in the Statement of Profit or Loss**

Subsequent Revaluation				
↑	**Initially there was revaluation profit**	↑	**Current year also there is a revaluation Profit**	**Revaluation Profit to be recognised in OCI**
↑	**Initially there was revaluation profit**	↓	**Current year there is a revaluation Loss**	**First the earlier profit recognised in OCI shall be reversed and then excess if any shall be charged to profit and loss**
↓	**Initially there was revaluation loss**	↓	**Current year also there is a revaluation Loss**	**Revaluation Loss shall be charged to Profit & Loss**
↓	**Initially there was revaluation loss**	↑	**Current year there is a revaluation profit**	**First the earlier loss recognised in P&L shall be reversed and then excess if any shall be charged to accounted for through OCI**

Methods of Revaluation

Further, in terms of paragraph 35 of Ind AS 16, when an item of property, plant and equipment is revalued, the carrying amount of that asset is adjusted to the revalued amount. At the date of the revaluation, the asset is treated in one of the following ways:

a. The gross carrying amount is adjusted in a manner that is consistent with the revaluation of the carrying amount of the asset. For example, the gross carrying amount may be restated by reference to observable market data or it may be restated proportionately to the change in the carrying amount. The accumulated depreciation at the date of the revaluation is adjusted to equal the difference

> **"In terms of Paragraph 40 of Ind AS 16, if an asset's carrying amount is decreased as a result of a revaluation, the decrease shall be recognised in profit or loss."**

between the gross carrying amount and the carrying amount of the asset after taking into account the accumulated impairment losses; or

b. The accumulated depreciation is eliminated against the gross carrying amount of the asset.

Example

Let us understand the concept and accounting of revaluation model of PPE through the following example :

SA Private Limited decided to revalue its plant and machinery at 31st March 2020. The following information is available with respect to its plant and machinery :

Amount in '000

Gross Carrying Amount	5,000
Accumulated Depreciation (SLM)	2,000
Net Carrying Amount	3,000
Fair Value	4,500

The useful life of machinery is 10 years and the company use straight line method (SLM) of depreciation. The revaluation was performed at the end of 4 years.

If the company opts for the treatment as per option (a) above i.e. adjusting the gross value, then the revised carrying amount of the machinery will be:

Amount in '000

Revised Gross Carrying Amount (Gross Carrying Amount/ Net Carrying Amount* Fair Value)	5,000/3,000*4,500	7,500
Net Carrying Amount	-	4,500
Accumulated Depreciation	(7,500-4,500)	3,000

Journal Entries in the year of revaluation i.e. FY 2019-20 in the above example :

1. Building (Gross Bock) a/c Dr ₹ 25,00,000

   To Accumulated Depreciation a/c Cr ₹ 10,00,000

   To Revaluation Reserve a/c Cr ₹ 15,00,000

If the company opts for the treatment as per option (b) above i.e. eliminating accumulated depreciation, then the revised carrying amount of the machinery will be:

1. Accumulated Depreciation a/c Dr ₹ 20,00,000

   To Fixed Assets (Gross Block) a/c Cr ₹ 20,00,000

2. Fixed Assets (Gross Block) a/c Dr ₹ 15,00,000

   To Revaluation Reserve a/c Cr ₹ 15,00,000

In subsequent years depreciation charged to Profit & Loss shall be (₹ 45,00,000/6) i.e. ₹ 7,50,000

In terms of paragraph 41 of Ind AS 16, amount of surplus transferred is the difference between depreciation based on revalued carrying amount and depreciation based on the asset's original cost, hence for each of the remaining 6 years in usual circumstances (₹ 15,00,000*/6) i.e. ₹ 2,50,000 shall be transferred from revaluation reserve to retained earnings in order to avoid the revaluation reserve being maintained indefinitely even after the asset ceases to exist. However, this is not mandatory. The company may choose to make the entire transfer at the end of useful life or when the asset is sold.

*₹ 1500000 being the difference between Fair Value and Net Carrying Amount (₹ 45,00,000-₹ 30,00,000)

Depreciation after Revaluation

On revaluation of assets, depreciation has to be charged on the revalued amount as per Ind AS 16. Additional depreciation arising due to revaluation shall not be retrieved from the revaluation reserve. Accordingly, on sale of revalued PPE, profit/ loss on sale is calculated as difference between sale consideration and revalued carrying amount. Hence on sale of PPE, the revaluation surplus originally recognised in OCI cannot be transferred to P&L

In terms of paragraph 77 of Ind AS 16, following are the disclosure requirements in Financial Statements in addition to the disclosures required by Ind AS 113

a. the effective date of the revaluation;

b. whether an independent valuer was involved;

c. for each revalued class of property, plant and equipment, the carrying amount that would have been recognised had the assets been carried under the cost model; and

d. the revaluation surplus, indicating the change for the period and any restrictions on the distribution of the balance to shareholders.

Corporate Guarantee and Transfer Pricing

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Business entities raise additional fund for expanding their existing business and/or adding new business venture. Debt financing has certain advantages. While extending loans lenders want a third party guarantee to safeguard their interest. When this guarantee is provided by a group company, it is required to be established that it is at arm's length. The chapter added by the OECD in the 2022 Guidelines on transfer pricing provides much required guidance on this issue. Transfer pricing of guarantee has been a matter of controversy due to lack of proper appreciation of factors influencing the determination of the arm's length price. To determine the arm's length price of corporate guarantee taxpayers as well as tax administration should carry out detailed analysis of the transaction. The article discusses various aspects of transfer pricing of corporate guarantee including controversies in India.

Need for credit: For the purpose of growth as well as for day-to-day running of operations, businesses need regular flow of fund/cash. For this, an enterprise may prefer to borrow fund from external sources, rather than use its internal resources. Debt has certain advantages compared to equity financing. It has a lower financing cost as it is finite and has to be paid off at some point of time allowing owners to retain full control over company, further, it allows tax breaks and is much less formal in organising[1].

Due to various reasons, such as capital base, profitability, perceived capacity to pay debt by the company, lenders ask for guarantee. Financial guarantees include bank guarantee, corporate guarantee, personal guarantee etc., the first two being more common. Further, the guarantee can be implicit or explicit. Implicit guarantee refers to the situation when the credit rating of a company that is part of a Multinational Enterprise ("MNE") group may be considered higher (and interest rate there for lower) than its stand-alone rating. In such a situation, a bank or rating agency believes that associated enterprises would support the company in a period of financial stress even in the absence of an explicit guarantee.[2] On the other hand, explicit guarantees are formally documented with required parameters expressed clearly and comprehensively.

Normally, bank guarantees are explicit while, corporate guarantees can be implicit or explicit. The other difference between bank guarantee and a corporate guarantee is that while in the former, the bank is the responsible party for repayment in case of default; in a corporate guarantee, "the company which agreed to repay the loan has the responsibility in the situation of repayment".[3]A bank guarantee is an assurance provided by a lending institution that the liabilities of a borrower will be paid back in time. It offers the lender the surety that if the borrower fails to clear the debt, the bank will make the payment or their client. On the other hand, in the corporate guarantee indemnity is granted by the corporate guarantor in favour of the lender. It means an irrevocable and unconditional guarantee given or, as the context may require, to be given by a corporate guarantor in form and substance satisfactory to the Bank as a security for the outstanding Indebtedness and any and all other obligations of the borrower. In a way corporate guarantee is an irrevocable and unconditional guarantee given

1 *"The Advantage of Using Debt as Capital Structure" by Jay Way, updated January 28, 2019 https://smallbusiness.chron.com/(accessed in June 2022)*

2 *OECD 2022, Chapter X, paragraph 10.186*

3 *"Difference Between Bank Guarantee and Corporate Guarantee" by Piyush Yadav, January 20, 2022, https://askanydifference.com/difference-between-bank-guarantee-and-corporate-guarantee/ (accessed in May 2022)*

or, as the context may require, to be given by the corporate guarantor in form and substance satisfactory to the lender as security for the outstanding indebtedness and any and all other obligations of the borrowers.[4] The corporate guarantee benefits the borrower as it enables it to get loan, at the same time it benefits the lender as it provides assurance that the loan is secured. In the absence of the guarantee the borrower might not have got the loan or might have got at a much higher cost. This applies more to the borrowers with low credit ratings. As a guarantee is a legal promise made by a third party (guarantor) to cover a borrower's debt or other types of liability in case of the borrower's default it serves as additional protection in a loan, making a loan more attractive to potential lenders. The lenders would be more willing to provide guaranteed loans even to borrowers with a poor credit profile, as the presence of a guarantor diminishes the probability of a lender of not being repaid.[5] In this article transfer pricing ramifications of explicit corporate guarantee are discussed.

From the perspective of borrower, a financial guarantee may affect the terms of borrowing. It reduces the cost of debt-funding for the borrower and hence it may be inclined to pay for that guarantee. On the other hand, from the perspective of lender, "the consequence of one or more explicit guarantees is that the guarantor(s) are legally committed; the lender's risk would be expected to be reduced by having access to the assets of the guarantor(s) in the event of the borrower's default. Effectively, this may mean that the guarantee allows the borrower to borrow on the terms that would be applicable if it had the credit rating of the guarantor rather than the terms it could obtain based on its own, non-guaranteed, rating."[6]

> **"Normally, bank guarantees are explicit while, corporate guarantees can be implicit or explicit."**

The entities involved in a corporate guarantee are:

1. The borrower, who seeks and receives credit and who is responsible for repaying the loan, also called the guaranteed party
2. The lender, who extends the credit
3. The guarantor, who agrees to repay the loan extended by the lender to the borrower, if the latter fails to repay the loan.

In an MNE group, normally the parent stands as corporate guarantor for its subsidiaries. There may be cases where two or more entities in the group guarantee each other's obligations. This is referred as cross-guarantee.From the lender's perspective, it has access to the assets of every cross-guaranteeing entity in the event of a default by a guaranteed borrower. This potentially gives the lender greater comfort than a single guarantee as it can choose where within the cross-guaranteeing MNE group it seeks, if necessary, to make its recoveries. The effect of a cross-guarantee from a borrower's perspective is that it now has multiple guarantees on its borrowings and may stand as guarantor for multiple borrowings itself.[7]

OECD on Financial Guarantee

On 20 January 2020 the Committee on Fiscal Affairs approved "Transfer Pricing Guidance on Financial Transactions –Inclusive Framework on BEPS: Actions 4, 8-10". This was incorporated in Chapter X[8] of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, which was released in January 2022 (herein after referred to as OECD 2022). It observes that to determine the transfer pricing consequences of a financial guarantee, it is first necessary to understand the nature and extent of the obligations guaranteed and the consequences for all parties in accordance with the general principles of arm's length. As for any transaction, for determining the arm's length price of a financial guarantee the selection of the most appropriate method should be consistent with the actual transaction as actually delineated, particular through

[4] *https://www.lawinsider.com/dictionary*

[5] *https://corporatefinanceinstitute.com/resources/knowledge/finance/guarantee (accessed in June 2022)*

[6] *Para 10.158, Chapter X (Page 434), OECD Transfer Pricing Guidelines, 2022 (hereinafter referred to as OED 2022)*

[7] *Para 10.165, page 436, ibid*

[8] *This section depends extensively on this chapter.*

functional analysis. The methods discussed in OECD 2022 are the Comparable Uncontrolled Price ("CUP") method, Yield approach, Cost approach, Valuation of expected loss approach and Capital support method.

> **"The corporate guarantee benefits the borrower as it enables it to get loan, at the same time it benefits the lender as it provides assurance that the loan is secured."**

The CUP method can be used where there are either internal or external comparables; independent guarantors providing guarantees in respect of comparable loans to other borrowers or where the same borrower has other comparable loans which are independently guaranteed. While applying this method, factors which should be kept in mind are: the risk profile of the borrower, terms and conditions of the guarantee, term and conditions of the underlying loan (amount, currency, maturity, seniority etc.), credit rating differential between guarantor and guaranteed party, market conditions, etc. When available, uncontrolled guarantee transactions are the most reliable comparable for determining arm's length guarantee fees.[9]The problem in applying this method is that publicly available information about a sufficiently similar guarantee is unlikely to be found between unrelated parties given that unrelated party guarantees of bank loans are uncommon.

In the Yield approach the benefit that the guaranteed party receives from the guarantee in terms of lower interest rates is quantified. The method calculates the spread between the interest rate that would have been payable by the borrower without the guarantee and the interest rate payable with the guarantee. This is carried out in two steps. In the first step, the interest rate that would have been payable by the borrower on its own merits, taking into account the impact of implicit support as a result of its group membership is determined.

The next step would be to determine, by a similar process (unless directly observable in the case of a loan from a third party), the interest rate payable with the benefit of the explicit guarantee. The interest spread can be used in quantifying the benefit gained by the borrower as a result of the guarantee. In determining the extent of the benefit provided by the guarantee, it is important to distinguish the impact of an explicit guarantee from the effects of any implicit support as a result of group membership.

The benefit of implicit support will be the difference between the borrowing terms attainable by the borrowing entity based on its credit rating as a member of the MNE group and those attainable on the basis of the stand-alone credit rating it would have had if it were an entirely unaffiliated enterprise. If the borrower has its own independent credit rating from an unrelated credit rating agency, this will usually reflect its membership of the MNE group and so ordinarily no adjustment would be needed to this credit rating to reflect implicit support.

> **"A financial guarantee may affect the terms of borrowing. It reduces the cost of debt-funding for the borrower and hence it may be inclined to pay for that guarantee."**

The result of this analysis sets a maximum fee for the guarantee (the maximum amount that the recipient of the guarantee will be willing to pay), namely, the difference between the interest rate with the guarantee and the interest rate without the guarantee but with the benefit of implicit support (and taking into account any costs). The borrower would have no incentive to enter into the guarantee arrangement if, in total, it pays the same to the bank in interest and to the guarantor in fees as it would have paid to the bank in interest without the guarantee. Therefore this maximum fee does not of itself necessarily reflect the outcome of a bargain made at arm's length but represents the maximum that the borrower would be prepared to pay.

The Cost method aims to quantify the additional risk borne by the guarantor by estimating the value of the expected loss that the guarantor incurs by providing the guarantee (loss given default). Alternatively, the expected cost could be determined by reference to the capital required to

[9] *Para 10.171, page 438, ibid*

support the risks assumed by the guarantor. Various possible models are used for estimating the expected loss and capital requirements. Pricing under each model will be sensitive to the assumptions made in the modelling process. Whatever valuation model is used, the evaluation of cost method sets a minimum fee for the guarantee (the minimum amount that the provider of the guarantee will be willing to accept) and does not of itself necessarily reflect the outcome of a bargain made at arm's length. The arm's length amount should be derived from a consideration of the perspectives (taking into account options realistically available) of the borrower and guarantor.

> **"In determining the extent of the benefit provided by the guarantee, it is important to distinguish the impact of an explicit guarantee from the effects of any implicit support as a result of group membership."**

The Valuation of expected loss method would estimate the value of a guarantee on the basis of calculating the probability of default and making adjustments to account for the expected recovery rate in the event of default. This would then be applied to the nominal amount guaranteed to arrive at a cost of providing the guarantee. The guarantee could then be priced based on an expected return on this amount of capital based on commercial pricing models such as the Capital Asset Pricing Model (CAPM).

The capital support method may be suitable where the difference between the guarantor's and borrower's risk profiles could be addressed by introducing more capital to the borrower's balance sheet. It would be first necessary to determine the credit rating for the borrower without the guarantee (but with implicit support) and then to identify the amount of additional notional capital required to bring the borrower up to the credit rating of the guarantor. The guarantee could then be priced based on an expected return on this amount of capital to the extent that the expected return so used appropriately reflects only the results or consequences of the provision of the guarantee rather than the overall activities of the guarantor-enterprise.

The OECD 2022 (page 440-441) explains the application of the arm's length methods with the following examples:

Example 1

Company M, the parent entity of an MNE group, maintains an AAA credit rating based on the strength of the MNE group's consolidated balance sheet. Company D, a member of the same MNE group, has a credit rating of only BBB on a stand-alone basis, and needs to borrow EUR 10 million from an independent lender.

Assume that the accurate delineation of the actual transaction shows that the effect of passive association raises Company D's credit standing from BBB to A, and that the provision of the explicit guarantee additionally enhances the credit standing of Company D to AAA. Assume further that independent lenders charge an interest rate of 8% to entities with a credit rating of A, and of 6% to entities with a credit rating of AAA. Assume further that Company M charges Company D a fee of 3% for the provision of the guarantee so the guarantee fee more than completely offsets the benefit of Company D's enhanced credit standing derived from the provision of such guarantee.

In that situation, the analysis under Chapter I may indicate that an independent enterprise borrowing under the same conditions as Company D would not be expected to pay a guarantee fee of 3% to Company M for the provision of the explicit guarantee since Company D is better off in the absence of the guarantee.

Example 2

Consider the same fact pattern as described in Example 1, but in this case assume that under the guidance in Section D.2, comparable uncontrolled transactions can be identified showing that the arm's length price of a comparable guarantee would be in the range of 1% to 1.5%.

The accurate delineation of the actual transaction indicates that the enhancement of Company D's credit standing from A to AAA is attributable to a deliberate concerted group action, i.e. the guarantee provided by Company M. Company D would be expected to be willing to pay an arm's length guarantee fee to Company M for the provision of the explicit guarantee since Company D is better off than in the absence of the guarantee.

In the UN Practical Manual on Transfer Pricing (2021) (herein after referred to as UN 2021) discussion on financial guarantee in para 9.13.2 (pages 387-393) is very similar to

that in the OECD 2022, discussed above. Inter alia, it suggests that the following economically relevant factors may be considered while determining the arm's length nature of an explicit financial guarantee:

- The contractual terms of the financial guarantee (including terms and conditions of the guaranteed instrument), as supported by the conduct of the parties;
- The risk profile of the borrower, after accounting for the impact of any implicit support, by considering the functions performed, and assets used (any available external credit rating of the borrower or of the guaranteed instrument and/or information on the probability of default of the borrower may be relevant in this regard);
- The risk profile and financial capacity of the guarantor;
- The characteristics of the financial guarantee (including benefits provided by the financial guarantee, if any);
- The economic circumstances of both the guarantor and the guaranteed entity and of the market(s) in which they operate; and

> **"The Valuation of expected loss method would estimate the value of a guarantee on the basis of calculating the probability of default and making adjustments to account for the expected recovery rate in the event of default."**

- The business strategies pursued by the guarantor and guaranteed entity.

The UN 2021 is of the view that an intra group financial guarantee fee is likely to be disallowed to the extent that:

- The guaranteed entity is perceived as having a better creditworthiness solely because of its group affiliation (so-called 'implicit support'), i.e. the financial guarantee does not improve the creditworthiness of the borrower beyond any benefits it already receives through implicit support;
- The debtor has no debt capacity or credit status and, therefore, would not be able to access the capital market without the financial guarantee. That is, a third party would never provide a loan to this debtor absent the guarantee, for example due to its insufficient debt capacity. In situations like this, an accurate delineation of the transaction might lead to the conclusion that the guarantee provided by the parent company is a function performed in its own interest and that the parent company, by providing the guarantee, essentially and substantively is the borrower; and
- The financial guarantee has been requested by the creditor for the sole purpose of ensuring that the parent company does not divert the funds of the borrower, i.e., moral hazard issues (although in this situation there may be some benefit to the borrower to the extent it obtains a better credit rating).

Transfer Pricing Approaches in a few countries regarding corporate guarantee

Financial guarantee has been one of the major focus areas for tax authorities around the globe. While countries vary in form and scope of their approaches in determining the arm's length nature of the transactions, most of the countries recommend examining the following factors while examining guarantee transactions:

- Benefit received;
- Whether a third party be willing to pay guarantee fees;
- Shareholder services;
- Risk profile of the guarantor;
- Nature of guarantee fees;

The salient features of the treatment of corporate guarantee in some of the countries are discussed hereunder:

USA

COVID 19 has seen a surge in financial guarantee and intercompany loan transactions in USA.[10] Though US transfer pricing regulations under section 482 of the Internal

[10] *"United States - Transfer Pricing Analysis – Guarantees" by Radhi Iyer; 2021 IJCRT | Volume 9, Issue 6 June 2021 | ISSN: 2320-2882 ; www.ijcrt.org (accessed in June 2022)*

Revenue Code specifies financing (intercompany loans, guarantees) as one of the categorises of intercompany transactions, it does not adequately address elements and process of transfer pricing of financial guarantees provided by a company to its Associated Enterprise.

Japan

Japanese tax authorities i.e. National Tax Agency ("NTA") also focus aggressively on Japanese headquartered companies which do not charge guarantee fees from its affiliates abroad. Usually, yield approach which requires split of benefit received because of guarantee is more prevalent.

Korea

The regulations on financial guarantees were introduced in the domestic law in year 2012. Under the Korean law the arm's length price of financial guarantee transaction may either be determined based on a) respective risk or expenses of guarantor or b) expected benefit derived by guarantee or c) a mix of the both.

Korean law also provides for safe harbour provisions wherein, fee determined based on interest rate differential or computed in accordance with conditions prescribed by National Tax Service ("NTS") are deemed to be at arm's length.

Australia

The Australian Taxation Office (ATO) has in recent years issued a range of guidance concerning intra group financing transactions and related issues following its win in the landmark transfer pricing case against Chevron. However, there is no specific guidance on transfer pricing of financial guarantees. As, Australian transfer pricing rules generally follows the OECD guidelines where possible, so taxpayers with related party financial arrangements are advised to take into account the new OECD guidance where relevant.[11]

Singapore

On 10 August 2021 Singapore has issued Transfer Pricing Guidelines[12] which provides guidance on the various aspects of transfer pricing. It specifies that TP documents should be prepared if guarantee fees paid/received by a taxpayer exceeds 1 million Singapore Dollar. The Guidelines does not prescribe any specific method or approach for the financial guarantee fees. It may be presumed that as Singapore normally follows OECD guidelines, to benchmark guarantee transactions the guidelines provided by the OECD would be followed by the tax authorities.

> **"The Australian Taxation Office (ATO) has in recent years issued a range of guidance concerning intra group financing transactions and related issues following its win in the landmark transfer pricing case against Chevron."**

Transfer pricing approach regarding corporate guarantee in India and controversies

In India transfer pricing of payment and receipt of corporate guarantee has been a matter of controversies. Prior to 2012 as there was no explicit provision covering guarantee, it was argued by taxpayers that corporate guarantees were not in the nature of "international transactions" and hence outside the scope of transfer pricing regulations.

The Finance Act, 2012 introduced Explanation in section 92B of the Income-tax Act, 1961, clarifying that the expression "international transaction" includes "lending or guarantee". This was necessitated to address the rulings where it was held that financial guarantees were not in the nature of international transaction and hence outside the scope of transfer pricing regulations. With introduction of the amendment mentioned above, this controversy stands resolved.

In a case, decided by the Delhi Bench of Income Tax Appellate Tribunal (ITAT)[13]an Indian company had provided guarantee to enable a Singapore based branch of an Indian bank to lend working capital loan to its subsidiary in Singapore. In the TP Report it was stated that this transaction had no impact on the profits,

[11] *"Transfer pricing of financial transactions – New OECD guidance: What will it mean for Australian taxpayers?" 10 March 2020; Natalya Marenina, https://www.bdo.com.au/ (accessed in June 2022)*

[12] *IRAS e-Tax Guide Transfer Pricing Guidelines (Sixth Edition); 10 August 2021, Published byInland Revenue Authority of Singapore*

[13] *SBS Transpole Logistics Pvt. Ltd. Vs. ACIT, ITA No. 6166/Del./2017, Dated 06.05.2022*

income, loss or asset of either of the company on account of providing guarantee. This was not accepted by the Transfer Pricing Officer (TPO), who obtained rates of Bank Guarantee from various banks and then applied ad-hoc rate for making addition. Before the ITAT, the company initially argued that guarantee given by the company was not an international transaction as it did not impact profit, income, loss or asset of either of the company. However, subsequently this was not pursued. On the basis of several decisions,[14] where guarantee of 0.5% was considered reasonable, it was argued that the rate adopted by the TPO was higher. The ITAT observed as follows:

> *"We find that there has been consistent view by various Benches of the Tribunal and* ***Hon'ble Bombay High Court in the case of Everest Kanto Cylinders 58 taxmann.com 254 and Glenmark Pharmaceuticals Ltd. 43 taxmann.com 191****wherein 0.5% of the guarantee commission has been held to be at arm's length. Accordingly, respectfully following the aforesaid decisions ……., we hold that the guarantee commission of 0.5% will be at arm's length…."*

In another case, the Hyderabad Bench of the ITAT [15]followed the decision of Madras high court[16]where it was held that Explanation to Section 92B inserted vide the Finance Act, 2012 with retrospective effect from 01-04-2002 has settled the law that a corporate guarantee indeed forms an international transaction. So far as the quantification of the corporate guarantee is concerned the ITAT relied on the decision of the same Bench in another case[17] and decided that the rate of the guarantee fees would be 0.6% (with a rider that it cannot be taken as benchmark in other cases).

