VOLUME 70 | NO. 7 | PAGES -132 | JANUARY 2022 | ₹100

THE CHARTERED ACCOUNTANT

JOURNAL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

Happy New Year 2022

Roadmap for India's growth

ICAI INTERNATIONAL CONFERENCE 2022
21-22 January 2022
Mumbai, India
Accountants Creating a Digital and Sustainable Economy

ICAI - SET UP BY AN ACT OF PARLIAMENT

Azadi Ka Amrit Mahotsav

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

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In line with the Government of India's national mission on **Vitiya Saksharta**, The Institute of Chartered Accountants of India (ICAI) on the occasion of 73rd CA Foundation Day had launched an innovative Financial & Tax Literacy Drive to promote financial planning and tax related guidance nationwide. This Drive includes awareness creation through the knowledge hub of seminars & lectures, articles & activities, booklets & video guides by the large community of Chartered Accountants who will act as **Vitiya Mitras.**

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Roadmap for India's Growth – Winds of Change

In this era of disruption, India's persistence with reforms to promote enterprise and industry has enabled the nation to revitalize its economic growth and prioritize economic expansion. Over the last couple of years the Government and policy makers have worked tirelessly to put in place a cohesive strategy for development, to steer sustained economic development driven by India's technological strength and entrepreneurial spirit of youth and regulatory reforms. As a nation we firmly believe that the economic development per se is an instrument for development of the society. As said by Mr. Michael Kouly *"Economic Growth can only be sustainable with social prosperity and global abundance".*

The roadmap for India's growth is chalked by the strength of its economy. With a gamut of reforms and initiatives like *Ease of doing business*, India has climbed to the 46th position according to the World Intellectual Property Organization in the Global Innovation Index 2021 ranking. This consistent rise in this ranking is fuelled by the relentless innovative capacity of private and public organisations that continued the path forward despite all challenges. India has emerged as one of the most attractive destinations not only for investments but also for doing business. India has jumped 79 positions from 142nd (2014) to 63rd (2019) in the 'World Bank's Ease of Doing Business Ranking 2020' with supportive measures introduced by central as well as state governments simplifying the regulatory requirements for starting a business.

India has steadfastly build pillars of development-led growth by continuously reinventing itself through major structural reforms and initiatives to transform its economy. India's efforts such as leveraging the digital economy to usher in financial inclusion and bringing healthcare at the ground level are being praised globally. The citizen-centric digital innovations have enabled many families to join the mainstream economy. The rise of the *Digital economy*, has added a new dimension to the transition from traditional business to digital adaptation of services and adoption of technology and building inroads into places beyond urban centres only fortifying the economic growth. As we move forward to celebrate 75 years of Independence, India's growth story will be on fast-track as evident from the International Monetary Fund's (IMF) projection that the global economy will grow by 6% in 2021, and forecasts 9.5% growth in the Indian economy. With its bold set of reforms, like Insolvency and Bankruptcy Code, GST, Reforms in Banking Sector, allowing FDI in various sectors a climate of trust and confidence is being built amongst the global investment fraternity to promote India as best choice of investment. These reforms will augur well for the economic expansion of the country and will lead to employment generation.

An important aspect of India's evolution is the adoption of technology and harnessing the technology for its growth. The Start-up ecosystem must be given impetus to meet the aspirations of the youth and inspire them to become entrepreneur, as entrepreneurship will promote ideas, innovation leading India on its path to become a USD 5 trillion economy. The growth of a nation is essentially a sum total of efforts of various stakeholders which creates a synergistic and catalytic effect. While the Government is playing its role, contribution from stakeholders and citizens is paramount. It is the collective will and collaborative approach of all stakeholders which will pave the roadmap for India's growth. As an institution and at the level of profession, elaborative efforts are being made to develop and build the intellectual capital of the nation. The institute since its inception takes it as its foremost duty to build the competence, capacity and capability of individual, industry and other stakeholders through various initiatives like VitiyaGyan Abhiyaan, GST MSME Helpdesk, developing assurance standards etc.

The accountancy profession by virtue has been on vanguard of public interest, going forward with the dawn of digital era, the profession must gear up itself to meet the challenges of the digital economy to steer economy on the path of growth.

-Editorial Board ICAI: Partner in Nation Building

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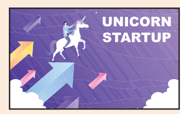

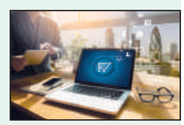

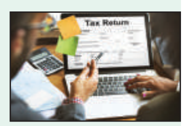

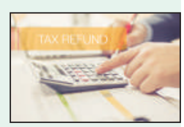

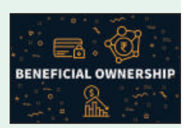

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

ICAI Bhawan, Post Box No.7100, Indraprastha Marg, New Delhi-110002, Tel: +91 (11) 39893989.
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From the President

CA. Nihar N. Jambusaria
President, ICAI

My Dear Professional Colleagues,

A Happy and Joyous New Year to all of you! I wish each one of you good health, wealth and happiness in New Year 2022, but more importantly, I wish you the strength and wisdom to build them for yourself. **Socrates once said, *"The secret of change is to focus all of your energy, not on fighting the old but on building the new".*** I wish you all the best and may you find abundant success and contentment in all your endeavours. With your dedication and efforts, may we continue to rise and shine as a people and professional community in the prestigious task of nation building with our unique skills and abilities.

The world around us is changing with each passing day, as we work towards the new beginnings, learning new things, starting new businesses and striding ahead to achieve new goals to reach greater heights. It is a matter of immense pride to see the rise of India's start-up ecosystem, as the third largest, globally. As a nation, driven by the power of youth and intellect, a new leadership is rising and building the culture of entrepreneurship, moving towards building *Aatmanirbhar Bharat*. To my mind, the roadmap to India's growth story leading to world economic growth essentially runs through by nurturing the spirit of entrepreneurship, developing framework for the new age fin-tech companies and start-up culture to meet the aspirations of youth. Our profession, being the trusted advisor to the industry, is poised to play the pivotal role by adopting the constantly evolving technology and supporting entrepreneurs in building innovative business models. The future is reshaping now and we as professionals whose advice and decisions impact our economy must rise to these new changes and thrive in it.

As we are rebuilding the economy overcoming the ill economic effects of pandemic, we as professionals can wield our expertise with the unfolding new reforms and enhance the capacity of the financial sector. Our fraternity has the foremost functionality in ensuring the best decisive actions in enhancing the physical, financial and infrastructure pillars to harness the opportunities offered to the nation through the budget.

ICAI Triennial Elections Conducted Successfully

Every election is determined by the voters. Voting is not only our right, but also our power. It is one of the most potent instruments through which people democratically choose their leaders. Voting is an expression of the commitment to oneself and profession to elect leadership who would take the profession to new heights.

Elections to the 25th Central Council and 24th Regional Councils were held successfully on 3rd and 4th December 2021 across 832 notified polling booths. A total of 228 candidates, including 73 for Central Council and 155 for Regional Councils, have contested in the elections. The counting of the votes of the Central and Regional Councils commenced concurrently from 16th December 2021 at all respective Regions.

For the first time in this election, with amended rules, voters had the liberty to exercise their voting rights from 'anywhere' in the sense, a polling booth in the same/different city within the same constituency or a polling both in another city outside one's own regional constituency. I am pleased to see that thousands of members have utilised this facility.

The results of these elections of ICAI have already been finalised and declared. ***Regardless of who wins, an election should be a time of optimism and fresh approaches, and it is always win for democracy.*** I extend a hearty welcome and my best wishes to the incoming members of the Council and Regional Councils.

MoU Signing Ceremony between ICAI and the Institute of Professional Accountants of Russia (IPAR)

I am happy to inform that coinciding with the 21st Annual India-Russia Summit, ICAI signed an MoU with the Institute of Professional Accountants of Russia (IPAR) on December 2, 2021 which is one of the 28 agreements signed between the two countries during the Summit.

The MoU aims to establish mutual cooperation in the areas of Professional Accountancy Training, Professional Ethics, Technical Research and Professional development of Accountants.

The event was graced by Dr. Aseem Vohra, First Secretary – Trade Wing, Embassy of India in Russia as Guest of Honour; myself and CA. (Dr.) Jai Kumar Batra, Secretary, ICAI from ICAI side. Mr. Gennadiy Ostrovskiy, Vice-President, IPAR, Russia and Ms. Evgeniya Koposova, Director IPAR, Russia attended the event for IPAR. Through this MoU, members of both the Institutions will gain an impetus for exchange, creating more opportunities for relationship building, policy making will be provided to Export of Services in Accountancy profession.

While I pen down this page, in yet another positive development, the Union Cabinet chaired by the Hon'ble Prime Minister Shri Narendra Modi ji has also approved Memorandum of Understanding between the ICAI and the Polish Chamber of Statutory Auditors (PIBR) on December 22, 2021. The aim of MoU is to work together to develop a mutually beneficial relationship for the members of ICAI and PIBR.

Expanding Global Outreach - New Overseas Representative Offices

Continuing our growth abroad, we have inaugurated two more Representative Offices of ICAI at Sweden (Stockholm) and Denmark (Copenhagen) on 9th December 2021 at a virtual event organised by Netherlands (Amsterdam) Chapter of ICAI. With the launch of these new additional Representative Offices, ICAI has now increased its presence to 11 cities of Europe with 4 Chapters and 7 Representative Offices. In total, ICAI has increased its presence to 73 Global cities of the World with 44 Chapters and 29 Representative Offices spanning in 47 countries.

Global Positioning and Recognition

We congratulate CA. Prafulla P. Chhajed, Past President, ICAI who has been recently elected as Deputy President of Confederation of Asian and Pacific Accountants (CAPA) for a period of two years. It is a matter of pride and joy that ICAI has secured this coveted position after a gap of 6 years. Further, I also got the honour to serve The South Asian Federation of Accountants (SAFA) as Vice-President starting from January 1, 2022. This position also comes to ICAI after a period of 9 years. I am also happy to inform that the Chartered Accountants Worldwide (CAW) Board has approved the appointment of CA. (Dr.) Debashis Mitra, Vice President - ICAI as a Non-Founder Director to the CAW Board for a two-year term. These positions are yet recognition and trust to the Indian accountancy profession, and it will further augment the position of the CA profession globally.

From the President

ICAI International Conference at Mumbai

Preparations for the ICAI International Conference on the theme *"Accountants Creating a Digital and Sustainable Economy"* on January 21-22, 2022 at Jio World Centre, Mumbai are in full swing and we are working to create a valuable experience for our participants wishing to remain updated with the current issues and learnings from the crisis.

I urge my brethren to register in large numbers and encourage fellow members to be a part of this flagship event of ICAI and make it a successful and enriching experience.

Connecting with the fraternity at the World Expo in Dubai

FROM THE PRESIDENT

I had the privilege to address the Indian CA fraternity at the World Expo in Dubai at an event organized by the Dubai Chapter of ICAI recently. It is always a pleasure to meet members of our fraternity, and especially on this favourable visit, with news of the oncoming World Congress of Accountants 2022 (WCOA 2022) which will be taking place from 18th to 21st in November, 2022. The WCOA, popularly known as the "Olympics of the Accountancy Profession" is one of the most prestigious global events of Professional accountants under the aegis of the International Federation of Accountants (IFAC), where a conglomeration of 6000 delegates from over 130 member countries of IFAC exchange views with other Accounting and Finance professionals from around the world and engage with visionaries and leaders to bring their own expertise to the fore on a world stage.

I look forward to participation from members and organizations to utilise this golden opportunity and make it a grand success for each one of us.

Convocation- Congratulate new CAs

It gives me immense pleasure to welcome the newly qualified Chartered Accountants into the professional community. I am very optimistic that the newly qualified Chartered Accountants will be taking the profession to newer paths beyond the traditional avenues, as the profession aligns with the digital era. As said by Abraham Lincoln, '*the best way to predict your future, is to create it*". I would take this opportunity to encourage the newly inducted Chartered Accountants to broaden their horizons and look for emerging avenues. India would be leading the next orbit of growth and I am confident that the profession would be the catalyst for Value Creation.

To felicitate and welcome the newly qualified Chartered Accountants into the professional community, the long awaited ICAI Convocation 2021-22 are being held at Mumbai, Pune, Ahmedabad, Chennai, Hyderabad, Kolkata, Indore, Jaipur and New Delhi during December 2021-January 2022 for members who are enrolled during the period from November 2019 to August 2021 and for Rank holders of CA Final Examination (July 2021).

Concluding Remarks

On the 73rd Republic Day of our nation, I extend my heartiest greetings and recall the commemoration of our Constitution, and the spirit of resilience of our nation builders whose hard work has enabled us the Indians to act *Independently* to take charge of our destiny ahead.

May we all continue to strive forward and add to the glory of our beloved nation. As professionals, let us work towards driving our economy in the right direction in these evolving times and prove our mettle as always.

Stay safe, stay healthy. Best Wishes.

CA. Nihar N. Jambusaria
President, ICAI
New Delhi, 27th December, 2021

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEW DELHI – 110 002

New Delhi, 22nd December, 2021

N O T I F I C A T I O N

(Chartered Accountants)

No.54-EL (1)/13/2021: In Pursuance of Rule 36 of the Chartered Accountants (Election to the Council) Rules, 2006, the Council of the Institute of Chartered Accountants of India is pleased to notify for general information the names (in alphabetical order), membership numbers and places of the members, who have been elected to the Twenty Fifth Council of the Institute from the constituencies as given below:

1. Western India Regional Constituency comprising the States of Goa, Gujarat and Maharashtra and the Union Territories of Dadra & Nagar Haveli and Daman & Diu.

Sl. No.	Names	Membership No.	Place
1.	CA. Adukia Rajkumar Satyanarayan, FCA	34769	Mumbai
2.	CA. Chitale Chandrashekhar Vasant, FCA	35885	Pune
3.	CA. Doshi Vishal, FCA	101533	Vadodara
4.	CA. Kabra Durgesh Kumar, FCA	44075	Mumbai
5.	CA. Khandelwal Dheeraj Kumar, FCA	105591	Mumbai
6.	CA. Khandelwal Purushottamlal Hukamichand, FCA	100601	Ahmedabad
7.	CA. Kinare Mangesh Pandurang, FCA	45481	Thane
8.	CA. Patodia Sunil Kumar, FCA	45489	Mumbai
9.	CA. Savla Priti Paras, FCA	108502	Mumbai
10.	CA. Sharma Umesh Ramnarayan, FCA	104605	Aurangabad
11.	CA. Talati Aniket Sunil, FCA	131567	Ahmedabad

2. Southern India Regional Constituency comprising the States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and Telangana and the Union Territories of Lakshadweep and Pondicherry.

Sl. No.	Names	Membership No.	Place
1.	CA. Dayaniwas Sharma, FCA	216244	Hyderabad
2.	CA. Muppala Sridhar, FCA	212977	Hyderabad
3.	CA. Prasanna Kumar D, FCA	23999	Visakhapatnam
4.	CA. Rajendra Kumar P, FCA	204314	Chennai
5.	CA. Srinivas Cotha S, FCA	205804	Bengaluru
6.	CA. Sripriya K, FCA	205829	Chennai

3. Eastern India Regional Constituency comprising the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, Tripura, West Bengal and the Union Territory of Andaman & Nicobar Islands.

Sl. No.	Names	Membership No.	Place
1.	CA. Agarwal Ranjeet Kumar, FCA	59869	Kolkata
2.	CA. Goyal Sushil Kumar, FCA	57534	Kolkata
3.	CA. Mitra Debashis, FCA	53649	Guwahati

4. Central India Regional Constituency comprising the States of Bihar, Chattisgarh, Jharkhand, Madhya Pradesh, Rajasthan, Uttarakhand and Uttar Pradesh.

Sl. No.	Names	Membership No.	Place
1.	CA. Agarwal Rohit Ruwatia, FCA	413955	Jaipur
2.	CA. Chhajed Abhay Kumar, FCA	79662	Bhopal
3.	CA. Goyal Anuj, FCA	75710	Kaushambi, Dist. Ghaziabad
4.	CA. Misra Gyan Chandra, FCA	78183	Vaishali, Dist. Ghaziabad
5.	CA. Sharma Prakash, FCA	72332	Jaipur
6.	CA. Soni Kemisha, FCA	78005	Indore

5. Northern India Regional Constituency comprising the States of Haryana, Himachal Pradesh and Punjab and the Union Territories of Chandigarh, Delhi, Jammu & Kashmir and Ladakh.

Sl. No.	Names	Membership No.	Place
1.	CA. Agarwal Sanjay Kumar, FCA	85252	New Delhi
2.	CA. Chawla Raj, FCA	90460	New Delhi
3.	CA. Chugh Hans Raj, FCA	88646	New Delhi
4.	CA. Jain Pramod, FCA	90358	New Delhi
5.	CA. Nanda Charanjot Singh, FCA	89658	New Delhi
6.	CA. Singhal Sanjeev Kumar, FCA	95377	Delhi

(CA. (Dr.) Jai Kumar Batra)
Returning Officer and Secretary

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEW DELHI – 110 002.

New Delhi, 24th December, 2021

N O T I F I C A T I O N

(Chartered Accountants)

No.54-EL(1)/14/2021: In pursuance of provisions of sub-regulation (10) of regulation 134 of the Chartered Accountants Regulations, 1988 read with rule 36 of the Chartered Accountants (Election to the Council) Rules, 2006, the Council of the Institute of Chartered Accountants of India is pleased to notify for general information the names (in alphabetical order), membership numbers and places of the members, who have been elected to the Twenty Fourth Regional Councils of the Institute as given below:-

Western India Regional Council

Sl. No.	Names	Membership No.	Place
1.	CA. Agarwal Ankit Ramchander, FCA	141254	Bhiwandi
2.	CA. Ajmera Sourabh, FCA	166931	Mumbai
3.	CA. Chandak Piyush Premsukh, FCA	122921	Nashik
4.	CA. Chitale Ruta Subhash, FCA	111703	Pune
5.	CA. Jain Shweta Jayant, FCA	122933	Mira Road
6.	CA. Jain Vikash Gautamchand, FCA	115545	Ahmedabad
7.	CA. Jivani Ishwarkumar Ramjibhai, FCA	140066	Surat
8.	CA. Kabra Arpit Jagdish, FCA	135637	Mumbai
9.	CA. Kachwala Murtuza Onali, FCA	49978	Kalyan
10.	CA. Kasar Yashwant Jaywant, FCA	133627	Pune
11.	CA. Kedia Pinki, FCA	59969	Mumbai
12.	CA. Kelkar Abhijit Jayant, FCA	110841	Nagpur
13.	CA. Lath Gautam, ACA	173435	Mumbai
14.	CA. Nikam Sanjay Dnyaneshwer, FCA	107170	Navi Mumbai
15.	CA. Pankhania Hrudyesh Natvarlal Nayna, FCA	138932	Nallasopara
16.	CA. Parikh Rahul Harshad, FCA	105642	Vadodara
17.	CA. Patel Chintan Nareshkumar, FCA	110741	Ahmedabad
18.	CA. Pomal Hitesh Manharlal, FCA	106137	Ahmedabad
19.	CA. Rathi Ankit, FCA	162441	Mira Road
20.	CA. Saiya Ketan Damji, FCA	49176	Mumbai
21.	CA. Shinagare Shilpa Babasaheb, FCA	106240	Mumbai

Southern India Regional Council

Sl. No.	Names	Membership No.	Place
1.	CA. Arun Ayyampalayam Venkatesan, FCA	214530	Salem
2.	CA. Chengal Reddy Ramireddygari, FCA	221424	Hyderabad
3.	CA. China Masthan Talakayala, FCA	218549	Hyderabad
4.	CA. Geetha A.B., FCA	213002	Bengaluru
5.	CA. Mandava Sunil Kumar, FCA	217061	Hyderabad
6.	CA. Naresh Chandra Gelli, FCA	201754	Hyderabad

7.	CA. Panna Raj S., FCA	26366	Ballari
8.	CA. Rajesh S., FCA	231027	Pollachi
9.	CA. Rekha U.S., ACA	246384	Chennai
10.	CA. Revathi S. Raghunathan, FCA	200052	Chennai
11.	CA. Satheesan P., FCA	209962	Thrissur
12.	CA. Subba Rao Muppala, FCA	205386	Guntur
13.	CA. Sundararajan R., FCA	29591	Kancheepuram

Eastern India Regional Council

Sl. No.	Names	Membership No.	Place
1.	CA. Agrawal Mayur, FCA	302458	Kolkata
2.	CA. Patra Debayan, FCA	301624	Uluberia
3.	CA. Patwa Ravi Kumar, FCA	56409	Silchar
4.	CA. Sanghi Sanjib, FCA	59112	Kolkata
5.	CA. Tulsyan Vishnu Kumar, FCA	61953	Kolkata

Central India Regional Council

Sl. No.	Names	Membership No.	Place
1.	CA. Bardia Kishore Hemraj, FCA	65676	Raipur
2.	CA. Bargoti Akash, FCA	410780	Jaipur
3.	CA. Biyani Manisha, FCA	59483	Ranchi
4.	CA. Gupta Nitin, FCA	79174	Ghaziabad
5.	CA. Gupta Rajeev, FCA	401237	Meerut
6.	CA. Jain Sharad, FCA	79750	Ujjain
7.	CA. Joshi Kirti Kumar, FCA	413927	Indore
8.	CA. Maheshwari Lokesh, FCA	411185	Kota
9.	CA. Mehrotra Atul, FCA	73921	Kanpur
10.	CA. Pandey Abhisak, FCA	79812	Kanpur
11.	CA. Somani Ankit, FCA	510836	Kishangarh
12.	CA. Yadav Anil Kumar, FCA	405160	Jaipur

Northern India Regional Council

Sl. No.	Names	Membership No.	Place
1.	CA. Agarwal Sandeep, FCA	508472	Delhi
2.	CA. Aggarwal Abhinav, ACA	522122	Delhi
3.	CA. Aggarwal Sangam Kumar, FCA	516131	Delhi
4.	CA. Aggrawal Gaurav, FCA	532594	Delhi
5.	CA. Garg Gaurav, ACA	504757	Delhi
6.	CA. Garg Naveen, FCA	508535	Gurugram
7.	CA. Goel Pitam, FCA	518702	Delhi
8.	CA. Gupta Shalini, FCA	524837	Ludhiana
9.	CA. Gupta Vijay Kumar, FCA	501902	Gurugram
10.	CA. Jags Jagjeet Singh, FCA	512338	Delhi
11.	CA. Malhotra Navya, FCA	539685	Delhi
12.	CA. Sharma Dinesh, FCA	96126	Ludhiana
13.	CA. Sharma Vipin, FCA	512515	Faridabad

(CA. (Dr.) Jai Kumar Batra)
Returning Officer and Secretary

ICAI President CA. Nihar N Jambusaria, ICAI Vice – President CA. (Dr.) Debashis Mitra with Shri Om Birla, Hon'ble Speaker, Lok Sabha. Also seen in picture are Past President, ICAI, CA. Prafulla P. Chhajed and Central Council Member CA. Rajesh Sharma.

ICAI President CA. Nihar N Jambusaria, ICAI Vice – President CA.(Dr.) Debashis Mitra with Shri Rajnath Singh, Hon'ble Union Minister of Defence. Also seen in picture Central Council Members CA. Rajesh Sharma and CA. Anil Bhandari.

ICAI President CA. Nihar N Jambusaria, ICAI Vice-President CA.(Dr.) Debashis Mitra with Shri Rao Inderjit Singh, Hon'ble Minister of State (I/C) for Statistics and Programme Implementation, Planning and Minister of State for Corporate Affairs. Also seen in picture, Central Council Member CA. Rajesh Sharma.

ICAI President CA. Nihar N Jambusaria, ICAI Vice- President CA. (Dr.) Debashis Mitra with Shri Arjun Ram Meghwal, Hon'ble Minister of State for Parliamentary Affairs and Culture and Shri P P Chaudhary, Honb'le Member of Parliament. Also seen in the picture are Past President ICAI Prafulla P. Chhajed, Central Council Member CA. Rajesh Sharma.

Chief Guest Shri Piyush Goyal, Hon'ble Union Minister of Commerce & Industry, Consumer Affairs & Food & Public Distribution & Textiles addressing the 5th Foundation Day of IIIPI held at New Delhi. (25.11.2021).

ICAI President CA. Nihar N Jambusaria addressing the 5th Foundation Day of IIIPI held at New Delhi. Also seen in picture, CA. Ashok Haldia, Chairman, IIIPI (25.11.2021).

Photographs

ICAI President CA. Nihar N Jambusaria inaugurating the 53rd SIRC Regional Conference. Also seen in picture are Past President, ICAI, CA. G Ramaswamy, CA. K. Jalapathi, Chairman, SIRC of ICAI and CA. P. Balasubramani, Chairman Coimbatore Branch of SIRC of ICAI (19.11.2021).