> **"The OECD observes that a financial guarantee provides for the guarantor to meet specified financial obligations in the event of a failure to do so by the guaranteed party."**

It is important to observe that in India the determination of the arm's length consideration has not been examined at any level in accordance with the process mentioned by the OECD and the approach has been ad hoc in nature based on estimation.

Conclusion

Financial transactions are integral and important part of any business organization. To expand operations as well as to add new ventures and activities companies borrow fund. However, many a times lenders insist for guarantee from a third party. The OECD observes that a financial guarantee provides for the guarantor to meet specified financial obligations in the event of a failure to do so by the guaranteed party. This provides benefits to the borrower as well as the lender. In multinational set up one company, with higher credit worthiness, provides the required guarantee for the benefit of another company of the group. The transfer pricing aspect of this transaction has drawn attention of the tax authorities in many countries. Unfortunately, there are no clear and detailed guidelines issued by tax authorities. Hence, one should use the guidance by the OECD. To determine the arm's length price of a financial guarantee fees it is imperative that proper study of the entities, nature of the transaction and the impact on the entities should be carried out as outlined by the OECD. In India a study of the decisions by various Benches of ITAT and High Courts lead to infer that corporate guarantee fees of 0.5% is considered adequate. However, this conclusion is, at most, the second best solution. It would be better if taxpayers and tax administration carry out detailed analysis of all aspects of the transaction for arriving at the arm's length price. Maintenance of detailed documentation by taxpayer would enable it to justify the process of determination of the arm's length price and enable it to avoid penalty.

■■■

[14] *Decisions referred included Dabur India Ltd, [TS-82-ITAT-2021 (Del)-TP (0.30%], Manugraph India Ltd [TS-113-ITAT-2015 (MUM) -TP (0.50%)], Asia Paints Ltd, [TS-297-ITAT-2013(MUM)-TP) (0.20%)] (upheld by Mum High Court); Thomas Cook (India) Ltd, [69 taxmann.com 443(MUM Tribunal) (0.50%]*

[15] *Axis Clinicals Limited [TS-717-ITAT-2021(HYD)-TP] dated 20.12.2021*

[16] *Pr.CIT Vs. M/s.Redignton (India) Limited, dt.10-12-2020 Tax Case Appeal Nos.590 & 591 of 2019*

[17] *ITA No.1950/Hyd/2017 in Rain Industries Limited Vs. DCIT decided on 24.08.2021*

Red Flags Identification and Mapping against Loan Frauds Cases in Indian Banks

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Frauds, a word that scares everyone from a common person to the banking system. In past years, the financial sector has faced multiple frauds challenges. Due to a surge in the number of committed frauds, financial institutions, particularly public sector banks, are experiencing growing losses and a spike in NPAs. The impacts of such frauds are catastrophic on the bank involved as well as in the economy. In terms of amount/value involved in frauds, public sector banks have faced a huge loss as compared to the private sector banks. Loan related frauds are more frequent with public sector banks, The purpose of this study is to identify possible red flags in loan fraud cases.

Introduction to Financial Fraud in Indian banks

Bank fraud involves stealing one's wealth or else damaging overall performance by deceitful, dishonest, or unlawful methods. This may be accomplished via several means, including fraudulent activity and orders to manage the risks. Lending corruption is defined as any criminal conduct committed with the goal of obtaining monetary gain through credit intermediaries. Financial theft may be reduced, but it cannot be eliminated.

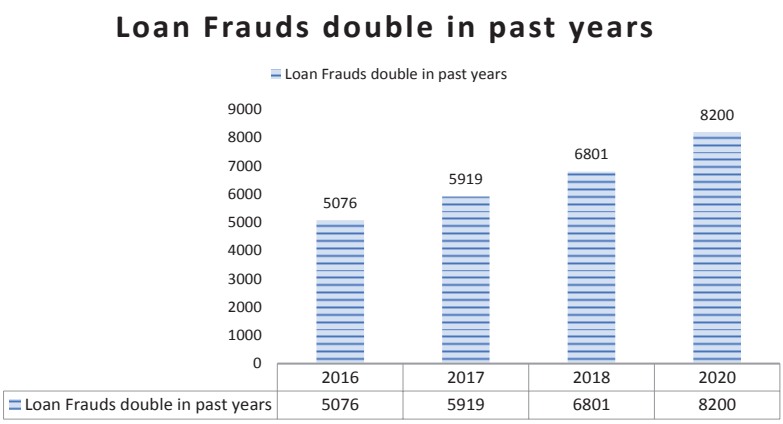
Banking crime's genesis and communication are two closely related concepts. Gaps in engineering management, governance, nullifying of regulation, connivance with clients and stakeholders, low employee morale, independent oversight, integration of polity, compliance to moral principle and development of the employees, and awareness campaigns program are all elements of the banknote. [1] Among such components are combined factors: technological advancement, managerial negation of regulation, connivance with customers, employees, and distributors, and staff turnover; the remaining four different factors are preventive measures: properly accounted and effectiveness of internal with legislation, moral qualities, and safety training. [2] To prevent a financial gap, administrators should combine these factors. Financial services program managers communicate to avoid fraud after determining the likelihood and landscape.

Loan Frauds

In recent years, the financial sector has faced tax evasion challenges. Due to a surge in the number of committed frauds, financial institutions, particularly State-owned banks, are experiencing growing losses and a spike in NPAs. In several situations, top-level management plays a crucial role in halting banking operations. The sector has suffered because of the similar trial of Nirav Modi, in which a credit was approved for a development task. Allegations of illegalities and dishonesty were made against several of the company's senior leaders. Internal control and ethics are questioned as a result. The global economic downturn has been blamed on the threat of growing non-performing assets (NPAs). The stability of a country's economic banking markets may be gauged by its output and spending levels. For any country, if its monetary sector is riddled with deception and has a significant percentage of non-performing loans, it should be a reason for concern. These problems have been affecting economic growth for a long time. The table below indicates the loan fraud cases doubling in the past years.[2]

> **"Lending corruption is defined as any criminal conduct committed with the goal of obtaining monetary gain through credit intermediaries."**

Table : 1.1 Loan fraud cases in past years



Even though the financial sector is governed by laws such as the Banking Act of 1949, RBI Act, SBI Act, and Bankruptcy Act, fraudsters and unethical behaviour by account holders and personnel continue to plague the industry. [2] Although various restrictions have been put in place to prevent action or activity by persons who use public funds for their gain, business is still going bankrupt because of it. With this, economic markets have several weaknesses and tax loopholes that allow fraudsters to take advantage of customers' funds. That's an effort to shed light on the various problems that lead to an increase in non-performing assets (NPAs) and bank failures.[1][2] Economic strain, chance, and reasoning all play a role in a person's willingness to pursue deception. It's very uncommon for downturns to worsen such concerns, since profits are limited and revenue is just a difficulty. According to the research, individuals and interested stakeholders are colluding to defraud people due to a major lack of monitoring by subordinates or supervisory board; a lack of entrepreneurial incentive to fulfil objectives; and collaboration among staff and key organisations. [3]

Red Flags Identifications

The existence of one or maybe more Early Warning Signals (EWS) raises suspicions of fraudulent transactions on a Red Flagged Account (RFA). If the bank notices any of these warning signs in a principal amount, it should be on high alert for possible fraud. Rather than ignoring these early earing signals, an institution should use them as a reason to conduct a thorough examination of any red flag accounts.[5] The financial institution pointed out that banks' poor implementation of leading indicators (EWS) and organisational inspections' failure to identify EWS were also the primary reasons for the delay in uncovering fraudulent activities. These findings support the urgent requirement for banks to put in comprehensive EWS processes that detect red flags in the early phases of fraud. Regulators have issued new guidelines for banks to follow when it comes to red flags. If you see a red light, it means there's something wrong with your personal or corporate loan account. As of 2015, the RBI has enforced a strict approach to systems and procedures, which includes EWS compliance.[4]

Multiple signals were listed by the banking system and banking sector administration as part of a complete framework for effective EWS systems.[2, 5]

The following are some examples of the many types of signals:

- **Accountancy Warning Signs**: The absence of audited banking statements, inappropriate or unaccountable money transfers, and irresolvable bank account reports are among the accountancy red flags.
- **Compliance with corporate rules and regulations concerns**: Some instances of corporate governance include exorbitant pay schemes, regulation evasion, poor or non-existent compliance requirements, and excess leadership mobility. These are warning signs.
- **Organisation Red Flags:** Transactions with unidentified parties, the presence of shell corporations, and historical memory of frauds are all examples of suspicious activity.[5]
- Individuals responsible for red flags, such as unexpected significant purchases, lacking KYC

> **"If you see a red light, it means there's something wrong with your personal or corporate loan account."**

papers, stacking debt, numerous credit lines, and so on, are also included in the general category of red flags.

> **Red flag tactics numbers are assigned, while probability of occurrence is on low to extreme scale.**

- On social media or in the mainstream, any unfavourable remarks about a company or its leadership might be considered a red flag. Based on our proposed research after analysing multiple loan fraud case studies the following red flags are identified as presented in Table 1.2 which indicates the possible red flags in loan frauds.
- Detail analysis and major key findings of possible loan frauds tactics, while red flags tactics (RFT) are assigned based on tactics numbers and probability of occurrence are cast-off based on case studies analysis.
- Red flag tactics numbers are assigned, while probability of occurrence is on low to extreme scale.

Table 1.2: Proposed mapping of red flags tactics (rft) and probability of occurrence.

Possible Red Flags	Details	Assigned Red Flags Tactics (RFT)	Probability of occurrence
Fake KYC documents	Fake documents were created for committing fraud.	**RFT-1**	**High**
Forged accounts.	Forged bank accounts were created in the name of servants, family members and other known persons.	**RFT-2**	**Medium**
Forged and fake documents produced.	Tampered documents were produced for loan credit	**RFT-3**	**Extreme**
Bogus Company	Bogus address was produced with bogus company which exists only in papers.	**RFT-4**	**Low**
Fake Invoices	Fake Invoices were created.	**RFT-5**	**Medium**
Spoof Bills produced	Spoof bills were produced.	**RFT-6**	**Low**
Fake Assets	Fake assets were shown for loan credits.	**RFT-7**	**Extreme**
Absence of whistle-blower policy	Whistle-blower policy sometimes work for all major banks.	**RFT-8**	**High**
Bank Employees misused his/ her duty /job/ position.	Mostly bank employees were involved in such frauds.	**RFT-9**	**Medium**
Failure of duty segregation.	Failure of duty segregation was seen.	**RFT-10**	**Medium**

Lack of employee's awareness.	Employee's awareness missing in fraud.	**RFT-11**	**Extreme**
Tempting offers to bank employees. (Root cause: [poor appraisal system)	Tempting offers and bribe offers to bank employees because of a poor appraisal system.	**RFT-12**	**Medium**
Early red signals Information not disclosed on time.	Bank failed in reporting incident on time.	**RFT-13**	**High**
Heavy Loan sanctions.	Heavy loan sanctions without proper verification.	**RFT-14**	**High**
Big transactions were not highlighted.	Big transactions were not recorded on time.	**RFT-15**	**Low**
Supplementary favoured for specific companies.	Favour done to specific company without proper document verifications	**RFT-16**	**Medium**
Suspicious entries not detected.	Suspicious payment/ truncation was not detected/ reported on time	**RFT-17**	**High**
Vague borrowing process.	Unclear borrowing process.	**RFT-18**	**Medium**
Non-cooperation of borrowers during forensic audits.	No cooperation during forensics audit process.	**RFT-19**	**High**
Huge diversification of money.	Money diversified into multiple accounts and also converted into multiple assets.	**RFT-20**	**Medium**
Failure of risk management.	Risk Management system was not active and missing.	**RFT-21**	**High**
Failure of Risk identification	Risk identification system failed completely.	**RFT-22**	**Medium**
Auditor cheated/ auditor training skills	Auditor cheated with tactics and techniques; main reason is audit were not trained to perform such audits.	**RFT-23**	**Medium**
Unsuitable Audit process.	Audit process was not done in a systematic manner.	**RFT-24**	**Low**

Inconclusive audit reports.	Inconclusive audit reports.	**RFT-25**	**Low**
Unsuitable Audit process.	Document analysis was not done in a proper manner and an unstable audit process followed.	**RFT-26**	**Medium**
Infrequent audit process.	Infrequent audit process.	**RFT-27**	**Medium**
Politician support	Support from politician in borrowing and lending.	**RFT-28**	**Extreme**
Cross border transactions	Huge and heavy transactions in cross border accounts.	**RFT-29**	**Low**
Overpriced invoices.	Invoices were overpriced and not monitored properly	**RFT-30**	**Medium**
Fake email ID created.	Fake email ID was used	**RFT-31**	**Low**
MIS used of advanced technology	MIS used of advanced technology in bypassing account details information	**RFT-32**	**Medium**
Misuse of fund	Fund misused by banks	**RFT-33**	**Medium**
Weak enforcement of law in the country	Weak	**RFT-34**	**Low**
Attention to early red signals	No attention was given to early red signals	**RFT-35**	**High**
No fear in committing fraud	The long and elaborate judicial process is another major concern.	**RFT-36**	**High**

Based on the above red flags, Table 1.3 demonstrates consequences and likelihood of occurrence, while colour codes are used for bifurcation purpose. Below Table 1.3 shows sample scale of Red Flags Consequences, Likelihood and occurrence using Risk Matrix

Table: 1.3: Sample scale: consequences, likelihood and probability of red flags tactics occurrence using risk matrix

	Consequences		
Likelihood	**Minor**	**Moderate**	**Significant**
Unlikely	**Low**	**Low**	**Medium**
Possible	**Low**	**Medium**	**High**
Likely	**Medium**	**High**	**High**

Table 1.4: Mapping of Consequences, Likelihood and Probability of Red Flag's occurrence using risk matx

	Consequences				
Likelihood	**Insignificant**	**Minor**	**Moderate**	**Major**	**Critical**
Rare	**Low RFT-29, RFT-34**	**Low RFT-31**	**Low RFT -25**	**Medium RFT -2**	**High RFT -36**
Unlikely	**Low RFT -15**	**Low RFT -24**	**Medium RFT -2, RFT -5**	**Medium RFT -9, RFT -10**	**High RFT -35**
Possible	**Low RFT -4, RFT -6**	**Medium RFT -10, RFT -12, RFT -16**	**Medium RFT -10, RFT -18, RFT-20**	**High RFT -8**	**High RFT -19**
Likely	**Medium RFT -2, RFT -5, RFT -9 RFT -10, RFT -32**	**Medium RFT -33**	**High RFT -14**	**High RFT -21**	**Extreme RFT -28**
Almost Certain	**Medium RFT -22, RFT -23, RFT -26**	**Medium RFT -27, RFT -30, RFT -32**	**High RFT -1, RFT -13, RFT -17**	**High RFT -3, RFT -7**	**High RFT -11**

Prevention: Possible Methods for preventing loan frauds

When it comes to fraud protection, the most significant safeguard banking must take is to incorporate developing technology into its legacy infrastructure. Numerous conventional banks in the nation have failed to take advantage of the emerging transformation that is taking place. A mere few years ago, acquiring and presenting fake paperwork was more challenging than it is now, as the number of technologies for those documents has grown dramatically. To avoid fraud, digitised authentication of the paperwork via the use of interconnected technology is required. Computing and Advanced Analytics-enabled technological tools have become a key differentiator for global companies, and viable banks will only benefit from incorporating these technologies into their operations. An added dimension to the safety precautions that organisations can implement is the examination of the issuers or individual player's business history and correlations. Tax

> **"To avoid fraud, digitised authentication of the paperwork via the use of interconnected technology is required."**

filings, whether they be ITR or GST filings, are a strong measure of the effectiveness and legitimacy of a company entity's operations. Invalid ITR information, on the other hand, should raise red flags for every mortgage lender since it may be an indication of improper purpose or activity. Upon receiving this information, the next precautionary action that institutions may take is to examine the organisations for any unfavourable information that may have been released about the respondent over a certain period.

Financial institutions may get crucial data from organisations to determine the legitimacy of applications. The absence of bad news allows one to proceed to a new phase in investigative work; on the other hand, bad publicity raises red flags and prompts a more in-depth investigation into the individual's economic and corporate safety. Figure 1 indicates the possible methods for loan fraud prevention.

Organisations need to make use of recent breakthroughs in advanced technologies to anticipate trends and learn from experiences. [7] Incorporating digital into financial transactions without providing useful viewpoints and data analysed through these procedures is indeed an unsatisfactory use of restricted resources in this case. The best thing for bankers to do is to make or use sophisticated models that can predict how likely it is that someone will be dishonest.[8] Risk assessment models can play an important role in all fraud identification and early detection of frauds.

Conclusion

Multiple factors contribute towards fraud, including a faulty legislative framework, negligent personnel, overall shortage of oversight just at the headquarters level, erroneous application of technologies, and often a failure to communicate between customers and staff. It is essential that institutions observe the infrastructure that periodically evaluates or verifies transactions that could be vulnerable to scams to avoid such concerns. To combat this rising problem in banks, authorities have to enact increasingly strict anti-corruption regulations. Financial services, including cross activities, mortgages, withdrawals, and other money transfers, must be much protected.

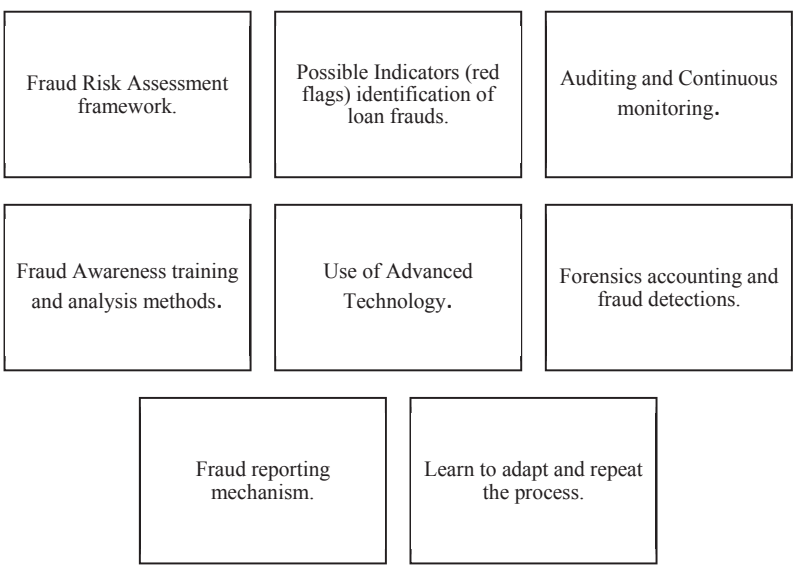


Figure: 1: Possible methods for loan fraud preventions.

> **"When it comes to fraud protection, the most significant safeguard banking must take is to incorporate developing technology into its legacy infrastructure."**

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Forensic Accounting; the 'Knight in Shining Armour' for Regulators against Fraudulent Shells

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With the Government putting efforts to weed out shell companies that are perceived as two-edged incorporations, there is a high perception of fraud in the post-pandemic period. As the nations undergo recovery, identifying fraudulent establishments is of utmost importance to rebound to a full-fledged economy. Forensic accounting, being considered a niche tool for fraud prevention and deterrence, has increased with the many financial frauds cropping up worldwide. The emergence of advanced technological innovations has not only contributed significantly to humanity in various forms of life but also in committing fraud. This article attempts to decode shell companies, their history and legitimacy, and the scope of forensic accounting as a tool for identifying fraudulent shell corporations.

An Overview of Fraud through Shell Companies

The pandemic triggered an increased perception of fraud worldwide in various sectors as businesses saw a slowdown in activities. A report titled, Rethinking Fraud and Economic Crime,' predicted that some companies might resort to round-tripping, fund diversion, and evergreening of loans in a desperate attempt to stay afloat to overcome the economic consequences of Covid-19 due to a lack of liquidity. The report further stated that volatile cash flows, insufficient reserves, and a limited capacity to get supplementary debt or equity funding might put enormous pressure on enterprises to transfer funds between corporations for illegal or covert purposes.

Fast forward to 2022, the instances of fund diversion are rampant in the country, with industry giants resorting to shell companies to route money to raise loans fraudulently. Accordingly, the Enforcement Directorate (ED) probed a notable real estate developer for round-tripping of funds through businesses acting as fronts to record bogus costs, write-off project expenses, advance interest-free loans to sister concerns, and fabrication of assets within and outside the country. Following an inquiry into one of the country's largest scams, the CBI claimed that the accused incorporated over 98 businesses to siphon cash to generate personal possessions and for the sole intention of evergreening loans. The fraud was mostly due to the company making huge transactions to related parties and then creating adjustment entries. It was also claimed that huge sums of money were invested in its foreign company by diverting bank loans, which were declared fraud accounts by multiple financial institutions following forensic Investigations.

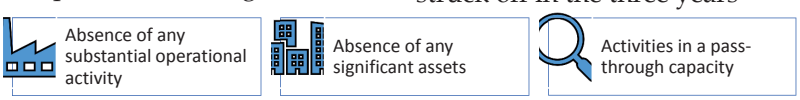
Apart from the above instances, as part of a countrywide crackdown on shell firms with sham Indian directors and a Foreign link (particular to countries having rocky relationship with India), the Registrar of Companies (ROC) filed multiple FIRs in January 2022. The sham corporations were involved in a variety of crimes, including bank fraud, money laundering, tax evasion, and crypto fraud, according to the investigation. In these instances, complaints were being filed under the FEMA (Foreign Exchange Management Act) and RBI guidelines if the fund is channelled outside India through hawala methods, apart from the Prevention of Money Laundering Act (PMLA), Prohibition of Benami Transactions Act, 2016, etc.

Historical perspective of Shell Companies in India

In India, running shell corporations used to be a large industry in and around large metros. The emergence of the shell company was not an isolated incident or a parallel economy as misconstrued. These shell companies emerged as a solution to remove money from the books of accounts, probably which did not have a legitimate explanation e.g., greasing the bureaucratic or political machinery for business. Contrary to belief, these company coexist with legitimate companies and supplement each other commercially and economically. However the good old wisdom was tossed and these have become a thorn in the business scheme. The tale of how this sector grew and supplied entry points for tax avoidance has been told anecdotally by certain attorneys and accountants in the industry. In a nutshell, the shell companies prospered during the year 2010, and they were managed by entry operators who were well-versed in accounting and taxation. In the years leading up to 2010, entry operators offering "accommodation entry" through shell businesses sprung up all throughout the country, with the eastern city being the epicentre of such shell businesses.

The legitimacy of Shell Companies

In theory, 'shell company' is not defined by either the Companies Act, 1956 or 2013. When a legislative commission approached the Ministry of Corporate Affairs for proposals on how to define 'shell companies,' the one suggested by the Organization for Economic Co-operation and Economic Development (OECD) was determined to be the most acceptable. According to the definition, "*The term shell is used to refer to a company that is formally registered, incorporated, or otherwise legally organised in an economy but which does not conduct any operations in that economy other than in a pass-through capacity.*" Furthermore, SEBI has established certain criteria for identifying shell companies, including;



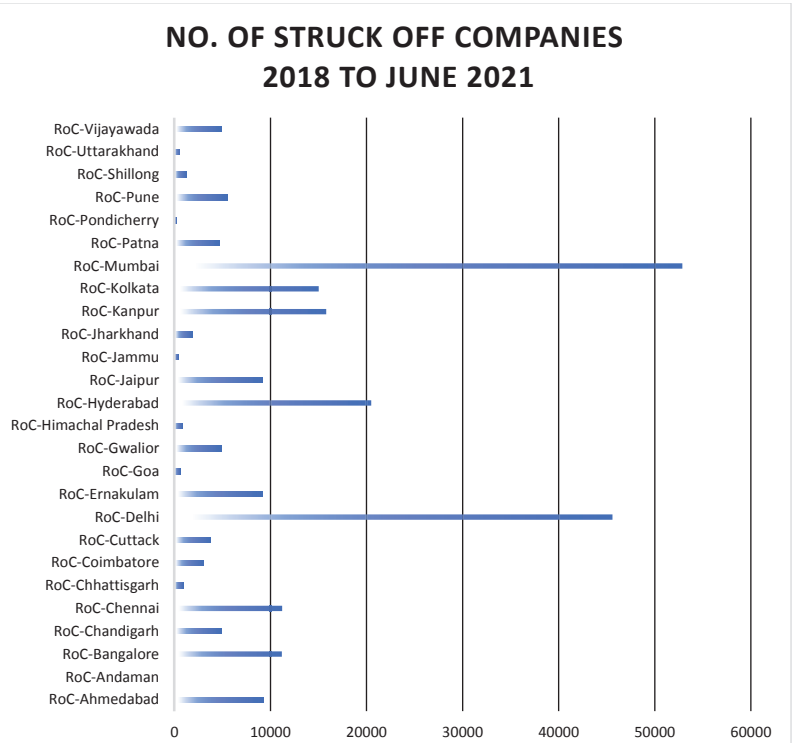
Other authorities have also established specific guidelines for identifying such businesses.

However, being a shell corporation by itself is not an offense, the High Court stated emphatically. Shell corporations are a type of Special Purpose Company (SPCS) that are necessary for legitimate business purposes such as asset ring-fencing (a virtual barrier separating a portion of an individual's or company's financial assets from the others), fundraising, effective and optimal asset management with multiple owners, facilitating mergers, acquisitions, and demergers, enabling investments in on-shore and off-shore projects, and so on. Any organisation formed for a specific reason usually starts out as a shell corporation. According to the Company Law Committee Report of April 2022, the concept of Special Purpose Acquisition Companies (SPAC) permits a shell company to launch an Initial Public Offering (IPO) without doing any business. In circumstances of unlawful activity, the most the Registrar of Companies can do is strike the incorporation's name from the company register. As per a press release from the Ministry of Corporate Affairs, 3,82,875 shell companies were struck off in the three years leading up to the financial year 2020 for failing to file Financial Statements (FS) for two years or more. Therefore, if, unfortunately, the shell corporation is involved in money laundering, tax evasion, or other unlawful activities, applicable sections of the Prevention of Money Laundering Act, 2002, the Prohibition of Benami Transactions Act, 2016, the Income-tax Act, 1961, and the Companies Act, 2013 would be invoked.

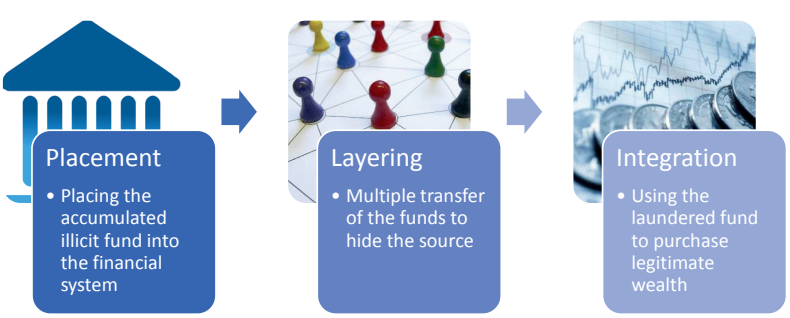
> **"Shell companies are known in India typically as investment companies, and *jamakharchi* companies and have established themselves as a well-organised corporation in eastern India."**

In recent years, the volume of shell companies that have been floated around the country has increased. As per the press release by Press Information Bureau (PIB), the Ministry of Corporate Affairs (MCA) tabled a list of 2,38,223 companies struck off u/s 248 of the Companies Act, 2013. The share

of companies out of the total number is categorised into State/ UT as under:



The campaign against black money would be incomplete as there are several possibilities for laundering illicit money through shell businesses. The basic steps in the process of diversion of unaccounted money through shell companies typically follow the placement of illicit funds, layering, and integration.



With reference to the Indian scenario, there are two types of shell companies; on-shore and off-shore. Shell companies are known in India typically as investment companies, and *jamakharchi* companies. However the unlayering of the transaction is easier said than done. It is a nightmare for the regulatory or law enforcement agencies to uncover the trail of transactions or to find the money trail. Evidence discovery is a challenge due to all transactions done in cash mode through parallel channel with no audit evidence or money trail.

The Indian scenario is witness to several cases of shell companies. In almost most of the cases of large frauds one of the allegations levelled in the chargesheet is diversion and siphoning of funds using shell company. These shell companies may either be incorporated in India or abroad. It is in the public domain based on the regulatory filing by SFIO that Bhushan Steel used about 155 shell companies controlled directly or indirectly by the promoters to remove money from the books. The classic modus operandi in such cases is incorporation of a Company where the owner has pseudo control through one of his stooges. Then the newly incorporated company issues an invoice to the principal company for some goods or services which are not provided or at the best provided only for namesake. Once the money is transferred to the shell company then the promotor has unrestricted access to the money.

There are global multinational corporations that may or may not be registered in India but are responsible for publicly reporting every rupee of earnings to their overseas headquarters. As stated earlier, every company has to remove some money from the books to run the business effectively and pay marginal legal payments. This is the reason why shells started in the first place. Further, these shady contributions are intended to resolve disputes and other agreements, which generally are in the form of cash or other types of black money.

Off-shore shell corporations, on the other hand, are a staple of money laundering schemes, which are corporations, trusts, joint ventures, enterprises,

and other entities formed outside of the jurisdiction of India (or their native nation) for the sole purpose of channelling money from one location to another. These businesses are typically formed in countries where taxes are either non-existent or minimal, anti-money laundering procedures are either non-existent or only exist on paper, and banking systems have the ability to wire transfer any amount of funds anywhere in the world through existing financial arrangements. Importantly, the off-shore shell corporations are not usually illegal, but they can be used to exploit gaps in tax legislation and tax treaties between nations. The unlawful element arises when the holding company obtains funds through Trade-Based Money Laundering (TBML) or an Informal Remittance System, such as *Hawala (Hindi word for informal and parallel money transfer)*. Off-shore shell corporations and tax havens have earned respectable names as a result of innovative money laundering operations; they are now known as International Business Corporations (IBCs) and Offshore Financial Centres (OFCs), respectively, located in over 70 locations across the world, such as Monaco, Panama, Mauritius, Marshal Islands, Aruba, and more.

> **"There are global multinational corporations that may or may not be registered in India but are responsible for publicly reporting every rupee of earnings to their overseas headquarters."**

Elements and Red Flags of Illegal Shell Corporations

Forensic Professionals are expected to recognise significant signs of fraud when offering consulting or assurance services, according to the technical requirements of the local region or governing bodies including Governments. A study of red flags could assist investigators of all sorts in spotting a discrepancy when it crosses them and lands right under their noses in everyday operations. Shell companies normally charge for a service, and reputable businesses rarely utilise tools like 'spreadsheets' as their invoicing system. This red flag might be used in a variety of scenarios, but the bottom line is that investigators should have a high likelihood of spotting an evident red flag if they come across one.

Some of the common elements of a fund diversion strategy in a shell company would be channelising payments from one company to another in multiple layers. Meanwhile, some of the shells may also be held by multiple other shell corporations such that the ownership structure of the immediate business appears complicated. Having termed as beneficial ownership, it is one of the typical cases of an Anti-Money Laundering (AML) issue in an off-shore context. Subsequently, there may be a holding company structure between the two shells, with the holding company overseeing the transfer of funds in a series of transactions between many interconnected and networked organisations. They may have various directors, but the entry operator would be the same.

> **"Some of the common elements of a fund diversion strategy in a shell company would be channelising payments from one company to another in multiple layers."**

Another scenario of a shell corporation is fake directors and locations where the directors are typically name-lenders with no genuine business experience, and each director is a director of several businesses. Any physical verification would reveal that the directors are either *benamis* or are untraceable. For Know Your Customer compliance, the entry operator who manages multiple companies from a single address purchases their identity for a low fee. Additionally, incorporations in a bunch are also a suspicious pattern that arises in the identification of a shell corporation. In order to supply accommodation entries, the entry operator requires a large number of businesses. As a result, he/she applies for registration of companies in bulk for several companies for commercial convenience, and many entities with identical directors and addresses are formed on the same day. Considering the proactive feature of the Ministry of Corporate Affairs (MCA), finding such commonality has become easier in India and the website itself offers multiple searches like number of business registered on an address, no of directorships held, cross directorships, etc. All the above information is available in the public domain for

a small fee. There are many companies that also use this data to prepare intelligible reports which can directly be used by professionals.

Evidently, the layering aspect of a shell company also makes use of entry operators to pass multiple entries in order to hide the source of funds, which raises suspicion in a bank account. For instance, high-value transactions are received via RTGS and sent out the same day with back-to-back entries indicating multiple clients requesting accommodations at the same time. For kickback payments, shell companies act as intermediaries to facilitate the conversion of black and white money to parties through entry operators, who earn commission from both parties.

Apart from the above-mentioned elements of shell companies which are often categorised as red flags, another suspicious component is the billing scheme. In a shell company, false invoicing is identified as one of the major red flags of diversion of funds, according to the ACFE Report to the Nations in respect of asset misappropriation. Elements such as sequential invoicing, limited or unintelligible details on the invoice, purchases of unusual items, etc., can be observed in red flags related to invoicing in a shell company.

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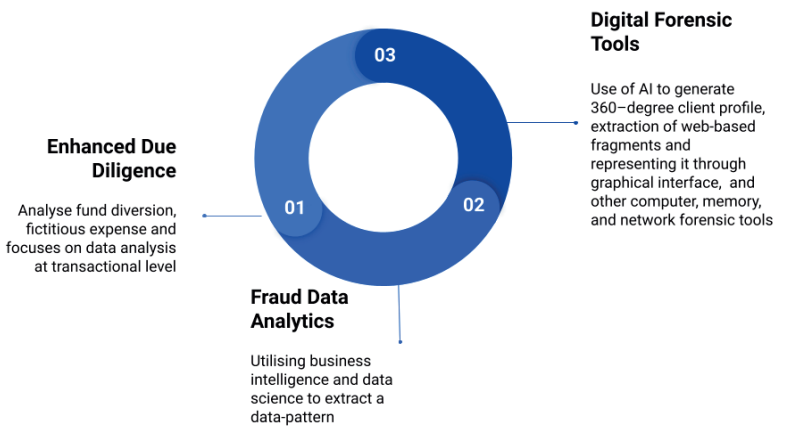
Scope of Forensic Accounting in Identifying Shell Companies



- **Enhanced Due Diligence** - Screening for contradictions and defects is an important part of research and analysis. If the forensic professional has suspicions about the deal's motivations or suspects that a beneficial owner is a different person and that the person claiming to be the beneficial owner is a frontman, enhanced due diligence and investigation procedures might be used. The investigation is based on the utilisation, analysis, and cross-checking of a variety of sources in the respective jurisdictions, both documented and qualitative. These must take into consideration the various commercial and legal settings that exist in different countries and sectors.

In the case of a German-based company, it was able to identify the beneficial ownership of a complicated network of health-care enterprises, including cross-ownership and shareholdings linked to off-shore entities. Several of the entities were linked to one German corporation, which was ultimately managed by an off-shore entity incorporated in another country, according to first-level due diligence that included searches and analysis of corporate data. Forensic analysis was used to establish this case of beneficial ownership by demonstrating a conflict of interest and anti-competitive behaviour. Unique investigative research approaches were utilised not only to comply with several legislative responsibilities, but also to obtain a complete understanding of the target, the companies, and to actually get to know the customer and organisation they are dealing with. Although determining beneficial ownership of businesses and trust arrangements can be complex, this case study demonstrated how

innovative research and investigation tactics spanning many jurisdictions could help solve even the most difficult problems.

> **The investigation is based on the utilisation, analysis, and cross-checking of a variety of sources in the respective jurisdictions, both documented and qualitative.**

- **Digital Forensic Tools–** By utilising online tools such as conducting global research in various databases and corporate registrations, ownership identification and information on shell firms can be obtained. Affiliation for shells with suspicious fund transfers may also be established using various AML-specific software. In order to detect shells, even a simple web history analysis yields results. A fundamental search on the world wide web may identify the organisation's ownership. Several corporations disclose the contact information of their CEOs and boards of directors on their websites in order to appear accountable and reputable. In contrast, shell companies may be missing out on this information, and many illegal businesses lack websites by leaving a paper trail. Forensic accountants may also utilise knowledge graphs to create 360-degree client profiles for risk assessment utilising modern AI technology. The knowledge graph is made up of interconnected descriptions of items such as objects, events, and concepts, and new data can be retrieved instantly from the original sources as required.

- **Fraud Data Analytics–** Fraud data analysis is the method of analysing data for red flags related to a certain fraud-risk claim using data mining. The approach developed by Leonard W.Vona, author of Fraud Analytics Methodology and CEO of Fraud Auditing Inc., begins with a fraud-risk statement rather than an allegation when investigating fraud. To begin, the fraud examiner or investigator may compile a list of suspicious vendors who could be involved in a shell company operation. The professional can then choose suppliers for inquiry using data-pattern analysis and fraud-testing processes. Based on the fraud-risk statement, the professional should comprehend and develop a fraud data analytics approach. Two of the approaches that can be used to figure out how each business transaction relates to the data are the master-file which is the vendors' data identity, and transaction-file, pertaining to the data identity of purchase orders, invoices, and corresponding payments.

In order to analyse a transaction-file data, key elements such as sequencing pattern of invoices, order of transactions, invoice amount below control level, anomalies inline description, and a detailed analysis of general-ledger account can reveal red flags related to shell companies.

In the master-file data, Leonard, a Certified Fraud Examiner states unique approaches to fraud analytics using five different categories of shell companies. The approach can be summarised as follows:

TYPE	MEANING	MODE OF DETECTION
Created shell company	To perpetuate a false-billing or pass-through fraud, an insider adds a shell entity to the accounts payable system.	• Identification of missing vendor information as the culprit may attempt to regulate who may contact the shell entity. • Correlation of contact details with bank accounts in HR database to identify anomalies
Assumed shell company	A dormant vendor existing on the master file or an actual marketplace supplier, not on the master file represented by an insider	• Identification of changes in contact address of the vendors and bank accounts. • Repeat the procedure of the created shell entity for identifying the real vendor.
Hidden shell company	Multiple names are used by an actual entity wherein the first business is the actual one, while the others are just shells. This strategy aims to get around control levels or give the impression of competitive procurement.	• Identification of data duplication between service providers in respect of contact details and business details.
Conflict-of-interest shell company	Uses a legally formed corporation to sell products or services; however, the vendor only has one customer. This corporation might be owned by an internal employee or someone linked to the employee.	• Same procedure as the created shell company.
Temporary shell company	The fraudster employs temporary shell entities for a short number of transactions and might be made up or assumed identity or exist just in name. This fraud frequently targets businesses with one-time payment methods.	• Identification of a limited volume of transactions with a single vendor that is associated with a single cost centre.

Conclusion

Shell companies have frequently become the subject of criminal investigations and enforcement actions, with lists of suspected shell companies being compiled by the Financial Intelligence Unit (FIU) and the Serious Fraud Investigation Office (SFIO). Based on that, SEBI has even suspended trading of 331 listed companies alleged to be shell corporations. In light of regulatory authorities' assault on shell corporations, forensic accountants should look for and disclose probable activities of their subject with shell companies using various techniques. However, a comprehensive formulation of shell companies with an acceptable scope and a consistent structure is required to address all difficulties of shell corporations. At the same time, the recent measures implemented by the MCA, the Income Tax Department, and the Task Force to shut down shell companies with illegal goals can be considered one of the first steps toward reducing the use of shell companies as a means of negatively affecting the Indian economy.

> **"Fraud data analysis is the method of analysing data for red flags related to a certain fraud-risk claim using data mining."**

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Virtual Certificate Course on Concurrent Audit of Banks

The concurrent audit system of banks has become very crucial and important for banks. The main objective of the system is to ensure compliance with the audit systems in banks as per the guidelines of the Reserve Bank of India and importantly, to ensure timely detection of lapses/ irregularities. In view of the core competence of the chartered accountants in the area of finance and accounting, risk management, understanding of the internal functioning and controls of banks, etc., the banking sector has been relying extensively on them to comply with these requirements of the regulator. The Internal Audit Standards Board of ICAI conducts 11 days Certificate Course on Concurrent Audit of Banks through Digital Learning Hub. The purpose of the ***Certificate Course on Concurrent Audit of Banks*** is to provide an opportunity to the members to understand the intricacies of concurrent audit of banks thereby improving the effectiveness of concurrent audit system in banks, and also the quality and coverage of concurrent audit reports.

The course is open for the members of the Institute of Chartered Accountants of India

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FEES DETAILS: Rs. 5,900/- (including GST)

The details of the forthcoming batches of the Virtual Certificate Course on Concurrent Audit of Banks to be organized by the Internal Audit Standards Board through Digital Learning Hub is as follows:

Location	Scheduled Dates	Course Structure and other details
BATCH 78	September 5- 15, 2022 (3:00 to 6:00 PM)	Structured_IASB_ Certificate Course Concurrent Audit of Banks BATCH - 78
BATCH 79	September 19- 29, 2022 (3:00 to 6:00 PM)	Structured_IASB_ Certificate Course Concurrent Audit of Banks BATCH - 79

Chairman
Internal Audit Standards Board, ICAI
E-mail: cia@icai.in;

Digital Rupee, CBDC - India steps towards Monetary Freedom

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The article discusses India's recent steps towards creating a digital rupee, which would be a form of Central Bank Digital Currency (CBDC). This would allow for more monetary freedom in India, as it would move away from the current system in which the government controls the circulation of money. The article cites initial questions asked about the launch and impact of the digital rupee in the economy.

Union Finance Minister Nirmala Sitharaman announced on February 1 that the Reserve Bank of India (RBI) would establish a central bank digital currency (CBDC) in 2022-23, the first formal declaration by the Union government of the much-anticipated digital currency's introduction.

The FM stated that the implementation of CBDC will be built on blockchain technology which will strengthen the digital economy. The Reserve Bank of India (RBI) previously indicated that CBDC is possible, notwithstanding the central bank's opposition to private virtual currencies.

The FM stated that the adoption of CBDC will bolster India's standing as a digital economy further, owing to the country's world-class digital payment infrastructure.

The debate over regularising cryptocurrencies in India

The debate over the regularisation of cryptocurrency in India revolves around the fact that cryptocurrencies are not legal tender. The argument against legalisation is that it can be used for illicit purposes. Another argument against legalisation is that it is speculative and unstable. Despite these arguments, some argue that legalising cryptocurrencies will help to promote financial inclusion in India since many don't have access to banking services.

In 2018, the Reserve Bank of India ('RBI') barred the use of virtual currencies, including Bitcoins, and directed banks and financial institutions to refrain from dealing in virtual currencies or providing services to facilitate the use or settlement of virtual currencies. The Supreme Court of India, however, lifted the prohibition in March 2020 in response to a plea filed in the case of Internet and Mobile Association of India v. Reserve Bank of India.

The Government was scheduled to introduce the Cryptocurrency and Regulation of Official Digital Currency Bill 2021 (Bill) during the Parliament's 2021 Budget Session. A major aim of the Bill is to establish a state-backed digital currency issued by the RBI while prohibiting private digital currencies, such as Bitcoin, Ethereum, and Litecoin. However, the law is yet to be introduced.

The Ministry of Corporate Affairs has revised Schedule III of the Companies Act, 2013 through a notification dated 24 March 2021 (the 'Notification'), which took effect on 1 April 2021. The amendments establish general guidelines for the preparation of a company's balance sheet and statement of profit and loss, requiring businesses that deal in virtual currencies to disclose the amount of virtual currencies they hold in their balance sheets, as well as the profit or loss incurred on their transactions. Additionally, this amendment establishes virtual assets as a distinct asset class.

Despite the prospect of a ban and the current uncertainty surrounding cryptocurrencies in the Indian market, the crypto

business is thriving in India, with massive transaction volumes and investments being made by Indian investors. Ban or no-ban, stakeholders have been closely monitoring the Government's every action regarding the regularisation of digital currencies in India. Regardless, with this Notification, cryptocurrencies in India and their stakeholders finally appear to see the light at the end of the tunnel.

"Central Bank Digital Currency (CBDC) will be the central banks' new digital money. The technology in CBDC will be designed in such a way that users can deposit money with the CB in exchange for cash in circulation."

These are ten important questions about the Digital Rupee that one must know.

What is CBDC?

Central Bank Digital Currency (CBDC) will be the central banks' new digital money. The technology in CBDC will be designed in such a way that users can deposit money with the Central Bank (CB) in exchange for cash in circulation. An example of this is Hong Kong's RMB-based CBDC, which is run by the HKMA and HSBC Holdings plc.

The CBDC would be a method of paperless, government-backed money that could be used in both online and offline transactions. This plan is being considered to reduce the amount of cash in circulation and increase the efficiency of the financial system.

How does Digital Rupee work?

Digital Rupee, the digital form of fiat currency, has taken India by storm. With a population of 1.3 billion people, India is an emerging market that offers enormous potential for growth. The country is home to over 21% of the world's unbanked population and offers a huge untapped market for Digital Rupee with its vast reach across most regions of the country.

A CBDC will facilitate transactions. The RBI previously described the CBDC as a secure, robust, and convenient alternative to physical cash. The RBI report stated that it could also take on the complex form of a financial instrument.

Is CBDC a cryptocurrency like Bitcoin?

No. CBDCs are not private cryptocurrencies. It is a digital representation of legal tender, whereas private virtual currencies are quite distinct. Private digital currencies are diametrically opposed to the traditional concept of money. Because they lack intrinsic value, they are not commodities or claims on commodities.

What is RBI's response to claims that private cryptos are assets like gold?

RBI responded to claims that private cryptos are assets like gold by saying- "No buyer of crypto can be fully certain about the nature of the crypto being bought. No underlying values have been ascribed to these currencies. Also, there is no legal recognition of crypto as property or asset.

According to the RBI, private virtual currencies do not represent any individual's debt or liability. "There is no issuing entity. They are not money (certainly not currency) in the historical sense of the term. "On July 22, RBI Deputy Governor T Rabi Sankar stated. This effectively means that no banking entity, according to the RBI, may treat private virtual currencies as assets or liabilities for transaction purposes.

What is RBI's view on CBDC?

The Reserve Bank of India (RBI) has weighed in on the issue of central bank digital currency (CBDC) with goals to increase financial inclusion, maintain macroeconomic stability, and manage market risks, among other objectives. The RBI's primary concerns revolve around regulation, non-transparent transactions (e.g., money laundering), data security, technical feasibility, and scalability. RBI wants to reduce the number of people who have no access to formal banking.

"The CBDC would be a method of paperless, government-backed money that could be used in both online and offline transactions."

Can the RBI express an opinion on CBDC vis-a-vis private cryptocurrencies?

The Reserve Bank of India (RBI) has taken a strict stance against the use of private cryptocurrencies

and has also prohibited entities regulated by them from dealing with them. This is primarily because the RBI views cryptocurrencies as a risk to consumers and investors alike and does not want cryptocurrency trading to become an avenue for inappropriate transactions such as money laundering or terrorism financing. Another reason why CBDCs may be essential, is the rise of private cryptocurrencies.

> **"Private digital currencies are diametrically opposed to the traditional concept of money. Because they lack intrinsic value, they are not commodities or claims on commodities."**

Which risks do CBDCs pose, according to the RBI?

Risks associated with CBDCs given by RBI are mainly related to the stability of the system. The Central Bank's ability to issue other currency hence there can be a need for more liquidity too. Bank runs could also happen if people think that the currency is unstable. Finally, digitalisation can make central agencies vulnerable.

When is RBI planning to introduce CBDC?

The finance minister explained the launch of the Digital Rupee in the Budget speech. Following Cabinet approval, the Government will request that the central bank begin preparations for the launch. Indeed, the RBI has already started laying the groundwork. According to government and RBI statements, the Digital Rupee is expected to launch this year.