ICAI President CA. Nihar N Jambusaria addressing the 53rd SIRC Regional Conference held at Coimbatore. Also seen in picture are Past President, ICAI, CA. G Ramaswamy, CA. K. Jalapathi, Chairman, SIRC of ICAI and CA. P. Balasubramani, Chairman, Coimbatore Branch of SIRC of ICAI (19.11.2021).

ICAI President CA. Nihar N Jambusaria attending the 50th year program of the Surat Branch of WIRC of ICAI. Also seen in the picture are Central Council Member, CA. Jay Chhaira, CA. Manish Gadia, Chairman, WIRC and members of the managing committee of Surat Branch of WIRC (11.12.2021).

ICAI President CA. Nihar N Jambusaria meeting members at the Surat Branch of WIRC of ICAI. Also seen in the picture are Central Council Member, CA. Jay Chhaira and CA. Manish Gadia, Chairman, WIRC (11.12.2021).

Photographs

ICAI President CA. Nihar N Jambusaria at the program organised by the Vasai Branch of WIRC of ICAI. Also seen in the picture are CA. Manish Gadia, Chairman, WIRC and members of the managing committee of Vasai Branch of WIRC (11.12.2021).

ICAI President CA. Nihar N Jambusaria at the Vasai Branch of WIRC of ICAI. Also seen in the picture CA. Manish Gadia Chairman, WIRC and members of the managing committee of Vasai Branch of WIRC (11.12.2021).

ICAI President CA. Nihar N Jambusaria attending the program at J.B Nagar CPE Study Circle of WIRC. Also seen in the picture CA. Manish Gadia, Chairman, WIRC and members of the Study Circle (21.11.2021).

ICAI President CA. Nihar N Jambusaria at the One Day Seminar at Madurai Branch of SIRC of ICAI. Also seen in picture are Central Council member CA. G. Sekar, and CA. K. Jalapathi, Chairman, SIRC of ICAI (18.12.2021)

ICAI in Action

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

Exposure Draft of the Amendments in the Commercial & Industrial (C&I) Taxonomies-IND AS based Taxonomy & AS based Taxonomy

Ministry of Corporate Affairs (MCA) has mandated the filing of financial statements in XBRL format for the specified class of companies for which the XBRL Taxonomies for Commercial and Industrial Sector- AS and Ind AS Based are already in place. The same have been amended/ updated in view of the followings in order to update the same for the FY 2021-22 for financial reporting purposes:

- Amendments in Schedule III
- Amendments in Companies (Auditor's Report) Order
- Amendments in AS/IND AS
- Other General improvements

The Exposure Drafts of said amendments in AS Taxonomy and Ind AS Taxonomy have been finalised recently by the Taxonomy Development and Review Committee of XBRL India. XBRL India, ICAI, with the aim to provide an opportunity to the various stakeholders to raise their concerns at the Exposure draft stage itself so that these concerns are appropriately addressed, invites comments on the Exposure drafts issued by it. The comments are invited on any aspects of the Exposure Draft. In addition to the comments on amendments in the Taxonomy, other suggestions for any inclusion/ deletion of any element are also invited for overall improvement of the Taxonomy or any area where any difficulty is faced by the Companies while filing.

Comments can submitted by email to **xbrl@icai.in**

Extension of timeline for conduct of Extra-ordinary General Meeting (EGM) through VC or OAVM or transact items through postal ballot

The Ministry of Corporate Affairs vide its General Circular No 20/2021 dated 08.12.2021 has allowed companies to conduct their EGMs through Video Conference (VC) or Other Audio-Visual Means (OAVM) or transact items through postal ballot in accordance with framework provided in the Circular no 14/2020 dated 08.04.2020 up to **30th June 2022.**

MCA vide its circular dated 08.04. 2020 had brought greater clarity on the modalities to be followed by companies for conduct of EGMs during the COVID-19 related social distancing norms and lockdown for the period. Clarifications were given regarding manner and mode of issue of notices to the members before convening the general meeting. The modalities were given for companies which were required to provide the facility of e-voting under the Act, or any other company which had opted for such facility and for companies which are not required to provide the facility of e-voting under the Act.

Extension of holding of Annual General Meeting (AGM) through Video Conference (VC) or Other Audio-Visual Means (OAVM) upto 30th June 2022

The Ministry of Corporate Affairs vide its General Circular No 19/2021 dated 08.12.2021 has allowed the Companies whose AGMs are due in the year 2021, to conduct their AGMs on or before 30th June 2022 in accordance with the requirements laid down in Para 3 and Para 4 of the General Circular No. 20/2020 dated 05.05.2020. The MCA's Circular No. 20/2020 dated 5th May, 2020 has allowed the companies to hold Annual General Meeting (AGM) in a manner similar to EGM Circular- I & II which deal with conduct of Extraordinary General Meeting (EGM) and by virtue of the same the companies have been allowed the holding of Annual General Meeting (AGM) through Video Conferencing (VC) or Other Audio Visual Means (OAVM).

Launching Online Refresher Course - 'Deep Dive into Leases Standard - Ind AS 116'

Our growth and relevance as a body of professionals relies upon the habitual effort to keep refining the repertoire of our knowledge and skills. The Institute is pleased to announce the launch of an online refresher course - 'Deep Dive into Leases Standard – Ind AS 116'. This course is for members who have already completed or are currently undergoing the 'Certificate Course on Indian Accounting Standards (Ind AS)', members who have experience in Ind AS and would like to have some more understanding on the topic and those members who would like to quench their intellectual curiosity on Ind AS.

Registration link, https://learning.icai.org/committee/asb/deep-dive-lease-standard-ind-as-116/

Supplier Finance Arrangements - Proposed amendments to IAS 7 and IFRS 7

The Accounting Standards Board (ASB) of ICAI with the aim to provide an opportunity to the various stakeholders in India to raise their concerns at the initial International Standard-setting stage itself, invites comments on the consultative documents issued by the IASB. It also helps the Indian stakeholders to be aware of the preparations required for implementation of Ind AS in line with adhering to global timelines. Recently, the IASB has issued the following Exposure Draft for public comments:

Supplier Finance Arrangements - Proposed amendments to IAS 7 and IFRS 7

The IFRS Interpretations Committee (IFRS IC) in response to the question about the information an entity is required to provide in its financial statements about supply chain finance (reverse factoring) arrangements. The credit rating agency that submitted the question said, based on its experience, entities provide little information in their financial statements about those arrangements. In response to that question, in December 2020 the Committee published the Agenda Decision Supply Chain Financing Arrangements—Reverse Factoring to explain the applicable requirements in IFRS Standards. The feedback on the draft Agenda Decision suggested that the information an entity is required to provide about this form of financing falls short of meeting user information needs. Users of financial statements want to understand the effects of these arrangements on an entity's liabilities and cash flows, as well as on liquidity risk and risk management.The proposals in this Exposure Draft are intended to complement the requirements in IFRS Standards that apply to reverse factoring and similar arrangements. The proposed amendments to IAS 7 Statement of Cash Flows and IFRS 7 Financial Instruments: Disclosures would require entities to disclose additional information in the notes about those arrangements.

The Exposure Drafts are available for public comments till January 30, 2022, and can be accessed at the following link: https://resource.cdn.icai.org/68013asb54470.pdf

Non-current Liabilities with Covenants - Proposed amendments to IAS 1

In January 2020 the IASB issued Classification of Liabilities as Current or Non-current (2020 amendments). The 2020 amendments clarified aspects of how entities classify liabilities as current or non-current; in particular, how an entity assesses whether it has the right to defer settlement of a liability when that right is subject to compliance with specified conditions (often referred to as 'covenants') within 12 months after the reporting period.

In response to questions from stakeholders, the IFRS IC published a tentative agenda decision explaining how to apply the 2020 amendments to particular fact patterns. Respondents to the tentative agenda decision raised concerns about the outcomes and potential consequences of the 2020 amendments in some situations.

Having considered the new information, the IASB decided to propose narrow-scope amendments to IAS 1. The proposed amendments would specify that conditions with which an entity must comply within 12 months after the reporting period do not affect classification of a liability as current or non-current. Instead, entities would present separately, and disclose information about, non-current liabilities subject to such conditions.

The proposed amendments would also defer the effective date of the 2020 amendments so that entities are not required to change their assessment of the classification of liabilities before the proposed amendments are in effect.

The Exposure Drafts open for public comments till January 30, 2022, and can be accessed at the following link: https://resource.cdn.icai.org/68014asb54471.pdf

Know Your Ethics

Q. Whether an auditor is required to provide to the client or to main auditor of the Head Office of the same enterprise access to his audit working papers?

A. No, working papers are the property of an auditor. An auditor is not required to provide the client access to his audit working papers. The main auditors of an enterprise do not have right of access to the audit working papers of the branch auditors. The auditor may at his discretion, in cases considered appropriate by him, make portions of, or extracts from his working papers available to the client.

Q. Whether Joint Auditors can demand the working papers of one another?

A. No, the working papers are the property of an auditor. Therefore, no Joint Auditor can demand the working papers of the other auditor.

Q. Whether a joint auditor will be responsible for the work done by another joint auditor?

A. The Council direction under Paragraph 2.15.1.2(ii) under Clause (2) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, appearing in Volume II of the Code of Ethics prescribes that in respect of audit work divided among the joint auditors, each joint auditor is responsible only for the work allocated to him including proper execution of the audit procedures. However, on the other hand, all the joint auditors are jointly and severally responsible for the work which is not *inter-se* divided among the auditors.

Q. Whether a member in practice can permit his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast?

A. No, as per Clause (3) of Part-I of Second Schedule to the Chartered Accountants Act, 1949, a member in practice will be deemed to be guilty of professional misconduct if he permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transaction in a manner which may lead to the belief that he vouches for the accuracy of the forecast. As per opinion of the Council, a Chartered Accountant can participate in the preparation of profit or financial forecasts and can review them, provided he indicates clearly in his report the sources of information, the basis of forecasts and also the major assumptions made in arriving at the forecasts and so long as he does not vouch for the accuracy of the forecasts. The member has to comply with SAE 3400 while drafting the report for such engagements.

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Q. Can a member in practice express his opinion on financial statements of any business or enterprises in which he, his relative, his firm or a partner in his firm has a substantial interest?

A. No, as per Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he expresses his opinion on financial statements of any business or any enterprise in which he, his firm or a partner in his firm has substantial interest. 'Substantial interest' here has the same meaning as contained in the resolution passed by the Council in pursuance to Regulation 190A of the Chartered Accountants Regulations, 1988.

However, in case of a company, under Section 141(3)(d)(i) of the Companies Act, 2013, a member cannot accept audit even if he or his partner holds a single share.

Further, in case of a company, under Section 141(3)(d)(i) of the Companies Act, 2013 read with the Companies (Audit and Auditors) Rules, 2014, the relative of an auditor cannot hold security or interest in the company of face value in excess of one lac rupees.

In case of entities other than companies, the criteria laid down for relatives in Regulation 190A of the Chartered Accountants Regulations, 1988 may be referred.

Q. Whether the Chartered Accountant who is appointed as a liquidator of a company can do the audit of that company?

A. No, Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and Regulations framed there under may be referred.

Q. Whether the Chartered Accountant will be guilty of professional misconduct, if he:

(i) accepts the auditorship of a college, if he is working as a part-time lecturer in the college.

(ii) accepts the auditorship of a trust where his partner is either an employee or a trustee of the trust.

A. Yes, the Chartered Accountant will be guilty of professional misconduct in both the above referred circumstances.

Q. Can a Chartered Accountant accept the assignment of audit of a company in which he is a director?

A. No, in cases where the member is a director of a company the financial statements of which are to be audited and/or opinion is to be expressed, he should not undertake such job and/or express opinion on the financial statements of that company.

Q. Whether a member can accept audit of a company where the relative of the member is a director in the company?

A. No, since a member is not eligible for appointment as an auditor of a company as per Section 141 (3) (f) of Companies Act, 2013, if his relative is a director, or is in the employment of the Company as a director, or key managerial person.

Q. Can an auditor write the books of accounts of the auditee?

A. No, Council directions under Paragraph 2.15.1.4(xi) under Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, appearing in Volume-II of Code of Ethics prescribe that an auditor is not permitted to write the books of accounts of his auditee clients.

Further, section 144 of the Companies Act, 2013 bars the auditor of a company to directly or indirectly render accounting and book keeping services to the said company, or its holding company or subsidiary company.

Q. Whether a member who is carrying out statutory audit and also rendering management consultancy services to his auditee clients can receive fees for such other services, which are in excess of the audit fees?

A. Yes. However, in exercise of the authority conferred by clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949, the Council has issued Guidelines, Chapter IX of which specifies that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts the appointment as statutory auditor of Public Sector Undertaking(s)/Government Company(ies)/Listed Company(ies) and other Public Company(ies) having turnover of Rs. 50 crore or more in a year and accepts any other work(s) or assignment(s) or service(s) in regard to the same Undertaking(s)/Company(ies) on a remuneration which in aggregate exceeds the fee payable for carrying out the statutory audit of the same Undertaking/ company.

Provided that in case appointing authority(ies)/ regulatory body(ies) specify(ies) more stringent condition(s)/restriction(s), the same shall apply instead of the conditions/ restrictions specified under these Guidelines.

Explanation :

1. The above restrictions shall apply in respect of fees for other work(s) or service(s) or assignment(s), payable to the statutory auditors and their associate concern(s) put together;

2. For the above purpose;

   (I) The term “other work(s)” or “service(s)” or “assignment(s)” shall include Management Consultancy and all other professional services permitted by the Council pursuant to Section 2(2)(iv) of the Act, but shall not include :-

   (i) audit under any other statute;

   (ii) certification work required to be done by ‘the statutory auditor’s; and

   (iii) any representation before an authority.

   (II) The term “associate concern” means any corporate body or partnership firm which renders the Management Consultancy and all other professional services permitted by the Council wherein the proprietor and/or partner(s) of the statutory auditor firm and/or their “relative(s)” is/ are Director/s or partner/s and/or jointly or severally hold “substantial interest” in the said corporate body or partnership;

   (III) The terms “relative” and “substantial interest” shall have the same meaning as are assigned under Appendix (9) to the CA Regulations;

3. In regard to taking up other work(s) or service(s) or assignment(s) of the undertaking/company referred to above, it shall be open to such associate concern or corporate body to render such work(s) or service(s) or assignment(s) so long as aggregate remuneration for such other work(s) or service(s) or assignment(s) payable to the statutory auditor(s) together with fees payable to its associate concern(s) or corporate body(ies) do/ does not exceed the aggregate of fee payable for carrying out the statutory audit.

Q. Whether the fee received from limited review/ quarterly Audit of the same undertaking/company under the listing regulations should be included in the fee received for carrying out the “statutory audit of the same undertaking/ company”, while comparing the same with the fee from permissible non-audit services?

A. The exemptions to the general rule contained in Chapter IX of Council General Guidelines mention “audit under any other statute”. The limited/quarterly review would not be included in the same, as these are done in the same statute (i.e., Companies Act, 2013). Hence, limited Review/quarterly Audit may be deemed to be included in statutory Audit.

Accounting treatment of Compulsorily Convertible Debentures (CCDs) by the issuer under Ind AS 32, Financial Instruments: Presentation

A. Facts of the Case

1. A Company (hereinafter referred to as 'the Company') is jointly promoted by an oil and gas extraction company and an oil marketing company (OMC) with current shareholding in the ratio of 49% and 51% by these companies respectively (with 0.0002% held by individuals). The oil and gas extraction company is a Maharatna PSU company. The OMC is a Miniratna PSU company. The Company operates an Aromatics Complex at Mangalore Special Economic Zone with feed streams predominantly supplied by the OMC. The Complex was commissioned in October 2014. Due to initial year challenges and market conditions, the Company had incurred losses up to the financial year (F.Y.) 17-18 and during the F.Y. 2019-20 (During F.Y. 2018-19, the Company earned profit).

2. One of the JV partners' group entities had issued Compulsorily Convertible Debentures (CCDs) which enabled that Company's net-worth shoring-up. In order to shore-up net-worth of the Company, reduce the debt levels and strengthen the Company's Balance Sheet, during the F.Y. 19-20, the Company embarked on Capital Realignment Plan with due approvals from the Board followed by the promoter companies' (oil and gas extraction company and OMC) Board approvals. This comprised of equity infusion by promoters, medium-term loan facilities from banks, working capital support by the OMC in the form of bill discounting and issuance of Compulsorily Convertible Debentures (CCDs) to investors with backstop support from Sponsors (Promoter Companies).

3. During March 2020, the Company issued CCDs to investors (NBFCs and bank) to the extent of Rs.1,000 Crore with backstop support from the promoter companies. The Company has an obligation to service the interest pay-outs during the tenure of the CCDs. It is also Sponsors' obligation to ensure that the Company meets the interest obligations on time.

4. The CCDs are not convertible in the hands of investors under any circumstance and the put option can be exercised by investors only on the sponsors and not on the issuer (the Company). These CCDs are convertible only in the hands of sponsors at the end of the tenure/buy-out option or exercising of put option by the investors (mandatory and irrevocable put option available to investors on sponsors only) and the Company would be required to convert the same into equity shares of the Company ranking pari-passu with existing shares at the time of conversion in the same proportion of shareholding /backstop support by reckoning share price at that time as per conversion formula defined in the transaction documents. Objective of such CCD issuance was to de-leverage the highly leveraged balance sheet of the Company through deferred equity infusion considering eventual merger plans of the oil and natural gas extraction company with OMC in the near term. The Company's CCD issuance was carried out broadly in line with CCDs transaction structure of a group company.

5. The querist has given the accounting policy followed by the Company as follows:

> "**3.20.1.2 Compound financial instruments**
>
> The component parts of compound financial instruments issued by the Company are classified separately as financial liabilities and equity in accordance with the substance of the contractual arrangements. At the date of issue, the fair value of the liability component is estimated using the prevailing market interest rate for similar instruments. This amount is recognised as a liability on an amortised cost basis using the effective interest method until extinguished upon conversion or at the instrument's maturity date. The conversion option classified as equity is determined by reducing the amount of the liability component from the fair value of the compound financial instrument as a whole. This is recognised and included in equity, net of income tax effects, and is not subsequently remeasured. In addition, the conversion option classified as equity will remain in equity until the conversion

option is exercised, in which case, the balance recognised in equity will be transferred to other component of equity. When the conversion option remains unexercised at the maturity date of the convertible note, the balance recognised in equity will be transferred to retained earnings. No gain or loss is recognised in profit or loss upon conversion or expiration of the conversion option. Transaction costs that relate to the issue of the convertible notes are allocated to the liability and equity components in proportion to the allocation of the gross proceeds. Transaction costs relating to the equity component are recognised directly in equity. Transaction costs relating to the liability component are included in the carrying amount of the liability component and are amortised over the lives of the convertible notes using the effective interest method."

6. Accounting Methodology: In view of the nature of instrument being compound financial instrument, accounting for the same has been carried out in the books of the Company by bifurcating the total proceeds of CCDs into equity and liability/debt components in compliance with Indian Accounting Standard (Ind AS) 32, 'Financial Instruments: Presentation'. The liability component of the same has been determined by considering discounted value of future cash outflows of the Company on account of the interest service obligations. The liability/debt component derived has been reduced from total value of CCDs to arrive at equity component accounted under other equity in financial statements.

7. The querist has given the rationale and justification for accounting methodology followed by the Company as follows:

I. Company's views on accounting methodology:

The Company has completed issuance of CCDs during March, 2020 to three investors after execution of all relevant documents and receipt of subscription. Post allotment of debentures to investors, the CCDs are held by investors in the capacity of debenture holders duly represented by debenture trustees. The said CCDs are backstop supported by the Sponsor/Promoter Companies, viz., oil marketing company and oil and gas extraction company in the ratio of 51% and 49% through option agreement. From the transaction documents, it may be noted that the following features are unique to this arrangement:

- Investors have un-conditional irrevocable put option on sponsors only and not on the issuers (the Company). The CCDs are compulsorily convertible into equity capital of the Company in the hands of the Sponsors in accordance with the terms of transaction documents. Issuer would be issuing shares to sponsors and not to the investors. Conversion price of shares would be determined based on valuation at the time of such conversion. Post issuance, shares would be ranking pari-passu with existing shares.

- Company's liability is limited to payment of interest to the investors as the value of CCDs is paid back to the investors by the Sponsor Companies upon exercising of Put Option. Pursuant to the option agreement, Sponsor/Promoter companies have undertaken that they will ensure that the service account is operated, maintained and funded at all times, in accordance with the terms of the transaction documents.

- Sponsors have extended the backstop support as above in the ratio of their existing shareholding.

Considering the above unique features of the CCDs read with the terms of transaction documents, the legal point of view on nature of the instrument is that, the consequence of infusion of funds by Parents/Sponsors through CCDs will ultimately be an equity investment into the Company pursuant to conversion of CCDs to equity shares of the Company; and such conversion is not optional but compulsory and does not contemplate repayment of the principal by the issuing Company. Hence, the CCDs issued by the Company can be characterised as equity related instruments or quasi-equity instruments from the date of issuance of such CCDs by the Company.

Further, the Central Government while bringing about the changes in Foreign Policy structure under Foreign Exchange Management Act (FEMA) notified FEMA (Non-debt Instruments) Rules, 2019 on 17.10.2019. The said rules while prescribing the conditions on foreign Investment and related matter defines and considers the equity instruments as under:

> "Rule 2(k) "**equity instruments**" means equity shares, **convertible debentures**, preference shares and share warrants issued by an Indian company;
>
> Explanation:-
>
> (i) Equity shares issued in accordance with the provisions of the Companies Act, 2013 shall include equity shares that have been partly paid. "*Convertible debentures*" *means fully, compulsorily and mandatorily convertible debentures...*
>
> Rule 2 (ai) "*non-debt instruments*" means the following instruments; namely:-
>
> (i) *all investments in equity instruments* in incorporated entities: public, private, listed and unlisted; ..."
>
> The sum and substance of above discussions clearly classify the CCDs *as equity related instrument or quasi-equity instrument or non-debt instrument.*

II. Accounting Treatment: With the above background, the accounting treatment of such instrument in the Company's financial statements is considered as under:

> The financial statements are prepared in accordance with the Companies Act and Ind ASs; and the Company has to comply with the requirements of Division II - Ind AS Schedule III to the Companies Act, 2013. The Institute of Chartered Accountants of India (ICAI), to comply with these provisions, issued Guidance Note (GN) on Division II- Ind AS Schedule III to the Companies Act, 2013 (GN revised edition issued during July-2019).
>
> A. Analysis of relevant paragraphs of Guidance Note and Indian Accounting Standards (Ind AS):

Guidance Note

> "**Paragraph 8.2.1.6.** states that, Ind AS 32 defines an equity instrument as "*any contract that evidences a residual interest in the assets of an entity after deducting all of its liabilities*". The accounting definition of 'Equity' is principle based as compared to the legal definition of 'Equity' or 'Share', such that any contract that evidences residual interest in an entity's net asset is termed as 'Equity' irrespective of whether it is legally recognized as a 'Share' or not. Accordingly, all instruments (including convertible preference shares and **convertible debentures**) that meet the definition of 'Equity' as per Ind AS 32 in its entirety and when they **do not have any component of liability**, should be considered as having the nature of 'Equity' for the purpose of Ind AS Schedule III. Such instruments shall be termed as 'Instruments entirely equity in nature'.
>
> **Paragraph 8.2.1.7.** states that, '**Instruments entirely equity in nature**, may be presented as a separate line item on the face of the Balance Sheet under 'Equity' after 'Equity Share Capital' but before 'Other Equity', as shown below:

Name of the Company.......

Balance Sheet as at.......

(Rupees in ....)

Particulars	**Note No.**	**Figures as at the end of current repor-ting period**	**Figures as at the end of previous reporting period**
EQUITY AND LIABILITIES			
Equity			
(a) Equity Share Capital			
(b) Instruments entirely equity in nature			
(c) Other Equity			

In the Statement of Changes in Equity, the reconciliation for instruments entirely equity in nature should be presented as below:

STATEMENT OF CHANGES IN EQUITY

...

B. Instruments entirely equity in nature *

(a) Compulsorily Convertible Preference Shares

Balance at the beginning of the reporting period	Changes in compulsorily convertible preference shares during the period	Balance at the end of the reporting period

(b) Compulsorily Convertible Debentures

Balance at the beginning of the reporting period	Changes in compulsorily convertible debentures during the period	Balance at the end of the reporting period

(c) [Instrument] (Any other instrument entirely equity in nature)

Balance at the beginning of the reporting period	Changes in [instrument] during the period	Balance at the end of the reporting period

Other Equity

[Table providing reconciliation of Other Equity]

** ...It is assumed that Instruments entirely equity in nature have such terms and conditions that qualify them for being entirely equity in nature based on the criteria given in para 16 of Ind AS 32.* ***Companies should assess terms and conditions specific to their instruments for deciding whether they are entirely equity in nature.***[1]

Paragraph 8.2.1.9 states that, All those compound financial instruments which have both 'Equity' and 'Liability' components, shall be split in accordance with Ind AS 32 and their 'Equity component' shall be presented under 'Other Equity' portion of Statement of Changes in Equity while their 'Liability component' shall be presented as a separate line item under 'Borrowings'.