What is the future of private virtual currencies in India?

The future of private virtual currencies in India is completely unknown. The Mumbai high court, has set a precedent of prohibiting financial institutions from dealing with cryptocurrencies. However, this was invalidated by the Supreme Court because the Government failed to provide coherent evidence to substantiate their claim that there is any benefit in banning virtual currencies.

The Government has stated that private virtual currency should not be used as a substitute for legal tender and that it will take measures to eradicate its use.

The Government announced a 30% crypto tax. What does it mean?

The Government announced a cryptocurrency tax. As a result, a 30% tax will be applied to the profits of investors and traders of the cryptocurrency. This means if you are trading cryptocurrencies in your own country, you may be liable to pay taxes on your trade profits. This is because cryptocurrency is an asset, not a currency, and must be taxed as any other capital asset.

Impact of Digital Rupee on the Indian Economy

Private virtual currencies are completely different from how money is thought of in the traditional sense. They aren't real things or claims on real things because they don't have value on their own. Some claims that they are similar to gold seem to be purely speculative. They don't usually show anyone's debt or obligation unless they meet certain rules in the countries where they are used.

If both countries in a currency transaction have CBDCs, the benefits of global settlements may be realised. The benefits of issuing a CBDC may be enough for India to issue one. Cash is still the most common way to pay and get money for regular expenses. A study by RBI analyses cash, payment system enablers, and electronic payment measures over the last five years to determine if India has shifted from cash to digital payments. India continues to have a strong bias for cash payments which increased to 10.70% in 2017-18 and 11.20% in 2018-19 but remains below the pre-demonetisation level of 12.1% in 2015-16. Slower growth indicates a cash shift.

Depending on how much they use them, CBDCs may cut down on the number of transactions that people do with their bank deposits. This is important to know. Because transactions in CBDCs have less risk of being settled, they also have fewer liquidity needs, like intra-day liquidity. As a result, offering a truly risk-free alternative to bank savings could make people move away from bank deposits, which could cut down on the need for government deposit insurance.

Reduced bank disintermediation, on the other hand, entails its own set of institutional dangers. If banks gradually lose deposits, their ability to extend loans is harmed. In India, since central banks are unable to lend to the private sector, the impact on bank lending must be carefully analysed. Additionally, when

banks lose significant quantities of low-cost transaction deposits, their interest margins may be squeezed, resulting in an increase in lending rates that might have a negative effect on the Indian economy as a whole. Due to the potential costs of disintermediation, it is necessary to design and administer CBDC so that demand is manageable compared to bank deposits.

CBDC's accessibility enables depositors to easily withdraw funds whenever a bank encounters issues. Deposits can be made significantly faster than cash withdrawals. On the other hand, the availability of CBDCs may help minimize panic "runs," as depositors are aware they can withdraw fast. One possible impact is that banks may be compelled to maintain a higher level of liquidity, which results in lower profitability for commercial banks with diminished lending capability.

In conclusion, the digital rupee will be a more cost-effective way to transact in the Indian economy. It can help save transaction fees and reach rural areas that may not have access to banks and credit cards.

The digital rupee has the potential to be a major economic asset for India. It can also positively impact other countries that have strong economic ties with India. Economic experts believe that this will be a good way to battle harmful counterfeiting and reduce black money, which is a problem in both India and other countries. The digital rupee offers many benefits to Indian citizens as well as those from other countries.

> **"The digital rupee will be a more cost-effective way to transact in the Indian economy. It can help save transaction fees and reach rural areas that may not have access to banks and credit cards."**

Conclusion

In the new financial system, the Rupee will be replaced with a digital rupee. This is a significant step for India in terms of its economic development and fiscal objectives.

> **"In India, since central banks are unable to lend to the private sector, the impact on bank lending must be carefully analysed."**

The Rupee to be augmented with a digital Rupee will allow global markets to easily trade Indian rupees in real time on their own local currency exchanges around the world. This provides greater transparency and accountability on Indian money globally. It will also enable Indian financial institutions to gain greater control over their money flow through international remittances and foreign exchange transactions.

The use of digital rupees will help reduce corruption, as people will not have to pay bribes when entering into an agreement with a foreign entity. This disables those who wish to abuse power utilising our current financial system, which is already riddled with corruption for their own benefit. It additionally reduces our fiscal deficit by facilitating remittances that have shifted from cash-based systems internationally into electronic formats thus decreasing our reliance on external financing mechanisms such as debt service payments and foreign direct investment (FDI) inflows.

The use of digital rupees would also be beneficial for retail investors in India who are currently unable to access international markets due to high transaction costs or where they cannot access services due to lack of knowledge or ability or because they do not have access to adequate information about these markets (e.g., how much risk protection is available or what are the requisite minimum account balances).

Allowing retail investors in India access to international markets without having to pay excessive transaction fees would help end this barrier. This hinders many individuals from investing in international equity markets given that it is still very much an untapped market globally (therefore providing more opportunities for Indian retail investors).

There may be additional value-added benefits arising from various trading platforms available on Digital Rupee, such as blockchain technology, which may facilitate cross-border transactions. This will significantly contribute to promoting financial inclusion among low income households across India as well as expanding e-commerce opportunities within the country through increased business volumes and more efficient international trade flows. ■■■

Exploring the linkage between constructive deviance and organisational performance in insurance companies

Constructive deviance is voluntary behaviour of employees that violate significant organisational standards and in doing so promotes the well-being of an organisation, its members, or both. The present study explores six constructs deviant behaviour (Issue selling, whistle blowing, extra-role, pro-social rule breaking, creative performance and Organisational Citizenship Behaviour) in the Indian Insurance Industry. The data collected for the study is primary data with a structured questionnaire. The study found empirical evidence in support of positive association between constructive deviance and perceived organisational performance and managerial effectiveness. Further practical contributions, limitations and scope of future researchers are also discussed.

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Introduction

Constructive deviance has been defined by scholars in various ways. According to spritzer and Sonenshein (2004) constructive deviance is "intentional behaviours that depart from the norms of a referent group in honourable ways". Galperin (2003) defined constructive deviance as "voluntary behaviour that violates significant organisational norms and in doing so contributes to the well-being of an organisation, its members, or both". Constructive deviance as "behaviour that deviates from the reference group norms but conforms to hyper norms" (Warren, 2003). It has been regarded as honourable deviance in desirable ways (Garg and Saxena, 2020). Other scholars like Saxena et al. (2020), Garg et al. (2020), Sarkar and Garg (2020) have also studied constructive deviance in Indian context, and they elaborated that constructive deviance facilitates achievement of organisational goals. The most common characteristics of constructively deviant behaviours are—deviation from an established norm of the reference group, confirmation to commonly held beliefs and values which leads to welfare of the society.

Warren (2003) reported that the constructive deviance is an umbrella term that comprises of several different types of behaviours. These different types of behaviour also considered as constructs of constructive deviance. Jain (2020) summarised different forms of constructive deviance as pro-social rule breaking (Morrison, 2006), extra-role behaviours (Van Dyne et al. 1995), issue selling (Dutton and Ashford, 1993), Creative performance (Baer, lenders, Oldham, & Vadera, 2010), principled organisational dissent (Graham, 1983), whistle-blowing (Near and Miceli, 1985), tempered radicalism (Meyerson and Scully, 1995), and counter-role behaviour (stow and Boettger, 1990). Creative performance is defined as the process of generation of news and useful ideas or solutions to organisational problems and challenges (Oldham and Cummings, 1996). According to Dutton and Ashford (1993), issue selling is voluntary behaviour which organisational members use to impact the organisational agenda by getting those above them to pay attention to an issue. Extra-role behaviour is defined as the behaviour which aids the organisation and/or is intended to benefit the organisation, which is unrestricted, and which goes beyond the existing role expectations (Van Dyne et al., 1995). According to Morrison (2006), pro-social rule breaking is defined as intentional violation of a formal organisational policy, regulation, or prohibition with the primary intention of promoting the well-being of the organisation or one of its stakeholder. Crank (2000) defined pro-active behaviour as taking initiative in improving present circumstances or creating new ones; it involves

challenging the status-quo rather than inactively adapting to present conditions. Bateman and Organ (1983) defined Organisation Citizenship Behaviour as individual behaviour which is flexible, not directly or overtly recognised by the official reward system, and taken together promotes the effective functioning of the organisation. According to Near and Miceli (1985), whistleblowing is well-defined as revelation by organisational members of unlawful, corrupt, or prohibited practices under the control of their employers to persons or organisations who may be able to take effective action.

Literature Review

Insurance Industry and HR challenges

The service activities witnessed are an outstanding development and the Indian insurance industry has also seen noteworthy growth and penetration in recent times. It is a known and recognised fact that the service sector is a human resource intensive industry. In this era of throat-cut competition in the insurance sector, only human resource can act as a probable source of competitive advantage. Hence, insurance companies have begun strengthening Human Resource Management (HRM) practices.

A well-defined and established structure of high-performance work practices aids not only the business but similarly the workers. Human Resource policies of an organisation assist the employees by providing opportunities for progress in terms of higher pay packages, training and development and career management, in turn leading to job satisfaction and self-fulfilment. The most challenging hurdles are related to attrition, low morale and employee engagement level, high level of organisational stress and lesser mutual trust and esteem.

> **"The most common characteristics of constructively deviant behaviours are—deviation from an established norm of the reference group, confirmation to commonly held beliefs and values which leads to welfare of the society."**

Liberalisation in the Indian insurance industry has unlocked the sector to private competition. A number of overseas insurance companies have set up typical offices in India and have also associated with various asset management companies (AMCs). All these advances have forced the insurance companies to be more competitively advanced. Existing companies must seek ways to become more efficient, productive, flexible and innovative (Kundu and Makhan, 2009). The customary ways of gaining competitive advantage must be appended with organisational capability and the firm's ability to manage people (Ulrich and Lake, 1990). With utmost pressure on employees of the Indian insurance industry the frequency and magnitude of constructive deviance has arisen in recent times. Modern insurance companies do not only accept deviances which are for betterment of organisations but there is a growing trend towards appreciating and rewarding positive deviance at the workplace.

Constructive Deviance and HR issues

Indian insurance industry faces serious HR challenges on all three fronts i.e., perceived organisational performance, managerial effectiveness and job satisfaction. With the increasing pressure, HR manager of the insurance industry needs to constantly respond to such pressures initiating timely and effective changes in HR policies of the organisation. These organisational challenges check their ability to adapt to the changing business environment, improve work efficiency and capitalise on growth in the sector. HR needs to analyse, innovate and reconstruct existing policies in order to keep up with the frequent changes. With rapid, unpredictable and profound transformation underway in the insurance industry, the issues HR must face have increased multiple folds and calls for rapid involvement. There is a need for creating new models and strategies, to adapt and evolve to such changes by the HR. One such highly appreciated model is the effective use of constructive deviance at workplace. Theoretical model hints at a probable association between constructive deviance and organisational outcome. The present paper tends to investigate the proposed linkage through empiricism and the following hypotheses are formulated.

Ho1: There does not exist a positive linkage between constructive deviance and perceived organisational performance.

H1: There exists a positive linkage between constructive deviance and perceived organisational performance.

Ho2: There exists a positive linkage between constructive deviance and managerial performance.

H2: There exists a positive linkage between constructive deviance and managerial performance.

Methodology

The primary aim of this study is to identify and establish the causal relationship between constructive deviance and perceived organisational performance. It also intends to study causal relationship between constructive deviance and perceived managerial effectiveness. The paper intends to investigate whether constructive deviance provides an effective solution to the most challenging and most prevalent issues of Indian insurance companies. The issues that challenge the HR department of every insurance company are work managerial effectiveness (at supervisory level) and perceived organisational performance (at organisational level). In other words, the paper tends to find a suitable and efficient answer to some crucial questions that keeps every HR manager on its feet. It is pertinent to find amicable solutions to these burning issues. The research setting for the present study is offices of insurance companies. Data is procured with the help of a structured questionnaire ensuring that data is collected from all categories including gender and different levels of experience—aged personnel to fresh recruits, etc. Sample size of the present study is 510 employees. Primary data is collected through a structured questionnaire. Part A of the questionnaire captured the respondents' demography such as age, gender, work experience, department and educational qualification. Part B investigated managerial effectiveness with the help of scale developed by Gupta (1996). The scale comprises of 45 items rated on a five-point rating scale, with 1 indicating disagreement and 5 indicating agreement with the statement. Part C of the questionnaire comprises of 10 statements that measures constructive deviance. The instrument is from Galperin (2012). Part D measured perceived organisational performance which was accessed with the help of scale developed by Singh (2004).

Result and Discussion

Table-1: Descriptive Statistics

Variable	Category	N	Mean	SD
Creative Performance	Constructive Deviance	510	3.45	0.67
Issue Selling	Constructive Deviance	510	3.29	0.78
Extra-role behaviour	Constructive Deviance	510	3.40	0.83
Pro-social rule breaking	Constructive Deviance	510	3.14	0.32
Whistle blowing	Constructive Deviance	510	3.85	1.47
Organisation Citizenship Behaviour	Constructive Deviance	510	4.04	0.94
Perceived Organisational Performance	Organisational level Outcome	510	2.87	0.55
Managerial Effectiveness	Managerial level Outcome	510	2.90	0.63

Table-1 enlisted descriptive statistics in terms of mean values and standard deviations. Among six constructs of constructive deviance, Organisation Citizenship Behaviour featured the highest mean value of 4.04 and lowest mean of 3.14 was reported for Pro-social rule breaking. Standard deviation reflected that the views of respondents varied across the sample. The findings revealed that job satisfaction is a matter of great concern for the Indian insurance industry as mean value of job satisfaction is only 1.82. Further perceived organisational performance and managerial effectiveness needs to be addressed in insurance company.

Table-2: Correlation Matrix and Cronbach's Alpha Values

Variable	CP	IS	ER	PR	WB	OCB	OP	ME
CP	(.81)							
IS	.42	(.77)						
ER	.33	.28	(.71)					
PR	.27	.36	.11	(.88)				
WB	.19	.31	.27	.44*	(.73)			
OCB	.38	.22	.48*	.31	.37	(.81)		
OP	.67*	.50**	.85*	.47*	.44*	.39**	(.79)	
ME	.29*	.18	.61*	.79*	.11	.26*	.87*	(.70)

*Source : Primary Data, * Sig. at .01, ** Sig. at .05*

CP- Creative Performance, IS- Issue Selling, ER- Extra-role behaviour, PR- Pro-social rule breaking, WB-Whistle Blowing, OCB- Organization Citizenship Behaviour, OP- Organisational Performance, ME- Managerial Effectiveness, JS- Job Satisfaction, PE- Psychological Empowerment, PJ- Procedural Justice

Table-2 represented correlation matrix and Cronbach's alpha values which was used to investigate reliability of the data. According to Field, value of Cronbach's alpha should be greater than 0.70. Bracketed values indicate Cronbach's value and all bracketed values are greater than 0.70 which means data is reliable and could be subjected to further statistical investigation. It has been observed that six constructs of constructive deviance do not have statistically significant correlation amongst themselves. It means that six constructs of the study are different from each other and hence selection of these constructs is a statistically appropriate decision. Further, statistically significant correlation was observed between independent variables (six measures of constructive deviance) and dependent variables. It concluded that the constructive deviance was significantly associated with job satisfaction, managerial effectiveness and perceived organisational performance. It was also reported that independent variables (six constructs of constructive deviance) have positive significance with both mediating variable (psychological empowerment and procedural justice).

Table-3: Multiple Regression Analysis Results (Constructive Deviance and Perceived Organisational Performance)

Predictor Variables	Unstandardised β	Standardised β	t-value	Sig.
Constant	1.134			
Creative Performance	0.71	0.68	4.76	.045*
Issue Selling	0.57	0.55	4.98	.040*
Extra-role behaviour	0.83	0.78	6.87	.048*
Pro-social rule breaking	0.52	0.49	3.60	.038*
Whistle blowing	0.48	0.43	0.96	2.55
Organisation Citizenship Behaviour	0.43	0.37	2.82	.030*

*Source: Primary Data, * Significant at .005*

Table-3 describes the results of multiple regression analysis for six constructs of constructive deviance and perceived organisational performance. It was observed that five constructs of constructive deviance (creative performance, issue selling, extra-role behaviour, Pro-social rule breaking and Organisation Citizenship Behaviour) were positively and significantly regressed with perceived organisational performance. Value of VIF confirms that there is no problem of multi-colinearity in the data. The regression equation presented below is derived from the result of the above table. The equation provides a mathematical model of the relationship between perceived organisational performance and five constructs of constructive deviance. HR manager could use following equation to bring about desired changes in organisational performance.

OP = 1.134 + 0.68 CP + 0.55 IS + 0.78 EB + 0.49 PB + 0.37 OCB

Table-4: Model Summary and Result of ANOVA (Constructive Deviance and Perceived Organisational Performance)

Regression Model Summary			ANOVA	
R	R Square	Std Error of Estimate	F-Value	Sig.
0.81	0.64	.989	10.98	.039*

*Source: Primary Data, * Significant at .005*

Table-4 concludes that the five constructs of constructive deviance explain 64% (coefficient of determination= .64) of variations in perceived organisational performance. The variation caused by constructive variance is reported to be statistically significant by F-value.

Table-5: Multiple Regression Analysis Results (Constructive Deviance and Managerial Effectiveness)

Predictor Variables	Unstandardised β	Standardised β	t-value	Sig.
Constant	1.84			
Creative Performance	0.32	0.26	0.95	1.93
Issue Selling	0.23	0.18	1.82	.098
Extra-role behaviour	0.68	0.62	6.94	.029*
Pro-social rule breaking	0.78	0.70	4.71	.037*
Whistle blowing	0.27	0.11	3.08	.055
Organisation Citizenship Behaviour				

*Source: Primary Data, * Significant at .005*

Table-5 describes the results of multiple regression analysis for six constructs of constructive deviance and Managerial Effectiveness. It was observed that only two constructs of constructive deviance (extra-role behaviour and Pro-social rule breaking) were positively and significantly regressed with managerial effectiveness. Value of VIF confirms that there is no problem of multi-colinearity in the data. The following regression equation is derived from the result of the above table. The equation provides a mathematical model of the relationship between managerial effectiveness and two constructs of constructive deviance. Managers could use the following equation to bring about desired changes in managerial effectiveness.

ME = 1.84 + 0.62 EB + 0.70 PB

Table-6: Model Summary and Result of ANOVA (Constructive Deviance and Managerial Effectiveness)

Regression Model Summary			ANOVA	
R	R Square	Std Error of Estimate	F-Value	Sig.
0.72	0.50	.33	3.94	.004*

*Source: Primary Data, * Significant at .005*

Table-6 illustrates that the two practices explain 50% (coefficient of determination= .50) of variations in managerial effectiveness. The variation caused by managerial effectiveness is reported to be statistically significant by F-value.

Discussion and Conclusion

One of the most important duties of the HR manager is optimum and efficient application of available human resources of the organisation. Active, flexible, proactive and pro-employee personnel policies and practices provides one of the ways

“One of the most important duties of the HR manager is optimum and efficient application of available human resources of the organisation.”

of ensuring performance optimisation. HRM does not only comprise of personnel management, but it represents a broader perspective of managing employees' skill, knowledge, values, ethics, experience, attitude and work behaviour (Jain, 2020). A dynamic and unstable work environment along with change in the attitude of employees towards work are amongst the major cause of this impact. A turbulence in environment which is referred to as unpredictability directly affects an organisation's productivity and profitability. The long-term planning of an organisation gets obstructed by unexpected and uncalculated alterations rising out due to uncertain situations. Organisations usually are under continuous competitive pressure to improve their organisation structure to get employees to perform better. To have a committed and dedicated team is definitely a valuable asset

“A turbulence in environment which is referred to as unpredictability directly affects an organisation's productivity and profitability.”

which contributes in attaining a competitive edge for the organisation.

There are many practical implications of the results of the present study for the Indian insurance industry. It tends to highlight the importance of different forms of constructive deviance for ensuring higher levels of organisational performance. Top management of Indian insurance companies can purposefully promote different facets of constructive deviance like creative deviance, issue-selling, organisational citizenship behaviour to facilitate organisational transition towards a more flexible, enriching and fulfilling workplace. This leads to enhanced performance, reduced absenteeism, and turnover. Management of Indian insurance industry could explore various awareness building initiatives like seminars, lectures, workshops, cross-industry training, etc. to strengthen employees' and managers acceptability for constructive deviance.

> **"Top management of Indian insurance companies can purposefully promote different facets of constructive deviance."**

Given the introductory nature of this study, future researchers need to explore further the field of constructive deviance and their relationship with organisational goal. Future studies have the scope to investigate the association of other forms of constructive deviance like pro-social rule breaking, extra-role behaviours, principled organisational, tempered radicalism and counter-role behaviour. The study has several limitations too. First, the data was collected from Indian firms only, thus given the cultural diversities of the eastern and western world, the results could not be generalised from the perspective of a western population. Second, the sample comprised of 510 people, a larger sample size would provide for better visualisation of the results. Further, a longitudinal study will make the results of the study more reliable and valid.

In conclusion, institutionalised and top management support for constructive deviance will help in addressing issues related to human resources of Indian insurance companies.

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American Depository Receipts: An Innovative Tool for Global Investing

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Indian ADRs are an innovative tool for global investing due to their lucrative return over the past few years and their efficiency in the global markets. After the liberalisation of the economy, many companies took the advantage to raise capital from the developed market of the United States. ADRs also allow investors for global portfolio diversification and some of the Indian ADRs performed well in the global market by giving good returns.

The primary purpose of the paper is to ascertain the efficiency of the Indian ADRs and identify it as an innovative global investing tool. For this, the ADR's data have been analysed by employing mean, variance, covariance, EPS, P/E ratio and beta calculation. The findings of the study indicate that automobile, software and banking sectors have given higher return making them a very lucrative asset in global investing. These sectors are having beta more than one, making them risky as well as give investors a chance for higher returns than the market. Health care sector having the highest P/E ratio compared to other companies' ADRs, indicates that the investor's expectations are much higher for this company. Also, ADRs are a safe and innovative instrument for global investing and they could act as an alternative instrument for the investors for the portfolio diversification.

Introduction

American Depository Receipts (ADRs) are financial instruments that enable investors to own overseas assets without actually acquiring them. Depositories in the US issue ADRs. These banks or depositories take actual possession of foreign securities and then issue receipts via their subsidiaries abroad or custodians. The receipts are agreements between the bank and the holder that a specific number of foreign shares has indeed been placed with the bank's overseas branch or custodian and will be held on deposit for the duration of the ADRs.

ADRs are traded similarly to domestic securities since they are traded on national stock markets or the over-the-counter market. On-demand, ADRs can be converted into the underlying shares, and foreign stocks can be traded for ADRs. For its services, the depository bank charges a fee typically.

Types of ADR

Sponsored ADR: When international firm issues sponsored ADRs, it hires a bank to mediate between the corporation and the ADR holders. The ADRs, in this case, have been properly registered with the Securities and Market Commission (SEC) and are available for trading on a stock exchange.

Unsponsored ADR: Unsponsored ADRs are produced at the request of American brokerage companies, with no involvement from foreign corporations. They trade on the over-the-counter market and are not registered with the Securities and Exchange Commission. In the case of sponsored ADRs, the foreign firm pays the banks' fees, but in the case of unsponsored ADRs, the investor pays the banks' charges.

Issuance of Indian ADRs: Regulatory Framework

The Indian government allowed Indian enterprises to raise capital from foreign stock markets as Depository Receipts in result of

the economic liberalisation programme in 1992. The DRs can be traded on any worldwide stock exchange and allowed to freely convert in denominated currency. Several multinational corporations seek this opportunity to their advantage and raised a huge amount of capital in the form of equity from foreign markets by issuing DRs on international markets. The subsequent selling of ADRs in international stock markets is not taxed in India as capital gains taxes. Arbitration involving the DRs is prohibited by law. Two options are essential if a foreign investor wants to invest in Indian shares. One option is to register as a foreign holding company (FH) and purchase and sell stocks in the Indian stock market; the other is to buy ADRs of Indian companies in foreign markets.

> **American Depository Receipts (ADRs) are financial instruments that enable investors to own overseas assets without actually acquiring them.**

Literature Review

Whether to invest in the ADRs or not is a concern area for scholars, professionals, investors, and advisors, but the answer to this question is still not provided systematically. As in today's time when the cross-border trade is increasing day by day, the cross-listing of assets also plays a remarkable role in this, which allows the investors to go global and also helps the investors from the emerging stock market like India to go to the developed stock exchange, i.e., U.S. stock market which is less volatile, more stable and securities also give an excellent return (Xuechun et al., 2020).

The study conducted by Saxena, (2006) supports the investment in Indian ADRs by giving the risk premia reward and trend for political and reasons for investment. The studies conducted by Amary & Ottoni (2005); Bhatnagar & Khan, (2015); Hansda & Ray, (2003); M.Punitham, (2015); Schaub & Simmons, (2020) also support the idea of investment in ADRs due to its high return and stability of developed stock markets. The global equity ADR report also stated returns as a key factor for attracting the investors to the ADRs investing (Harding Loevner, 2020).

However, on the other hand, the research conducted by several past researchers like Beckmann & Ngo, (2020), Dania & Verma, (2007); Foerster & Karolyi, (1999); Raj, (2012); Samant & Korth, (1999); Visalakshmi et al., (2016) showed a significant adverse risk associated with the investment in ADRs like political risk, integration of stock markets, price diffusion and, exchange rate risks. Tong et al., (2022) in their study examined the importance of dividend yields and stock repurchase ratio at the time of investing in the ADRs and also compared the performance of ADR firms to the non- ADR issuing firms.

It was observed that the previous studies gave confusing results and did not explain much about positive aspects of investment in ADRs in a detailed manner. While most of the research provides the negative aspects of the ADRs (Dollani, 2019; Grossmann & Ngo, 2020), there is a positive side to investing in ADRs. Thus, the study has been undertaken to ascertain the movement of ADRs concerning the market and the earning efficiency of their shares and to bridge the gap between positive aspects of ADRs in terms of returns and fundamentals of the companies. The present study undertakes the following objectives:

- To ascertain the efficiency of the shares of selected ADRs.
- To identify Indian ADRs as an innovative global investing tool.
- To examine the movements of selected Indian ADRs concerning the US market.

> **ADRs are traded similarly to domestic securities since they are traded on national stock markets or the over-the-counter market.**

Data and Methodology

Data Type and Source – The present study is based on secondary data. The ADRs listing information is collected from NASDAQ, NYSE, and investing.com. The financial data of companies taken from their respective annual reports, and the Prowess database has been used to extract the information. Relevant books have been consulted to build the conceptual framework, and research articles were also consulted to make the theoretical background for the study.

Sample Selection – The study sample comprises level 2 and 3 ADRs of 7 major Indian companies listed on NYSE and NASDAQ. The companies have been selected based on their market capitalisation because they influence investors' decisions. Thus these 7 companies are chosen based on their market capitalisation displayed in NYSE and NASDAQ exchanges retrieved on 26/01/2022.

> **"Unsponsored ADRs are produced at the request of American brokerage companies, with no involvement from foreign corporations."**

Sample Period – Data for Earning per share is collected for the financial year 2020-2021 because the investors decide based on the latest EPS. The ADR price data for the return calculation is taken from 2020 to 2021 for 1-year return and years ranging from 2018-2019 to 2020-2021 to analyse 3-year return.

Data Analysis Tool – The data have been analysed using different financial tools like ratio and, percentage. Further, the statistical tools mean, variance and, covariance are also used. The daily closing price of the ADRs is used to calculate the return as it is assumed that the closing price is the sensation of the complete day. Earnings per share, price to earnings ratio and a beta of the ADRs are considered, which are factors that help the investors decide on investment.

Methodology – In the present study, the beta value is calculated for the ADRs of each selected country to ascertain the movement of ADRs in terms of markets. EPS and P/E Ratio are calculated to check the stability of these ADR in a long time to help the investors in decision making.

Results and Discussion

The relevant data of selected companies have been analysed, keeping the study's objective in mind. First of all, market capitalisation of the selected ADRs have been calculated to ascertain the company's worth determined by the stock market.

Here, Market Capitalisation of Company = Market Price of the share × Shares Outstanding

Market capitalisation is a helpful statistic in choosing which companies you are interested in and diversifying your portfolio with firms of various sizes.

Companies are classified based on their market capitalisation as:

Large-cap Firms - $10 billion or more

Mid-cap Firms - $2 billion to $10 billion

Small-cap Firms - $300 million to $2 billion

Table 1 shows the mid-cap and large-cap firms based on their market capitalisation. Among the below mentioned firms, all except one are large-cap where the value of market capitalisation lies between 9.72 to 108.45 billion.

Table 2. lists the companies based on their revenues, 15.540 billion being the highest and 2.730 billion being the lowest.

Table 1. Major Indian ADRs with a market capitalisation (as on 26/01/2022)

Name of ADRs	Market Capitalisation (in billion)
Infosys Ltd.	96.25
ICICI Bank Ltd.	74
Wipro Ltd.	41.20
HDFC Bank Ltd.	108.45
Tata Motors Ltd.	12.33
Reddy's labs Ltd.	9.72
Vedanta Ltd	51.59

Source: ADR prices (nasdaq.com)

Table 2. Major Indian ADRs with Revenue (as on 31/03/2021)

Name of ADRs	Revenue (in billion)
Infosys Ltd.	15.540
ICICI Bank Ltd.	10.040
Wipro Ltd.	10.010
HDFC Bank Ltd.	10.450
Reddy's labs Ltd.	2.730
Vedanta Ltd	5.37

Source: Annual report of companies (2021)

For checking the efficiency of the ADRs for these companies, the EPS and P/E ratio is calculated.

EPS = Net Income - (Preferred Dividend)/ Shares Outstanding

P/E Ratio = Market Price of the Share / EPS

EPS and P/E ratios are the two most essential tools for a stock's valuation and help investors in deciding the valuation of stocks in terms of overvalued and undervalued.

Earnings per share is an important metric to look at when assessing a company's financial performance on an absolute scale. It is also a big aspect of figuring out the price-to-earnings (P/E) ratio. A stock's worth may be computed by dividing its stock price by its profits per share to see how much the market is willing to pay for each dollar of earnings. Because it reflects how much money a company makes for each share of its stock, EPS is an often-used measure for determining corporate value. If investors feel a company's profits are greater than its share price, they will pay more for its stock; hence, a higher EPS indicates better value. Table 3 shows that the highest EPS is 3.9 followed by 2.38 indicating that these companies are attractive to investors and show these firms' better value.

A higher Price-to-earnings ratio indicates that a company's stock is overvalued or that investors anticipate higher future growth rates. A low P/E ratio might suggest that its present stock price is undervalued compared to earnings. The highest P/E ratio belongs to the health care sector which when compared to other companies' ADRs, shows that the investor's expectations are higher from this company. Covid-19 can also be one of the reasons for the higher P/E ratio for this company. Despite of the highest EPS, the automobile sector has the lowest P/E ratio which shows the lower expectation of investors to the future growth of ADRs in this segment.

Table 3. Major Indian ADRs earning per share (as on 26/01/2022)

Name of ADRs	EPS	P/E Ratio
Infosys Ltd.	0.68	32.12
ICICI Bank Ltd.	0.81	24.81
Wipro Ltd.	0.3	24.05
HDFC Bank Ltd.	2.38	27.39
Tata Motors	3.9	8.43
Reddy's Labs Ltd.	1.57	35.42
Vedanta Ltd	1.63	10.13

Source: Prowess Database (retrieved on 26/01/2022)

The next objective focus is on ADRs as an innovative investment tool. The last year's return and the return for the past three years are being calculated. Returns for all the companies have been positive in the past three years, showing excellent returns, which show why the ADRs are one of the most innovative tools for global investment.

Table 4. Major Indian ADRs returns (on 31/12/2021)

Name of ADRs	1 Year Return	3 Year Return
Infosys Ltd.	28.52%	117.44%
ICICI Bank Ltd.	41.83%	111.96%
Wipro Ltd.	17.59%	86.31%
HDFC Bank Ltd.	-7.34%	36.34%
Tata Motors	70.79%	154.73%
Reddy's labs Ltd.	14.01%	57.36%
Vedanta Ltd	83.54%	49.05%

Source: ADR prices (nasdaq.com)

To explore the movement between Indian ADRs regarding the U.S. market, we have calculated the beta value for each ADR.

Here, the beta is calculated as $\beta i = Covariance(r_i, r_m)/Variance(r_m)$

r_i = return on an asset i

r_m = average rate of return on the market

Covariance measures how the stock moves together, while variance measures the relative movement of the stock from its mean. The stock whose movement is more than the market has a greater beta of more than 1, while stocks that move less than the market have less than 1. High beta stocks are riskier and provide better and higher returns while stock with low beta poses less risk and gives a lower return. That is why the beta is an essential measure while examining the risk-return ratio because it helps investors to determine the balance. Table 5. shows the beta value of ADRs in terms of the U.S. market. Tata Motors has the highest beta value, i.e., 1.9, which shows that Tata Motors poses a higher return in terms of the market. It is observed with the return table, followed by Vedanta Ltd. and ICICI Bank, whose Beta value is also greater than 1 representing higher volatility and better return compared to the market. Reddy's Lab has the lowest beta among all i.e., 0.56 showing that the stock is less volatile concerning the market and possesses a lower return.

Table 5. Beta Value of ADRs (as on 26/01/2022)

Name of ADRs	Beta
Infosys Ltd.	0.95
ICICI Bank Ltd.	1.06
Wipro Ltd.	0.84
HDFC Bank Ltd.	0.73
Tata Motors	1.9
Reddy's labs Ltd.	0.56
Vedanta Ltd	1.8

Source: Prowess Database (retrieved on 26/01/2022)

Conclusion

The present study finds the ADRs to be an innovative instrument for global investing. The returns of the ADRs are significantly positive and gave an excellent return in the past one year and the past three years despite the stock market shock due to Covid-19. In the past three years, Tata Motors, Infosys, and ICICI Bank ADRs had given exceptional returns, making it a lucrative asset in global investing. The movement of ADRs concerning the US market is also an essential criterion for knowing the volatility. Beta value helps the investors to make an alignment between the risk and reward. ADRs having more than one beta, are risky and gives investors a chance for higher returns than the market.

> **"ADRs are a safe and innovative investment avenue for the investors for global investing."**

In contrast, ADRs having a less beta are less volatile and gives safer and likely low returns. While diversifying the portfolio, investors also decide whether to invest in Large-Cap, Mid-Cap, or Small-Cap companies. Apart from Reddy's Labs Ltd., a mid-cap firm based on its market capitalisation, all other companies are large-cap. EPS and P/E ratios are essential criteria for the company's stock valuation and profitability measurement and help the investors decide whether to invest in a particular company. It is found in the study that Tata Motors and HDFC Bank have the highest EPS, i.e., 3.9 and 2.38, respectively, showing that these companies are attractive to investors and shows the better value of these firms. Reddy's Lab has the highest P/E ratio compared to other companies' ADRs, indicating that the investor's expectations are very much higher from this company. Covid-19 can also be one of the reasons for the higher P/E ratio for this company, followed by Infosys, ICICI Bank, Wipro and HDFC Bank. Tata Motors has the lowest P/E ratio despite the highest EPS, showing the lower expectation of investors to the future growth of ADRs as the company deals with Automobile's segment.

Thus, it can be concluded with the analysis and above discussion that the ADRs are a safe and innovative investment avenue for the investors for global investing. As in the study, the included variables are Market Capitalisation, Revenue, EPS, P/E ratio, and Beta value, which are important criteria for deciding while investing in a particular asset. But some limitations of the present study, without which the discussion is incomplete, must also be reported. There are many factors apart from the companies' financials and market fluctuations responsible for volatility in ADRs, i.e., exchange rate fluctuations, political risk, and underlying stock prices movements. Thus, addressing these issues will help to further improve the results.

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Non-compliances observed in the Ind AS Financial Statements pertaining to Components of Profit and Loss

Contributed by the Financial Reporting Review Board of the ICAI. Comments may be sent to frrb@icai.in and eboard@icai.in

Financial Statements are the paramount source in the hands of the stakeholders to understand the financial well-being of an enterprise. The users are highly reliant on the information presented in the financial statements and therefore the preparers ought to ensure that it is correct, complete, relevant and adhere to the applicable regulatory requirements.

Financial Reporting Review Board (FRRB) reviews the General Purpose Financial Statements (GPFS) of enterprises with the view to identify the non-compliances with Accounting Standards/ Ind AS and Standards of Auditing, CARO, Companies Act, and other applicable statutory requirements. The non-compliances observed by the Board are compiled and published under the name of ''Study on Compliance with Financial Reporting Requirement''. Till date, three volumes of the aforesaid publication have been released by the Board. Further, one more publication on "Study on Compliance of Financial Reporting Requirements (Ind AS Framework)" has been released for preparers and auditors of the Ind AS financial statements. In addition, the Board publishes such non compliances observed by way of articles in the *Chartered Accountant Journal* of the Institute.

This article is in furtherance of the FRRB's endeavour to update the members and other stakeholders in the field of financial reporting. It may be noted that in this article, the observations related to Ind AS framework have been classified on the basis of components of financial statements i.e., Assets, Equity, Liabilities for Balance Sheet and revenue, interest income, employee benefits etc. for Statement of Profit and Loss and likewise. This article deals with the non-compliances, observed by the Board, with regard to Components of Statement of Profit and Loss which is an important element for Ind AS financial statements.

Observations related to Components of Statement of Profit and Loss

Employee Benefits – PF Contribution to a Trust

Case

Accounting policy of a company on Employee benefits read as follows:

"Defined Contribution Plans such as Provident Fund etc., are charged to the Statement of Profit and Loss Account as incurred. Further for certain employees, the monthly contribution for Provident Fund is made to a Trust

administered by the Company. The interest payable by the Trust is notified by the Government. The Company has an obligation to make good the shortfall, if any."

Principle: Ind AS 19, Employee Benefits

Paragraph 8 – Definitions

"**Defined contribution plans** are post-employment benefit plans under which an entity pays fixed contributions into a separate entity (a fund) and will have no legal or constructive obligation to pay further contributions if the fund does not hold sufficient assets to pay all employee benefits relating to employee service in the current and prior periods.

Defined benefit plans are post-employment benefit plans other than defined contribution plans."

Observation:

It was noted from the stated accounting policy on employee benefits that under defined contribution plans such as provident fund, the company has an obligation to make good the shortfall, if any.

As per the definition of defined contribution plans, employer's liability to the employee is limited to the amount of contribution and has no further obligation to pay beyond agreed contribution. Further, as per the definition of defined benefit plans, employer's liability to the employee is not limited to the amount of contribution and may extend further to pay beyond agreed contribution.

Accordingly, it was viewed that if the company has an obligation to make good any shortfall, the said plan cannot be considered as defined contribution plan as per Ind AS 19.

> **"This article deals with the non-compliances, observed by the Board, with regard to Components of Statement of Profit and Loss which is an important element for Ind AS financial statements."**

Borrowing Cost

Case

Note to the financial statements of a company on Fair Value reads as follows:

"Amount due to/from related companies, approximate their fair values as the interest rates charged to / by related companies are approximately equivalent to interest rate prevailing in the market or re-priced regularly."

From the Related Party Disclosure, it was noted that the amount due to related party pertaining to loan was disclosed in current year as well as in previous year.

Principle: Ind AS 32, Financial Instruments

Paragraph 31-32 of Ind AS 32:

"31.

…when the initial carrying amount of a compound financial instrument is allocated to its equity and liability components, the equity component is assigned the residual amount after deducting from the fair value of the instrument as a whole the amount separately determined for the liability component. …The sum of the carrying amounts assigned to the liability and equity components on initial recognition is always equal to the fair value that would be ascribed to the instrument as a whole. No gain or loss arises from initially recognising the components of the instrument separately."

32.

… first determine the carrying amount of the liability component by measuring the fair value of a similar liability that does not have an associated equity component. The carrying amount of the equity instrument is then determined by deducting the fair value of the financial liability from the fair value of the compound financial instrument as a whole."

Observation:

It was observed that the company has not accounted for any borrowing cost (whether expensed or capitalised) in the current year as well as in the previous year. In such a case, there may be two possibilities:

(a) Borrowing from Related Party is Interest bearing:

In this case, the company has not accounted for the **borrowing cost** on such borrowing availed throughout the current year as well as previous year.

(b) Borrowing from Related Party is Interest free:

In this case, the company has not classified borrowing as **Compound Financial Instrument** in accordance with Ind AS 32. Further, according to paragraphs 31 and 32 of Ind AS 32**,** loan would include components of both Equity and Financial liability. These components should be separately recognised and accounted for in the financial statements.

Considering the above, it was viewed that the requirements of Ind AS 32 have not been complied with.

Provision for Expected Credit Loss

Case

Under note on Trade Receivables, no provision was created for doubtful trade receivables.

Principle:-Ind AS 109, Financial Instruments

Paragraph 5.5.7 of Ind AS 109, Financial Instruments – Recognition of Expected Credit Losses

"If an entity has measured the loss allowance for a financial instrument at an amount equal to lifetime expected credit losses in the previous reporting period, but determines at the current reporting date that paragraph 5.5.3 is no longer met, the entity shall measure the loss allowance at an amount equal to 12-month expected credit losses at the current reporting date.

Paragraph 5.5.8 of Ind AS 109, Financial Instruments – Recognition of Expected Credit Losses

"An entity shall recognise in profit or loss, as an impairment gain or loss, the amount of expected credit losses (or reversal) that is required to adjust the loss allowance at the reporting date to the amount that is required to be recognised in accordance with this Standard."

Division II to the Schedule III to the Companies Act

Paragraph 6B III (ii) of General Instruction for the Preparation of Balance Sheet:

"(ii) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.""

Observation:

It was noted from the note on trade receivables that the trade receivables have been shown as doubtful. It was viewed that when trade receivables are shown as doubtful, the company shall disclose the amount of credit loss that is expected on those receivables.

As per Ind AS 109, the company is required to recognise a loss allowance (i.e., Impairment) for expected credit losses on financial assets including trade receivables. Loss allowance is presented as separate line item as deduction from gross carrying amount of trade receivable. It was noted that the provision for expected credit loss has not been created for doubtful trade receivables.

Accordingly, it was viewed that the requirements of Ind AS 109 as well as Division II to the Schedule III to the Companies Act, 2013 have not been complied with.

Foreign Exchange Difference

Case

Accounting policy of a company on Foreign Exchange Transaction and Translation read as follows:

"Exchange differences on monetary items receivable from or payable to a foreign operation for which settlement is neither planned nor likely to occur (therefore forming part of the investment in the foreign operation), are recognised initially in other comprehensive income (OCI) and reclassified from equity to the statement of profit and loss on repayment of the monetary items."

Principle: Ind AS 21, The Effects of Changes in Foreign Exchange Rates

Paragraph 32 – Recognition

"….. In the financial statements that include the foreign operation and

the reporting entity (e.g., consolidated financial statements when the foreign operation is a subsidiary), such exchange differences shall be recognised initially in other comprehensive income and reclassified from equity to profit or loss on disposal of the net investment in accordance with paragraph 48."

Observation:

It was noted from the stated accounting policy that the exchange difference on monetary items related to foreign operations are initially recognised in OCI and reclassified from equity to Statement of Profit and Loss on repayment of monetary items.

It was viewed that as per paragraph 32 of Ind AS 21, reclassification from equity to statement of Profit and Loss should have been made on disposal of net investment instead of reclassifying the same on repayment of the monetary items.

Accordingly, it was viewed that the requirements of Ind AS 21 have not been complied with.

Gain/ Loss on Mark to Market (MTM) transactions

Case

Abstract of accounting policy of a company on Sale of securities read as follows:

"Gain/loss from trading in derivatives has been recognised only upon settlement of trade. The Mark to Market margins have not been charged to revenue."

Principle: Ind AS 109, Financial Instruments

Paragraph 4.1.4– Classification of financial assets

"A financial asset shall be measured at fair value through profit or loss unless it is measured at amortised cost in accordance with paragraph 4.1.2 or at fair value through other comprehensive income in accordance with paragraph 4.1.2A. However an entity may make an irrevocable election at initial recognition for particular investments in equity instruments that would otherwise be measured at fair value through profit or loss to present subsequent changes in fair value in other comprehensive income."

Observation:

It was noted from the stated policy that any gain/ loss from trading in derivatives was recognised only upon settlement. Any gain/ loss on MTM (Marked to market) transactions was also not charged to the Statement of Profit and loss.

As per the requirements of Ind AS 109, all derivatives, other than those parts of hedging, which do not meet the criteria for classification as subsequently measured at Amortised Cost or Fair Value through Other Comprehensive Income (FVOCI) are measured at fair value at each reporting date and all gains and losses are recognised in the Statement of Profit or Loss.

Accordingly, it was viewed that the stated policy of the company is not in line with Ind AS 109.

Interest on prematurity of Fixed Deposits

Case

An abstract of Auditor's Report under CARO read as below:

"viii) In our opinion and according to the information and explanations given to us company has not defaulted in repayment of dues to a financial Institution or bank. During the year under consideration, the bank has charged the company on account of deduction of interest on prematurity of FDRs, which stands included under interest expense. The company has not issued debentures."

Principle: Guidance Note on Division II- Ind AS Schedule III to the Companies Act, 2013

Paragraph 9.1.8 of Guidance Note on Division II – IND AS Schedule III to the Companies Act, 2013

"The term "other operating revenue" is not defined. This would include Revenue arising from a company's operating activities, i.e., either its principal or ancillary revenue-generating

activities, but which is not revenue arising from sale of products or rendering of services. Whether a particular income constitutes "other operating revenue" or "other income" is to be decided based on the facts of each case and detailed understanding of the company's activities."

Observation:

It was noted from the CARO report of the company that deduction of interest on pre-maturity of fixed deposits was included in the finance cost. **It was viewed that the deduction of interest income on prematurity of fixed deposits should not have been accounted as finance cost, rather the interest income should not be recognised to the extent of the deduction**.

It was viewed that interest income on fixed deposits should have been shown under other income or other operating income based on the related facts of the entity.

Accordingly, it was viewed that the above stated requirements of Guidance Note on Division II – Ind AS Schedule III to the Companies Act, 2013 have not been complied with in preparation and presentation of the financial statements.

Prior Period Items

Case

In the note to the financial statements of a company on Other Expenses, Prior period items were shown during the current year and comparative year. Further, the disclosures regarding prior periods were not found in the financial statements. It was further noted that this is the entity's first Ind AS financial statement.

Principle: Ind AS 8, Accounting Policies, Changes in Accounting Estimates and Errors

Paragraph 42 – Errors

"Subject to paragraph 43, an entity shall correct material prior period retrospectively in the first set of financial statements approved for issue after their discovery by:

a) restating the comparative amounts for the prior period(s) presented in which the error occurred; or

b) if the error occurred before the earliest prior period presented, restating the opening balances of assets, liabilities and equity for the earliest prior period presented."

Paragraph 49 – Disclosure of prior period errors

"In applying paragraph 42, an entity shall disclose the following:

a) the nature of the prior period error;

b) for each prior period presented, to the extent practicable, the amount of the correction:

(i) for each financial statement line item affected; and

(ii) if Ind AS 33 applies to the entity, for basic and diluted earnings per share;

c) the amount of the correction at the beginning of the earliest prior period presented; and

d) if retrospective restatement is impracticable for a particular prior period, the circumstances that led to the existence of that condition and a description of how and from when the error has been corrected.

Financial statements of subsequent periods need not repeat these disclosures."

Observation:

It was noted that the prior period items have been disclosed under the head of 'Other expenses'. It was viewed that as per Ind AS, prior period items should be adjusted either by restating the comparative amounts for the period in which error occurred or restating the opening balances of assets, liabilities and equity for the earliest prior period presented.

In the given case, it was viewed that the company has not corrected the prior period errors retrospectively in its first set of Ind AS financial statements. Further, the disclosures as required under paragraph 49 have also not been made in the financial statements.

Accordingly, it was viewed that the requirements of Ind AS 8 have not been complied with. ■■■

Reference

ACCOUNTANT'S BROWSER

PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE

Index of some useful articles taken from Periodicals received during July - August 2022 for the reference of Faculty/Students & Members of the Institute.