On going through the above paragraphs of Guidance Note alongwith related Ind AS provisions and considering the terms and conditions associated with CCDs issued by the Company, it is viewed that:

(i) In substance, the CCDs are more of equity in nature as these instruments are compulsorily convertible into equity shares of the Company which evidences residual interest in the assets of the Company.

(ii) One more special feature of the contract is, upon conversion, the shares are issued to Sponsors being existing shareholders at their shareholding ratio without altering their control and thereby preserving their stake in residual interest. Even though CCDs are issued by the Company to investors, the redemption happens only through sponsors.

(iii) The only liability to the issuer is serving of coupon rate till the conversion of CCDs into equity shares of the company.

Considering above, the Company's CCDs are in substance equity in nature with co-existence of a component of liability to the Company being serving of coupon rate till buyback by sponsors. Hence, it needs to be evaluated whether the CCDs in entirety qualify as equity in terms of paragraph 16 of Ind AS 32.

It may be noted that, as per paragraph 16 of Ind AS 32 which provides for classifying the instrument *as an equity instrument rather than a financial liability* in entirety, subject CCDs of the Company are instruments which are more of equity in nature with co-existence of liability component of serving coupon rate. In view of this, requirement of treating the subject CCDs *in entirety* either as equity or liability as prescribed in paragraph 16 of Ind AS 32 would not arise. Hence, the accounting treatment suggested in paragraph 8.2.1.9 of GN to split the CCDs in accordance with Ind AS 32 into 'equity component' and 'liability component' applicable to a compound financial instrument has been followed.

Ind AS 32 provides for the accounting treatment of compound financial instruments having equity as well as debt component. The standard has specifically dealt with the accounting treatment for such instrument in paragraphs 28 to 32 along with accounting guidance in paragraphs AG30 to AG35 which is an integral part of the standard.

[1] This paragraph has been quoted by the querist from July 2017 Edition of the Guidance Note on Division II – Ind AS Schedule III to the Companies Act, 2013, which has been subsequently revised in July 2019 Revised Edition of Guidance Note on Division II - Ind AS Schedule III to the Companies Act 2013.

As per paragraph 28, the issuer of a non-derivative financial instrument shall evaluate the terms of the financial instrument to determine whether it contains both a liability and an equity component. Such components shall be classified separately as financial liabilities, financial assets or equity instruments in accordance with paragraph 15.

Paragraph 15 of Ind AS 32 states that the issuer of a financial instrument shall classify the instrument, or *its component parts*, on initial recognition as a financial liability, a financial asset or an equity instrument *in accordance with the substance of the contractual arrangement* and the definitions of a financial liability, a financial asset and an equity instrument.

As per paragraph 31 of Ind AS 32, the issuer of a compound financial instrument will have to split the financial instrument into liability and equity portions by first calculating the liability portion and the residual will be the equity portion.

As per the terms of issue, the obligations on the part of the Company are:

(i) To service the coupon (interest) to the investors during the period till conversion of CCDs into equity shares.

(ii) Issuance of equity shares ranking at par with existing shares of the Company to the Sponsor companies upon conversion of CCDs.

(iii) Under no circumstances, the CCDs are convertible in the hands of investors as they are convertible only in the hands of Sponsor.

The interest liability will have to be computed by calculating the present value of the interest scheduled over the tenure of the CCD's.

Paragraph 31 of Ind AS 32 also states that 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.

Paragraph AG31 of Ind AS 32 states as follows:

"AG31 A common form of compound financial instrument is a debt instrument with an embedded conversion option, such as a bond convertible into ordinary shares of the issuer, and without any other embedded derivative features. Paragraph 28 requires the issuer of such a financial instrument to present the liability component and the equity component separately in the balance sheet, as follows:

(a) The issuer's obligation to make scheduled payments of interest and principal is a financial liability that exists as long as the instrument is not converted. On initial recognition, *the fair value of the liability component is the present value of the contractually determined stream of future cash flows discounted* at the rate of interest applied at that time by the market to instruments of comparable credit status and providing substantially the same cash flows, on the same terms, but without the conversion option.

..."

In the case of the CCD issued by the Company, the obligation is only to pay the contractual cash flows for the interest portion. There are no cash flows contracted for the principal portion due to the put option given to the investors as well as the back stop facility provided by the sponsors.

Considering this arrangement, the Company has calculated the present value of their cash flows for interest as a liability and the residual amount as the equity component.

B. Further, Ind AS 8, 'Accounting Policies, Changes in Accounting Estimates and Errors' prescribes that, developing and applying an accounting policy should result in information that is:

(a) relevant to the economic decision-making needs of users; and

(b) reliable, in that the financial statements:

(i) represent faithfully the financial position, financial performance and cash flows of the entity;

(ii) reflect the *economic substance of transactions*, other events and conditions, and not merely the legal form;

(iii) are neutral, ie free from bias;

(iv) are prudent; and

(v) are complete in all material respects.

C. Keeping the above aspects and considering the special nature of CCDs issued by the Company, accounting policy of the Company, accounting treatment and disclosures are in line with Ind AS requirements including Ind AS 32.

In view of the above, the Company is of the firm belief that the accounting treatment followed in its financial statements is in compliance with the provisions of Indian Accounting Standards (Ind AS).

(Emphasis supplied by the querist.)

8. The Company also placed reliance on the following which substantiate this CCD transaction instruments to be in the nature of equity:

(i) Financial advisor's to the transaction view is as follows:

- CCD is an alternative to direct equity investment.
- CCD is accepted as quasi-equity by both rating agencies and the lenders
- There is no obligation of repayment of the principal amount by the issuer.

(ii) Legal cases upholding the nature of compulsorily convertible debentures as "Equity in nature" referred by the Company are as under:

(a) Supreme Court of India in Narendra Kumar Maheshwari vs. Union of India

(b) Ahmedabad Special Bench of ITAT in Ashima Syntex Limited vs. ITAT

(c) Ahmedabad Special Bench of ITAT in Banco Products (India) Ltd. vs. DCIT

In essence, in the above cases, it has been viewed that a compulsorily convertible debenture, which will automatically convert into equity shares of the issuing company, which does not contemplate repayment of principal by issuing company is regarded as equity instrument from the date of issuance by the issuing company.

(iii) The Company also searched public domain and accessed few relevant examples pertaining to accounting treatment of CCDs followed by other companies. The CCD transaction structures are unique in every case. The Company's CCD transaction structure also being unique cannot be straight away compared with general examples available in publications on accounting and academic discussions. This needs to be seen from the perspective of its unique nature and substance of transaction. Moreover, treatment of financial instruments (especially compound financial instruments) under Ind AS is continuously evolving through discussions in academic forums. As CCD issuances do not happen regularly in the market unlike issuance of NCDs /bonds, the Company has endeavoured to access few near comparable examples from published data sources.

9. The accounts for the year ended 31st March 2020 were audited by the statutory auditors wherein aforesaid accounting treatment has been reviewed by the Company's statutory auditors during annual statutory audit for the F.Y. 19-20. The financial statements have been adopted by the Board of the Company on 05.06.2020 and statutory auditors report was also placed and considered by the Audit Committee and the Board.

10. Subsequently, the financial statements have been reviewed by resident audit team from the Comptroller and Auditor General (C&AG). C&AG had issued an audit enquiry with regard to accounting methodology followed by the Company w.r.t. CCDs. The audit enquiry was dropped. However, the matter of treatment of CCDs was also taken up by the regional office of C&AG at Chennai by the Audit Team. It was informed that there could be different interpretations under Ind AS with regard to CCDs. Considering complexity of the matter and time constraints, the Company extended an assurance of referring the matter to the Expert Advisory Committee of the Institute of Chartered Accountants of India (ICAI). Based on such assurance, C&AG has issued Nil comments for the year and issued a management letter separately advising the Company's management to place the same before Audit Committee & the

Board and also take up with the Expert Advisory Committee of the ICAI.

11. Extract from Management letter issued by the C&AG states as follows:

"Certain Deficiencies noticed as detailed below, were not issued as Audit Comment. However, the same is bought to your notice for Corrective and remedial Action.

Balance Sheet: Equity and Liabilities:

(1) Equity: (b) Other Equity-₹(-)19,596.89 million:

The above head 'other equity' includes ₹ 7,740.67 million arrived at on initial recognition (05.03.2020) after deducting the amortized amount of interest liability of ₹2,250.89 million and the pro-rata transaction cost of issue of CCD ₹ 8.44 million from the fair value of CCD ₹ 10,000 million.

The recognition of equity is not in line with Ind AS 32 [paragraph 16 (a) and 16 (b) (i) read with paragraph 15] and we differ on the accounting treatment followed by the company.

The financial liability on conversion of CCD into equity shares amounting to ₹10,000 million at the end of tenure is not recognised in the financial statements. The draft provisional comment is dropped on the basis of assurance given by the company to refer the issue to the Expert Advisory Committee (EAC) of the ICAI for its opinion on the treatment of financial liability in the financial statements. Further action taken/proposed to be taken to rectify the lapses/ errors may be communicated to audit."

In view of the management letter of C&AG, the Company seeks EAC opinion on the correctness of the accounting methodology adopted.

12. The querist has supplied the key terms of CCDs as follows:

Sponsor	The two promoter shareholders of the Company
Company/Issuer	The Company
Sponsor	Oil and gas extraction company and OMC
Type of Instrument	Compulsorily Convertible Debentures (CCD)
Nature of the Instrument	The Debenture shall mean an instrument which is compulsorily convertible into equity capital of the Company by the Sponsor/nominees of the Sponsors in accordance with the terms mentioned herein.
Mode of Issue	Private Placement on a fully paid up basis
Listing	Unlisted
Issuance Mode	Demat only. Demat credit to be received within 15 days of the Debentures Pay-in-Date.
Depository	NSDL or CDSL
Debenture Trustee	S Trustee Company Limited
Use of Funds	The Company shall use the proceeds for repayment of existing credit facility(ies), availed by the Company and general working capital purposes.
Face Value	Rs 1 Crore per Debenture.
No. of Units	1,000
Tenure	36 (thirty-six) months from the Deemed Date of Allotment; with mandatory Put / Call Option at the end of the 35th month.
Coupon Payment Date	shall mean with respect to the first coupon period 31 March, 2020 thereafter on 30th June, 30th September, 31st December and 31st March of each year.
Rating of Instrument	The Debentures are expected to be assigned a rating of AAA (CE).

Accelerated Buy Out Option with the Sponsor	• Upon signing of a binding term sheet for equity infusion in the Issuer at any time prior to the expiry of 35 months from the Deemed Date of Allotment, the Sponsor may, with a prior written notice of 15 days to the Debenture Trustee, buy–out Debentures at Face Value ("Accelerated Buy Out of Securities") from the Investor (s); • Coupon amount accrued and due but unpaid till the date of the Accelerated Buy Out shall be paid to the Investor (s) as on the date of the Accelerated Buy Out. • The Sponsors will have a right to buy-out the CCDs (partly or fully at Face Value) at any point of time. On exercising such accelerated buy-out option prior to the 12th month of the instrument, the Investors will be compensated through Yield Protection Premium for the balance period until the end of 12 months from the Pay-in date. • The Yield Protection Premium will be calculated as follows for each Debenture – [(Face Value of a Debenture) X (Coupon rate – 1 yr. G-sec rate) X (No. of days till end of 12 months /365)] / [(1+ 1 yr. G-sec rate) ^ (No. of days till end of 12 months /365)]
"Put Option" or "Mandatory Buy-out by the Sponsor"	a) In the event that the Sponsor has not procured a Nominee who has, or the Sponsor by itself has not, acquired all the Debentures from the Investor (s) prior to the expiry of 35 months from the Deemed Date of Allotment of Debentures, the Sponsor will mandatorily, and without requiring any notice or intimation in this regard, buy the outstanding Debentures for the aggregate Face Value of the Debentures and the accrued/ outstanding but unpaid amounts (including but not limited to unpaid coupon amount), if any, at the end of 35th month from the Deemed Date of Allotment ("Mandatory Buy-out"). Purchase of Debentures shall be undertaken mandatorily by the Sponsor for the entire outstanding Debentures amount; b) The Mandatory Buy-out set out above, shall be binding on the Sponsor and not optional in nature and shall not be dependent on any notice being delivered to the Sponsor; and c) The Debenture Trustee shall give a prior notice of 60 days to the Sponsor in regards to the Mandatory Buy-out. However, the obligation of the Sponsor under the Mandatory Buy-out shall remain, independent of any such notice being given to the Sponsor. d) Sponsors' liability: The liability of each Sponsor shall be limited to its proportionate shareholding in the Company, i.e. the Sponsors will not be joint and severally liable
Accelerated Put Option available to the Investor (s)	a) Accelerated Put Option may be exercised by the Investor(s) on the Sponsor in case of non-payment of coupon amount due and payable on the applicable Coupon Payment Dates wherein such default continues for a period of 1 (one) Business Days (including the Coupon Payment Date) from such Coupon Payment Date; and b) Accelerated Put Option shall be applicable on the entire outstanding principal amount of Debentures and any other dues due to the Investor(s).

Transfer	a) In case of exercise of Accelerated Buy-out Option, the Sponsor, by itself, or through any other affiliate or Nominees (s) nominated by the Sponsor, may acquire the outstanding Debentures. b) In case of Mandatory Buy-out and/or the Accelerated Put Option, the Sponsor or its Nominees shall be mandatorily required to buy the outstanding Debentures held by the Investor(s). c) The Debentures, if required by the Principal Investor (s), maybe transferred only to the Permitted Investor at any time during the Tenure. Provided that such Permitted Investor (s) shall be permitted to transfer the Debentures to any of the Principal Investor (s)/ other Permitted Investor(s).
Conversion Option	The Debentures will not have any conversion option for the period it is held by the Investor(s). On exercise of any of the following, the conversion option shall be effective: a) Accelerated Buy-out Option; b) Mandatory Buy-out; c) Accelerated Put Option; Sponsor/ Nominee shall have the unilateral right to convert the Debentures held by them to equity of the Company.
Conversion Terms for Debentures	Debentures shall be automatically and compulsorily converted into ordinary equity shares of the Company at the end of the Tenure; provided however in the event that the Investors continue to hold the Debentures at the end of the Tenure, for any reason whatsoever, the conversion of the Debentures shall not happen until such time as the Sponsor has acquired the Debentures from the Investor. Further, in the event, the Sponsor exercises the Accelerated Buy-out Option or when the Debentures are transferred to Nominee(s), the Sponsor may require the Company to convert the Debentures including the coupon amount and any other fee paid to the Investor (s) by the Sponsor into ordinary equity shares of the Company, before the end of the Tenure of the Debentures. Such conversion shall occur at the Conversion Price.
Conversion Price	To be decided 35 months from date of issuance or within 30 days of the exercise of the following, whichever is earlier: a) Accelerated Buy-out Option; b) Mandatory Buy-out; c) Accelerated Put Option;
Ranking of shares	The equity shares issued upon conversion of the Debentures shall rank pari-passu in all respect with the equity shares existing at the time of such conversion, including with respect to voting rights, bonus and rights shares.
Transaction Documents	Customary documents for such Debenture issuance, including: • Debenture Trust Deed (DTD) setting out the terms of issuance of Debentures set out in this term sheet; • Option agreement setting out the terms of the Mandatory Buy-out, Accelerated Put Option, and the Accelerated Buy-Out Option; • Debenture Trustee Agreement setting out the terms of appointment of Debenture Trustee and the rights and duties of the Debenture Trustee; and • Service Account Agreement setting out the terms of operation of the Service Account. • Private Placement Offer Letter (PAS-4) Pricing Supplement setting out the applicable coupon rate in respect of each series of debentures.

B. Query

13. On the basis of above, the opinion of the Expert Advisory Committee is sought on the following issues:

(i) Whether the accounting treatment of CCDs issued by the Company and the disclosures made by the Company for the year ending 31st March 2020 is in line with the requirement of Ind AS 32 and the applicable provisions of other Indian Accounting Standards.

(ii) In case, EAC opinion is contrary to accounting treatment adopted by the Company:

(a) What is the correct accounting treatment that should have been followed in the matter?

(b) What are the corrective or remedial actions to be taken by the Company in this respect?

C. Points considered by the Committee

14. The Committee notes that the basic issue raised by the querist relates to the accounting treatment of the Compulsory Convertible Debentures (CCDs) issued by the Company and the related disclosures made in its financial statements for year ended 31st March 2020 under Ind AS. 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 the CCDs in the financial statements of the Sponsors and the Investors, valuation and measurement (initial and subsequent) of CCDs (including embedded derivative, if any), deferred tax implications, accounting for the interest payments on the CCDs, control assessment, etc. The Committee further notes that in determining whether to classify a financial instrument (or its components) on initial recognition as a financial liability or as equity, Ind AS 32, requires an entity to assess the substance of a contractual arrangement rather than its legal form. Therefore, it is possible for an instrument that qualifies as equity for legal or regulatory purposes, to be classified as a financial liability under Ind AS. The Committee has only looked into the issue from an Ind AS perspective and has not looked into the regulatory or legal classification and implications, including those arising under Income-tax Act and FEMA. Further, the Committee presumes from the Facts of the Case that the interest/coupon rate in respect of the extant CCDs is at the prevalent market rate of interest for similar kind of instruments (having same terms, comparable credit status and cash flows, etc.).

15. The Committee notes that Ind AS 32, 'Financial Instruments: Presentation' states the following:

"15 The issuer of a financial instrument shall classify the instrument, or its component parts, on initial recognition as a financial liability, a financial asset or an equity instrument in accordance with the substance of the contractual arrangement and the definitions of a financial liability, a financial asset and an equity instrument.

16 When an issuer applies the definitions in paragraph 11 to determine whether a financial instrument is an equity instrument rather than a financial liability, the instrument is an equity instrument if, and only if, both conditions (a) and (b) below are met.

(a) The instrument includes no contractual obligation:

(i) to deliver cash or another financial asset to another entity; or

(ii) to exchange financial assets or financial liabilities with another entity under conditions that are potentially unfavourable to the issuer.

(b) If the instrument will or may be settled in the issuer's own equity instruments, it is:

(i) a non-derivative that includes no contractual obligation for the issuer to deliver a variable number of its own equity instruments; or

(ii) a derivative that will be settled only by the issuer exchanging a fixed amount of cash or another financial asset *for a fixed number of its own equity instruments*. For this purpose, rights, options or warrants to acquire a fixed number of the entity's own equity instruments for a fixed amount of any currency are equity instruments if the entity offers the rights, options or warrants pro rata to all of its existing owners of the same class of its own non-derivative equity instruments. Apart from the aforesaid, the equity conversion option embedded in a convertible bond denominated in foreign currency to acquire a fixed number of the entity's own equity instruments is an equity instrument if the exercise price is fixed in any currency. Also, for these purposes the issuer's own equity instruments do not include instruments that have all the features and meet the conditions described in paragraphs 16A and 16B or paragraphs 16C and 16D, or instruments that are contracts for the future receipt or delivery of the issuer's own equity instruments.

A contractual obligation, including one arising from a derivative financial instrument, that will or may result in the future receipt or delivery of the issuer's own equity instruments, but does not meet conditions (a) and (b) above, is not an equity instrument. As an exception, an instrument that meets the definition of a financial liability is classified as an equity instrument if it has all the features and meets the conditions in paragraphs 16A and 16B or paragraphs 16C and 16D."

"21 A contract is not an equity instrument solely because it may result in the receipt or delivery of the entity's own equity instruments. An entity may have a contractual right or obligation to receive or deliver a number of its own shares or other equity instruments that varies so that the fair value of the entity's own equity instruments to be received or delivered equals the amount of the contractual right or obligation. Such a contractual right or obligation may be for a fixed amount or an amount that fluctuates in part or in full in response to changes in a variable other than the market price of the entity's own equity instruments (eg an interest rate, a commodity price or a financial instrument price). Two examples are (a) a contract to deliver as many of the entity's own equity instruments as are equal in value to Rs. 100, and (b) a contract to deliver as many of the entity's own equity instruments as are equal in value to the value of 100 ounces of gold. Such a contract is a financial liability of the entity even though the entity must or can settle it by delivering its own equity instruments. It is not an equity instrument because the entity uses a variable number of its own equity instruments as a means to settle the contract. Accordingly, the contract does not evidence a residual interest in the entity's assets after deducting all of its liabilities.

22 Except as stated in paragraph 22A, a contract that will be settled by the entity (receiving or) *delivering a fixed number of its own equity instruments* in exchange for a fixed amount of cash or another financial asset is an equity instrument. For example, an issued share option that gives the counterparty a right to buy a fixed number of the entity's shares for a fixed price or for a fixed stated principal amount of a bond is an equity instrument. Changes in the fair value of a contract arising from variations in market interest rates that do not affect the amount of cash or other financial assets to be paid or received, or the number of equity instruments to be received or delivered, on settlement of the contract do not preclude the contract from being

an equity instrument. Any consideration received (such as the premium received for a written option or warrant on the entity's own shares) is added directly to equity. Any consideration paid (such as the premium paid for a purchased option) is deducted directly from equity. Changes in the fair value of an equity instrument are not recognised in the financial statements."

"28 **The issuer of a non-derivative financial instrument shall evaluate the terms of the financial instrument to determine whether it contains both a liability and an equity component. Such components shall be classified separately as financial liabilities, financial assets or equity instruments in accordance with paragraph 15.**

29 An entity recognises separately the components of a financial instrument that (a) creates a financial liability of the entity and (b) grants an option to the holder of the instrument to convert it into an equity instrument of the entity. For example, a bond or similar instrument convertible by the holder into a *fixed number* of ordinary shares of the entity is a compound financial instrument. From the perspective of the entity, such an instrument comprises two components: a financial liability (a contractual arrangement to deliver cash or another financial asset) and an equity instrument (a call option granting the holder the right, for a specified period of time, to convert it into a fixed number of ordinary shares of the entity). The economic effect of issuing such an instrument is substantially the same as issuing simultaneously a debt instrument with an early settlement provision and warrants to purchase ordinary shares or issuing a debt instrument with detachable share purchase warrants. Accordingly, in all cases, the entity presents the liability and equity components separately in its balance sheet."

Appendix A, Application Guidance, Ind AS 32 Financial Instruments: Presentation

"AG27 The following examples illustrate how to classify different types of contracts on an entity's own equity instruments:

(a) A contract that will be settled by the entity receiving or delivering a fixed number of its own shares for no future consideration, or exchanging a fixed number of its own shares for a fixed amount of cash or another financial asset, is an equity instrument (except as stated in paragraph 22A). Accordingly, any consideration received or paid for such a contract is added directly to or deducted directly from equity. One example is an issued share option that gives the counterparty a right to buy a fixed number of the entity's shares for a fixed amount of cash. However, if the contract requires the entity to purchase (redeem) its own shares for cash or another financial asset at a fixed or determinable date or on demand, the entity also recognises a financial liability for the present value of the redemption amount (with the exception of instruments that have all the features and meet the conditions in paragraphs 16A and 16B or paragraphs 16C and 16D). One example is an entity's obligation under a forward contract to repurchase a fixed number of its own shares for a fixed amount of cash.

(b) …

(c) …

(d) *A contract that will be settled in a variable number of the entity's own shares whose value equals a fixed amount or an amount based on changes in an underlying variable (eg a commodity price) is a financial asset or a financial liability.* An example is a written option to buy gold that, if exercised, is settled net in the entity's own instruments by the entity delivering as many of those instruments as are equal to the value of the option contract. Such a contract is a financial asset or financial liability even if the underlying variable is the entity's own share price rather than gold. Similarly, a contract that will be settled in a fixed number of the entity's own shares, but the rights attaching to those shares will be varied so that the settlement value equals a fixed amount or an amount based on changes in an underlying variable, is a financial asset or a financial liability."

(Emphasis supplied by the Committee)

16. Further, the Committee notes that Ind AS 109, 'Financial Instruments' provides as follows:

"4.3.1 An embedded derivative is a component of a hybrid contract that also includes a non-derivative host—with the effect that some of the cash flows of the combined instrument vary in a way similar to a stand-alone derivative. An embedded derivative causes some or all of the cash flows that otherwise would be required by the contract to be modified according to a specified interest rate, financial instrument price, commodity price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, provided in the case of a non-financial variable that the variable is not specific to a party to the contract. A derivative that is attached to a *financial instrument* but is contractually transferable independently of that instrument, or has a different counterparty, is not an embedded derivative, but a separate financial instrument."

"4.3.3 If a hybrid contract contains a host that is not an asset within the scope of this Standard, an embedded derivative shall be separated from the host and accounted for as a derivative under this Standard if, and only if:

(a) the economic characteristics and risks of the embedded derivative are not closely related to the economic characteristics and risks of the host (see paragraphs B4.3.5 and B4.3.8);

(b) a separate instrument with the same terms as the embedded derivative would meet the definition of a derivative; and

(c) the hybrid contract is not measured at fair value with changes in fair value recognised in profit or loss (ie a derivative that is embedded in a financial liability at fair value through profit or loss is not separated)."

"Embedded derivatives (Section 4.3)

B4.3.1 When an entity becomes a party to a hybrid contract with a host that is not an asset within the scope of this Standard, paragraph 4.3.3 requires the entity to identify any embedded derivative, assess whether it is required to be separated from the host contract and, for those that are required to be separated, measure the derivatives at fair value at initial recognition and subsequently at fair value through profit or loss."

"B4.3.3 An embedded non-option derivative (such as an embedded forward or swap) is separated from its host contract on the basis of its stated or implied substantive terms, so as to result in it having a fair value of zero at initial recognition. An embedded option-based derivative (such as an embedded put, call, cap, floor or swaption) is separated from its host contract on the basis of the stated terms of the option feature. The initial carrying amount of the host instrument is the residual amount after separating the embedded derivative."

17. The Committee notes from the above that the appropriate classification as a financial liability, equity or a combination of both, is determined by the entity when the financial instrument is initially recognised. The Committee notes that the exceptions in Ind AS 32, paragraphs 16A-D do not apply in the

extant case. The Committee further notes that Ind AS 32 defines an equity instrument as any contract that evidences a residual interest in the assets of an entity after deducting all of its liabilities. While classifying a financial instrument as a liability or equity, equity classification is appropriate only if the instrument fails the definition of a financial liability. In order for an instrument to be classified as an equity instrument under Ind AS 32, it is not sufficient that it involves the reporting entity delivering or receiving its own equity instruments. The number of equity instruments delivered, and the consideration for them, must be fixed ('fixed for fixed' requirement). Contracts that will be settled other than by delivery of a fixed number of shares for a fixed amount of cash do not meet the definition of equity. An entity may have a contractual obligation to deliver a number of its own shares or other equity instruments that varies so that the fair value of the entity's own equity instruments to be delivered equals the amount of the contractual obligation. Such a contract is a financial liability. Even though the contract must, or may, be settled through delivery of the entity's own equity instruments, the number of own equity instruments required to settle the contract will vary. The contract will therefore not fulfil the requirements of an equity instrument and is, therefore, a financial liability.

18. The Committee notes that in the extant case, interest is payable to the investors by the Company as per the terms of the CCDs, which in the view of the Committee, would meet the criteria for financial liability classification, since there is an obligation to pay cash that the issuer (the Company) cannot avoid (interest payment obligation). For this component, on a stand-alone basis, there is no feature that is similar to equity.

19. The Committee also notes from the Facts of the Case that the CCDs are convertible only in the hands of sponsors at the end of the tenure/buy-out option or exercising of put option by the investors and the Company would be required to convert the same into equity shares of the Company ranking pari-passu with existing shares at the time of conversion in the same proportion of shareholding /backstop support by reckoning share price at that time as per conversion formula defined in the transaction documents. The conversion option shall be effective on the exercise of the Accelerated Buy-out Option, the Mandatory Buy-out or the Accelerated Put Option giving the sponsor/ nominee an unilateral right to convert the debentures into equity of the Company.

Thus, with regard to conversion feature of the CCD, the Committee notes that in the extant case, there is no contractual obligation to pay cash that the issuer (the Company) cannot avoid, since the conversion into own equity shares is compulsory. However, the conversion ratio for the purpose of the conversion shall be dependent on the share price of the Company at the time of conversion. The equity conversion feature can only be settled through the issue of equity shares – however, there is an obligation to issue a variable number of shares – the number of shares to be issued is based on the share price on conversion. In other words, the conversion price and, hence, the conversion ratio of CCDs into ordinary equity shares of the Company is not fixed at the point of initial recognition of the CCDs. Therefore, the conversion component within the instrument would not meet the criteria laid down in Ind AS 32 for the purpose of classifying as equity. Accordingly, overall, the CCDs do not meet the criteria for being classified as compound instrument as there is no equity component. The CCDs should be classified as financial liabilities in entirety.

20. The Committee further notes that terms of the CCDs contain Accelerated Buy-out Option, or the Accelerated Put Option during the 35-month tenure of the CCDs. Upon exercise of these options by the Sponsors/ Investor, the Company would be required to convert the CCDs into equity shares. The Committee is of the view that these options may represent embedded derivatives under Ind AS 109, which should be evaluated by the Company in the extant case. Further, the Company shall also evaluate whether these embedded derivatives are 'closely related' to the host contract as per the requirements of Ind AS 109. The Committee notes that as per the requirements of Ind AS 109, for convertible notes with embedded derivative liabilities, the embedded derivative liability is determined first and the residual value is assigned to the debt host liability.

21. The Committee notes that the Company has provided the disclosures relating to CCDs in its financial statements for financial year ended 31st March 2020 based on compound instruments classification. The Company shall present and make the disclosures for the CCDs, as per the applicable requirements of Ind AS 32, Ind AS 107, Ind AS 113 and Division II – Ind AS Schedule III to the Companies Act, 2013 that are relevant for financial liabilities.

22. The Committee further notes that Ind AS 8, 'Accounting Policies, Changes in Accounting Estimates and Errors' states as follows:

> "41 Errors can arise in respect of the recognition, measurement, presentation or disclosure of elements of financial statements. Financial statements do not comply with Ind ASs if they contain either material errors or immaterial errors made intentionally to achieve a particular presentation of an entity's financial position, financial performance or cash flows. Potential current period errors discovered in that period are corrected before the financial statements are approved for issue. However, material errors are sometimes not discovered until a subsequent period, and these prior period errors are corrected in the comparative information presented in the financial statements for that subsequent period (see paragraphs 42–47).
>
> **42 Subject to paragraph 43, an entity shall correct material prior period errors 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."**

The Committee notes from the above that as per Ind AS 8, material prior period errors are corrected retrospectively by restating the comparative amounts for prior period(s) presented in which the error occurred. If the error occurred before the earliest period presented, the opening balance of assets, liabilities and equity/ retained earnings for the earliest period presented are adjusted. Therefore, the Company shall correct the accounting treatment of the CCDs as a prior period error retrospectively in the first set of financial statements approved for issue after the discovery of the error.

D. Opinion

23. On the basis of above, the Committee is of the following opinion on the issues raised in paragraph 13 above:

a) The accounting treatment of CCDs issued by the Company as compound instrument is not in line with the requirements of Ind AS 32, as discussed in paragraphs 15 to 19 above. The disclosures in the financial statements shall be provided based on the classification as financial liabilities, as discussed in paragraph 21 above:

b) i) The CCDs shall be classified as financial liabilities in entirety under Ind AS 32, as discussed in paragraph 19 above.

ii) The Company shall correct the accounting treatment of the CCDs as a prior period error retrospectively in the first set of financial statements approved for issue after the discovery of the error, as discussed in paragraph 22 above.

1.	The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
2.	The Opinion is based on the facts supplied and in the specific circumstances of the querist. The Committee finalised the Opinion on January 18-20, 2021. The Opinion must, therefore, be read in the light of any amendments and/or other developments subsequent to the issuance of Opinion by the Committee.
3.	The Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in forty volumes. This is available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur.
4.	Recent opinions of the Committee are available on the website of the Institute under the head 'Resources'.
5.	Opinions can be obtained from EAC as per its Advisory Service Rules which are available on the website of the ICAI, under the head 'Resources'. For further information, write to eac@icai.in.

India's Growth Story: A New Era of Success and Hope

2020 has been a year of challenges due to Covid-19. However, India bounced back quickly to growth in 2021 with a GDP growth of 8.4% in the Jul-Sept'21 quarter. The RBI has estimated a GDP growth of 9.5% for the full financial year FY'22. The growth has been driven by all sectors with industry growing at 6.9%, services growing by 10.2% and agriculture by 4.5%. Although the 2nd wave of COVID-19 had cast a long shadow on growth in Q1, India quickly rebounded with growth in vaccination, continuing high investments in infrastructure, increase in consumption and a high growth focused monetary policy. Read on…

CA. (Dr.) Vikas S. Chaturvedi

The author is a member of the Institute. He can be reached vschaturvedi@gmail.com and eboard@icai.in

After the pandemic, we observed a completely different approach in which the world conducts business with China. There is an effort to find alternatives to the global industrial production supply chain which was disrupted due to the pandemic. In the times to come, localization and building a self-sustained economic model will be the preferred theme of the business. We already see a shift towards this theme. Though this will take time, as right ecosystem needs to be built before full efficiency in localization is achieved. Simultaneously, the pandemic is leading to change in the globalization strategy of all the major countries who are realigning the strategy to de-risk their manufacturing supply chain. In the times of the pandemic, India has emerged as a trusted partner for global manufacturing and has shown its technological and intellectual competence by emerging as the leading producer of vaccinations.

In the last 5 years, the Government has promoted Make in India across the world and has built a climate of trust and friendship with significant sections of world leaders both in politics and business. Due to these continuous efforts of simplification of various laws and building infrastructure in

the country in last 5 years, India has gained significant rank in the Ease of Doing Business Index. Over 1000 international firms are in advanced discussions to consider production in India. This will create significant job opportunities and will boost India's GDP in the upcoming financial years.

Recently, the Prime Minister has spelled five pillars of his vision for an emerging new business and inclusive work culture, including adaptability to survive future crisis, efficiency, primacy to caring for the poor, new opportunities emerging in the post-pandemic world, unity and brotherhood.

While FY'21 has seen a good growth so far, FY'22 and 23 is expected to be even better. Even though the new Omicron variant of Covid-19 is posing some challenges, increase in vaccination coverage will limit the impact. With tremendous efforts of the Government, about 85% of adults in India are vaccinated with at least 1 dose as of mid-December 2021.

The following areas will be key to driving growth in the coming years.

> In the last 5 years, the Government has promoted Make in India across the world and has built a climate of trust and friendship with significant sections of world leaders both in politics and business.

Infrastructure Investments

India is emerging to become a global leader in investing in world-class infrastructure projects, in view of concrete plans set out in the 2021 Budget. The Indian infrastructure sector is filled with signs of optimism as the country recovers from the effects of the pandemic. Current trends suggest a boost in infrastructure spending that shall also facilitate infusion of overseas capital for investments in other sectors and an availability of credit for infrastructure projects.

The Government's National Infrastructure Plan for 2019 to 2025 has already supported more than 9000 projects having a total project cost surpassing USD 1949 billion. The National Infrastructure Pipeline is a live database of infrastructure projects worth more than INR 100 crores and provides lucrative investment opportunities in various infrastructure sectors including Energy, Transport, Water and Sanitation, Logistics, Energy, Communication, Social and Commercial Infrastructure.

Apart from this, opportunities are available through the Government's 'India Investment Grid' (IIG) for investing in stressed assets to allow the purchase of viable stressed assets which have the potential for being turned around. These investment opportunities are coupled with a bold move towards introducing the National Bank for Financing Infrastructure and Development Act, 2021. The long-overdue initiative establishes a government-owned Development Finance Institution (DFI) for extending long-term affordable debt financing to infrastructure projects. The DFI is set to receive initial funding from the Government and is projected to have a lending capability of

> Statutory authorities have already begun setting up infrastructure investment trusts (InvIT) which will hold the public infrastructure assets for national as well as international institutional investors.

a minimum of INR 5 trillion by 2024-25.

The INR 40,000 crore National Investment and Infrastructure Fund (NIIF) anchored by the Government of India in 2015 is also gaining traction through its funds namely, Master Fund, Fund of Funds and Strategic Opportunities Fund, each with a designated purpose.

The Government of India has also earmarked areas including highways, railways, power grids, and airports to monetize public infrastructure for financing new public projects. Statutory authorities have already begun setting up infrastructure investment trusts (InvIT) which will hold the public infrastructure assets for national as well as international institutional investors. Another avenue under consideration for obtaining public investment into infrastructure projects is issuance of tax-efficient zero-coupon bonds by infrastructure debt funds. Tenders' worth more than INR 20 billion are expected to be issued in the coming financial year for public-private partnership in the management and operations of ports.

In the power sector, apart from an outlay worth INR 3 trillion planned over the coming five years for revamping the power distribution scheme by providing distribution companies with financial assistance for developing a smart-metering infrastructure, the Government is also in the advanced stages of launching a National Hydrogen Mission which may provide an opportunity for corporations in the power sector to engage in the export of green hydrogen and green ammonia while also meeting the domestic demand.

These dynamic initiatives clubbed with the use of India's IT capabilities by creating monitoring mechanisms such as a dashboard to track the progress of publicly monetized infrastructure projects have created attractive opportunities for infrastructure companies to mobilize their assets into the establishment of new development projects.

Performance linked Incentives (PLI) for Manufacturing and Industry

The Government has announced an outlay of INR 1.97 Lakh Crores for the Production Linked Incentive (PLI) Schemes across 13 key sectors to create national manufacturing champions and generate employment opportunities for the country's youth.

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The aim is to make the country and its citizens independent and self-reliant in all senses under the 'Atmanirbhar Bharat' plan. This scheme will further have a multiplier effect in terms of Higher Capital Expenditure by the private sector as well as increase competitiveness of Indian products in exports markets.

The major sectoral allocations are as below:

- Automobiles and Auto Components: INR 57.042 Crores
- Drones (Aviation): INR 120 Crores
- Chemicals: INR 18,100 Crores
- Electronics: INR 40,000 Crores for Large Scale Electronics Manufacturing and INR 7.325 Crores for IT Hardware
- Food Processing: INR 10,900 Crores
- Metals and Mining: INR 6,322 Crores
- Pharma: INR 21,940 Crores
- Renewable Energy: INR 4,500 Crores
- Telecom: INR 12,195 Crores
- Textile: INR 10,683 Crores
- White Goods: INR 6,238 Crores

Green Technology

India is leading the way for a new era of low carbon emissions, and its solar ambition will help transform an energy structure currently dominated by coal. The majority of India's $775 million Clean Technology Fund (CTF)

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investment plan supports the development of over 3 GW of new installed solar power capacity and associated transmission infrastructure. In particular, CTF concessional financing is helping to offset the high upfront costs of large-scale solar park projects and to de-risk investments in rooftop solar photovoltaic to unleash its full market potential.

Green technology has a huge potential, and it is very important for India to build a sustainable economy and contribute towards mitigating climate change. The various initiatives of the Government and the nudge to shift towards renewable sources of energy is very promising like increasing adoption of electric vehicles. The segment has huge potential and a number of major industrial conglomerates in India have committed huge investments in the area of green technology. In fact, the country is witnessing a revolution in the electric vehicle space which offers a huge opportunity in the clean tech space. With strategic impetus and support from the Government, the adoption of electric vehicles will accelerate and lead to further development of the sector.

Foreign Direct Investment

With more and more countries trying to reduce their dependence on China for supply of time critical components and goods, India stands to gain as a reliable and a stable alternative.

The Government of India has made significant changes to the FDI policy regime to make it more investor-friendly to ensure that India is amongst the most promising investment destination. It has put in place a very liberal policy to attract Foreign Direct Investment (FDI), wherein 100% FDI is permitted under the automatic route in most sectors/activities.

To promote Foreign Direct Investment, the Government has decided to continue with Scheme for Investment Promotion (SIP), for another five years term (FY 2021-22 to 2025-26) with a financial outlay of INR 9.70 billion. With the persistent efforts of the Government Foreign Direct Inflows in India have consistently increased since 2014-15. Further, coupled with promising FDI policy and structural regulatory reforms the total FDI inflow grew from $266.21 bn in 2007-14 to $440.01bn in 2014- 21 i.e., by 65.3% and similarly FDI equity inflow also increased from $185.03 bn during 2007-14 to $312.05 bn (2014-21) i.e., by 68.6%.

> Green technology has a huge potential, and it is very important for India to build a sustainable economy and contribute towards mitigating climate change.

During the first four months of FY 2021-22 India has attracted a total FDI inflow of $27.37 bn which is 62% higher as compared to the corresponding period of FY 2020-21 ($ 16.92 billion). FDI equity inflow grows by 168% in the first three months of FY 2021-22 ($17.57 bn) compared to the same corresponding period last year ($6.56 bn). It shows that our policy and reforms are in right direction and with overall improvement in global sentiments India is poised to grow well.

Exports

India's export sector has shown strong recovery after the COVID-induced slowdown in 2021, and the strong growth is likely to extend the growth story to the New Year as the demand revives in the global markets, boost in domestic manufacturing due to production-linked incentive schemes and implementation of some interim trade pacts.

With significant impetus and support from the Government and improvement, India's merchandise exports are on their way to touch the $ 400 billion target set by the Government. Exporters believe that the outbound shipments by the current momentum may reach USD 475 billion in 2022-23. Proactive reviewing and monitoring of the macro environment and geographical factors are helping to find and forge new areas of trading relationships. Various measures

> The Department of Commerce is working on the new Foreign Trade Policy (FTP) and is aggressively negotiating Free Trade Agreements (FTAs) with key trading partners including the UAE, the UK and Australia.

to improve ease of doing business, incentivisation schemes like PLIs, rationalisation of duties are facilitating the trade scenario like never before.

To boost exports, the Government has taken several measures such as notifying RoDTEP (Remissions of Duties and Taxes on Exported Products) rates and releasing INR 56,027 crore against pending tax refunds of exporters and steps to promote ease of doing business. The Department of Commerce is working on the new Foreign Trade Policy (FTP) and is aggressively negotiating Free Trade Agreements (FTAs) with key trading partners including the UAE, the UK and Australia. All these measures would help in registering record growth in exports in the next year as well.

Exports are likely to do better in 2022 on account of improving demand in global markets, strategic shift in global manufacturing strategy and emergence of India as a trusted manufacturing hub. Incentives like PLI will start yielding result in the export segment. ■■■

Roadmap for India's Growth from Taxation and Regulatory Perspective

The empirical evidence on the link between the economic growth of a country and the level of regulations have been mixed. While Fukumoto 2008[1] and Kirchner 2012[2] have indicated a positive relationship between the volume of the regulations and the economic growth, Botero et al. 2004[3], Di Vita 2017[4] have provided evidence for the negative consequences of the regulations on employment and income of various economies they have researched. It is also to be understood that complex legislations hurt the economy and its growth Foarta and Morelli (2020)[5]. In this article, the author attempts to correlate the role of taxes and regulations for achieving economic growth in India. Read on...

CA. (Dr.) V. Gopalan
The author is member of the Institute. He can be reached at janharmcs@gmail.com and eboard@icai.in

Indirect tax such as GST, the biggest ever reform in tax structure in India since independence, is levied equally upon all taxpayers irrespective of whether they are rich or poor. The economic growth is enjoyed uniformly by all the consumers. All the sectors of the economy have a bearing of the GST. Obviously, economic growth through growth in GDP, exports, trade, manufacture and services result in growth in indirect tax revenues. More than 160 countries have adopted GST successfully.

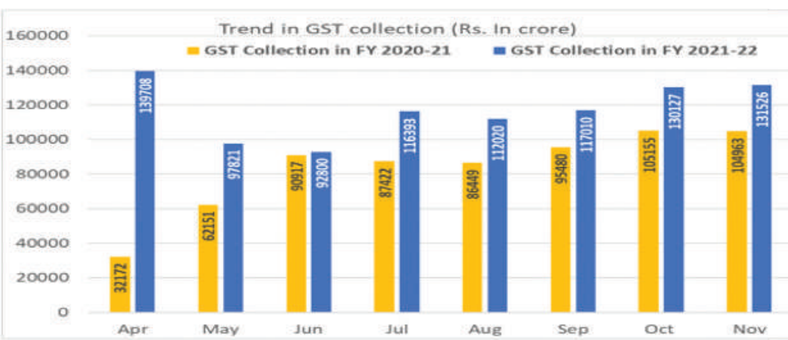
As per the information provided in 'India Brand Equity Foundation' (IBEF), the Indian economy registered a V-shaped recovery in GDP. In the first quarter of FY22, India's output registered a 20.1% YoY growth, recovering 90% of the pre-pandemic output in the first quarter of FY20. In FY21, India registered a current account surplus at 0.9% of the GDP. The report states that the Indian government's policy push to accelerate growth via infrastructure spending and capex has improved capital

1. Fukumoto, K (2008), "Legislative production in comparative perspective: Cross-sectional study of 42 countries and time-series analysis of the Japan case", Japanese Journal of Political Science 9(1):1–19.
2. Kirchner, S (2012), "Federal legislative activism in Australia: a new approach to testing Wagner's law", Public Choice 153(3):375–392.
3. Botero, J C, S Djankov, R L Porta, F Lopez-de Silanes and A Shleifer (2004), "The regulation of labor", The Quarterly Journal of Economics 119(4):1339–1382.
4. Di Vita, G (2017), "Institutional quality and the growth rates of the Italian regions: The costs of regulatory complexity", Papers in Regional Science 97(4): 1057-1081.
5. Foarta, D and M Morelli (2020), "Complexity and the reform process", Working Paper.

formation in the economy and therefore, boosted the investment to GDP ratio to 32% in the fourth quarter of FY21.

The growth in economy can be attributed to the consistent growth in tax collections, more particularly indirect tax, despite difficult times faced during the pandemic. IBEF report states that between April 2021 and July 2021, custom revenue collection registered 144% YoY growth, and the GST collection to the Centre increased by 60% YoY, primarily due to recovery of economic activities. The net tax revenue stood at Rs. 5.29 lakh crore (US$ 71.83 billion), registering a 2.5 times growth as compared with the same period last year.

GST collection grew at 25 % YOY to Rs 1.31 trillion in November 2021, the second highest ever after Rs 1.40 trillion in April 2021 and is expected to surpass the Budget projections for 2021-22. The GST collection of Rs 1.31 trillion in Nov 2021 is even 27% higher than that of the pre-Covid month of 2019-20 and has been steadily increasing in last 4 months.



Source: Finance Ministry

The Finance Ministry attributed the recent trend of high GST revenues to the various policy and administrative measures taken by the government in the past to improve compliance such as enhancement of system capacity, nudging non-filers after the last date of filing of returns, auto-population of returns, blocking of e-way bills and passing of input tax credit for non-filers has led to consistent improvement in the filing of returns over the last few months.

E-Way bill is an electronic document generated on the GST portal for causing movement of the goods. It is a mechanism to ensure that the goods being transported comply with the GST laws, tool to track the movement of the goods being transported and above all to check tax evasion. Prior to the introduction of the GST, different States had different rules for the E-Way bills which were not uniform and therefore made compliance and tax payments cumbersome. The digital interface across the country facilitates faster movement of goods across states improving the turnaround time by increasing the average distance travelled thereby reducing the travel time and costs. The steadily increasing volume of E-way bills and the GST collections indicate the revival of our economy even in difficult times.

The need of the hour is not only sustainability in the economic growth but steady increase in the growth to achieve the USD 5 trillion target in the next 3 years.

The GDP growth of India in the 2nd quarter (July to Sept 2021) was 8.4% while for China it was 4.9%, Russia 4.3%, Italy 3.8%, France 3%, USA 2.9%, Germany 1.7%, UK 1.3% and Japan -3%. India is apparently the fastest growing economy even in the current pandemic conditions despite the fact that the economy of India shrunk by 23.9% during the first quarter of 2020-21 compared to the pre-Covid corresponding period in the previous year.

Had there not been a set back due to Covid, India would have achieved much higher

> “E-Way bill is an electronic document generated on the GST portal for causing movement of the goods. It is a mechanism to ensure that the goods being transported comply with the GST laws, tool to track the movement of the goods being transported and above all to check tax evasion.

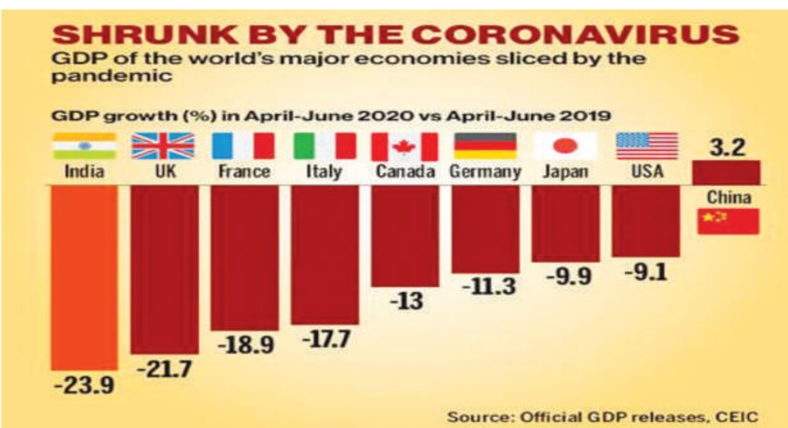
levels of growth in all the areas contributing to the GDP growth.