1. Accountancy

Ind AS/IGAAP- interpretation and practical application: Accounting of warrants issued by subsidiary to parent by Dolphy D'Souza. *Bombay Chartered Accountant Journal*, July 2022, pp.103-104.

2. Auditing

Interplay of schedule III and caro – Key implementation challenges for preparers of financial statements and auditors by Deepa Agarwal. *Bombay Chartered Accountant Journal*, July 2022, pp.50-55.

3. Economics

Economic models of price competition between traditional and online retailing under showrooming by Subrata Mitra. *Decision*, Volume 49 (part1-2), pp.29-63.

Self – financialisation and the qualitative shifts in engineering education in Kerala: Exploring the Political Economy of its quantitative expansion by Manu V Mathew. *Economic & Political Weekly*, July 23, 2022, pp.53-59.

Trade credit and bank credit: Impact of Macroeconomic policy interventions by Ramesh Bhat and Samveg Patel. *Economic & Political Weekly*, July 30, 2022, pp.44-51.

4. Investment

Electronification of FX Markets – Trends in India. *RBI Bulletin*, July 2022, pp.161-170.

Social stock exchange of India: From commerce to conscience by Trisha Shreyashi. *Chartered Secretary*, July 2022, pp.105-112.

5. Management

Analysing the efficacy of governance professionals in ensuring good corporate governance practices by Puzhankara Sivakumar, Raveendrananth K and Anju Panicker. *Chartered Secretary*, July 2022, pp.64-68.

How to turn a supply chain platform into an innovation engine lessons from haier by Kasra Ferdows, Hau L.Lee and Xiande Zhao. *Harvard Business Review*, July – August 2022, pp.127-133.

Understanding influence of supply chain relationships in retail channels on risk manangement by Arisa Shaikh and Waqar Ahmed. *Decision*, March 2022, pp.153-176.

6. Taxation and Finance

Analysis of recent changesin GST – Based on the recommendations of 47th GST council meeting by Dhruvank Parikh. *Goods & Services Tax Cases*, August 2-8, 2022, pp.17-42.

Recent amendments in taxation of charitable trusts by P.N. Shah. *Bombay Chartered Accountant Journal*, July 2022, pp.69-75.

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.

Classifieds

5918 32 year old Firm Headquartered in Delhi NCR invites proposal for merger with sole proprietorship or partnership firms. Mail with brief profile to sangeeta.pgc@gmail.com or call 9811278153

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5920 Mumbai based FCA CoP Age 70, 46 years' experience in Industry & Practice Seeks professional work on Partnership/Retainer basis at Mumbai harshadshah1953@yahoo.com

5921 Required Partners and qualified assistants from Chennai, Telangana, Lucknow, Ranchi, Patna and Jamshedpur. Please Contact email: bk1ckdk@gmail.com

5922 Gujarat headquartered 42 year old firm wishes to open branches in Tamil Nadu, Kerala, Punjab, Andhra Pradesh, Assam, Orissa & WB. Contact: firm.rkdoshi@gmail.com

5923 We are 11 year old Professional Practice; looking for Firms who are interested to officially merge with us. Please mail: firms@shahteelani.com

5924 Hyderabad based CA firm with experience of 33 years in practice require partners/paid CAs for Bangalore, Tirupati, Visakhapatnam and at Gacchibowli, Hyderabad. Contact details M. Devaraja Reddy 8008357999 email id: cadevanna@gmail.com

Crypto regulation needs to be global, says FM Nirmala Sitharaman

Any legislation to regulate or ban cryptocurrencies can be effective only if it is globally coordinated, finance minister Nirmala Sitharaman said in a sign that immediate prohibition of the intangible digital tokens is not on the government's agenda.

The Reserve Bank of India (RBI) had suggested that the government formulate a piece of legislation on cryptocurrencies and "prohibit" them, citing their "destabilising effect" on the monetary and fiscal stability, Sitharaman told Parliament. The government, however, thinks that for any regulation or ban on cryptocurrencies to be effective, a global strategy needs to be firmed up first.

https://www.financialexpress.com/digital-currency/crypto-regulation-needs-to-be-global-says-fm-nirmala-sitharaman/2598217/

New RBI rules: Safety net for borrowers of digital loans via online platforms, mobile apps

The Reserve Bank of India (RBI) has rolled out a new regulatory framework for digital lending. The set of regulations is applicable to any lending service providers (LSP) that these entities work with as well as the entities that the banking regulator regulates.

When the banking authority issued a directive to non-banking fintech companies in June of this year that the prepaid payment instruments master directions do not permit the loading of prepaid payment instruments from credit lines, everything got started. And it had an instant effect. As opposed to 5-7 lakh in May, these companies now only issue less than one lakh new prepaid cards per month.

It is crucial to note that the Reserve Bank established a Working Group on "Digital Lending," which includes lending through online platforms and mobile apps, on January 13, 2021. (WGDL). And after a number of proposals from various stakeholders were included into the working group, these rules were born.

https://www.dnaindia.com/personal-finance/report-new-rbi-rules-safety-net-for-borrowers-of-digital-loans-via-online-platforms-mobile-apps-2976990

Centre to amend Companies Act, tighten audit regime soon

The ministry of corporate affairs will soon introduce a set of tough measures to tighten the framework of statutory auditors aimed at ensuring their independence. The measures are aimed checking the recurrence of situations such as the 2018 failure of Infrastructure Leasing and Financial Services Ltd. (IL&FS) group firms.

The ministry has completed consultation on a report on audit reforms submitted to finance and corporate affairs minister Nirmala Sitharaman in March by an expert committee. The drafting of a bill to amend the Companies Act will start now, said a person familiar with the discussions in the government, indicating the government's resolve to raise the bar on statutory audit.

Audit reforms will now become a priority for the ministry as reforms in other areas have reached an advanced stage—a bill on amendments to the Competition Act has already been introduced in Parliament and work is at an advanced stage on bankruptcy reforms.

https://www.livemint.com/companies/news/centre-to-amend-companies-act-tighten-audit-regime-soon-11660587640580.html

11% growth over next decade could make India world's second largest economy by 2031: RBI Deputy Governor

"Currently, India is the third largest economy in the world in PPP terms, with a share of 7% of global GDP after China and the U.S.," says Michael Debabrata Patra.

If India achieves a growth rate of 11% into the next decade, it would become the second largest economy in the world not by 2048 as projected earlier, but by 2031, said Michael Debabrata Patra, Deputy Governor, Reserve Bank of India (RBI).

"Even if it does not sustain this pace and slows to 4-5% in 2040-50, it will become the largest economy of the world by 2060 [surpassing China]," Dr. Patra said while speaking at an event to celebrate Azadi Ka Amrit Mohotsav organised by the RBI in Bhubaneswar.

Observing India's progress in a cross-country setting, he said today, **India was the world's sixth largest economy** in terms of market exchange rates.

"Noteworthy is the age of Japan which started in the 1960s and lasted through 1970s and 1980s. The

NATIONAL UPDATE

age of China began in the early 1990s, taking it to the position of the second largest economy of the world. It is from 2015 that India's time seems to be arriving," he said.

https://www.thehindu.com/business/Economy/achieving-11-growth-rate-in-next-decade-possible-if-india-capitalises-on-demography-manufacturing-exports-patra/article65765440.ece

Govt, RBI moves help banks recover Rs 8.6-trn bad loans in last 8 fiscals

Concrete steps taken by the government and RBI helped banks recover bad loans worth over Rs 8.6 lakh crore in the last eight financial years, the government informed Parliament.

Minister of State for Finance Bhagwat Karad in a written reply to the Lok Sabha said the occurrence of non-performing assets (NPAs) is normal, although an undesirable, corollary to the business of banking.

Several factors -- including prevailing macroeconomic conditions, sectoral issues, global business environment, delayed recognition of stress by banks, aggressive lending during upturns, improper risk pricing and poor credit underwriting -- are attributed towards NPA build-up, he said.

"Government and RBI (Reserve Bank of India) regularly issue guidelines and have taken several initiatives aimed at resolution of long-standing stressed assets on the books of banks as well as timely identification and recognition of stress immediately upon default and take corrective action for mitigation of the same," Karad said.

https://www.business-standard.com/article/finance/govt-rbi-moves-help-banks-recover-rs-8-6-trn-bad-loans-in-last-8-fiscals-122071800795_1.html

60% of CSR spend on education, healthcare and rural development in last seven years: Govt

At least 60 per cent of the total CSR funds spent by companies in the last seven financial years were in the areas of education, healthcare and rural development- related activities.

In a written reply to the Lok Sabha, the corporate affairs ministry said that during the period, around 33 per cent of the total CSR amount spent by companies were in Maharashtra, Karnataka, Gujarat, Andhra Pradesh and Tamil Nadu.

"An analysis of CSR data during the period 2014-15 to 2020-21, reveals that around 33 per cent of the total CSR spent by the companies is in the states of Maharashtra, Karnataka, Gujarat,Andhra Pradesh and Tamil Nadu. Similarly, around 60 per cent of the total CSR spent by the companies is in the areas of education, healthcare and rural development related activities," he said. Under the Companies Act, 2013, a certain class of profitable companies have to earmark at least two percent of their three year annual average net profit towards CSR (Corporate Social Responsibility) activities in a particular fiscal year.

https://timesofindia.indiatimes.com/business/india-business/60-of-csr-spend-on-education-healthcare-and-rural-development-in-last-seven-years-govt/articleshow/92969207.cms

INTERNATIONAL UPDATE

IFAC calls on global business leadership to drive trust and sustainable value creation by championing an "integrated mindset"

Functional and information silos within organizations are barriers to delivering high-quality sustainability-related information, which is necessary for decision making and trustworthy corporate reporting. Boards and CEOs are turning to CFOs and finance functions to break down these silos and to drive connectivity between sustainability and financial information and processes, thereby creating a critically important "integrated mindset."

At its core, an integrated mindset is about improving the quality of sustainability information and processes and connecting these to financial reporting and the value of the business. This leads to better decision making and communication with stakeholders, and consequently to reduced risk and cost of capital, as well as growth opportunities.

The CFO and finance function are essential facilitators of an integrated mindset given their expertise in connecting and prioritizing information—both financial and sustainability-related—into a more integrated corporate reporting process that provides an accurate

picture of performance and value creation to the organization, its investors, and other stakeholders.

https://www.ifac.org/news-events/2022-06/ifac-calls-global-business-leadership-drive-trust-and-sustainable-value-creation-championing

USAID Joins IFAC, The Global Fund, and Gavi in Efforts to Strengthen Public Financial Management in the Public Health Sector

USAID (United States Agency for International Development) has joined the International Federation of Accountants (IFAC); The Global Fund to Fight AIDS, Tuberculosis and Malaria; and Gavi, the Vaccine Alliance, in signing a Memorandum of Understanding (MOU) to support in-country financial management. The agreement supports programming for local accountancy and finance professionals and efforts to improve financial transparency, accountability, and anti-corruption efforts in the public health sector.

The MOU supports continued donor collaboration, the importance of which was emphasized during the COVID-19 pandemic, and the need for accountability and transparency on the use and stewardship of funds. The partnership between IFAC, USAID, The Global Fund, and Gavi demonstrates a shared commitment to strengthening public financial management globally. Through this agreement, USAID, IFAC, the Global Fund, and Gavi seek to strengthen accountancy and financial professionals' expertise and help close the gaps in accountancy skills in implementing countries, which can impact the reliability and effectiveness of managing and disbursing funds. The MOU builds on a 2011 agreement and aims to optimize the joint efforts of global partners to maximize the performance of investments and support the sustainability of health programs.

Ultimately, this partnership will help improve the integration of donor investments into country systems, strengthen internal controls to reduce fiduciary and financial risks, enhance absorption of grants, and produce greater impact.

https://www.ifac.org/news-events/2022-06/usaid-joins-ifac-global-fund-and-gavi-efforts-strengthen-public-financial-management-public-health

New Implementation Guide Available for Identifying and Assessing the Risks of Material Misstatement in an Audit of Financial Statements

The International Auditing and Assurance Standards Board (IAASB) released its *First-Time Implementation Guide for ISA 315 (Revised 2019), Identifying and Assessing the Risks of Material Misstatement*. The guide focuses on the more substantial changes that were made to International Standard on Auditing (ISA) 315 (Revised 2019) and will help stakeholders understand and apply the revised standard as intended.

ISA 315 (Revised 2019) is effective for audits of financial statements for periods beginning on or after December 15, 2021. This publication does not amend or override ISA 315 (Revised 2019), the text of which alone is authoritative. Reading this publication is not a substitute for reading the standard.

https://www.iaasb.org/news-events/2022-07/new-implementation-guide-available-identifying-and-assessing-risks-material-misstatement-audit

IAASB proposes narrow scope Amendments to operationalize changes to the IESBA Code that enhance transparency about Independence

The International Auditing and Assurance Standards Board (IAASB) released proposed narrow scope amendments to International Standard on Auditing 700 (Revised), *Forming an Opinion and Reporting on Financial Statements* and ISA 260 (Revised), *Communication with Those Charged with Governance*. The proposed amendments will help operationalize recently approved changes to the International Ethics Standards Board for Accountants' (IESBA) *International Code of Ethics for Professional Accountants (including International Independence Standards)* related to listed and public interest entities. The changes to the IESBA Code require firms to publicly disclose when the independence requirements for public interest entities have been applied in an audit of financial statements.

"There are heightened expectations about auditor independence for audits of public interest entities. The recent changes to the IESBA Code, reinforced through the IAASB's proposed changes to the ISAs, will enhance transparency to the public about application of independence requirements for audits of financial statements of public interest entities," said IAASB Chair Tom Seidenstein. "This is a further sign of enhanced IAASB-IESBA coordination, a strategic commitment of both boards in our joint effort to better serve the public interest."

https://www.iaasb.org/news-events/2022-07/iaasb-proposes-narrow-scope-amendments-operationalize-changes-iesba-code-enhance-transparency-about

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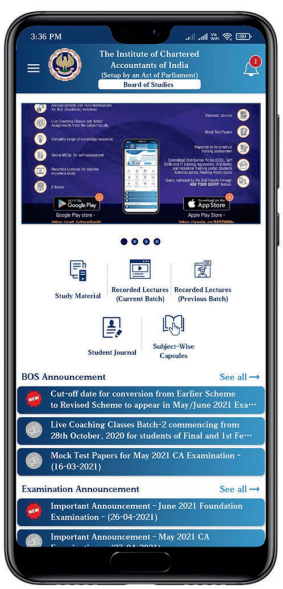

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Legal Decisions

Income Tax

LD/71/20 ITAT Mumbai: ITA No.294/Mum/2022 M/s Cowtown Software Design P. Ltd. Vs. The Dy. Commissioner of Income Tax 22nd July 2022 Income Tax

ITAT held that entire payments made by assessee to digital media advertisement agency fell within the ambit of provisions of sec 194C and not u/s 194J; CIT(A) had confirmed the order u/s 201 and 201(1A) upholding Revenue's stand, against which the assessee preferred an appeal before the ITAT; ITAT noted that the assessee made payment to the ad agency in accordance with the agreement entered between Assessee and the Ad agency, whereby the Ad agency would act as digital media agency while providing various services such as e-mail services, web management, etc.; ITAT held that the concerned payment, constituted the payment made for carrying out any "work" falling within the ambit of provisions of Section 194C.

LD/71/21 ITAT Chennai: ITA No.139/Chny/2020 M/s Maxivision Eye Hospital P. Ltd. Vs. The Dy. Commissioner of Income Tax 22nd July 2022 Income Tax

ITAT held that no disallowance can be made u/s 14A r.w.r 8D(2) where the Assessee had not earned any exempt income; ITAT held that amendment to Section 14A made by the Finance Act, 2022 is prospective in nature, thus not applicable to the present case; Revenue had disallowed Rs.32.06 Lacs under Section 14A being interest expenses and administrative expenses of Rs.3.50 Lacs at 0.5% of average value of investment; ITAT relied on Delhi HC ruling in Era Infrastructure, wherein it was held that the amendment of Section 14A, which is "for removal of doubts" cannot be presumed to be retrospective, if it alters or changes the law as it earlier stood; Memorandum of the Finance Bill, 2022 explicitly stipulates that the amendment to Sec 14A will be effective from 01/04/2022.

LD/71/22 ITAT Mumbai: ITA No. 612/Mum/2022 Meghana Apartment Cooperative Housing Society Ltd. Vs. The Income Tax Officer 20th July 2022 Income Tax

ITAT directed revenue to delete disallowance made regarding deduction under Section 80P; Revenue denied deduction u/s 80P claimed by Assessee-Cooperative Society in the belated return for AYs 2012-13 to 2014-15; ITAT held that amendment in Section 80AC and Section 143(1) covering Heading C of Chapter VIA is prospective i.e. applicable from Apr 1, 2018 and Apr 1, 2021, respectively; In instant case, assessee has made claim for deduction under Section 80P, hence the provisions of sec. 80A(5) were not applicable to the assessee; The power to disallow deduction under Heading C of Chapter VIA, while processing return u/s 143(1) was only given by Finance Act, 2021 w.e.f. Apr 1, 2021, and accordingly held that Revenue could not have disallowed the deduction claimed by the Assessee u/s 80P, while processing the returns of income u/s 143(1).

LD/71/23 Delhi High Court: ITA No. 204/2012 The Prin. Commissioner of Income Tax. Vs. ERA Infrastructure (India) Ltd. 20th July 2022 Income Tax

Delhi High Court held that amendment to Section 14A by Finance Act, 2022 on disallowance of expenditure in absence of exempt income, is applicable prospectively, despite being inserted for removal of doubts; Amendment cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood; Revenue had challenged Delhi ITAT order deleting disallowance of Rs.3.61 Cr u/s 14A for AY 2013-14 in this case wherein ITAT had held that no disallowance u/s 14A could be made where no exempt income was earned by the Assessee.

LD/71/24 Delhi High Court: W.P. 10740/2022 Seema Gupta Vs. The Income Tax Officer 19th July 2022 Income Tax

High Court remanded the matter back for fresh consideration after setting aside the order u/s 148A(d); Court observed that the issue sought to be reopened was "discussed, deliberated and verified" by the Revenue at the time of original assessment; On the perusal of Section 148A(d) order, Court observed that the Revenue wrongly concluded that the Assessee had not disclosed the sale of property and long term capital gain in the ITR which was, in fact, accepted by the Revenue at the time of original assessment

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.

LD/71/25 ITAT Mumbai: ITA No. 779/Mum/2022 Marvel Industries Limited Vs. The Dy. Commissioner of Income Tax 19th July 2022 Income Tax

ITAT held that CIT(A) is statutorily obliged to dispose of appeal on merits by a speaking order and that non-exercise of right to be heard cannot be a reason enough for the CIT(A) to not deal with the merits and statutory scheme does not provide for summary dismissal of appeal in disregard of the material on record; Scheme of Section 250 does not allow summary dismissal since sub-section (6) warrants CIT(A) to dispose appeal on merits; Right to be heard contained in Section 250(2)(a) is not a condition precedent for the disposal of appeal on merits in accordance with Section 250(6)

LD/71/26 Bombay High Court: Income Tax Appeal No. 82 of 2018 Prin. Commissioner of Income Tax Vs. Kumar Builders Consortium 18th July 2022 Income Tax

Bombay High Court allowed pro-rata deduction under Section 80-IB(10) in respect of eligible residential units in housing project; Revenue disallowed the deduction holding that some residential units had built up area in excess of the limit prescribed in section 80-IB(10)(c), however CIT(A) and ITAT had allowed the deduction by restricting the claim to eligible units not exceeding the limit prescribed in Section 80-IB(10)(c); Words "each residential unit has a maximum built up area…" used in Section 80-IB(10)(c) clearly indicates that the intention of the legislature is to ensure that each and every residential unit which confirms the limit prescribed in Section 80-IB(10) would be eligible for deduction.

LD/71/27 ITAT Mumbai: ITA No. 3009/Mum/2016 Mehta Charity Trust Vs. Dy. Director of Income Tax (Exemptions) 13th July 2022 Income Tax

ITAT held that Revenue was not justified in denying exemption under Section 11 where Trust received premium along with rent, which was alleged to be lower than the market rate from a company, whose promoter was one of the Trustees; Assessee's property was under possession of a Pvt. Ltd. Company in which the trustees were interested, however the company was Assessee's tenant in respect of an area of 2000 sq.ft. from the year 1994, whereas Company's promoter subsequently became the Trustee, in the year 1998; Building under use and occupancy of the tenants was covered under the Rent Control Act, and the Assessee was only eligible to standard rent from the statutory tenants

LD/71/28 ITAT Chennai: ITA No. 1017/Chny/2017 George Oakes Ltd. Vs. The Asst. Commissioner of Income Tax 30th June 2022 Income Tax

ITAT allowed loss on embezzlement discovered in earlier years to be written off in year under consideration, wherein Assessee realised that there was no scope of recovery of the embezzled amount; Meaning of expression 'discovery' about loss, has to be interpreted so as to mean that loss must be deemed to have arisen only when employer comes to know about the embezzlement and realizes that the amount embezzled cannot be recovered and not merely from the date of acquiring knowledge in which that embezzlement has taken place; Assessee, having finally realised that there was no scope of recovery of the said amount either from the accused or from the bank, wrote off the said amount in AY 2008-09.

GST

LD/71/29 [2022-TIOL-57-SC-GST] UOI and Ors vs Filco Trade Centre Pvt. Ltd. 22-07-2022

Hon'ble Supreme Court directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e., w.e.f. 01.09.2022 to 31.10.2022. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed a writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee. GSTN has to ensure that there are no technical glitches during the said time. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting the appropriate reasonable opportunity to the parties concerned. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims.

Legal Update

LD/71/30 [2022-TIOL-1050-HC-DEL-GST] Railsys Engineers Pvt Ltd and Anr Vs Railsys Engineers Pvt Ltd and Anr; 21-07-2022

The extension of limitation granted by the order of the supreme court during the COVID-2019 pandemic in Writ Petition (Civil) No. 3/2020 vide Order dated 10.01.2022 would apply even to the condonable period, and not just to the prescribed period of limitation under Section 107 of the Act.

LD/71/31 [2022-TIOL-1003-HC-KAR-GST] M/s DPJ BIDAR vs UOI and ORS; 11-07-2022

The payment of annuity in lieu of Toll collection rights is exempt under Entry 23A of Notification No.12/2012 CTR and Circular No.150/06/2021-GST dtd.17-06-2021 clarifying that the said annuity (deferred payment) for the construction of roads is not covered under the said exemption entry is bad in law.

LD/71/32 [2022-TIOL-892-HC-MAD-GST] M/S Progressive Stone Works Vs Joint Commissioner (ST); 16-06-2022

High Court declined to exercise writ jurisdiction under Article 226 of the Constitution to set aside the assessment orders raising demands due to a mismatch of ITC in GSTR-2A and ITC claimed by the assessee in GSTR-3B on the ground that the petitioner has an alternative remedy available and that the exceptional circumstances for admitting writ such as where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of a judicial procedure or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice etc were absent in the present case.

LD/71/33 [2022-TIOL-918-HC-AHM-GST] Sreejith K Prop of M/S Sridev Traders Vs State of Gujarat; 24-02-2022

The show cause notice for cancelling the registration by mere incorporation of the relevant ground appearing in the Rules framed thereunder is held as vague and is accordingly set aside. Further order cancelling the registration based on the investigation report of some other officer in some other matter to which neither formed part of show cause notice nor disclosed to the writ applicant, is set aside as being passed in violation of principles of natural justice.