The Union finance ministry's monthly review of the economy for November stated, 'India is among the few countries that have recorded four consecutive quarters of growth amid Covid-19 (Q3, Q4 of FY2020-21 and Q1, Q2 of FY2021-22), reflecting the resilience of the Indian economy. The recovery was driven by a revival in services, full recovery in manufacturing and sustained growth in the agriculture sectors.'

The International Monetary Fund (IMF) projects that the global economy will grow by 6% in 2021 while it is their forecast that with respect to India the growth during this period will be 9.5%.

reasons are mainly attributed to lockdown imposed in several states of the country during the month and quite a few festival holidays across the country.

All is well as far as India's growth strategy is concerned, as it appears! As highlighted in a recent article published by the World Economic Forum, in the past few years, major structural reforms have been launched by the Indian government to boost the long-term outlook of the economy. The article highlights that India's vision on transformation is exhibited through its several initiatives such as Gati Shakti National Master Plan and the Atmanirbhar Bharat mission. The article further states that the government has also announced the National Infrastructure Pipeline and National Monetization



The volume of E-Way bills generated during a month is an indicator of the business activity and the economic growth. As it appears, there is a slight dip in the E-way bills in November 2021 compared to previous few months since July 2021. The

Plan to boost infrastructure development.

It is further stated that all these initiates across multiple sectors and several reforms in labour laws, banking reforms, bankruptcy code are clear indications of how India

> The need of the hour is not only sustainability in the economic growth but steady increase in the growth to achieve the USD 5 trillion target in the next 3 years.

is focused to enhance the robustness and vitality of its economy.

Changes in tax laws such as GST will produce the desired results if only various structural changes are brought in the banking regulations to ensure the availability of funds at affordable cost as that was one of the reasons for the economy to face challenges and difficulties. With the improvement in the recovery for the banks of their long outstanding dues through IBC mechanism and through several other initiatives, the trading and industry are now getting funds at affordable costs. And this has supported growth in goods and services sector thereby increasing the tax revenues to strengthen the economy. However, there is still a long way to go before we can call it a day!

India's efforts to promote digital empowerment and last mile financial inclusion are commendable. GST has taken the digitization of trade and commerce to the next level.

The ranking published each year by the World Bank with respect to 'Ease of doing business' is based on the analysis of 12 areas of business regulation in 190 economies. The analysis addresses 3 questions viz., when do governments change

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regulation with a view to develop their private sector, what are the characteristics of reformist government, what are the effects of regulatory change on different aspects of economic or investment activity. In the last survey, India is one of the very few countries which implemented one fifth of all the regulatory reforms recorded worldwide. India ranked 63 among 190 economies making India one of the most attractive destinations not only for doing business but also for investments. It is, therefore, very clear that India is well positioned regarding regulatory reforms. It clearly exhibits that growth is linked to strong and effective regulations.

World Bank in its report in 2019 had indicated that going forward, the country will also have to ramp up its infrastructure efforts not just for roads and bridges but for health and education too. It added further that equally critical is the need to ensure that India's demographic advantage becomes a dividend and that millions of young people entering the workforce every year gain meaningful employment.

It is evident that India has been doing its best in the health sector. India has administered over 135 crore doses of Covid vaccination as of mid- December 2021.

India, the seventh largest country by area and the second most populous country of about 1.4 billion people has been comfortably adapting to various international changes. Several changes in the tax laws have been made to attract foreign investments in a vast range of industries. The changes in GST laws are keeping in mind not only the Indian requirements but as well the demands of the international investors.

According to the International Monetary Fund (IMF), these are the highest ranking countries in the world in nominal GDP as per the latest available data - United States (GDP: 20.49 trillion); China (GDP: 13.4 trillion); Japan: (GDP: 4.97 trillion); Germany: (GDP: 4.00 trillion); United Kingdom: (GDP: 2.83 trillion); France: (GDP: 2.78 trillion); India: (GDP: 2.72 trillion); Italy: (GDP: 2.07 trillion); Brazil: (GDP: 1.87 trillion) and Canada: (GDP: 1.71 trillion). India is ranking 7th in the list. From the current level of US$2.7 trillion, India's roadmap is to reach a level of US$5 trillion in 2024. As the economy slowed down due to pandemic world over, to achieve this ambitious target of US$ 5 trillion it is necessary to fix milestones, monitor them meticulously and have a powerful mechanism to take corrective steps when there are setbacks.

Rai[6] has highlighted an action plan in areas requiring comprehensive, well synchronized and closely monitored action to achieve the projected US$ 5 trillion economy by 2024. The six specified areas are agriculture, infrastructure, banking, real estate and construction, labour and water.

The paper highlights that with respect to infrastructure, as per data from the Finance Ministry, projects worth about INR 11 trillion remain stalled largely in the power, railways and roads sectors. To meet the financing requirements for implementation of many other proposed infrastructure projects in next 5 years, the Task Force on National Infrastructure Pipeline has outlined an investment of INR 102 trillion. Of this, about INR 20 trillion is expected to be funded by private sector.

Here comes the need for proper tax incentives and regulatory mechanism for attracting investments from the private sector to boost economy from domestic and international sources. Hope the government comes out with such incentive plans in the Budget 2022.

Banking sector reform is another major reform taking place in India. In a way, the new GST regime has brought in changes in the structure and operations of banking. The introduction of Insolvency and Bankruptcy

> India's efforts to promote digital empowerment and last mile financial inclusion are commendable. GST has taken the digitization of trade and commerce to the next level.

[6] *Vinod Rai, ISAS Working Paper No.324 dated March 30,2020 published by National University of Singapore, (Please provide name of the paper)*

Code (IBC) is a departure from various other earlier laws from the 'debtor in possession' approach to 'creditor in control' regime. IBC aims at maximizing the value of assets of the Corporate Debtor. IBC has brought out a comprehensive and systemic economic reform in India. One of the key aspects of IBC is the early detection of insolvency paving the way for an early resolution to prevent dissolution. The rules and regulations of IBC have been amended from time to time in line with the changing economic scenario. IBC aims at reviving potentially viable firms in a time bound manner. It is however felt that more checks and controls are to be introduced to avoid undue delays in finding a meaningful resolution to the cases referred to and pending under IBC.

Policies and Regulations announced by the governments play a crucial role in achieving growth both in domestic and international business.

> Several changes in the tax laws have been made to attract foreign investments in a vast range of industries. The changes in GST laws are keeping in mind not only the Indian requirements but as well the demands of the international investors.

"Government regulation of economic and social activities permeates our lives. While regulation in many instances yields important public benefits, regulations often are imposed on individuals and organizations with too little thought or analysis of what is gained in comparison with the losses incurred in time, money, indecision, and productivity... Further, the growth of government involvement in the market system sometimes constrains our ability to achieve fundamental economic and social goals".[7]

India is well focused on infrastructure strengthening by attracting private sector investments, labour reforms, banking and financial sector reforms, digital transformation, enhancing savings and investment, reviving productivity of industries, attracting foreign investment to generate employment, engaging employable youth in gainful employment for a favourable demographic dividend, strengthening fiscal consolidation, to name a few. The newly set up 'National Bank for Financing Infrastructure and Development' is to address sizeable gaps in physical infrastructure in rural areas. India has pledged to reach net zero carbon emissions by 2070 and to produce half of its energy from renewable resources by 2030. To achieve this ambitious goal, huge investments are required to be made to upgrade the power grid and scale up the share of renewables in installed capacity.

> To meet the financing requirements for implementation of many other proposed infrastructure projects in next 5 years, the Task Force on National Infrastructure Pipeline has outlined an investment of INR 102 trillion. Of this, about INR 20 trillion is expected to be funded by private sector.

India has made remarkable progress over the past two decades in accelerating economic growth and making a dent on poverty. Improving social policy delivery and targeting it better are now fundamental challenges to heal the scars left by the pandemic.[8]

With the multipronged approach of the government in strengthening the economy, creating a strong tax collecting mechanism backed up by an effective digital edge, proactive regulatory measures to attract foreign investments and creating a strong infrastructure with a last mile connectivity, ensuring availability of funds at an affordable cost, advantage of the demographic dividend, to name a few, the Indian economy is poised for a smart recovery and sustainable growth. ■■■

7. *Committee for Economic Development, Modernizing Government Regulation: The Need for Action, 1998, p. vii (https://www.ced.org/reports/single/modernizing-government-regulation-the-need-for-action).*

8. *OECD ECONOMIC OUTLOOK, VOLUME 2021 ISSUE 2: December 2021 -PRELIMINARY VERSION © OECD 2021*

The Dawn of the Indian Unicorn Era

The Indian economy opened its door to foreign investments in the early 1990s. The last decade of the second millennium witnessed a beeline of foreign multinational enterprises entering Indian markets with their own investments. This paved the way for high-end white collared jobs and India also saw a boom in its services sector. The software industry of India started to flourish with Indian software being regarded as world class in quality. The public listing of Infosys in the mid-90s was a cherry on the cake as it created wealth for the common investor and gave a glimpse of the strength of Indian IT companies. Read on…

CA. Anshul Kumar
The author is member of the Institute. He can be reached at eboard@icai.in

The Beginning

Infosys, TCS, Wipro and other IT companies invested in technology and leveraged the country's young, English-speaking workforce to provide cost-effective technology services to clients across the globe. Naukri.com, launched in the mid-90's, used the sheer growth in job opportunities and soon it became the go-to place for candidates as well as the recruiters. The 90's witnessed the launch of Airtel, which today is one of the leading players in the Indian telecommunications industry, with over $14 bn in revenues in 2021 and more than 350 million consumers. Similarly, the 90's also witnessed the launch of ICICI, HDFC and Axis Bank, which have gone on to rank amongst the top 10 banks in India and ushered a new era of private sector banking with customer focused services. Most importantly, they fundamentally reshaped the Indian banking business model, leading to the betterment of the sector as a whole.

While the last decade of the second millennium gave jobs to aspiring Indian youth, the first decade of this millennium saw the aspirational youth who were willing to tread the entrepreneurial path with greater zeal. Technology and software solutions which were predominantly serving the corporate demands, were now tilting towards solving problems faced by the common man.

Some of the iconic start-ups such as Byju's, Dream11, Paytm, Policy Bazaar, Ola, Quikr, Zomato, went on to change the landscape of their respective industry segments and modified the consumer behaviour for good, were founded in the first decade of this century.

The Push

The beginning was slow yet steady. It laid a strong foundation with the strengthening of software, telecommunications, and financial sector. The further growth of Indian start-ups was fuelled by the increasing speed of internet. The majority of the start-ups in the late 2000's was focused on using technology and providing solutions based on the use of internet.

E-commerce started to get a foothold with the urban population, having access to internet, choosing to buy more and more from online stores instead of visiting the traditional brick and mortar shops. Flipkart, Snapdeal, Shopclues and some other Indian e-commerce players showed the mettle to compete with global giants like Amazon and eBay. E-commerce start-ups brought the shopping experience to the doorstep of consumer. The consumer was no longer required to step out of the comfort of his house, rather, he could order significant numbers of products without stepping out in the market.

> While the last decade of the second millennium gave jobs to aspiring Indian youth, the first decade of this millennium saw the aspirational youth who were willing to tread the entrepreneurial path with greater zeal.

The start-ups story of India got a major boost with the launch of Startup India and StandUp India programs in year 2016. It helped in creating widespread awareness in general public about start-ups and gave a boost to the entrepreneurial mind-set. By setting up a SIDBI-run Electronic Development Fund (EDF), the Indian Government became a Limited Partner (LP) in a fund for the first time ever. Easy finance options such as Mudra Scheme, tax benefits such as 100% tax holiday under section 80-IAC and exemption from angel taxation also provided the much-needed push to the young Indian start-ups.

In January 2021, the Department for Promotion of Industry and Internal Trade (DPIIT) created the Startup India Seed Fund Scheme (SISFS) with an outlay of INR 945 Crore to provide financial assistance to start-ups for Proof of Concept, prototype development, product trials, market entry, and commercialization. It will support an estimated 3,600 entrepreneurs through 300 incubators in the next 4 years.

A start-up, recognized by DPIIT, incorporated not

> E-commerce started to get a foothold with the urban population, having access to internet, choosing to buy more and more from online stores instead of visiting the traditional brick and mortar shops.

more than 2 years ago at the time of application and having a business idea to develop a product or a service with a market fit, viable commercialization, and scope of scaling, can apply for SISFS. A start-up can get seed fund of as much as INR 50 Lakh under SISFS. The priority sectors for SISFS are social impact, waste management, water management, financial inclusion, education, agriculture, food processing, biotechnology, healthcare, energy, mobility, defence, space, railways, oil and gas, and textiles.

Apart from the support from government, there are quite a few other reasons why India became such a sustainable environment for start-ups to thrive in. Some of the major reasons are:

i) **The Pool of Talent** - Our country has a pool of talent. India has a population that is most of the younger generation. This shows the amount of potential that our country has in terms of talent. There are millions of students graduating from colleges and b-schools every day. Many of these students use their knowledge and skills to begin their own ventures, and that has contributed to the start-up growth in India. In the past, much of this talent was attracted to only the big companies, but now that is slowly changing.

ii) **Cost Effective Workforce** - India is a labour-intensive country rather than being capital intensive. Also, the workforce is available in abundance and is also cost effective. So, compared to some other countries, the cost of setting up and running a business can be comparatively lower.

iii) **Increasing use of the Internet** - India has the world's second-highest population, and after the introduction of affordable telecom services, the usage of internet has increased significantly. It has even entered the rural areas now. India has the second-largest internet user base after China, and companies and start-ups are leveraging this easy access to the internet.

> The start-ups story of India got a major boost with the launch of Startup India and StandUp India programs in year 2016. It helped in creating widespread awareness in general public about start-ups and gave a boost to the entrepreneurial mind-set.

iv) **Technology** - Technology has made the various processes of business very quick, simple and efficient. There have been major developments in software and hardware systems due to which data storage and recording has become an easy task. Indian start-ups are now increasingly working in areas of artificial intelligence and blockchain technologies which is adding to the growth of businesses.

v) **Variety of Funding Options Available** - Earlier there were only some very traditional methods available for acquiring funds for a new business model, which included borrowing from the bank or borrowing from family and friends. However, this concept has now changed. There are numerous options and opportunities available. Start-up owners can approach angel investors, venture capitalists, seed funding, etc. The easing of Foreign Direct Investment norms and opening up of majority of sectors to 100% automatic route has also opened the floodgates for foreign funding in the Indian start-up ecosystem.

> The total number of start-ups achieving Unicorn status in India is now estimated to be around 80 and out of theses, more than 40 Unicorns have been founded in last seven years only.

The Dawn of the Indian Unicorn Era

A Unicorn is a start-up which achieves a valuation of USD 1 billion. In September 2011, InMobi became the first Unicorn of India. SoftBank had at that time handed InMobi, an ad-tech start-up, a hefty cheque of $200 million, making it India's first unicorn. The start-up ecosystem has the potential to gaze into the future well in advance and as early as in 2011, the confidence shown by Soft Bank in InMobi made it clear that mobile apps are going to rule in the coming times.

Soon, e-commerce and fintech start-ups heated the Indian start-up space with Flipkart, Snapdeal, Paytm, Quikr and Shopclues achieving the coveted Unicorn status in early part of the last decade.

Start-ups in diverse sectors made it big in the past decade and more than 35 start-ups made it to the Unicorn status. Some of the significant ones from them are:

a) **E-commerce/ Marketplace** – Flipkart, Snapdeal, Paytm, Quikr, Shopclues, Cars24, Udaan, BigBasket, LensKart, Nykaa

b) **Fintech** – Paytm, Policy Bazaar, Billdesk, Pine Labs, Razorpay, PhonePe

c) **Foodtech** – Zomato, Swiggy

d) **Edtech** – Byjus's, Unacademy

e) **Proptech** – Oyo

f) **Logistics** – Delhivery, Rivigo

g) **Mobility** – Ola Cabs, Ola Electric

h) **Gaming** – Dream11

i) **Content** – Dailyhunt, Glance InMobi

j) **Social Media** – Hike

k) **SaaS products** – Mu Sigma, Freshworks, Druva Software, Icertis, Postman, Zenoti

A few of the Unicorns, being Shopclues, Hike and Quikr, later lost their Unicorn status, as their valuation slipped below the USD 1 billion mark.

The year 2020 was marred by the deadly COVID-19 and the ensuing worldwide lockdowns. It seemed that the economy is doomed, and the hard work of Indian start-ups will go down the drain. However, the Indian start-up story had its own twist and year 2020 produced as much as 10 Unicorns in India.

The start-up eco-system of India was now ready to explode with Unicorns and that is what happened in 2021. 2021 has seen over 40 start-ups achieving the Unicorn status. That is more than the number of start-ups achieving this coveted status in the entire past decade.

The total number of start-ups achieving Unicorn status in India is now estimated to be around 80 and out of theses, more than 40 Unicorns have been founded in last seven years only.

InMobi, the first Unicorn of India, took four years to achieve the Unicorn status. It was founded in 2007 and achieved the Unicorn status in 2011. Whereas, in 2018, Udaan, a B2B e-commerce marketplace, became the fastest growing start-up by becoming a Unicorn in just over two years' time.

In September 2021, Apna, a jobs marketplace for blue-collar workers, became the fastest Unicorn by achieving the status in less than two years. However, this record was quite short lived as Mensa Brands, which buys stakes in digital brands, dethroned Apna as the fastest Unicorn in November 2021, by achieving the status within just six months of its foundation.

The startups which became Unicorns in 2021 are:

a) **E-commerce/Marketplace** – Infra.Market, FirstCry, Meesho, Moglix, Grofers, Urban Company, Droom, Zetwerk, Apna, MyGlamm, Spinny

b) **Fintech** – Digit, Cred, Groww, Zeta, BharatPe, Acko, Upstox, Slice, MobiKwik

c) **Foodtech** – Rebel Foods, Licious

d) **Edtech** – upGrad, Eruditus, Vedantu

e) **Proptech** – NoBroker

f) **Logistics** – BlackBuck

g) **Gaming** – Mobile Premier League (MPL)

h) **Social Media** – ShareChat, Gupshup

i) **SaaS products** – Innovaccer, ChargeBee, BrowserStack, MindTickle

j) **Crypto currency** – CoinSwitch, CoinDCX

k) **Aggregator (Consumer Brands)** – Mensa Brands

l) **HealthTech** – Curefit, Innovaccer, Pristyn Care, Pharmeasy

m) **NBFC** - OfBusiness, Five Star Business Finance

Start-ups in e-commerce and fintech space are still ruling the roost, with the largest number of Unicorns. Software as a Service (SaaS) products and Healthtech start-ups are also catching up with a number of them achieving Unicorn status in 2021. However, the real showstopper has been Mensa Brands which is now the fastest Unicorn of India. It is pioneering a new kind of business wherein the aim is to acquire good digital brands and scale them up as quickly as possible.

The rise of e-commerce and marketplace start-ups also mean creation of a lot more blue-collared jobs for the unskilled workforce. This would help in raising the livelihoods of the lower strata of the population and take the economy towards a more inclusive growth. The significant opportunities in blue-collared jobs are evident from the success of Apna which is a dedicated job portal for such jobs and which is also providing upskilling to the unskilled or lesser skilled personnel.

One must keep an eye on drone technology and semiconductor industry, which is expected give rise to significant numbers of start-ups, many of whom will be the future Unicorns of India.

Indian start-ups are now maturing into stable companies with many of them treading the path of listing their shares on stock exchanges in India as well as abroad. While Zomato, Nykaa and Paytm have chosen Indian stock exchanges for listing, Freshworks opted to get listed on Nasdaq in USA. MobiKwik has also got the approval to bring its IPO to India. Zomato, Nykaa and Freshworks had a bumper listing, but Paytm was not so lucky and the share price of Paytm listed far below its issue price. However, one may not judge the future prospect of a company from the listing day gains/losses. One thing is for sure that we will see many more start-ups getting listed in the near future.

India has now emerged as the 3rd largest ecosystem for start-ups globally, after US and China, with over 59,000 DPIIT-recognized start-ups. As per data available on InvestIndia.gov.in, as of December 2021, India has 79 unicorns with a valuation of USD 260.5 billion.

The next step for a Unicorn is to become a Decacorn, i.e., a company which has attained a valuation of more than USD 10 billion. There should be no doubt that within a few years, the Unicorns would be a thing of the past and we would be talking about the Decacorns of India.

> The rise of e-commerce and marketplace start-ups also mean creation of a lot more blue-collared jobs for the unskilled workforce. This would help in raising the livelihoods of the lower strata of the population and take the economy towards a more inclusive growth.

The Missing Link

Start-ups and Unicorns have been the buzz words for a couple of years now and the last decade has clearly been the decade for start-ups. However, for every Oyo, Zomato, and Flipkart, there are countless other start-ups that were not able to survive and had to shut shop. Yet, India has been doing quite well and has grown to be the third largest start-up ecosystem in the world.

The mega growth of Indian start-ups is still majorly funded by foreign funds, with players like Soft Bank, Ant Group, Sequoia Capital, Tiger Capital, Accel Partners, Matrix Partners and other foreign funds leading the way in large scale funding of Indian Start-ups. Some Indian Venture Capital Funds, such as Kalaari Capital, Blume Ventures, Nexus Venture Capital, and a few others have also gained prominence, yet the scale of investment by foreign Venture Capital Funds is way ahead as compared to domestic funding.

Also, there are over 59,000 start-ups registered with Department for Promotion of Industry and Internal Trade (DPIIT), the number of start-ups which have been granted second stage registration by Inter Ministerial Board for the three-year tax holiday, is only a few hundreds. Also, the amounts of loan provided in Mudra scheme, capped at INR 1 million, is too insignificant considering the requirements of Indian start-ups. Moreover, the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) initiative of Govt. of India is oriented towards SMEs and MSMEs for providing loans, rather than funding through risk capital. The goverment's initiative to provide funding through SISFS is a welcome step, yet there is a lot more which can be done to support young start-ups.

> Indian start-ups are now maturing into stable companies with many of them treading the path of listing their shares on stock exchanges in India as well as abroad.

The Indian start-up ecosystem needs many more indigenous Venture Capital Funds and at the same time, the policies of Govt. need to keep pace with the ever-evolving start-up scenario, so that India can be the *numero-uno* in the start-up world.

It's Still Just a Beginning

The entrepreneurial zeal has been ignited in the last decade or so. More and more students are now looking towards building a start-up rather than taking a job after completing their studies. The demography of India, with the largest pool of a younger population, which is highly skilled and English-speaking, gives us an edge to create world class start-ups and businesses which will serve not only India but also the world.

The Unicorn boom of 2021 is just a beginning, and I am certain that this boom is not going to be short lived. We are witnessing an exciting phase of Indian resurgence and we must stand up and be a part of this journey. ■■■

MSME Banking Finance – An Overview of Credit Procedures

MSMEs are the backbone of the Indian economy because of their enormous contribution to GDP, exports and employment. Creating opportunities for MSMEs in the emerging markets is a key way to advance economic development. However, there is a huge understanding gap between the entrepreneurs and bankers when it comes to concluding the eligible finance to an MSME. This article attempts to clarify the understanding of credit assessment among entrepreneurs and finance professionals so that majority of the check points can be cleared at their end to improve the overall Turnaround Time (TAT). Read on...

CA. Nitin Kumar Agrawal
The author is member of the Institute. He can be reached at ca.nitin7989@gmail.com and eboard@icai.in

Here is what to expect a bank to ask for when you apply for a MSME loan for your business. There will be occasional exceptions to every rule, of course, but given below are the general rules which a credit manager sees while assessing the banking finance to an MSME.

1) Business Profile
2) Credit history of the borrower i.e., CIBIL checks/ Dedupe Checks
3) Financial Assessment
4) Banking Conduct
5) Collateral Comfort
6) Other aspects.

Business Profile

- Business profile is majorly classified between 1) Manufacturing firm 2) Trading Firm 3) Service Enterprise.
- Business profile is the first aspect based upon which a credit manager establishes primary assurance for a loan proposal. For a manufacturing enterprise, assurance would be on the higher side than a pure trader as the manufacturer invests his equity in a project/manufacturing facility after lot of planning considering the long-term benefit from that

establishment. For a trading enterprise, the assuredness is derived from the age of the business while a service enterprise certainty based on the nature of contracts in hand and the nature of principal for whom they work. Again, in the manufacturing sector, assessment is supported by the capacity of the plant while in the other two profiles their turnover growth during previous years is relevant.

- This also includes the business vintage and promoter experience in the same line of business. A higher business vintage gives additional security to the bank. A credit manager also observes in which product the firms deal. Based upon the product the firm deals with and the performance of said product/goods in the relevant market the assurance is derived.
- Few products are general products which are globally traded in large volumes such as textile, pharma, chemical and intermediates, food products, metal, paper etc.
- While few products are requirement specific such as engineering machines, moulds, heavy equipment, specific consumer durable items etc.
- Few banks may have negative profiles. Also the list those of not funded by them may include stockbrokers, bullion traders, private builders, real estate, land traders, news channels, distilleries and alcohol as a major product.

Credit History of the Borrower

- This includes CIBIL check by the banker. Additionally, dedupe checks of the borrowing entity and the individuals including the promoters and guarantors under the deal.
- This majorly includes commercial CIBIL of the borrowing entity, Consumer CIBIL of the individual persons, RBI defaulter list, Exporter defaulter list, Bank's internal CPCS etc.
- A borrower may have default, settlement, Delayed Payment (DPD) or write off in his previous loan. If the same gets reflected in his CIBIL check, a valid justification of the dispute needs to be provided by the borrower. In case of settlement or write off, the reason for the same needs to be provided and documentary evidence related to same needs to be furnished.
- CIBIL may reflect SMA1, SMA2 & 3 and NPA status in particular account.
- Considering the overall CIBIL conduct of the customer, justifications provided by him for a past default and other merits of the case, the credit manager takes a suitable call.

> The credit manager requires audit reports of the entity for financial assessment. Generally, the borrower is asked to submit audit reports of 3 years.

- The credit manager may put a condition to resolve the matter with the existing bank by payment of a disputed amount before disbursement and submit proof of the same.
- Over a period, CIBIL gets updated, and the score may improve based upon recent sound credit history. However, this is also true that certain banks do not accept proposals below a particular CIBIL score.

Financial Assessment

- The credit manager requires audit reports of the entity for financial assessment. Generally, the borrower is asked to submit audit reports of 3 years. However in case of lower vintage i.e., less than 3 years the credit manager can take a call/ deviation as per the policy of bank subject to minimum vintage norms.

> The bank observes the trend of the turnover of the past 3 years which may be increasing, stagnant, decreasing or gradual in nature.

- For assessment of the working capital cycle, the turnover of the entity is the first criteria based upon which overall eligibility of working capital is decided. Generally a bank funds 20-25% of the last audited/ CA certified Provisional turnover of the firm. However sometimes based on projected sales (well supported by orders in hand), the credit manager may take a call on projections.

- The bank observes the trend of the turnover of the past 3 years which may be increasing, stagnant, decreasing or gradual in nature. If there is an exceptional growth in sales, the reason for the same and possibility of same in future years also needs to be justified. Also, for a decreasing trend, the valid reason for the turnover needs to be furnished before the bank.

- After turnover, the banker observes the EBIDTA and PAT ratio of the entity. Banker observes it from an overall industry margin viewpoint and on the basis of the level of operation of the firm, these ratios may be in increasing, stagnant or decreasing in trend. For decreasing margin, valid reasons need to be furnished before the bank.

- Adjustable Tangible Networth (ANTW) is an important aspect to which banks give more importance. It includes core equity in capital, reserve and surplus and unsecured loans from friends and relatives. From this, and loans and advances given to related parties i.e., diversion is deducted to calculate the ATNW.

- ATNW should be in increasing trend. An increasing trend ensures that the promoter funds are not withdrawn from the firm for diversion, and profit of the business is well ploughed back in the firm.

- TOL/ATNW is an important aspect on which the banker decides up to what extent the limit should be approved. Total outside liabilities (TOL) include Bank borrowing, trade payables, provisions and any other outside liability. Generally, the bankers are comfortable for a TOL/ ATNW ratio lesser than 5 times. In case the same goes beyond 5 times including the limit proposed by firm with the bank, the credit manager may stipulate a condition for infusion of funds before disbursement of limit. Thus, the bank ensures a healthy debt equity ratio in the firm prior to disbursement of limit.

- The current ratio is an important aspect which decides the liquidity of the business. The benchmark ratio is 1.33 for a bank. However, industry to industry the ratio differs on the basis of which the banker may take a call. In a highly capital-intensive unit where more funds are invested in long term assets, there may be a situation of a lower current ratio. In the same way in a contactor firm where majority of funds are blocked in long term EMDs/Security deposits, a lower current ratio may be considered.

- Debtors' realization period gives an idea of the average realization cycle of the business. Again, the same is verified with the industry practice and also the nature

> The creditor's cycle gives an idea of how the firm is meeting its trade payables and the overall gap between the debtors and creditors realization period for which working capital is desired.

of customers the firms deal with. The debtor's realization period remains between 60-90 or 90-120 days. However, the same may increase based upon the nature of business.

- The creditor's cycle gives an idea of how the firm is meeting its trade payables and the overall gap between the debtors and creditors realization period for which working capital is desired. Payment to creditors may be in the form of Advance payment, payment at the time of delivery or credit period of 30-60 days.

Banking Conduct

- Under Banking conduct, there may be two possibilities viz 1) a first-time borrower 2) a balance takeover case from another bank.
- The bank demands the latest 12 months bank statements to observe the banking conduct of the borrower.
- The bank verifies the credit summation in the bank statements which should overall match with the turnover the borrower is showing in the books of accounts. This validates whether the turnover shown in the financials is genuine or not.

> The bank demands the latest 12 months bank statements to observe the banking conduct of the borrower.

- The bank verifies the nature of payments received by the firm and the parties from whom the payments are received. Payments and receipts should be invoiced to and verified with those parties who are related to the business of the firm.
- The bank verifies the pattern of inward and outward cheque bounces. A higher inward cheque bounce reflects the poor quality of the debtors. Similarly, a higher outward cheque bounce situation reflects the financial mismanagement at the end of the borrower.
- The bank verifies the pattern of debt servicing by the borrower. Payment of interest on borrowings and repayment of EMIs should be regular and as per the terms or sanction and repayment schedule.

Collateral Comfort

- Banks take collateral security to secure their loan to the enterprise. Collateral may be in the form of immovable security or movable assets. Immovable security includes residential premises, commercial office, industrial unit or land. Again, these immovable securities may be self-occupied, vacant or rented. Land may be an industrial land, residential land or commercial purpose land. Based upon the nature of security and their occupancy status, the banker derives comfort in a proposal. For self-occupied residential houses, the confidence of the bank remains at the highest level. It may be satisfactory for a commercial space and low for industrial premises.

> The bank verifies the nature of payments received by the firm and the parties from whom the payments are received. Payments and receipts should be invoiced to and verified with those parties who are related to the business of the firm.

- Based upon the collateral offered, the bank decides what should be the coverage ratio of collateral security against the loan applied. In few cases where the other aspects of the case are weak, the bank may take security coverage ratio of more than 100% of the limit offered. Where the merits of the case are satisfactory the bank may go up to

100% coverage. However, where the borrowing has extra ordinary financial performance with sound vintage and good market reference, the banker may go for a security coverage of lesser than 100%. Also, the coverage ratio may remain different based upon the nature of property offered.

- Bank will consider the market value of the collateral as valued by their valuer which may be different from the expectations of the borrower.
- Moveable security includes charges over the current assets of the firm—inventory and debtors, liquid security in the form of Fixed deposit or bonds/ mutual funds/shares, surrender value of life insurance policy etc.
- Collateral securities are required to be mortgaged/ hypothecated with the bank. In case of immovable property, a title report is taken from an empanelled advocate and the charge over the collateral is registered through a mortgage deed. In case of hypothecation, the charge is registered by execution of documents after adequately stamping a hypothecation deed. In the case of charge over assets of corporate entity, the same is required to be registered with ROC. Also, immovable collateral needs to be covered under insurance.

> "Reference check is an important aspect about the proposed borrower, which the banker does many times with buyer/suppliers of the applicant firm.

Other Aspects

- Other than the above mandatory requirements, there are other aspects that bankers may find important from case to case.
- Reference check is an important aspect about the proposed borrower, which the banker does many times with buyer/suppliers of the applicant firm. They may do a reference check with a customer in same industry from their existing portfolio also. Market reference is a deciding factor in allowing additional comforts to the borrower in a proposal.
- Banker does a unit visit before sanctioning the proposal. Banker observes the overall operation of the unit during his visit and takes comfort. They understand the product, production process, procurement cycle, manufacturing period, dispatch system and transport model. The banker may amend his call based upon satisfactory/ unsatisfactory unit visit.

> "Banker may stipulate conditions for release of funds with riders. They may sanction an applied limit and disburse/release by linking it with turnover achievement or fulfilment of particular conditions.

- Banker may stipulate conditions for release of funds with riders. They may sanction an applied limit and disburse/release by linking it with turnover achievement or fulfilment of particular conditions.
- Banks do put conditions for routing of maximum transaction with them and therefore they may disallow continuation of other bank current accounts.
- Bank also may stipulate penalty clauses on not meeting particular conditions.
- Bank may put conditions for minimum utilization of funds. Currently most banks put a condition for 60% average utilization of limit to ensure Net Interest Income (NII) at the end of the bank.

- Accordingly for a proposal below, details may be gathered from the client to be submitted to the bank :

(A) Business Overview

Sr No.	Particulars	Remarks
1.	**Product configuration** • Name of Product that entity is manufacturing/going to manufacture under expansion • Monthly production capacity of each Product	
2.	**Raw Material** • Raw Materials required for manufacturing such product/ products	
3.	**Sources of Raw Material** • Locality of Suppliers • Whether purchased from original manufacturer or trader/dealer • Average stock of Raw material maintained by the entity • Transport mode of RM procurement • Import/Domestic procurement Percentage	
4.	**Manufacturing** • Manufacturing process in brief • Average manufacturing time • Percentage of Wastage	
5.	**Product Applications** • Industries where the product is used • Whether the product is RM or FG of its customers	
6.	**Factory land details** • Obtain land allotment letter if GIDC land • GPCB applicability and clearance • Obtain soft copy of plans if available	
7.	**Status of Statutory License/Registrations/Approvals** • Udyam Registration • Building Approval/Layout Approval • Factory License • GPCB approval • PF/ESIC registration • GST registration • Drug License (if applicable)	

(B) Revenue and Cost Estimations and data for CMA (Majorly a part of Project Finance, however relevant details needed for working capital finance can be given)

Sr No.	Particulars	Remarks
1.	**Capacity Utilization** • Total Month wise production capacity of each product • Capacity utilization percentage presently and in upcoming years • No. of Operational Hours per day • Prepare Excel Sheet for Capacity Utilization	
2.	**Revenue Estimation** • Selling price of each product • Selling price hike over a period • GST applicability of Sales • Monthly sales Unit and Finished goods • Closing Stock units monthly • Prepare Excel Sheet for Revenue Projection	
3.	**Raw Material Cost** • Raw Material cost per unit • Consumption pattern of Raw material per month as per production units • Raw material closing stock maintained per month • Price escalation percentage over a period in RM cost • Prepare Excel Sheet for Raw material l Cost calculations	
4.	**Power, Fuel, Water & ETP cost** • Details of connected load/power requirement proposed • Details of alternative source of power in case of failure/ DG sets if proposed in Cost in project • Prepare Excel sheet for power consumption calculation • Obtain details of fuel cost as percentage of production • Cost of Water and ETP	
5.	**Manpower Cost** • Prepare excel sheet for manpower cost calculation • Growth percentage in manpower cost over a period	

6.	**Repairs & Maintenance Cost** • R&M cost as percentage of Gross Fixed Assets per annum (say 1% of the FA Block each year)	
7.	**General and Administration cost** • General and Administration cost as percentage of Gross sales per year	
8.	**Selling and Marketing Cost** • Selling and Marketing cost as percentage of Gross sales per year	
9.	**Depreciation and Income Tax** • Prepare Excel Sheet for above calculations	
10.	**Margins** • Obtain idea of EBIDTA and PAT margins industry specific	
11.	**Inventory/Debtors/Creditors Cycle** • Average inventory cycle • Average Debtors realization period i.e., the credit period allowed to customers • Average credit period expected to get from suppliers	

(C) Promoters Background

Sr No.	Particulars	Remarks
1.	**Name of all promoters**	
2.	**Name of all owners of collateral offered**	
3.	**Promoters/Guarantors background** • Total experience in the field • Brief career/journey of the promoter • Current role in the business entity (Accounts/Finance/ Production/Marketing and sales/Liasoning) • Age (can be taken from KYC) • Residential Address (can be taken from KYC) • Education (including name of the institute) • Family tree and Legal Decedents	
4.	**Net worth of Promoter/Guarantors** • Net worth Details of each promoter/guarantor and supporting if available • Copies of Index 2 of the properties considered under net worth	

(D) Collateral Details

Sr No.	Particulars	Remarks
1.	**Details of collateral offered** • Nature of Collateral viz Industrial/ Commercial/Residential/ Liquid etc • Name of Owners of Collateral • Approx. Market value of collateral • Details of Leasehold/freehold collateral	

(E) Other Details

Sr No.	Particulars	Remarks
1.	About Technology acquisition (if any)	
2.	Marketing Strategy of company • Targeted markets in India and Abroad • Marketing team at Ground level • Online Marketing (if applicable) • Brand name (if any) • Targeted segments viz., Pvt/Govt • USP of the product	
3.	Plans of Import/Export (if any)	
4.	Site Photographs (if available)	
5.	Sample 5 Invoices of Top suppliers	
6.	Contact details of top 5 RM suppliers	
7.	Contact details of top 5 Customers	
8.	Sister Concern Details and Promotes experience in those firms	
10.	Check if the unsecured loans are in the nature of interest bearing loans	
11.	Due Diligence note of Suppliers of Machinery	
12.	Competitive Quotations if available with client to present it with bankers	
13.	Additional Check points • Whether activity is permitted in Memorandum of Association (MOA)/ Partnership deed • Whether the unit got borrowing powers as per MOA / Partnership deed Arrear of Statutory dues, if any, litigation on the company / promoters (if any) and adverse auditors' comments • Whether unit has got powers to mortgage its properties for Borrowings	

E-Commerce Transactions and Overview

E-commerce is continuously progressing and is becoming more and more important to businesses as technology continues to advance and is something that should be taken advantage of and implemented. The e-commerce market has become such a vital part of the economy that it is difficult to pinpoint exactly where e-commerce begins and the old world economy ends. It encompasses all spheres of life. Moving towards the economy post the pandemic era, e-commerce will cover more areas than it already does. Newer roles and avenues may give rise to issues in taxation. They need to be addressed as early as possible. Read on...

CA. Tejas Savla

The author is member of the Institute. He can be reached at catejassavla@gmail.com and eboard@icai.in

Introduction

The e-commerce industry has been directly impacting micro, small and medium enterprises (MSME) in India by providing means of financing, technology and training and has a favourable cascading effect on other industries as well. The e-commerce market has changed the way business is transacted, whether in retail or business-to-business (B2B), locally or globally. Prior to the Internet, success in retail was said to hinge on location. Now, the Internet is a global marketplace, affording even the smallest retailer a national presence. Smart phones and internet connections have ensured that every retailer can sell and the buyer can buy in an instant click.

Digital India, Startup India and Government e-Marketplace are just some of the initiatives introduced by the Government to ensure support to the e- Commerce ventures. The e-commerce sector also saw huge investments from global players such as Facebook. The COVID pandemic has hit the Indian economy hard, however, the e-commerce sector seems to have been unaffected by this and instead has risen as compared to earlier years.

Category of Goods & Services

Parties involved in an E-commerce transaction

- **Buyer**

  The main concern of the buyer is to get a good quality product at reasonable prices from a trustworthy source and that too within the shortest duration.

- **Seller**

  The seller is mainly concerned with capturing most of the market which is possible only if he provides reasonable prices.

> The COVID pandemic has hit the Indian economy hard, however, the e-commerce sector seems to have been unaffected by this and instead has risen as compared to earlier years.

- **Aggregator**

  His role comes into the picture when there's a vacuum between the seller and buyer. He is the main link between the buyer and the seller usually facilitating the delivery from the seller to the buyer.

Establishing an online presence

There are generally two alternatives or options for any business entity to establish their presence online:

- **Sell via own website**

Ownership

The design, content, products are all owned and controlled by the owner of the business giving ample opportunity to advertise in every possible way.

Branding

The name of the marketplace becomes popular when the product

> The main concern of the buyer is to get a good quality product at reasonable prices from a trustworthy source and that too within the shortest time duration.

is popular and has large sales. This in turn creates a goodwill of the business itself.

Limited Reach

The market penetration is limited and the product visibility also becomes lower due to limited reach.

100% Own Profit

Except the AMC charges for the development and maintenance of the website, the profit earned is wholly of that of the business owner itself.

- **Sell via an already established website**

Limitless Reach

Selling via an established website gives an opportunity to expand on a global scale.

Higher Sales

A well-established site would have a huge customer base which, the local business entity would have access to. This in turn would lead to higher sales.

Competition

There will be multiple sellers on the website selling similar products which would lead to higher competition.

Share of Profit

A certain percentage of profit would have to be shared with the owner of the website of all the sales generated through the website.

E-Commerce industry can be divided into 3 aspects based on the way they are structured:

1. Sale taking place via their own website
2. Aggregator of Goods
3. Aggregator of Services

1. Sell via own Website

Most traditional businesses only have a local store which offers services or products to the local customers thus limiting the growth potential of the organisation. The change in environment has brought about a drastic turn forcing the businesses to expand to survive in the current environment.

> The name of the marketplace becomes popular when the product is popular and has large sales. This in turn creates a goodwill of the business itself.

The traditional methods of advertising via physical media have become less effective due to the rise in use of technological products. A lot of businesses have grabbed the opportunity and led themselves to have an online presence. Most of the websites offer a range of the products they offer thus giving the customers a chance to select the product even before they reach the store to buy.

Income tax

No TDS implication on the sale of goods through your website. The turnover done via its website will be considered under the calculation of the total turnover of the entity at the time of computation and filing of return of the entity under the Income-tax Act, 1961.

The income tax return is to be filed compulsory for the business entity if the total income crosses the basic exemption limit and an Income Tax Audit is required if the turnover exceeds the limits mentioned in Sec 44AB of the Income-tax Act, 1961.

GST

He is liable to obtain a Normal Registration under GST.

The GST rate has to be charged appropriately based on the classification of Goods mentioned in the GST Rate List.

A proper tax invoice as per Sec 31 of the CGST Act, 2017 to be issued to the end consumer for the sale of goods.

> The traditional methods of advertising via physical media have become less effective due to the rise in use of technological products. A lot of businesses have grabbed the opportunity and led themselves to have an online presence.

Monthly Tax Payment via GSTR 3B and Monthly/ Quarterly Invoice disclosure of outward supplies is required in GSTR-1 by the business entity as per the turnover of the organization.

2. Aggregator - Goods

An e-commerce business model where the web store sells products which it does not produce or warehouse. An aggregator creates an environment where multiple providers (sellers) must compete on terms determined by the customer. The aggregator acts as a mediator only and doesn't own the products that are sold through the portal.

Few examples of the same include Amazon, Flipkart, Hotels.com

A lot of businesses like Amazon and Flipkart are in fact aggregators wherein the sellers get themselves registered on the portal and buyers then have

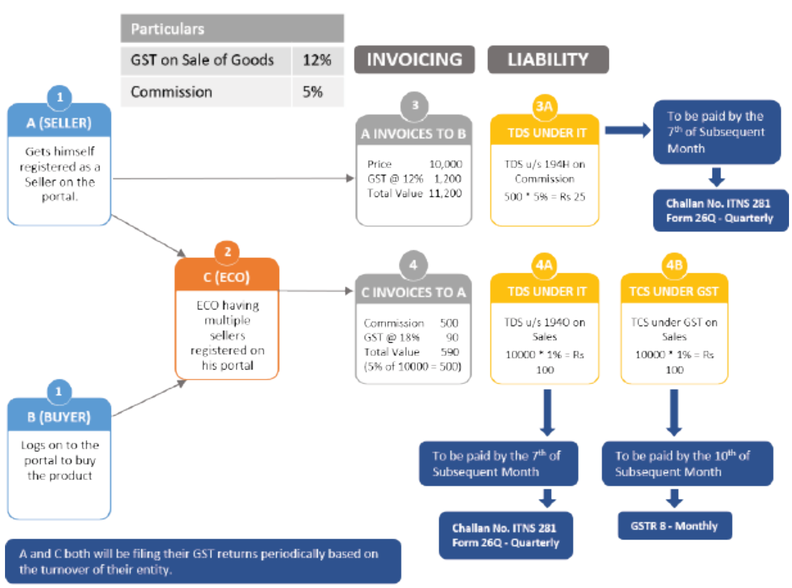
> An aggregator creates an environment where multiple providers (sellers) must compete on terms determined by the customer. The aggregator acts as a mediator only and doesn't own the products that are sold through the portal.

an option to select the product from various sellers.

Let's take an example,

A is a seller into the business of pens. The GST rate for the same is 12%. He decides to sell his products online via C (E-Commerce Operator). C charges a commission of 5% of the sales.

Here's a chart depicting the liabilities to be borne by such parties:



Once B (Buyer) buys the product online on the portal of C. He makes the payment to C.

The taxation effects to be given by each party is depicted below:

Income tax

A (Seller) –

A issues an invoice to B at the appropriate GST rate applicable based on the product. *(3)*

He is liable to deduct TDS u/s 194H under the Income-tax Act, 1961 @ 5% on the commission charged to him by the E-Commerce Operator. *(3A)*

This credit is available to C (ECO) in his 26AS.

C (ECO) –

Recent amendments in Income-tax Act, 1961 have led to the deduction of TDS u/s 194O – which states that where the sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform (by whatever name called), such **e-commerce operator** shall, at the time of credit of the amount of sale or services or both to the account of an e-commerce participant or at the time of payment thereof to such e-commerce participant by any mode, whichever is earlier, deduct income-tax at the rate of **1%** of the **gross amount** of such sales or services or both.

Therefore, as per ***4A*** in the above image 1% TDS u/s 194O under the Income-tax Act, 1961 is to be paid by the ECO.

However, no deduction is required if the e-commerce participant is an Individual/HUF to whom the amount of such sale does not exceed 5 lakhs and the participant has furnished his PAN/Aadhar to the ECO.

This credit is available to A (Seller) in his 26AS.

GST

A (Seller) –

He is liable to obtain a Normal Registration under GST.

The GST rate has to be charged appropriately based on the classification of Goods mentioned in the GST Rate List.

A proper tax invoice as per Sec 31 of the CGST Act 2017 to be issued to the end consumer for the sale of goods.

Monthly Tax Payment vis GSTR-3B and Monthly/ Quarterly Invoice disclosure of outward supply is required in GSTR-1 by the business entity as per the turnover of the organization.

C (ECO) –

An E-Commerce Operator is liable to obtain 2 different GST registrations –

Normal Registration – Providing an online marketplace to sellers

This would require him to file the GSTR 3B returns monthly and GSTR 1 returns either monthly or quarterly based on the turnover of the entity.

TCS Registration – Mandatory registration for E-Comm Operators

Since the ECO provides an online portal and facilitates the sale via the portal, he is required to comply with the TCS provisions.

- C (ECO) charges a commission to A (Seller) for making supplies through C. C is liable to charge GST @ 18% on the same. ***(4)***
- Section 52 of the CGST Act, 2017 provides for tax collection at source, by e-commerce operator in respect of the taxable supplies made through it by other suppliers, where the consideration in respect of such supplies is collected by him.

  Also, as per Sec 24(x) of the CGST Act, 2017, every E-commerce Operator who is required to collect tax at source u/s 52 would have to obtain registration under GST mandatorily except the following services:

- Hotel accommodation/clubs (unregistered suppliers)
- Transportation of passengers –radio taxi, motor cab or motorcycle, omnibus or any other motor vehicle
- Housekeeping services like plumbing, carpentry etc. (unregistered suppliers)

  The rate of TCS applicable is 1% of the net value of taxable supplies done via the E-commerce Operator ***(4B)***

  This credit is available to A (Seller) in his GST return of the corresponding month.

3. Aggregator - Services

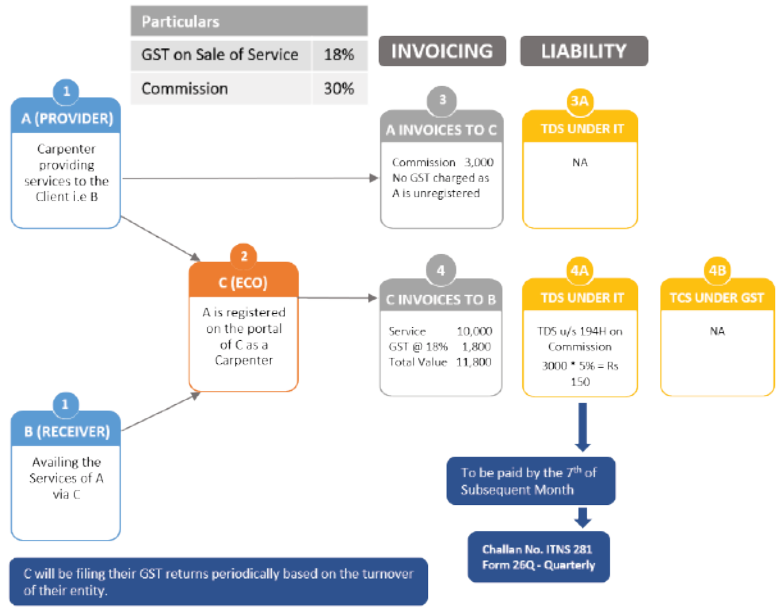
The provisions for an aggregator of services is similar to the one as explained under Aggregator of Goods.