Disciplinary Case

Complaint against Respondent for preparing and filing of forged/ fraudulent documents with ROC due to which the shareholding pattern of the Complainant in the Company drastically reduced –Role of the Respondent limited to filing Forms 32, 5 and 2 and not related to any statutory audit – Respondent merely acted on the basis of documents/papers provided by one of the Directors -- No evidence to show malafides on part of Respondent -- Fit case for extending the benefit of doubt -- Held, Respondent NOT GUILTY of Professional Misconduct falling within the meaning of Clause (2) Part IV of First Schedule and Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949

Held:

In the instant case, the allegation is that the Respondent had prepared and filed forged and fabricated documents of the Company with the help of one of the Directors of the Company due to which the shareholding pattern of the

Complainant was drastically reduced from 67% to a mere 13.4%. The Committee based on the submissions of the parties noted that the role of the Respondent was limited to filing Forms 32, 5 and 2 of the Company. The Respondent was engaged by the Company for said work. In the letter of appointment it had been clearly stated that the Company required the services of the Respondent for filing various Forms, Returns, documents etc. as may be required under compliance of Companies Act, 1956 in the office of RoC. The Committee noted that Form 32 was certified by the Respondent appointing X and Y as additional directors of the Company. It is on record that Mr. Z was authorized by the Board of Director's resolution dated 25/11/2013 to sign and submit said form. Further, there is certified Board Resolution appointing X and Y as additional Directors of the Company. The Committee observed that the Respondent had sufficient evidences with him based upon which he had certified/filed said forms with RoC and there is no negligence on his part. The Committee noted that the Respondent was not the regular auditor of the Company. At the same time , the Committee noted that the RoC filing done by the Respondent had an effect on the share capital structure of the Company and the whole issue was related to the act of the Respondent in filing statutory forms merely on the basis of papers/documents given by Mr. Z, one of the Directors of the Company and thereby coming under a shadow of doubt.

In this context, the Committee noted that no evidence had come on record specifically establishing the mala fide of the Respondent and since the work was not relating to any statutory audit of the Company and pertained only to certifying of certain statutory forms requiring to be done by a professional, the Respondent had acted based on documents/papers provided to him by Mr.Z. Further, in the earlier years too, it was Mr. Z who as the Director was signing the documents of the Company and therefore there was no occasion for him to have any doubt about the papers being submitted to him for certification. Upon consideration of the facts of the case along with the submissions of the Respondent vis-à-vis the documents available, the Committee held that this was a fit case where the benefit of doubt could be extended in favour of the Respondent and thereby decided that the Respondent was not guilty of professional misconduct in respect of allegations alleged against him.

Sh. Girish Jain, Shri Ratnesh K Dayal vs CA. Natwar Lal Sharma [PR-19/14/DD/55/2014/DC/450/2016]

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. *Specifying Forms, returns, statements, reports, orders, by whatever name called, prescribed in Appendix-II to be furnished electronically under sub-rule (1) and sub-rule (2) of Rule 131 of the Income-tax Rules, 1962 - Notification No. 03/2022, dated 16-07-2022*

In exercise of the powers conferred by Rule 131(1)/(2), the DGIT (Systems), with the approval of the CBDT, has specified that the Forms, returns, statements, reports, orders, by whatever name called (as specified in this notification), shall be furnished electronically and shall be verified in the manner prescribed under Rule 131(1). Rule 131 empowers DGIT (Systems) to specify any Forms, returns, statements, reports, orders as prescribed in Appendix II shall be furnished electronically.

The detailed Notification can be downloaded from the link below:

https://incometaxindia.gov.in/communications/notification/notification-no-3-2022-systems.pdf

2. *'Odisha Electricity Regulatory Commission' notified for exemption under section 10(46) - Notification No. 85/2022, dated 21-07-2022*

In exercise of the powers conferred by section 10(46), the Central Government has notified for the purposes of the said clause, Odisha Electricity Regulatory Commission (PAN: AAALO0073B), in respect of the specified income arising to that Commission subject to satisfaction of conditions laid therein for the FY 2021-22 to 2025-26.

The detailed Notification can be downloaded from the link below:

https://incometaxindia.gov.in/communications/notification/notification-85-2022.pdf

3. *'CPPIB Credit Investments VI Inc.' Pension fund notified for exemption under section 10(23FE) - Notification No. 86/2022, dated 21-07-2022*

In exercise of the powers conferred by sub-clause (iv) of clause (c) of the Explanation 1 to section 10(23FE), the Central Government has specified the pension fund, namely, CPPIB Credit Investments VI Inc. (PAN: AAGCC5549K), as the specified person for the purposes of the said clause in respect of the eligible investment made by it in India on or after 21.07.2022 but on or before 31.03.2024 subject to the fulfillment of the conditions specified therein.

The detailed Notification can be downloaded from the link below:

https://incometaxindia.gov.in/communications/notification/notification-86-2022.pdf

4. *Procedure of PAN application & allotment through Simplified Proforma for incorporating Limited Liability Partnerships (LLPs) electronically Form FiLLiP of Ministry of Corporate Affairs - Notification No. 04/2022, dated 26-07-2022*

In exercise of the powers delegated by the CBDT vide notification G.S.R. No. 117(E) dated 09.02.2017, the DGIT (Systems) has laid down the classes of persons to which FiLLiP form will apply, applicable forms, format and procedure for Permanent Account Number (PAN) as specified vide this Notification.

The detailed Notification can be downloaded from the link below:

https://incometaxindia.gov.in/communications/notification/notification-4-dated-26-7-2022.pdf

5. *Reduction of time limit for verification of Income Tax Return (ITR) from within 120 days to 30 days of transmitting the data of ITR electronically - Notification No. 05/2022, dated 29-07-2022*

Vide this Notification, it has been decided by the CBDT that in respect of any electronic transmission of return data on or after 01.08.2022, the time-limit for e-verification or submission

Matter on Direct and Indirect Taxes is contributed by Direct Taxes Committee, GST & Indirect Taxes Committee of ICAI respectively. FEMA updates by CA. Manoj Shah, CA Hinesh Doshi and CA. Sudha G. Bhushan.

of ITR-V shall now be 30 days from the date of transmitting/uploading the data of return of income electronically. It is also clarified that where the return data is electronically transmitted before 01.08.2022, the earlier time limit of 120 days continue to apply in respect of such returns.

The detailed Notification can be downloaded from the link below:

https://www.incometax.gov.in/iec/foportal/sites/default/files/2022-08/Click%20Here.pdf

6. *Amendment in Rule 21AK pertaining to conditions for the purpose of claiming exemption under section 10(4E) - Notification No. 87/2022, dated 01-08-2022*

Section 10(4E) provides exemption to any income accrued or arisen to or received by a non-resident as a result of transfer of non-deliverable forward contracts or offshore derivative instruments or over-the-counter derivatives, entered into with an offshore banking unit of an International Financial Services Centre as referred to in section 80LA(1A), which fulfils such conditions as may be prescribed. Conditions have been prescribed in Rule 21AK. Vide this notification, Rule 21AK has been amended to provide reference to 'offshore derivative instruments or over-the-counter derivatives' in the said Rule.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification-no-87-2022.pdf

7. *'The Telangana State Pollution Control Board' notified under section 10(46) - Notification No. 88/2022, dated 02-08-2022*

Vide this notification, the Central Government has notified the Telangana State Pollution Control Board (PAN AAAGT0080Q) for the purposes of claiming exemption under section 10(46) in respect of specified income arising to that Board subject to satisfaction of conditions laid therein for the Financial Years from 2016-17 to 2020-21 subject to outcome of SLP as specified therein.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification-no-88-2022.pdf

8. *Amendment to Notification No. 16/2020 dated 05.03.2020 pertaining to specification of securities for the purpose of section 47(viiab)(d) - Notification No. 89/2022, dated 03-08-2022*

Section 47(viiab)(d) empowers Central government to notify securities whose transfer by a non-resident on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency will not be regarded as transfer for the purposes of section 45. Notification No. 16/2020 dated 05.03.2020 notified certain securities for the said purpose. Now, vide this notification, 'Bullion Depository Receipt with underlying bullion' is also notified as a security for the purpose of section 47(viiab)(d).

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification-no-89-2022.pdf

9. *Central Government notifies conditions for the purpose of sub-clause (c) of clause (ii) of the first proviso to section 17(2) - Notification No. 90/2022, dated 05-08-2022*

Sub-clause (c) of clause (ii) of the first proviso to section 17(2) provides that any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family in respect of any illness relating to COVID-19 subject to such conditions, as may be notified by the Central Government, shall not be forming part of "perquisite". Vide this notification, conditions in this regard have been specified prescribing documents to be submitted by the employee to the employer.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification_90_2022.pdf

10. *Central Government notifies conditions for the purpose of clause (XII) of the first proviso of section 56(2)(x) - Notification No. 91/2022, dated 05-08-2022*

Clause (XII) of the first proviso of section 56(2)(x) provides that any sum of money received by an individual, from any person, in respect of any expenditure actually incurred by him on his

medical treatment or treatment of any member of his family, in respect of any illness related to COVID-19 subject to such conditions, as may be notified by the Central Government in this behalf, shall not be the income of such person. Vide this Notification, such conditions have been notified, *inter alia*, prescribing furnishing of details of the amount received in any FY in Form No. 1 to the ITD within 9 months from the end of such FY or 31.12.2022, whichever is later.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification_91_2022.pdf

11. *Central Government notifies conditions for the purpose of clause (XIII) of the first proviso of section 56(2)(x) - Notification No. 92/2022, dated 05-08-2022*

Clause (XIII) of the first proviso of section 56(2)(x) provides that any sum of money received by a member of the family of a deceased person, from the employer of the deceased person (without limit), or from any other person or persons to the extent that such sum or aggregate of such sums does not exceed Rs 10,00,000, where the cause of death of such person is illness relating to COVID-19 and the payment is, received within 12 months from the date of death of such person, and subject to such other conditions, as may be notified by the Central Government in this behalf, shall not be the income of such person. Vide this Notification, such other conditions have been notified, *inter alia*, prescribing furnishing of details of the amount received in any FY in Form A to the AO within 9 months from the end of such FY or 31.12.2022, whichever is later.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification_92_2022.pdf

12. *Qatar Holding LLC notified as the sovereign wealth fund under section 10(23FE) - Notification No. 93/2022, dated 05-08-2022*

In exercise of powers conferred by sub-clause (vi) of clause (b) of the Explanation 1 to section 10(23FE), the Central Government has specified the sovereign wealth fund, namely, Qatar Holding LLC (PAN: AAACQ3167H), as the specified person for the purposes of the said clause in respect of the investment made by it in India on or after 05.08.2022 but on or before 31.03.2024 subject to the fulfilment of the conditions as specified therein.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification_93_2022.pdf

13. *Insertion of new Rule 17AA prescribing books of account and other documents to be kept and maintained under section 12A(1)(b)(i) and clause (a) of the tenth proviso to section 10(23C) - Notification No. 94/2022, dated 10-08-2022*

Section 12A(1)(b) and tenth proviso to section 10(23C) provides that where the total income of the trust or institution, without giving effect to the provisions of section 10(23C) or section 11 and 12, exceeds the maximum amount which is not chargeable to tax, such trust or institution shall keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed. Accordingly, vide this notification, Rule 17AA has been notified prescribing that every fund or institution or trust or any university or other educational institution or any hospital or other medical institution which is required to keep and maintain books of account and other documents under the aforesaid provisions shall keep and maintain the specified books of account.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification-94-2022.pdf

II. CIRCULARS

1. *Condonation of delay u/s 119(2)(b) in filing of Form No. 10BB (Audit report under section 10(23C)) for AY 2018-19 and subsequent years - Circular No. 15/2022, dated 19-07-2022*

Further to the powers delegated to the field authorities as per Circular No. 19/2020 dated 03.11.2020, the CBDT has directed that where there is delay of beyond 365 days upto 3 years in filing Form No. 10BB for AY 2018-19 or for any subsequent AYs, the PCCIT/CCIT are authorized to admit such applications of condonation of delay u/s 119(2) and decide on merits. It is also prescribed that aforesaid authorities shall

preferably dispose the application within three months of receipt of the application.

The detailed Circular can be downloaded from the link below:

https://incometaxindia.gov.in/communications/circular/circular-no-15-2022.pdf

2. *Condonation of delay u/s 119(2)(b) in filing of Form No.10B (Audit report u/s 12A(b) in the case of charitable or religious trusts or institutions) for AY 2018-19 and subsequent years - Circular No. 16/2022, dated 19-07-2022*

Further to the powers delegated to CIT as per Circular No. 02/2020 dated 03.01.2020, the CBDT has directed that where there is delay of beyond 365 days upto 3 years in filing Form No. 10B for AY 2018- 19 or for any subsequent AYs, the PCCIT/CCIT are authorized to admit such applications of condonation of delay u/s 119(2) and decide on merits. The aforesaid authorities, while entertaining such applications for condonation of delay in filing Form No. 10B, shall satisfy themselves that the applicant was prevented by reasonable cause from filing such Form within the stipulated time.

The detailed Circular can be downloaded from the link below:

https://incometaxindia.gov.in/communications/circular/circular-no-16-2022.pdf

3. *Condonation of delay u/s 119(2)(b) in filing of Form No. 9A and Form No. 10 for AY 2018-19 and subsequent years - Circular No. 17/2022, dated 19-07-2022*

Further to the powers delegated to CIT as per Circular No. 03/2020 dated 03.01.2020, the CBDT has directed that where there is delay of beyond 365 days upto 3 years in filing Form No. 9A (Application for exercise of option under clause (2) of the Explanation to section 11(1)) and Form No. 10 (Statement to be furnished to the AO/Prescribed Authority u/s 11(2)) for AY 2018-19 or for any subsequent AYs, the PCCIT/CCIT are authorized to admit such applications of condonation of delay u/s 119(2) and decide on merits.

The detailed Circular can be downloaded from the link below:

https://incometaxindia.gov.in/communications/circular/circular-no-17-2022.pdf

III. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM/ORDER

1. *Order authorizing 'Prescribed Authority' for the purpose of e-Verification Scheme, 2021 - Order, dated 20-07-2022*

In exercise of the powers conferred by clause (l) of sub-paragraph (1) of paragraph 2 of the e-Verification Scheme, 2021, the CBDT, has authorised the DGIT, DIT, Additional DIT, Joint DIT, Deputy DIT, Assistant DIT, ITOs and Inspectors of Income-tax working in the Directorate of Income-tax (Intelligence and Criminal Investigation) as "Prescribed Authority" for the purposes of the said Scheme.

The complete text of the above Order can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Latest%20News/Attachments/529/Order-authorizing-Prescribed-Authority-purpose-of-e-Verification-Scheme-2021-miscComm-20-7-22.pdf

2. *ITD conducts searches in Mumbai & Tamil Nadu - Press Release(s), dated 26-07-2022&28-07-2022*

ITD carried out a search and seizure operation on 05.07.2022 on a group engaged in agro and textile business, and another group of entry operators. A total of 27 premises were covered during the search action in Mumbai and Delhi NCR. In another search operation, ITD carried out a search and seizure operation on 20.07.2022 on two business groups; one engaged in real estate, and the other in contracts related to road and railway construction. The search operation covered more than 30 premises located in and around Madurai and Chennai.

The complete text of the above Press Release(s) can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1086/PressRelease-ITD-conducts-searches-in-Mumbai-26-7-22.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1087/Press-Release-IT-Department-conducts-searches-in-Tamil-Nadu-dated-29-07-2022.pdf

3. *New record of over 72.42 lakh (7.24 m) ITRs filed on a single day and about 5.83 crore ITRs filed till 31st July, 2022 - Press Release, dated 01-08-2022*

The ITD expressed its gratitude to taxpayers and tax professionals for making compliances in time leading to a surge in filing of ITRs resulting in a new record of ITRs filed on a single day. The ITD reiterated its gratitude for the support in timely compliances and requested all taxpayers to e-verify their ITRs at the earliest. The ITD also urged taxpayers, who for any reason, missed the due date, to complete their filing immediately.

The complete text of the above Press Release can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1088/PressRelease-New-record-of-over-7.24m-ITRs-filed-on-a-single-day-2-8-22.pdf

4. *ITD conducts searches in Gujarat & on Healthcare Provider Groups in Haryana and Delhi-NCR - Press Release(s), dated 02-08-2022 & 03-08-2022*

The ITD carried out a search and seizure operation on 20.07.2022 on a prominent business conglomerate engaged in diversified fields of Textiles, Chemicals, Packaging, Real estate and Education. Also, in another search operation, the ITD carried out search and seizure operations on 27.07.2022 on several groups engaged in the healthcare services by running hospitals. A total of 44 premises were covered during the search action in Delhi-NCR.

The complete text of the above Press Release(s) can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1089/PressRelease-ITD-conducts-searches-in-Gujarat-2-8-22.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1090/PressRelease-ITD-conducts-searches-on-Healthcare-Provider-Groups-in-Haryana-NCR-3-8-22.pdf

5. *ITD conducts searches in Mumbai & Tamil Nadu - Press Release(s), dated 05-08-2022 & 06-08-2022*

The ITD carried out a search and seizure operation on 28.07.2022 on an ex-fund manager and chief trader of equities of a prominent mutual fund house along with related sharebrokers, middlemen and entry operators. Also, in a separate search operation, the ITD carried out search and seizure operations on 02.08.2022 in the cases of certain producers, distributors, and financiers associated with the film Industry. The search operations were conducted at almost 40 premises located in Chennai, Madurai, Coimbatore and Vellore.

The complete text of the above Press Release(s) can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1091/PressRelease-ITD-conducts-searches-in-Mumbai-5-8-22.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1092/Press-Release-ITD-conducts-searches-in-Tamil-Nadu-dated-06-08-2022.pdf

6. *ITD conducts searches in Madhya Pradesh & Maharashtra - Press Release(s), dated 10-08-2022 & 11-08-2022*

The ITD carried out a search operation on 14.07.2022 on a group engaged in the business of mining, sugar manufacturing and liquor. The key person of the group is also occupying a political position. Also, in a separate search operation, the ITD carried out a search operation on 03.08.2022 on two major groups engaged in the manufacturing of steel TMT Bars.

The complete text of the above Press Release(s) can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1093/PressRelease-ITD-conducts-searches-in-Madhya-Pradesh-10-8-22.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1095/Income-Tax-Department-conducts-searches-in-Maharashtra-12-08-2022.pdf

7. *ITD conducts searches in Rajasthan & Uttar Pradesh - Press Release(s), dated 11-08-2022 & 12-08-2022*

The ITD carried out a search operation on 03.08.2022 on a Jaipur based group, engaged in the business of gems and jewellery, hospitality and real estate. The search operation has covered more than three dozen premises located in Jaipur and Kota. In another search operation, the ITD carried out a search operation on 03.08.2022 on a Jhansi based group, engaged in the business of civil contract and real estate development.

The complete text of the above Press Release(s) can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1094/Press-Release-IT-Department-conducts-searches-in-Rajasthan-dated-11-08-2022.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1096/IT-Department-conducts-searches-Uttar-Pradesh-12-08-2022.pdf

GST

Notifications

1. Turnover limit for e-invoicing reduced from ₹ 20 crore to ₹ 10 crore

The Central Government, on the recommendations of the GST Council, has amended *Notification No. 13/2020-CT dt. 21.03.2020* vide *Notification No. 17/2022-CT dt. 01.08.2022* to reduce the threshold limit of aggregate turnover for the applicability of e-invoicing provisions from ₹ 20 crore to ₹ 10 crore. The said amendment shall become effective from 1st October 2022.

2. Various rate notifications have been issued to give effect to the recommendations made by the GST Council in its 47th meeting. Such changes have become effective from 18th July 2022.

a) *Notification No. 3/2022-CT(R) dt. 13.07.2022*, *Notification No. 4/2022-CT(R) dt. 13.07.2022*, *Notification No. 5/2022-CT(R) dt. 13.07.2022* have been issued to amend *Notification No. 11/2017-CT(R) dt. 28.06.2017*, *Notification No. 12/2017-CT(R) dt. 28.06.2017*, *Notification No. 13/2017-CT(R) dt. 28.06.2017* respectively to make changes in rates, exemptions and applicability of reverse charge on various services like works contract/ construction services, hotel accommodation services, goods transport agency (GTA) services, renting of residential dwelling, healthcare services, postal services etc.

(b) *Notification No. 6/2022-CT(R) dt. 13.07.2022* and *Notification No. 7/2022-CT(R) dt. 13.07.2022* have been issued to amend *Notifications 1/2017-CT(R) dt. 28.06.2017* and *Notifications 2/2017-CT(R) dt. 28.06.2017* respectively to make changes in rates, exemptions on various goods. Earlier, GST was applicable on specified goods when they were put up in a unit container and were bearing a registered brand name or were bearing brand name in respect of which an actionable claim or enforceable right in a court of law was available. However, with effect from 18th July 2022, the exemption has been withdrawn on supply of such goods which are required to be "pre-packaged and labelled" in accordance with Legal Metrology Act, 2009.

(c) *Notification No. 03/2017-CT(R) dt. 28.06.2017* has been amended vide *Notification No. 08/2022-CT(R)-dt. 13.07.2022* to increase the rate of tax to 6% from 2.5% applicable formerly on supplies to exploration and production notified under section 11(1) of the CGST Act, 2017.

(d) *Notification No. 5/2017-CT(R) dt. 28.06.2017* has been amended vide *Notification No. 09/2022-CT(R) dt. 13.07.2022* to notify a few additional items like certain oils, vegetable fats, coal, lignite, peat, etc. in respect of which no refund of unutilised input tax credit shall be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods (other than nil rated or fully exempt supplies).

(e) *Notification No. 02/2022-CT(R) dt. 31.03.2022* has been amended vide *Notification No. 10/2022-CT(R) dt. 13.07.2022* to remove the condition of having 90% fly ash content in supply of fly ash bricks and fly ash aggregates in order to avail concessional rate of GST.

(f) *Notification No. 45/2017-CT(R) dt. 14.11.2017*, which provided for concessional GST rate of 2.5% on scientific and technical equipment supplied to public funded research institutions has been rescinded vide *Notification No. 11/2022-CT(R) dt. 13.07.2022.*

The text of the above-mentioned notifications may be referred to for complete details.

Circulars

3. *Circular No. 177/09/2022-TRU dt. 03.08.2022* has been issued to clarify on following issues:

a) Rate of GST applicable on supply of ice-cream by ice-cream parlours during the period from 01.07.2017 to 05.10.2021

b) Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions

c) Whether storage or warehousing of cotton in baled or ginned form is covered under

entry 24B of *Notification No. 12/2017-CT(R)* which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18.07.2022?

d) Whether exemption under Sl. No. 9B of *Notification No. 12/2017-CT(R) dt. 28.06.2017* covers services associated with transit cargo both to and from Nepal and Bhutan?

e) Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments

f) Whether the activity of selling of space for advertisement in souvenirs published in the form of books by different institutions/ organizations like educational institutions, social, cultural and religious organizations including clubs etc., is eligible for concessional rate of 5%?

g) Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time

h) Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment?

i) Applicability of GST on payment of honorarium to the Guest Anchor

j) Whether the additional toll fees collected in the form of higher toll charges from vehicles not having Fastag is exempt from GST under entry 23 of notification No.12/2017-Central Tax (Rate) dated 28th June, 2017?

k) Applicability of GST on services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF)

l) Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST?

m) When services are provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966)?

n) Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of *Notification No. 12/2017-CT(R)* transport of passengers by non-air conditioned contract carriage?

o) Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18.07.2022?

p) Applicability of GST on tickets of private ferry used for passenger transportation

4. *Circular No. 178/10/2022-GST dt. 03.08.2022* has been issued to clarify on following issues:

a) Liquidated damages

b) Compensation for cancellation of coal blocks

c) Cheque dishonor fine/ penalty

d) Penalty imposed for violation of laws

e) Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

f) Compensation for not collecting toll charges during the period 08.11.2016 to 01.12.2016

g) Late payment surcharge or fee

h) Fixed Capacity charges for Power

i) Cancellation charges

5. *Circular No. 179/11/2022-GST dt. 03.08.2022* has been issued to clarify following issues regarding GST rates & classification (goods):

a) Electric vehicles whether or not fitted with a battery pack attract GST rate of 5%

b) Stones otherwise covered in S. No. 123 of Schedule-I (such as Napa stones), which are not mirror polished, are eligible for concessional rate under said entry

c) Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes

and sliced, dried mangoes shall attract GST at 12% rate

d) Treated sewage water attracts Nil rate of GST

e) Nicotine Polacrilex Gum attracts a GST rate of 18%

f) Fly ash bricks and aggregate - condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks

g) Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi

CUSTOMS

Notifications

1. Passenger Name Record Information Regulations, 2022

In order to enhance detection for combating offences related to smuggling of contraband such as narcotics, psychotropic substances, gold, arms & ammunition etc. that directly impact national security, CBIC has issued Passenger Name Record Information Regulations, 2022.