Here are few exceptions to the TCS provisions for the services provided by an e-commerce platform:

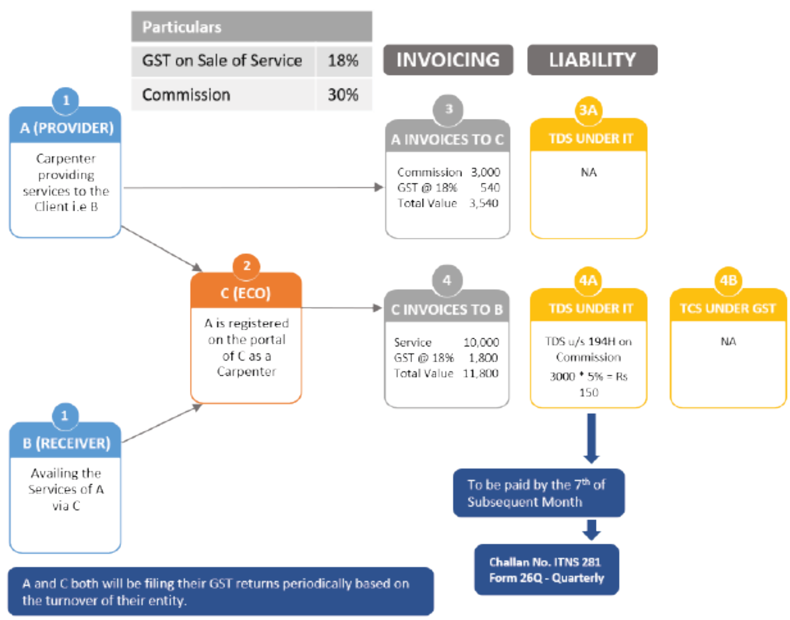
- Hotel accommodation/clubs (unregistered suppliers)
- Transportation of passengers –radio taxi, motor cab or motorcycle, omnibus or any other motor vehicle
- Housekeeping services like plumbing, carpentry etc. (unregistered suppliers)

In case of the above mentioned services TCS under GST is not liable to be deducted and the tax has to be paid by the ECO.

1. The Professional is not registered under GST



2. The Professional is registered under GST



Equalisation Levy

Considering the potential of new digital economy and the rapidly evolving nature of business operations and to address these challenges, the Finance Act 2016 has inserted Chapter VIII encompassing sections 163 to 180. Section 165, provides for an equalisation levy of 6 % of the amount of consideration for specified services received or receivable by a **non-resident** not having permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India, if such consideration exceeds Rs 1 lakh p.a.

Currently, the ***specified service cover online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement***. The government is also empowered to notify other services. The levy is to be collected and deposited by the payer who is receiving the specified service.

However, no levy shall be charged under this section where:

a. the non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment;

b. the aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident from a person resident in India and carrying on business or profession, or from a non-resident having a permanent establishment in India, does not exceed one lakh rupees; or

c. where the payment for the specified service by the person resident in India, or the permanent establishment in India is not for the purposes of carrying out business or profession.

As per Sec 165A of Finance Act,2016 introduced w.e.f. 1st day of April, 2020, there shall be charged an equalisation levy at the rate of 2% of the amount of consideration received or receivable by an **e-commerce operator** from e-commerce supply or services made or provided or facilitated by it—

(i) to a person resident in India; or

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

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

Specified Circumstances means

- *sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement though internet protocol address located in India; and*
- *Sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India].*

Sec 165A is not applicable in following cases:

1. where the e-commerce operator making or providing or facilitating e-commerce supply or services has a permanent establishment in India and such e-commerce supply or services is effectively connected with such permanent establishment;
2. where the equalisation levy is leviable under section 165; or
3. sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than two crore rupees during the previous year.

Income Tax

For the Levy under Sec 165, TDS at a rate of 6% of the gross consideration paid to be deducted by the receiver. The same has to be paid by the 7th of the next month.

Equalisation Levy Statement (Form-1) is to be filed on or before the 30th June of Financial Year End.

For the Levy under Sec 165A, TDS at the rate of 2% of the consideration receivable to be paid by the E-commerce Operator as per the following due dates:

Sr No.	Date of Ending the Quarter of FY	Due Date of FY
1	30th June	7th July
2	30th September	7th October
3	31st December	7th January
4	31st March	31st March

Delayed Payment of the Levy

Particulars	Interest/ Penalty	Rate
Delay in Payment	Interest	1% per month or part thereof
Not Deducted	Penalty	(Amount of Levy + Original Amount Outstanding + Interest) (A)
Deducted but not deposited	Penalty	1000/ day Subject to (A)
Statement not filed	Penalty	100/day

Conclusion

The rising e-commerce market has led to multiplicity of transactions due to the technological improvements thus creating complexity in tracking the process flow of the transaction and the payment from the consumer to the organisation.

These taxation laws are in place to ensure that each and every party at each and every stage which gets involved in dealing with such ventures.

The seller's entire business profile and financial transactions are covered along with the people who are buying and selling on the e-commerce Portal. Thus, taxation implication gets triggered at each and every stage of the transaction.

"The seller's entire business profile and financial transactions are covered along with the people who are buying and selling on the E-comm Portal. Thus, taxation implication gets triggered at each and every stage of the transaction.

To address the tax challenges of the digitalisation of the economy, there have been talks about implementation of the Two Pillar approach by the OECD Inclusive Framework. Reconciliation of Tax Profits with accounting profits in India is itself a complicated scenario in India which might require a separate mechanism to tackle it.

A Critical Analysis of Alternate Tax Regime Under Section 115BAC Of Income Tax Act, 1961

Investment planning is an essential part of financial planning. However, investment decision making is a difficult task since the market is flooded with plethora of investment alternatives which renders an ordinary person having limited knowledge of financial products, confused and lost. As a result, this part of financial planning is side-lined and pushed to some 'later date' in future. As the financial year comes to an end and date of income tax return filing nears, a haggard ordinary taxpayer is then forced to rely on so called 'investment advisors' who, in pursuit of higher commissions, push sub-standard financial products which are not aligned to his financial needs and goals. Such investment options, no doubt, save taxes but do not provide adequate return or/and are not liquid enough. Read on…

Dr. Shikha Gupta
The author is an academician. She can be reached at eboard@icai.in

Investment planning should not only save taxes but also provide competitive returns commensurate with the risk of underlying security and liquidity according to the needs of the investor. This paper, however, focuses only on tax planning as an integral part of financial planning. The paper becomes more relevant in the wake of Budget 2020 which introduced Alternate Tax regime under section 115 BAC in Income Tax Act, 1961 with the aim to minimise the burden of buying unnecessary policies for individuals. The section provides an option to an assessee to either continue with existing tax structure or adopt the new one. The paper studies the pros and cons of both the regimes to assist a taxpayer to make an appropriate decision.

Introduction

A new and optional taxation structure, called Alternate Tax regime was introduced by the Government of India through the Finance Act, 2020. It is applicable to individual and Hindu Undivided Family (HUF) category of taxpayers. This tax structure under the newly

inserted section 115BAC of the Income Tax Act, 1961 has been pushed by the Government as a major milestone in the direction of simplification of income tax laws in India. It is expected to provide significant relief and autonomy to these taxpayers who constitute the largest base of income taxpayers in India. No doubt, it will significantly affect the tax planning and adherence of income tax laws of a large number of taxpayers. This paper attempts to study in depth the Alternate Tax regime under Section 115BAC of the Income Tax Act, 1961. This is then compared with the existing tax regime to conclude whether it is more beneficial than the existing one.

Objectives of the Study

1. To examine the Alternate Tax regime introduced through Section 115BAC of the Income Tax Act, 1961 to understand its impact in (alleged) simplification of tax structure for sampled population.
2. To compare the Alternate Tax regime with existing tax regime so as to assist an individual and HUF taxpayer in arriving at an informed decision.

Database and Methodology

The paper is descriptive in nature and is based on secondary sources of information. Provisions contained in Finance Act, 2020 and Section 115BAC of Income Tax Act, 1961 have been consulted to examine the effect of such provisions on tax liability, simplification of tax structure and compliance. Since Section 115BAC is applicable only to individuals and Hindu Undivided Family (HUF), they form the sample of study. Thereafter, a comparative analysis of Alternate Tax Regime with existing tax regime has been attempted by taking hypothetical total income figures. The important results have been then carefully disseminated such that the objectives of the paper are achieved.

Review of Literature

Sarma (2002) in his study propounded the traditional taxes with income, wealth, trade, services etc. as bases are complex to understand and have resulted in complicating the lives of taxpayers. The paper examined the feasibility of replacing the present system and suggested a single comprehensive revenue neutral Transaction Value Tax as an Alternate tax regime for a country like India.

Saltiel (2014) examined the impact of changes in individual income tax on long-term economic growth. Any cut in tax rates must be accompanied by spending cuts otherwise it will result in federal budget deficit. Tax base- broadening reduce the impact on budget deficit but also reduce impact on labour, savings and investment.

While presenting the Budget for the year 2020-21, Union Finance Minister, Nirmala Sitharaman (2020) said that "Currently the Income Tax Act is riddled with various exemptions and deductions which make compliance by the taxpayer and administration of the Income Tax Act by the tax authorities a burdensome process. Inability to comply with provisions of tax laws has been a major issue for a large number of tax payers". Majority of the small individual taxpayers are forced to secure the services of tax professionals, either to seek advice on tax-savings investment options or for filing tax returns. She highlighted that simplification of tax laws through reduction in various provisions and doing away with unnecessary and difficult to understand deductions and exemptions will ensure compliance.

Ghimire, Sanjib (2020) attempted conceptually to study the pros and cons of new and optional tax regime and concluded that the taxpayer must possess thorough knowledge of the provisions of both the tax structures. An individual without having business income can opt for either of the tax regimes after due consideration of his case.

Surana, Suresh (2021) attempted to compare both the regimes and concluded that unlike the corporate tax, concessional tax rate has limited application and will be beneficial to a limited category of individuals. He adopted illustrative approach to put forward his findings.

Significant Provisions relating to Alternate Tax Regime u/s 115BAC of Income Tax Act, 1961

1. The provisions of this section are effective from the assessment year 2021-22.

2. They are applicable only to an individual ad HUF category of taxpayers, whether resident or non-resident.

3. The Alternate tax regime is not intended to replace existing tax regime; in the sense it provides an 'option' to an assessee to choose a regime which is beneficial and suitable to him.

4. Under alternate tax regime income-tax shall be computed as per the slab rates given in Table 1.

Table 1: Income Tax rates under Alternate tax regime

S. No.	Total Income	Tax Rate
1.	Up to 2,50,000	Nil
2.	From 2,50,001 to 5,00,000	5 percent
3.	From 5,00,001 to 7,50,000	10 percent
4.	From 7,50,001 to 10,00,000	15 percent
5.	From 10,00,001 to 12,50,000	20 percent
6.	From 12,50,001 to 15,00,000	25 percent
7.	Above 15,00,000	30 percent

(Source: Central Board of Direct Taxes (2020), "Income-tax (13th Amendment) Rules, 2020," Department of Revenue, Ministry of Finance).

5. The exemption limit is Rs. 2,50,000 and is applicable for all category of individuals whether senior citizens or super senior citizens, unlike existing tax regime.

6. The provisions u/s 87A shall continue to be applicable under alternate tax regime.

7. The provisions u/s 115BAC will not be applicable for incomes under provisions of Chapter XII. Hence an assessee (who has opted for Alternate tax regime) has other incomes under Chapter XII (e.g., long-term capital gains, winnings from lotteries etc) then tax on such incomes will continue to be calculated as per the special rates specified in these sections.

8. Surcharge and health and education cess will continue to be applicable under alternate tax regime.

9. The following deductions and exemptions will not be available under alternate tax regime.

Table 2: Deductions and exemptions not available under alternate tax regime

S. No.	Deductions/Exemptions
i.	Leave travel concession [u/s 10(5)]
ii.	House rent allowance [u/s 10(13A)]
iii.	Special allowances u/s 10(14) other than exemptions pertaining to travel, transfer and conveyance expenses incurred officially (vide Notification No. 38/2020 dt/- 26/06/2020).
iv.	Allowances to MPs/MLAs [u/s 10(17)]
v.	Exemption [u/s 10(32)] available in case of clubbing of income of minor child
vi.	Exemption of perquisite in respect of free food and non-alcoholic beverages [u/s 17(2)]
vii.	Standard deduction, Entertainment allowance and Professional tax [u/s 16]
viii.	Interest on housing loan for one or two self-occupied properties [u/s 24(b)]
ix.	Additional depreciation [u/s 32(1) (iia)]
x.	Deduction for investment in new plant or machinery in notified backward areas in certain States [u/s 32AD]
xi.	Deduction for tea development account, coffee development account and rubber development account [u/s 33AB]
xii.	Deduction for site restoration fund [u/s 33ABA]
xiii.	Deduction for expenditure on scientific research [u/s 35(1)]
xiv.	Standard deduction in case of family pension [u/s 57(iia)]
xv.	All deductions from section 80C to 80U (except employer's contribution towards NPS)

(Source: Central Board of Direct Taxes (2020), "Income-tax (13th Amendment) Rules, 2020," Department of Revenue, Ministry of Finance).

> Surcharge and health and education cess will continue to be applicable under alternate tax regime.

10. Any loss under the head "Income from house property" cannot be set off with any other head of income.
11. Brought forward business losses or unabsorbed depreciation of earlier year(s) cannot be set off with business income of current year.
12. In case of taxpayers not having business income the option for alternate tax regime must be exercised each year on or before the due date of filing of return of income. However, in case of tax payers with business income, once the taxpayer has exercised the option for alternate tax regime, it remains valid for subsequent years. The option for alternate tax regime can be withdrawn only once for subsequent year. Thereafter, the tax payer with business income shall never be eligible to opt for alternate tax regime, except where such person ceases to have any business income.
13. A taxpayer who wants to avail alternate tax regime is required to upload an option in Form No.10-IE on or before due date of filing of return of income.

Analysis and Discussion

For the purpose of analysis, a comparative summary of income tax slab rates under alternate tax regime and existing tax regime has been shown in Table 3.

Table 3: Comparative summary of income tax slab rates under the alternate and existing tax regimes

S. No.	Total Income	Tax rate under alternate tax regime	Tax rate under existing tax regime
1.	Up to Rs 2,50,000	Nil	Nil
2.	From Rs 2,50,001 to Rs. 5,00,000	5 percent	5 percent
3.	From Rs. 5,00,001 to Rs. 7,50,000	10 percent	20 percent
4.	From Rs. 7,50,001 to Rs. 10,00,000	15 percent	20 percent
5.	From Rs. 10,00,001 to Rs. 12,50,000	20 percent	30 percent
6.	From Rs. 12,50,001 to Rs. 15,00,000	25 percent	30 percent
7.	Above Rs. 15,00,000	30 percent	30 percent

(Source: Central Board of Direct Taxes (2020), "Income-tax (13th Amendment) Rules, 2020," Department of Revenue, Ministry of Finance).

The comparative summary given in Table 3 reveals alternate tax regime is similar to existing tax regime with respect to the exemption limit of Rs.2,50,000/- and same (5 percent) tax rate for income slab of Rs. 2,50,001/- to Rs. 5,00,000/-. Further, the maximum marginal rate of tax in both the regimes remain at 42.744%. which is one of the highest in the world. Both the regimes have progressive tax structure. The similarity ends here. The income tax rates are different in two regimes. Also, there are seven income slabs under alternate tax regime in comparison to four slabs under the existing tax structure. The highest income slab under the alternate tax structure is Rs. 15,00,000/- and above, while it is Rs. 10,00,000/- under the existing tax regime.

In order to facilitate a deeper understanding and comparison of various provisions of alternate tax regime with existing tax regime, the paper attempts to incorporate hypothetical income data in the calculations. The results have been presented in Tables 4, 5 and 6. Since surcharge and health and education rates continue to be applicable and same in both regimes, they have been excluded from analysis.

> Any loss under the head "Income from house property" cannot be set off with any other head of income.

Situation 1: When assessee has not made any 'eligible' investments and hence deductions and exemptions are not claimed by assessee.

'Eligible investments' are those investments in respect of whom deductions and exemptions are available in the existing regime but are not available in alternate regime (refer Table 2)

Table 4: Comparative analysis of tax liability when deductions and exemptions are not considered.

Case No.	Total Income (Rs.)	Tax liability as per existing tax regime (Rs.)	Tax liability as per alternate tax regime (Rs.)	Benefit as per alternate tax regime (Rs.)
1.	2,50,000	Nil	Nil	Nil
2.	5,00,000	Nil	Nil	Nil
3.	7,50,000	62,500	37,500	25,000
4.	8,00,000	72,500	45,000	27,500
5.	10,00,000	1,12,500	75,000	37,500
6.	12,50,000	1,87,500	1,25,000	62,500
7.	15,00,000	2,62,500	1,87,500	75,000
8.	50,00,000	13,12,500	12,37,500	75,000
9.	1,00,00,000	28,12,500	27,37,500	75,000
10.	2,00,00,000	58,12,500	57,37,500	75,000
11.	5,00,00,000	1,48,12,500	1,47,37,500	75,000

Analysis of Table 4 reveals that an assessee can avail maximum tax benefit of Rs. 75,000/- under alternate tax regime. As a result, it can be safely concluded that in this situation, the alternate tax regime has limited application and will be more beneficial for assesses belonging to lower to middle income groups. The benefit is capped at Rs. 75,000/- for all assesses whose total income exceeds Rs. 15,00,000/- in the previous year.

Situation 2: When an assessee has made 'eligible' investments.

In this situation, the assessee is required to make a thorough analysis as benefit in alternate tax regime will be dependent on factors unique to his case. Table 5 exhibits a case when alternate tax regime will be beneficial to the assessee (assuming he only has salary income)

Table 5: Comparative analysis when deductions and exemptions are considered.

Particulars	Computation as per existing tax regime (Rs.)	Computation as per alternate tax regime (Rs.)	Benefit under alternate regime (Rs.)
Gross Salary	13,50,000	13,50,000	
Less: Standard deduction	50,000	-	
Less: Professional tax	2,400	-	
Net Salary/ Gross Total Income	12,97,600	13,50,000	
Less: Deduction under Section 80C, 80CCC and 80CCD (1)	1,50,000	-	
Total Income	11,47,600	13,50,000	
Tax Liability	1,56,780	1,50,000	6,780

As is evident from above table, for a Salary (only) income of Rs. 13,50,000/-, the alternate tax regime is beneficial by Rs. 6,780/-. But, if the assessee has paid health insurance premium or has taken education or home loan which are eligible for deductions under various sections, the existing tax regime may become beneficial.

Table 6 exhibits a case when existing tax regime will be beneficial to the assessee (assuming he only has salary income)

Table 6: Comparative analysis when deductions and exemptions are considered.

Particulars	Computation as per existing tax regime (Rs.)	Computation as per alternate tax regime (Rs.)	Benefit under existing regime (Rs.)
Gross Salary	9,00,000	9,00,000	
Less: Standard deduction	50,000	-	
Less: Professional tax	2,400	-	
Net Salary/ Gross Total Income	8,47,600	9,00,000	
Less: Deduction under Section 80C, 80CCC and 80CCD (1)	1,50,000	-	
Total Income	6,97,600	9,00,000	
Tax Liability	52,020	60,000	7,980

An analysis of table 6 exhibits that for a Salary (only) income of Rs. 9,00,000/-, existing tax regime is a better option as it results in tax savings of Rs. 7,980/-

Thus, in case the taxpayer has invested in eligible investments (situation 2), it cannot be assumed that alternate tax regime will be beneficial irrespective of income slab.

Based on the above analysis, benefits and costs of alternate tax regime vis-à-vis existing tax regime has been arrived at and discussed below:

Benefits

i) **Lesser number of provisions**: Under alternate tax regime, a substantial number of deductions and exemptions have been disallowed making it simpler. It is, therefore expected that its adoption will ensure ready compliance

ii) **Lower tax liability**: It was observed that the tax liability of a taxpayer under the alternate tax regime is reduced and they get benefitted by concessional tax rates under certain conditions in comparison to existing tax regime rates.

iii) **Increased liquidity**: Lower tax rates would result in more disposable income and increased liquidity in the hands of a taxpayer under the new tax regime. This will benefit those who do not invest in eligible investment instruments due to monetary or other constraints and preferences.

iv) **Scope for customizing investments**: Under the existing tax regime, in order to reduce tax liability, taxpayers are required to invest in certain notified tax-saving instruments most of which have long lock-in periods. This restricts their choice of investments. However, since the alternate tax regime does not provide any benefit for investment for tax saving purposes, the taxpayers have greater autonomy as regards investing their savings in avenues of choice.

v) **Lesser dependence on tax professionals**: As alternate tax regime has lesser provisions and hence is expected to result in relatively greater compliance of income tax laws, the dependence of taxpayers on tax professionals is expected to reduce.

Costs

i) **Long-term economic costs resulting from disallowance of deductions and exemptions**: A coin has two sides. The scheme of provision of deductions and exemptions to taxpayers in an economy encourages personal savings at micro level and provide much needed funds to the Government at macro level. Further, personal savings for future is very important in a country like India where social security system is inadequate. This economic aspect resulting from such

"Under alternate tax regime, a substantial number of deductions and exemptions have been disallowed making it simpler. It is, therefore expected that its adoption will ensure ready compliance.

> As a general rule, the alternate tax regime may prove beneficial to those who are in comparatively lower income bracket between 5-15 lacs and are not significantly invested in various tax-saving schemes.

disallowance of deductions and exemptions needs to be researched further.

ii) **Implications of disallowance of carry-forward and set-off of losses**: Under the alternate tax regime, any loss under the head 'Business' or 'House Property' are not allowed to be carried forward to subsequent year(s) and set off with incomes from other heads. It is a setback for assesses who have suffered losses in business. It will also increase the notional rate of home loan as interest paid by an assessee on loan taken for self-occupied property u/s 24(b) has been done away with in alternate tax regime. It is expected to adversely affect the demand for affordable housing and will have implications for property market.

iii) **Increased complexity**: Although alternate tax regime has lesser number of provisions, decision regarding choice of an appropriate tax regime requires a thorough analysis and calculation of taxes under both the regimes. An ordinary taxpayer may not have requisite knowledge and skill for the same, thus, in fact, increasing the complexity of tax structure.

iv) **Restrictions on exercise of option for taxpayers having business income**: In case an individual or HUF having business income exercise the option for alternate tax regime for a previous year, it shall remain valid for all subsequent years. It can be withdrawn only once in the lifetime of the taxpayer for the subsequent year(s). In case a case, such tax payer will never be eligible to opt for alternate tax regime again, except in case he ceases to have business income.

Conclusion

The alternate tax regime introduced by Government of India through Section 115BAC of Income Tax Act, 1961 has resulted in a simpler and compliance friendly tax structure in comparison to the existing tax structure. However, according to Sanjib Ghimire, "due to certain conditions stated therein, it might not be beneficial for all taxpayers". Also, it requires thorough knowledge of both the tax structures on the part of taxpayer. It is only after cost – benefit analysis can a taxpayer concludes which of the two regimes will be beneficial for him. As a general rule, the alternate tax regime may prove beneficial to those who are in comparatively lower income bracket between 5-15 lacs and are not significantly invested in various tax-saving schemes. However, those taxpayers who believe in investing for securing the future, existing tax regime could be suitable as it allows for various tax deductions and exemptions. Further, the long-term economic consequences resulting from disallowance of deductions and exemptions must be carefully looked into. It is also expected to adversely impact demand for affordable housing, by making notional cost of home loan expensive. It will be double whammy for individuals already suffering from business losses as such losses cannot be carried forward and set off in subsequent years.

Scope for further Research

The alternate tax regime has become effective from the assessment year 2021-22. In future, many challenges and issues in relation to its adoption by taxpayers, its implementation by tax authorities, compliance of TDS provisions by employers etc. might arise. As such, after the submission of return, primary data can be collected from them to further understand the implications and challenges. It provides scope for further research in these areas.

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Interest on Delayed Tax Refund: The Saga Continues

The article deals with the recent judgement of the Hon'ble Karnataka High Court in the case of Wipro Limited. In the said decision, the court has discussed in detail the purpose of introduction of section 244A(1A) under the Income-tax Act 1961 and the purpose cannot be defeated because of the whims of the erring officials. The court has taken the cognizance of the arguments contended by the department and has brought a thin line of distinction between assessment, reassessment and assessment order. Additional interest u/s 244A(1A) cannot be denied to the assessee when there is a delay beyond the prescribed period in giving of the order by the Assessing Authority. Read on...