These regulations require every aircraft operator to mandatorily provide details of all international passengers on flights to the designated Customs systems by push method using PNRGOV EDIFACT message format. The aircraft operators shall transfer passenger name record information not later than twenty four hours before the departure time or at the departure time - wheels off. Such information shall be subject to the strict information privacy and protection in accordance with the provisions of any law for the time being in force. Further, such information shall be retained for a maximum period of five years from the date of such receipt. Moreover, a penalty between Rs.25000 and Rs.50,000 can be imposed on the aircraft operator or his authorised agent for non-compliance with the regulations.

Notification No. 67/2022 Customs (N.T.) dt. 08.08.2022

Circulars

2. Extension of Customs clearances beyond normal working hours in Inland Container Depot(s)

The Board has advised all the Pr. Chief / Chief Commissioners, having jurisdictions over Inland Container Depots (ICDs) to consider having the ICDs within their jurisdictions designated with extended facility of Customs clearance beyond normal working hours in any of the following ways, namely :-

(a) The facility of Customs clearance may be made available on a 24x7 basis, similar to the current Board guidelines for Sea Ports and Air Cargos/Airports;

(b) The facility of Customs clearance may be extended on all seven (7) days of the week (including holidays), with stipulated timings (say from 9 :30 AM to 6 :00 PM);

(c) The facility of Customs clearance may be extended beyond normal working hours for specified days in a week and with specified timings.

Circular No.11/2022-Customs dt. 29.07.2022

FEMA Updates

External Commercial Borrowings (ECB) Policy – Liberalization Measures

A.P. (DIR Series) Circular No. 11 dated August 1, 2022

As announced in paragraph five of the press release on "Liberalisation of Forex Flows" dated July 06, 2022, it has been decided, in consultation with the Central Government, to:

i) increase the automatic route limit from USD 750 million or equivalent to USD 1.5 billion or equivalent.

ii) increase the all-in-cost ceiling for ECBs, by 100 bps. The enhanced all-in-cost ceiling shall be available only to eligible borrowers of investment grade rating from Indian Credit Rating Agencies (CRAs). Other eligible borrowers may raise ECB within the existing all-in-cost ceiling, as hitherto.

The above relaxations would be available for ECBs to be raised till December 31, 2022.

AD Category-I banks may bring the contents of this circular to the notice of their constituents and customers. The Master Direction No. 5, is being updated to reflect these changes.

Announcement regarding Technical Guides issued for the preparation and presentation of financial statements of Non-Corporate Entities and Limited Liability Partnerships

Accounting Standards prescribe the principles for recognition and measurement of events, transactions and various elements of the financial statements as well as lay down presentation and disclosure requirements for the same. General Purpose Financial Statements prepared in accordance with the Accounting Standards provide relevant and reliable information which enables the users of financial statements to make informed economic decisions about the entity.

The Institute of Chartered Accountants of India (ICAI), through its Accounting Standards Board (ASB), apart from formulating high quality Accounting Standards (viz., Ind AS and AS) and recommending these Standards to the Government of India for notification under section 133 of the Companies Act, 2013, also issues Accounting Standards for non-company entities. Non-company entities include sole proprietorship firms, partnership firms, limited liability partnerships, trusts, Hindu Undivided Families, association of persons and co-operative societies, etc.

While recognition and measurement principles laid down in the Accounting Standards issued by the ICAI are applicable to non-company entities and disclosures and presentation aspects have also been dealt with under the Accounting Standards, formats for presentation of financial statements of non-company entities have not been prescribed. Efforts have always been made to provide necessary guidance to such entities from time to time. For example, to ensure effective implementation of Accounting Standards, ICAI announced the criteria for applicability of Accounting Standards to non-company entities. For this purpose, non-company entities are classified into four levels, viz., Level I, Level II, Level III and Level IV non-company entities. Level I entities are large size entities and required to comply with all the standards. Level IV, Level III and Level II non-company entities are considered as Micro, Medium and Small Sized Non-Company Entities and have been granted certain exemptions/relaxations.

Financial statements formats for companies are notified by the Central Government through Schedule III of the Companies Act, 2013. In the direction to strengthen and standardise the financial reporting system of Non-Company Entities, the Accounting Standards Board of the ICAI has issued formats of financial statements for Non-Company Entities through following Technical Guides:

- Technical Guide on *Financial Statements of Non-Corporate Entities* prescribing the formats of financial statements for Non-Corporate entities.
- Technical Guide on *Financial Statements of Limited Liability Partnerships* prescribing the formats of the financial statements for Limited Liability Partnerships (LLPs).

The Technical Guides have been designed in simple manner to assist the preparers of financial statements of Non-Corporate Entities and LLPs and other stakeholders to follow these formats in preparing the financial statements. These Technical Guides also include Illustrative formats for financial statements for the guidance of the stakeholders. Illustrative formats for financial statements included in the Technical Guides have been prepared in Excel file also for the ease of preparers of financial statements. The Technical Guides should be read in conjunction with the relevant Accounting Standards. It may be noted that the Technical Guide on *Financial Statements of Non-Corporate Entities* is relevant for the purpose of preparation of the financial statements of the Non-Corporate Entities unless any formats/principles are specifically prescribed by the relevant Statute or Regulator or any Authority.

The Technical Guides and Excel files containing Illustrative Formats for Financial Statements can be assessed at the following links on the ICAI's website:

- Technical Guide on *Financial Statements of Non-Corporate Entities* prescribing the formats of financial statements for Non-Corporate entities - https://resource.cdn.icai.org/70614asb56545.pdf
- Excel file containing Illustrative Formats for Financial Statements of Non-corporate Entities -https://www.icai.org/post.html?post_id=15772.
- Technical Guide on *Financial Statements of Limited Liability Partnerships* prescribing the formats of the financial statements for LLPs - https://resource.cdn.icai.org/70861asb56826.pdf
- Excel file containing Illustrative Formats for Financial Statements of LLPs - https://www.icai.org/post.html?post_id=15772.

ICAI News

New Publication - Sustainability Reporting Standards Board, ICAI (2022-23)

"FAQs on Sustainability Reporting – Heart of Good Governance"

Sustainability Reporting Standards Board of the Institute of Chartered Accountants of India, in its endeavour to advance and support entities and professionals towards sustainable practices and reporting, has brought out the publication "FAQs on Sustainability Reporting – Heart of Good Governance". The objective is to assist members and other stakeholders in not only being updated in the sustainability reporting domain but also to gain an effective understanding and grasp on various dimensions of sustainability reporting, including global trends in corporate sustainability reporting. It covers important aspects like, regulatory framework, steps in preparation of sustainability report, materiality aspects, assurance framework, etc

The publication covers all the important aspects related to adoption of sustainability reporting and highlights crucial role of accountants in enhancing the quality and credibility of sustainability information. It addresses the key questions related to sustainability reporting and will be of great significance for chartered accountants and other users in understanding sustainability reporting ecosystem.

The publication "FAQs on Sustainability Reporting – Heart of Good Governance" is available on ICAI website at https://resource.cdn.icai.org/71206srsb57220.pdf.

Invitation for empanelment as Examiners for Chartered Accountants Examinations

Applications are invited from eligible members of the Institute and other professionals including academicians of reputed educational institutions, tax and legal practitioners etc., having a flair for academic activities including evaluation of answer books and willing to undertake confidential assignments as a dedicated examiner, for empanelment as examiner in respect of the following papers of the Chartered Accountants Examinations.

Foundation Examination	
Paper-2	Business Laws & Business Correspondence and Reporting Part I : Business Laws Part II : Business Correspondence and Reporting

Intermediate Examination (New Syllabus)	
Paper -2	Corporate & Other Laws
Paper -8	Financial Management and Economics for Finance

Final Examination (New Syllabus)	
Paper -1	Financial Reporting
Paper -4	Corporate and Economic Laws
Paper -5	Strategic Cost Management and Performance Evaluation
Paper -6	**Elective Papers**
	6D: Economic Laws

The eligibility criteria for empanelment as examiner are as follows:

- Chartered Accountants with a minimum of five years standing in practice or in service are eligible.
- University Lecturers/Professors with a minimum of five years teaching experience are eligible.
- ICWA, ACS, M.Com, Post Graduates in Economics or Law, Lawyers, IT Professionals,

MBA (Finance) and other professionals with at least five years experience, either in academic position or in practice or in employment are eligible to apply. Those with work experience having direct relevance to the aforesaid subjects(s) of examination(s) will be preferred.

- Persons above 65 years of age are not eligible.
- Persons who are visually impaired or suffer from such other physically disability that might necessitate taking the assistance of any other person for evaluation of answer books are not eligible.
- Persons who are undergoing CA Course of the Institute are not eligible.
- Persons whose applications were rejected earlier from the Panel are eligible to apply again after a gap of 1 year from the date of rejection.
- Those who are already empanelled with ICAI as examiners need not apply. Their candidature will be considered in the normal course, at the appropriate time.
- Persons associated with the coaching activities are not eligible. Those who have ceased to be associated with the coaching activity, are permitted to apply after a gap of 5 years.

Scales of honorarium for evaluation of answer books

Examination	Paper	Rate (for Digital Evaluation)
Foundation	2	Rs 125/- per answer book
Intermediate (IPC)	2 & 8	Rs 150/- per answer book
Final examination	1, 4, 5 & 6	Rs.190/- per answer book

Application for empanelment as examiner can be made online at http://examinerspanel.icaiexam.icai.org.

ICAI has implemented the Digital evaluation (Online Evaluation) of answer books in all the papers of Foundation, Intermediate and Final examinations. Hence, applicants are expected to be comfortable working on computers and also evaluating answer books on-line. However, requisite training will be provided, before on-line evaluation assignments are undertaken. Please fill the application online, take a print out, affix your photograph, sign it and send with all the requisite enclosures to the following address:

Shri S K Garg
The Additional Secretary (Exams)
The Institute of Chartered Accountants of India
ICAI Bhawan, Indraprastha Marg,
New Delhi – 110002

Additional Secretary (Exams.)

RESULT OF CHARTERED ACCOUNTANTS FOUNDATION EXAMINATION HELD IN JUNE - 2022

The result of the Foundation Examination held in June 2022 was declared recently.

The details of percentage of candidates passed in the above said examination are given below:

Gender	No. of candidates appeared	No. of candidates passed	% of Pass	No. of Exam Centres
Male	51111	13043	25.52	508
Female	42618	10650	24.99	
Total	93729	23693	25.28	

Glimpses of August - 2022

The Telegraph

Social audit rules soon

A STAFF REPORTER

Calcutta: The Institute of Chartered Accountants of India (ICAI) is hopeful of finalising the social accounting standards by the end of the year after Sebi on July 25 announced the regulations defining the social stock exchange, social enterprise and social auditor.

"We are working on the standards and we will send them to Sebi for its approval. There will be about 16 focus areas. ICAI will develop the standards as well as register the auditors who would conduct the social audit," ICAI president Debashis Mitra said on Tuesday.

A social stock exchange has been defined by Sebi as a separate recognised stock exchange with nationwide trading terminals that will allow not for profit organisations (NPO) to register and list securities. These organisations can raise funds by issuing zero coupon-zero principal instruments. The funds raised could be utilised for undertaking social objectives.

Debashis Mitra in Calcutta on Tuesday

A social audit will involve a formal review of the NPO's activities, including the utilisation of the availed resources to achieve the social obligations.

A social auditor has been defined as an individual registered with a self-regulatory organisation under the ICAI who has qualified for a certification programme conducted by the National Institute of Securities Market, with whom the ICAI is working towards developing course curriculum and study material for the certification programme.

The Sustainability Standards Reporting Board of the ICAI is working on developing the social audit framework that will cover the elements of audit of impact report of projects, programmes and activities of the NPOs listed on the social stock exchange.

पीपुल्स समाचार

Bhopal

चार्टर्ड लेखाकार संस्थान की लघु उद्यम यात्रा को राणे ने दिखाई हरी झंडी

एजेंसी ● मुंबई

editor@peoplessamachar.co.in

सनदी लेखाकारों की संस्था इंस्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया (आईसीएआई) की ओर से आजादी के अमृत काल में सूक्ष्म, लघु और मझौले उद्यम (एमएसएमई) के महत्व पर केंद्रित एमएसएमई यात्रा आयोजित की है। आधिकारिक विज्ञप्ति के अनुसार यह यात्रा 75 दिनों में 75 शहरों में जाएगी और इस दौरान एमएसएमई क्षेत्र पर 75 बैठकों का आयोजन किया जाएगा।

केंद्रीय सूक्ष्म, लघु और मध्यम उद्यम मंत्री नारायण राणे ने देश की अर्थव्यवस्था में सूक्ष्म, लघु और मझौले उद्यमों की महती भूमिका को रेखांकित करते हुए मुंबई में इंडियन मर्चेंट्स चैंबर में एक प्रतीकात्मक बस को हरी झंडी दिखाकर रवाना किया। यह देश के पश्चिमी क्षेत्र में जाएगी। इसी तरह उत्तर, मध्य, पूर्व, दक्षिण से यात्राएं शुरू होंगी और 18 नवंबर को मुंबई में समाप्त होंगी। यात्रा के दौरान आईसीएआई के पदाधिकारी एमएसएमई के साथ सरकारी योजनाओं, आसान और सस्ते वित्तीय विकल्पों, शिकायतों पर ध्यान देने, प्रशिक्षण और कौशल विकास में सहायता प्रदान करने, डिजिटलीकरण और अनुपालन और व्यवसाय स्थापित करने के लिए आवश्यक अन्य पेशेवर सहायता के बारे में जागरुकता कार्यक्रम आयोजित करेंगे। इस समय एमएसएमई क्षेत्र देश के सकल घरेलू उत्पाद (जीडीपी) में 30 से अधिक और निर्यात में 48 प्रतिशत से अधिक का योगदान करता है। इस क्षेत्र में 11 करोड़ लोगों को नौकरियां मिली हुई हैं। इस कार्यक्रम का उद्देश्य एमएसएमई की क्षमताओं और क्षमताओं को बढ़ाना, उन्हें पेशेवर रूप से उन्नत करना और उन्हें भविष्य के लिए तैयार करना है।

THE ECHO OF INDIA

THE ECHO OF INDIA·SILIGURI

Thursday·August 4, 2022

ICAI to create awareness on ESG efforts

EOI CORRESPONDENT

KOLKATA, AUG 3/--/CA Ravi Kr. Patwa Chairman, EIRC, CA Sushil Kr. Goyal, Central Council Member ICAI to create awareness on Environmental, Social and Governance (ESG) efforts through Sustainability Reporting Standards Board. ICAI, CA Dr. Sanjeev Kr. Singhal Chairman, SRSB ICAI, CA Dr. Debashis Mitra President ICAI, CA Priti Paras Savla, Vice Chairperson SRSB ICAI and CA Ranjeet Kr. Agarwal, Central Council Member ICAI were present at the press conference held on Tuesday at Kolkata, sources informed.

CA Dr. Debashis Mitra, President ICAI said, "Businesses are now increasingly being called upon to report on the Environmental, Social and Governance (ESG) efforts. ICAI through its Sustainability Reporting Standards Board has been taking various initiatives to create awareness regarding ESG issues. In line with the above, the ICAI is organizing a series of ESG Roundtables for the Independent Directors and the CFOs across India. The Roundtables will focus on the knowledge areas on ESG/Sustainability pertinent from the perspective of decision-makers."

(L to R) CA Ravi Kr. Patwa Chairman, EIRC, CA Sushil Kr. Goyal Central Council Member ICAI, CA Dr. Sanjeev Kr. Singhal Chairman, SRSB ICAI, CA Dr. Debashis Mitra President ICAI, CA Priti Paras Savla Vice Chairperson SRSB ICAI and CA Ranjeet Kr. Agarwal Central Council Member ICAI were present at the press conference of The Institute Chartered Accountants of India in Kolkata. (EOI Photo)

ICAI in Media

दैनिक भास्कर भोपाल सिटी भास्कर 21-08-2022
Pg-01

जीएसटी की सक्सेस में देश के सीए का बड़ा रोल

भोपाल में जुटे देशभर के 500 चार्टर्ड अकाउंटेंट

नेशनल कॉन्फ्रेंस 'आरोह'

सिटी रिपोर्टर . भोपाल

जीएसटी को सफल बनाने में देश के चार्टर्ड अकाउंटेंट्स (सीए) का बड़ा योगदान है। अब पुराने तरीके से ऑडिट करने के बजाय नया ऑडिट टूल उपलब्ध करवाया जाएगा। जिससे सोशल ऑडिट, फॉरेंसिक ऑडिट आदि में सीए को आसानी होगी। यह बात आईसीएआई के नेशनल प्रेसिडेंट डॉ. देबाशीष मित्रा ने कही। वे कोर्टयार्ड मैरियट में आयोजित सीआईआरसी की भोपाल ब्रांच की नेशनल कॉन्फ्रेंस आरोह को संबोधित कर रहे थे।

कॉन्फ्रेंस में चार टेक्निकल सेशन हुए। इस दौरान डॉ. मित्रा ने कहा कि देश की अर्थव्यवस्था में सीए की महत्वपूर्ण भूमिका है। उन्होंने टेक्सेशन के साथ ही ऑडिट में हुए बदलाव पर भी जानकारी दी। सीए पंकज शाह ने नोटिस प्रोसिडिंग के संबध में अपने विचार रखे। इसी के साथ चंद्रशेखर वी चितले ने पार्टनरशिप फर्म में टेक्सेशन में हुए संशोधन पर चर्चा की। कॉन्फ्रेंस में सेंट्रल काउंसिल मेंबर कॉन्फ्रेंस डायरेक्टर अभय छाजेड़ ने ईएसजी, सोशल ऑडिट स्टेंडर्डस, क्रिप्टोकरेंसी आदि पर चर्चा की। इस दौरान सीए राजेश जैन, अंकुर जैन, सेक्रेट्री पारुल श्रीवास्तव आदि ने भी विचार रखे। कॉन्फ्रेंस में शामिल होने देश भर से लगभग 500 सीए आए हैं। कॉन्फ्रेंस के दौरान मुंबई में नवंबर 2022 में होने वाले ओलंपिक ऑफ अकाउंटेंट्स कार्यक्रम को लेकर भी चर्चा हुई। इस कार्यक्रम में कई दशों के प्रतिनिधि हिस्सा लेंगे।

राजधानी — मध्य प्रदेश 03

वित्तीय प्रबंधन के साथ पढ़ाया जाएगा लोकनीति का सिद्धांत

- आईसीएआई अध्यक्ष ने कहा हो रहा है पाठ्यक्रम में बदलाव
- राष्ट्रीय टैक्स सम्मेलन के शुभारंभ समारोह में हुए थे शामिल

मध्य स्वदेश संवाददाता ■ भोपाल

वित्तीय प्रबंधन के साथ लोकनीति व सिद्धांत पर जोर दे रहे हैं। चार्टड एकाउंटेंट पाठ्यक्रम में बदलाव को लेकर पूछे गये सवाल पर यह कहना है आईसीएआई (दी इंस्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया) के अध्यक्ष डॉ देवाशीष मित्रा का। वह राजधानी में आयोजित दो दिवसीय राष्ट्रीय टैक्स सम्मेलन के शुभारंभ सत्र के बाद मीडिया के सवालों का जबाव दे रहे थे। नये पाठ्यक्रम को लेकर उन्होंने बताया कि आगामी 28-29 अगस्त के दौरान इसको लागू कर दिया जाएगा। इस अवसर पर मध्य क्षेत्र सदस्य अभय छाजेड और प्रमोद जैन के साथ सीए राजेश जैन, अंकुर जैन और पारूल श्रीवास्तव सहित कई पदाधिकारी मौजूद थे।

इसके पहले डॉ मित्रा ने सीए पाठ्यक्रम में प्रवेश को लेकर विद्यार्थियों की कम होती रूचि को लेकर कहा कि इसके कारण मांग और आपूर्ति का अंतर बहुत बढ़ गया है। क्योंकि दूसरे पाठ्यक्रमों के मुकाबले इस कोर्स को उत्तीर्ण करना थोड़ा मुश्किल है, लेकिन इसके बाद कैंपस सलेक्शन के माध्यम से फ्रेशर्स को भी सालाना 70 लाख रूपये तक का पैकेज मिल रहा है। इस दौरान डॉ मित्रा ने स्पष्ट किया कि दी इंस्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया बदलते समय के अनुरूप संगठन को ढ़ालने की कोशिशों में जुटा है। यही वजह है कि आज इसने नान फाइनेंसियल रिपोर्टिंग की ओर कदम बढ़ाए है। आर्टीफीशियल इंटलीजेंस के मद्देनजर आगामी समय में फ्राड डिशेक्सन को लेकर काम करने की तैयारी है। इसके लिये फोरेंसिक ऑडिटरर्स के विशेषज्ञ जुटाए जाएंगे।

कम हुआ भ्रष्टाचार

डॉ मित्रा ने कहा कि इंकमटैक्स डिपार्टमेंट फेसलेस होने के बाद भ्रष्टाचार कम हो गया है। एक सवाल के जबाव में उनका कहना था कि सरकार के टैक्स रेट कम है। इसे बढ़ना चाहिये। उन्होने कहा कि कृषि क्षेत्र अभी भी इससे बचा हुआ है। सवाल जबाव के दौरान सीए पदाधिकारियों ने यह स्पष्ट किया है कि ब्लैकमनी के मामले में कोई भी सीए किसी का सहयोग नहीं करता है। हम नियमों से बाहर नहीं जाते हैं और सरकार को अपना सहयोग प्रदान करते हैं।

सम्मेलन का आज अंतिम दिन

आइसीएआइ की प्रत्यक्ष कर समिति द्वारा आयोजित इस दो दिवसीय सेमीनार का शुभारंभ वितमंत्री जगदीश देवड़ा ने किया। इसके बाद दिन भर कई सत्रों में विषय विशेषज्ञों ने अलग-अलग विषयों पर अपने विचार साझा किये। सीआइआरसी की भोपाल शाखा की मेजबानी वाले इस कार्यक्रम का समापन आज रविवार होगा। प्रथम सत्र सीए मेडल ठक्कर (अहमदाबाद) द्वारा लिया जाएगा, जिसमें वे कराधान से संबंधित विषयों और प्रकल्पित कराधान योजना के गहन विश्लेषण को संबोधित करेंगे। सीए नमन श्रीमल इसके बाद अंतरराष्ट्रीय कर अभ्यास कैसे स्थापित करें पर सदस्यों का ज्ञानवर्धन करेंगे। जबकि अंतिम सत्र सीएएस के टैक्स गुरु सीए गिरीश आहुजा द्वारा लिया जाएगा जो पूंजीगत लाभ के विषयों से संबंधित सभी का मार्गदर्शन करेंगे।

TIMES BUSINESS
Pg-17

ESG efforts in business:

Businesses are increasingly being called upon to report on the environmental, social and governance (ESG) efforts. ICAI through its Sustainability Reporting Standards Board has been taking various initiatives to create awareness on ESG issues, said Debashis Mitra, president, ICAI.

BusinessLine
MONDAY • AUGUST 22 • 2022

CA Institute issues revised guidance note on tax audit

KR SRIVATS

New Delhi, August 21

The CA Institute has issued the Revised Guidance Note on Tax Audit to help its members discharge their obligations in a timely and effective manner under the income tax law.

The Revised Guidance Note – eighth edition– was approved at a meeting of the central council of Institute of Chartered Accountants of India (ICAI) at Siliguri.

"We have in the recent council meeting approved the revised Guidance Note on Tax Audit. It's going to be a big change as it is being done after seven or eight years," Debashis Mitra, President of ICAI, told *BusinessLine*.

The format of tax audit reports have changed significantly since the last revision in year 2014, which broaden the responsibility of the chartered accountants while discharging their professional duties in this respect, sources said. Also, guidance was required on certain issues around Goods and Services Tax (GST).

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Regd. with the RNI No. 738/57
ISSN 0009-188X

Regd No. DL (C)-01/1190/2021-23, D. No. MH/MR/TECH-47/1/2022-23 License to post without prepayment,
WPP License No MR/Tech/WPP-133/DL(C)/2022-23. Posted at Mumbai Patrika Channel Sorting Office, Mumbai.
Published on 1st of Every Month. Posting Date: 01st - 06th of Every Month.

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