CA. Mohit Choudhary

The author is member of the Institute. He can be reached at camohitchoudhary360@gmail.com and eboard@icai.in

Collect taxes from the citizens as honeybees collect nectar from the flowers, gently and without inflicting pain

\- Chanakya

Introduction

As the Department of Income Tax charges interest on delayed payment of taxes from the taxpayer, it is its ethical responsibility to pay interest to the assessees on delayed payment of refund as well. However, in the practical world, though department takes coercive steps for recovery of the taxes from the taxpayer but at the time of issuance of refund, the exchequer generally resorts to usual tactics of holding the refund, making unusual delay in issuing the refund or even denying paying the refund. As a result, taxpayer is left with no option other than to knock the doors of the Courts by filing writ petition against the department.

The courts on multiple occasions have even taken tough stand on the department for making extraordinary delays in issuing refunds to the taxpayer. In order to compensate the assessee for delayed or non-payment of refund, the courts have also ordered the department to pay hefty penal interest.

To avoid any injustice to taxpayers, though the government has introduced section 244A for payment of interest on refund, to compensate the assessee for delay but the department again resorts to new tactics for denying or holding the amount of interest. Long story short, despite all the judicial pronouncements and orders, the fight for refund and interest on refund continues.

Few Judicial Pronouncements on interest on refund

Hon'ble Apex Court in the case of **Sandvik Asia Ltd. -vs.- CIT (2006) 280 ITR 643 (SC)** has held that the assessee was entitled to compensation by way of interest on the delay in the payment of amounts lawfully due to the assessee, which were withheld wrongly and contrary to the law by the department for an inordinate long period of up to 17 years.

Further, the court in the aforesaid decision has also held that while charging interest from the assessee, the department has first adjusted the amount paid towards interest so that the principal amount of tax payable remained outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance is adjusted towards interest. That stand taken by the revenue was discriminatory in nature and thereby causing great prejudice to the assessees.

Similarly, in **CIT -vs.- HEG Ltd. (2010) 324 ITR 331 (SC)** the Hon'ble Supreme Court has held that meaning of the word 'any amount' as used in section 244A is not limited to principal amount of tax but includes within its ambit the interest component which accrued to the assessee for refunding the principal tax.

Thereafter, Hon'ble Apex Court in the case of **CIT -vs.- Gujarat Fluoro Chemicals (2014) 42 taxmann.com 1 (SC)** has held that in the event of extraordinary delay for refund of taxes owing to the department, revenue is liable to pay the compensation for the same. However, revenue is not liable for payment of interest on interest. The court has also reviewed its earlier decision in the case of Sandvik Asia (supra) and has held that in the said case there was extraordinary delay in refund of interest which caused great prejudice. The same was compensated by way of penal interest. Therefore, revenue was directed to pay compensation for the same not an interest on interest.

Also, Supreme Court in **Union of India -vs.- Tata Chemicals Ltd. (2014) 363 ITR 568 (SC)** has clarified the reasons for granting interest on refund. The court held that refund due and payable to the assessee is a debt owed and payable by the Revenue. The State having received the money without right, and having retained and used it, is bound to make the party good. The obligation to refund money received and retained without right implies and carries with it the right to interest.

In **India Trade Promotion Organisation -vs.- CIT (2014) 361 ITR 646 (Delhi)** it was held that the assessee is eligible for refund of any amount due which could include not only the tax paid but also the interest element which has accrued and which is payable on the date of refund. It made reference to the Apex Court decision in the case of HEG Ltd. (supra) where it was clarified if the refund granted does not include interest due and payable on the amount refunded, the Revenue is liable to pay interest on the shortfall.

Introduction of New Section 244A(1A) by Finance Act, 2016

Before moving on the recent decision of Hon'ble Karnataka High Court in the case of **Wipro Limited -vs.- JCIT (WP. No. 20040/2019)**, it better have a small discussion about the genesis of section 244A(1A).

In order to provide fairness and equity to the taxpayer, a new section 244A(1A) was introduced by the Finance Act 2016. The subsection provides that where a refund arises out of appeal effect being delayed beyond the time prescribed under section 153(5), the assessee shall be entitled to receive, in addition to the interest payable under section 244A(1), an additional interest on such refund amount calculated at the rate of 3% p.a., for the period beginning from the date following the date of expiry of the time allowed under section 153(5) to the date on which the refund is granted.

Section 153(5) prescribes the time period for the AO for giving effect of the order of judicial authority or order u/s 263 and 264. In case where the AO is not directed for reassessment or fresh assessment, the time period for the AO is three months from the end of the month in which the order of the appellate authority is received.

It may be said that the objective behind the introduction of section 244A(1A) is to compensate the taxpayer for unjust delay in the payment of refund amount because of delay in order effect. In a nutshell, if there is a delay in giving refund beyond the period prescribed in section 153(5), then instead of 6%, assessee shall be entitled for interest at the rate of 9%.

Decision of Karnataka High Court in Case of Wipro Limited (supra)

Brief Facts

The assessee files return of income for AY 2008-09 declaring a total income of Rs. 588.08 Crs. which was subsequently assessed at Rs. 2,389.89 Crs. as per the

> The objective behind the introduction of section 244A(1A) is to compensate the taxpayer for unjust delay in the payment of refund amount because of delay in order effect.

direction of DRP. Against, the said order both assessee and the department preferred an appeal before ITAT wherein the tribunal vide order u/s 254 dated **04-01-2017** partly favoured the assessee and remitted the case to TPO with a direction for re-computation of the transfer pricing adjustment.

Thereafter, JCIT vide order effect dated **28-12-2017** determined the total income of Rs. 693.88 Crs. and tax payable thereon at Rs. 206.69 Crs under normal provisions. However, the tax on book profit was higher at Rs. 316.85 Crs., resulting in a refund of Rs. 1057.45 Crs. including interest u/s 244A amounting Rs. 267.54 Crs.

Thereafter, file was transferred to DCIT before whom rectification petition was filed on various dates by the assessee which was kept pending for a while. Finally, rectification order was passed on 04-05-2019 enhancing the refund amount to Rs. 1380.13 Crs. including interest u/s 244A of Rs. 397.56 Crs.

Besides, interest of Rs. 397.56 Crs., the assessee envisaged for additional interest u/s 244A(1A) for the period between 28-12-2017 and 04-05-2019, amounting to Rs. 59.65 Crs.

Contentions of the Assessee

The contentions of the assessee are,

- Holding the entire refund on the pretext of a transfer pricing adjustment which would account for a masculine refund of Rs. 3.88 Crs. offends the sense of fairness and proportionality.
- Further, transfer pricing adjustment was not determinative of refund since the assessee was liable to pay tax on book profit and not on normal income.
- The orders subjected to section 244A(1A) can be classified into two categories viz.,
  (i) the ones where a fresh assessment/re-assessment needs to be made, and
  (ii) the others where only effect is to be given to the appellate orders straightway without any fresh assessment/reassessment;

Even if the direction of the ITAT to recompute the transfer pricing adjustment falls within the former category, effect had to be given expeditiously to the rest of the ITAT order which has attained finality, regardless of contemplated transfer pricing assessment;

Contentions of the Department

The contentions of the department are,

- Assessment or re-assessment cannot be done in piecemeal or in a truncated way; the total income of an assessee can be determined only after the fresh assessment or re-assessment is accomplished.
- Section 244A(1A) envisages interest only in cases where there is no requirement of fresh assessment or reassessment in terms of appellate order. In the instant case, since the matter was remitted to the TPO for fresh assessment, case of the assessee does not fit into section 244A(1A).
- Section 240 provides that the refund on appeal would arise where an order in appeal on assessment is set aside or cancelled with a direction to undertake a fresh assessment/re-assessment and such a direction is accomplished.

Held by the High Court

There is a difference between assessment and assessment order. Assessment, *inter alia*, includes preparation of assessment order, computation of income, declaration, and imposition of tax liability. Passing of an assessment order is only an integral part of the process of assessment.

Further, section 153(3) uses the term 'fresh assessment', which means that the entire exercise of assessment is to be done afresh. And since the term is used along with the terminology "setting aside or cancelling" it means that the whole order of assessment being set aside and not some issues comprised in the assessment order.

Therefore, if the orders to be given effect are to be made by following the principles already

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laid down by the higher forum, it would not be a case of fresh assessment in terms of section 153(3).

Interest u/s 244A(1A) would not accrue in cases of fresh assessment or reassessment but would extend to the concluded issues that give rise to refund u/s 153(5). Thus, where in respect of certain issues, time limit for order giving effect u/s 153(5) has expired, interest u/s 244A(1A) has to be granted in respect of refund arising on such issues that are concluded. The pendency of consideration on remitted issues which are subjected to section 153(3) does not interdict the statutory accrual of interest.

Further, in the instant case, since the assessee is subjected to tax on book profit, therefore, it can be safely stated that no part of the refund payable arose because of the reduction in the TPA. Further, the demand attributable to the TPA as finally made is miniscule i.e., Rs. 25 lakh or so, as compared to the total refund including interest of over Rs.1,380.

The contention of the Revenue that any order giving effect to the order of the ITAT will result in redetermination of the assessee's total income and therefore will constitute a fresh assessment, is absurd. If the same is accepted, it would inexorably lead to the result that the Revenue can invariably retain the refund determined, without the liability to pay the additional interest in terms of Sec.244A(1A) for the delayed period. This would defeat the very object for which this provision has been brought on the statute book.

Conclusion

The case of Wipro Ltd is another example that the tussle between department and the taxpayer for refund and interest of refund is not going to end. Taxpayers have to knock the doors of judicial forum for getting their hard-earned money back.

In fact, the current experience of faceless assessment does not seem to help much. Although the physical interface between the department and the taxpayer has been eliminated, but to get rectification orders, order effects judicial AO has to be approached.

> If the department sets various mechanisms for collection of taxes, then a better and fast mechanism should also be set for paying the right amount of refund along with interest.

> Modality of issuing refund needs to be transformed. Instead of seeing the assessee with suspicion, department needs to trust the assessee. Although, taxpayer's charter has been issued but it is important to implement the principals of taxpayer's charter in reality.

In my view, modality of issuing refund needs to be transformed. Instead of seeing the assessee with suspicion, department needs to trust the assessee. Although, taxpayer's charter has been issued but it is important to implement the principals of taxpayer's charter in reality.

Further, department needs to take more strict actions in cases where refund payments get delayed. If the department sets various mechanisms for collection of taxes, then a better and fast mechanism should also be set for paying the right amount of refund along with interest.

Holding of refund not only creates financial burden on assessee but it leads to unnecessary litigations and disputes. It creates a problem for both the department and the assessee. Such problems may be avoided by implementation of better and assessee friendly refund mechanism. ■■■

The Beneficial Ownership Saga

The concept of "beneficial ownership" plays a crucial role in determining whether a recipient of income (e.g. dividends, interest, royalties etc.) qualifies for certain benefits under the DTAA. In the absence of any formal rules around this concept, it is a highly fact specific exercise determined largely by legal dictionaries, commentaries and international as well as domestic judicial precedents. Dividend distributing companies are required to undertake this detailed analysis at the time of distribution of dividend (and their Chartered Accountants at the time of issuing Form 15CB certificate). In this article, the author attempts to shed light on the factors determining beneficial ownership based on various meanings assigned to the concept, domestic and international jurisprudence and the way forward in an Indian context. Read on…

CA. Vijaykumar Puri

The author is a member of the Institute. He can be reached at vkrpuri@gmail.com and eboard@icai.in

Background

- The concept of "beneficial ownership" (BO) plays a crucial role in determining whether a recipient of income qualifies for certain benefits under the Double Taxation Avoidance Agreement ('DTAA'). It is quite significant from the perspective of international taxation as a significant number of tax treaties adopt the condition of BO for granting concessional treatment to a resident of another country; in particular, when it comes to articles dealing with dividend, interest, royalties.
- BO under tax treaties is a specific anti-abuse rule incorporated to target specific instances of tax treaty shopping involving the use of agents/ nominees/ conduits i.e., entities which act as mere administrators or fiduciaries of income and have no substance of their own.
- From Indian perspective, the concept of BO has gained even more relevance with the abolishment of dividend distribution tax on companies whereby the dividend is now taxable in the hands of the investors with effect from 1st April 2020. The tax rate for a non-resident prescribed under section 115A of the Income-tax Act, 1961 ('Act')

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is 20% (plus applicable surcharge and health and education cess) while many India's tax treaties typically provide a tax rate of 5-15% subject to BO and certain other shareholding related conditions. Thus, foreign investors exploring to avail benefit under the tax treaty would be required to fulfil the BO criteria.

- To understand the methods for evaluating BO, it is imperative to first discuss the evolution of the concept in international tax arena.

Evolution of the concept of BO in tax treaties

- The concept of BO was first envisaged in the US-Canada tax treaty of 1942 and has evolved over time.
- The expression 'beneficial owner' has not been defined under the tax treaties or the Act and must therefore be interpreted based on general commercial understanding, tax commentaries and judicial precedents in this regard.
- The Model Commentaries (MC) to the tax treaties and leading international tax lawyers have commented that the term has to be given a purposive interpretation (viz. prevention of tax avoidance) and persons not entitled to treaty protection are to be prevented from obtaining benefits there under by interposing entities between the ultimate beneficiary and the payer.
- Further, in evaluating the concept of BO, one has to take cognizance of the 'substance' of the transaction and not its 'form' duly considering all relevant facts and circumstances. In other words, the meanings of the term "BO", should be understood in a commercial or general parlance.

Definitions of beneficial owner

- With regards to the term 'beneficial owner', as per Black's Law Dictionary[1] the said term is defined as "one recognized in equity as the owner of something because use and title belongs to that person, even though the legal title belongs to someone else."
- Law Lexicon defines 'beneficial owner' as "one who, though not having apparent legal title, is in equity entitled to enjoy the advantage of ownership."
- As per Prof Klaus Vogel, among other factors, the issue of control is the most important factor in deciding the BO. Beneficial owner is the person who is free to decide:
  - i. Whether or not the capital or other assets should be used or made available for use by others; or
  - ii. On how the yield there from should be used; or
  - iii. Both
- Further, Klaus Vogel in his commentary[2] also states that *"....even a one hundred per cent interest in a subsidiary does not preclude the latter's 'beneficial ownership' in the assets held by it. There would have to be other indications of the fact that the subsidiary's management is not in a position to make decisions differing from the will of the controlling shareholders. If it were so, the subsidiary's power would be no more than formal and the subsidiary would, therefore, not qualify as a "beneficial owner" within the meaning of Arts. 10 to 12."*

1. *'Black's Law Dictionary, 6th edition (1990)'*

2. *Klaus Vogel, "Klaus Vogel on Double Taxation Conventions", Third Edition Kluwer Law international, 1977 at page 561*

Reference from treaty commentaries

- The OECD MC[3], in relation to the 'BO' was substantially amended in 2014. The key highlights of the commentary in relation to BO are as under:
  i. The meaning of "beneficial owner" should be interpreted as not to refer to any technical meaning that it could have had under the domestic law of a specific country, but it must be understood in light of context and purpose of the tax treaty.
  ii. In addition to agent and nominees, conduit companies do not satisfy the status of BO.
  iii. It is considered that a direct recipient of income may not qualify as a "beneficial owner", if from the very inception of his status, that recipient's right to use and enjoy the income is constrained by a contractual or legal obligation to pass on the payment received to another person.
  iv. Reference has been made to the "related" and "unrelated" obligations. In case where the recipient has specific obligation to pass on the income received, such factor is relevant to the BO test.
  v. The obligation may be inferred from legal documents or facts and circumstances of the case.
  vi. The concept of BO and other forms of anti-avoidance principles are applicable simultaneously since BO addresses specific forms of tax avoidance.

Reference from domestic and international Judiciary

- Key Indian judicial precedents/ circulars etc. in the context of BO are set out below:
  i. Circular No. 789 dated 13 April 2000 issued by the Central Board of Direct Taxes (CBDT) in the context of the Treaty provides that a Tax Residency Certificate (TRC) issued by the tax authorities of a country would be regarded as conclusive evidence regarding residential status and BO of the income earned by Mauritian entities. The validity of the above Circular has been confirmed by the Supreme Court in its decision in the case of *Union of India v Azadi Bachao Andolan*[4].
  ii. In Bharti Airtel Limited[5], the issue before the Income Tax Appellate Tribunal (ITAT) was whether benefit of Article 11 of the India-Sweden tax treaty would be available when interest was paid to an 'arranger' of loan (ABN Amro Bank, Sweden) instead of the actual lender. The ITAT held that the provisions of Article 11 shall not be applicable since the arranger is a mere conduit for onward payment to the actual lenders. Even though the arranger produced a TRC to establish their residency in Sweden, the interest received by the arranger was not in its own right but merely as a facilitator and thus the arranger is not the beneficial owner of the interest income.
  iii. In *HSBC Bank (Mauritius) Ltd.*[6], in context of BO of interest income, the ITAT adjudicated the following:
     i. *"Considering the above, we infer that* ***the 'beneficial owner' can be***

[3] *The OECD Commentary to the Model Convention for tax treaties, 2014 edition*

[4] *(2003)] 263 ITR 706 (SC)*

[5] *[TS-141-ITAT-2014(DEL)]*

[6] *ITA No. 1078/Mum/2016*

the one with the full right and the privilege to benefit directly from the interest income** earned by the FII-Bank (Indo-food International Finance Ltd vs. J.P. Morgan Chase Bank NA London Branch [2006] EWCA case 158). **The income must be attributable to the assessee for tax purposes and the same should not be aimed at transmitting to the third parties under any contractual agreement / understanding.** The bank should not act as a conduit for any person, who in fact receives the benefits of the interest income concerned. **The recipient of the interest income should be deemed as the 'beneficial owner' unless there is any evidence to suggest that the said interest income is for the benefit of third persons."

iv. In the case of Golden Bella Holdings Ltd[7], ITAT held that the mere fact that the investment was funded using a portion of an interest free shareholder loan shall not deprive the Cyprus entity from enjoying the concessional rate of 10% withholding taxes as per Article 11 of India-Cyprus treaty. It was held that the Cyprus entity is not a conduit to be subject to tax at 42% but a beneficial owner of interest income.

- Key international judicial precedents in the context of BO are mentioned below:

  i. The Canadian Court in the case of *Prévost Car Inc. v The Queen*[8] concluded that the beneficial owner is the person who receives dividends for his own use and assumes the risk and control of the dividend and is not accountable to anyone for how he deals with it. However, where the person receiving the dividend is obligated to pass on such dividends to a third party, such a person would not be considered as a beneficial owner of the dividends.

  This decision reaffirms the principle that while examining BO rule, the corporate veil of the entity earning income should be respected unless the corporation is a conduit and has no discretion to deal on its own with the property put through it as a conduit or is acting as an agent, trustee or nominee of its shareholders.

A similar view is taken by the Canadian Court in the case of *Velcro Canada v The Queen*[9].

ii. The UK Court of Appeals in the case of *Indofood International Finance Ltd. v JP Morgan Chase Bank NA, London Branch*[10] held that an interposed entity between the beneficiary and the ultimate payer with a back-to-back debt obligation would not qualify as the beneficial owner of such interest income. The UK Court of Appeals arrived at its conclusion on the application of the 'substance over form' approach.

iii. The Federal Administrative Court of Switzerland[11] while determining the BO of dividend under DTAA between Switzerland and Denmark, held that the concept of BO as stated in double tax convention, has to be interpreted based on 'substance over form'

7. *[TS-523-ITAT-2019(Mum)]*
8. *2009 DTC 5053 (FCA)*
9. *2012 TCC 57*
10. *(2006) EWCA Civ 158*
11. *Case no. A - 1246/2011and A-6537/2010*

approach. The beneficial owner is defined as a person who has broad discretion to decide how dividend shall be utilised. In the facts of the said case, the Federal Administrative Court observed that, although the taxpayer had a duty to compensate the counterparty of a total return swap for the appreciation of the underlying shares, including dividend payments distributed during the maturity of the derivative, the total return swap did not include any contractual obligation for the taxpayer to hedge its position with the acquisition of the underlying assets. The Court then observed that there was no factual obligation to transfer any dividend income to the counterparty, as the taxpayer was only obliged to pass on an amount equal to the dividend, irrespective of whether it had effectively received a dividend payment. Hence, the fact that the taxpayer, by hedging its exposure from the total return swaps, was able to use the dividends for other purposes played a crucial role in strengthening the BO. The Federal Administrative Court further clarified that the effective holding period of the shares has no impact on the BO.

However, it is pertinent to note that in respect of the above decision, on further appeal by the Swiss Federal Tax Authority (SFTA), the Federal Supreme Court (FSC)[12] reversed the decision of the Federal Administrative Court and upheld the view of SFTA. The FSC observed that there also is an implicit BO requirement in treaties that do not explicitly mention BO. BO requires, as a first element, that at the time of receiving a dividend, the recipient of a dividend has an unconstrained right to use, enjoy and dispose of the dividend received. If the recipient has a (legal or factual) obligation to pass on the dividend received to a third party under a derivatives contract, BO is denied.

> The recipient must have full right to directly benefit from the income and must be free to decide the manner of using the income so earned i.e. there should not be any contractual/ legal obligation to pass the income so earned.

Furthermore, the beneficial owner must bear the economic risk of whether a dividend is distributed or not. Where such risk is passed on to a counter-party to a derivatives contract, BO is denied. The derivatives contracts entered into by the Danish banks were accurately matching their investment in the underlying, both in volume and timing. The derivatives were entered into when the underlying shares were acquired and were terminated when the shares were sold. At the time when the dividend was received by the Danish banks, they had an obligation to pass it on to third parties under the total return swap or futures contracts, so that both the risks and rewards of the investment in the Swiss shares were substantially with the third parties and not with the Danish banks, which made only a small profit from these transactions.

Factors for determining BO – The PURC Matrix

Based on the meanings and judicial decisions discussed above, the PURC (Possession, Use, Risk, Control) matrix is a widely regarded test of BO. The elements of the PURC matrix need to be cumulatively fulfilled in order to satisfy the BO condition.

[12] *2C_364/2012, 2C_377/2012, and 2C_895/2012 dated 5 May 2015*

A brief discussion on each element is tabulated below:

Element	Factors
Possession	• This refers to possession of income which is substantiated by factors like receipt of income, exercise of dominion over income and property and valid economic, commercial purpose for the transaction. • Further, the recipient should not be acting as a mere conduit, nominee or agent. • Legal ownership, ultimate control and holding period of shares are irrelevant factors for fulfilling this element
Use	• The recipient must have full right to directly benefit from the income and must be free to decide the manner of using the income so earned i.e. there should not be any contractual/ legal obligation to pass the income so earned • An adverse factor denoting lack of use by the recipient is that the right to use and enjoy is constrained by interdependency between obtaining an income and an obligation to pass it on.
Risk	• The recipient must bear the business risk of the income in order to satisfy this element of the matrix. The recipient must be the economic owner i.e. he must bear the consequences of loss as well as enjoy the fruits of income. Further, his liability towards creditors must not be affected by lack of receipt of the income. • Any contractual agreement to pass on the risk of bad debt, loss, exchange fluctuation is indicative of lack of risk of the recipient.
Control	• The recipient must retain full control over the income. Even in absence of explicit contractual agreements, the Revenue Authorities have regarded common Board of Directors (between the recipient and the alleged beneficial owner) as a sufficient factor for determining that the recipient does not have control over the income. • However, merely because of a holding-subsidiary relationship, it should not be assumed that the subsidiary company does not retain control of the income.

Based on the above, it can be concluded that the evaluation of BO is a highly fact specific exercise and there is no one-size-fits-all approach for the evaluation.

Way forward – Is evaluating BO a challenge?

- The evaluation of BO requires a careful study of the facts of the case and is an evolving matter in the courts of law. For instance, as discussed above, in some cases Revenue Authorities have held that merely having a common director leads to non-fulfilment of the ‘Control’ element; however, having common directors across group entities is a normal business practice and driven by commercial considerations – all of which are seldom considered by the Revenue Authorities.
- Given the recent amendment on taxation of dividends in the hands of the investors, the BO test would be required to be fulfilled by foreign investors seeking to avail tax treaty benefits for such dividend income. Thus, litigation around the overall concept of BO may increase.

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- Also, the determination of BO will be a time-consuming activity, both for the Assessing Officer (in terms of understanding complex multinational group structures and applying the concept of BO) and the taxpayer (in terms of collating documentation). Similar to the approach adopted under GAAR, the Indian Revenue Authorities should release a guidance on the BO to provide certainty on the matter.
- Chartered Accountants are also required to issue certificate in Form 15CB certifying applicability of beneficial rate under DTAA which will include satisfying the BO test. CAs must ensure that there is adequate documentation on record to substantiate that the foreign investor is indeed fulfilling the BO test. Where BO has not been evaluated, it would be a worthwhile exercise to undertake the same before certifying applicability of beneficial rate under DTAA.
- That being said, just like Pandora's box, there does remain 'hope' – that the tax authorities are able to provide clarity around the issue to promote Ease of doing business in India instead of resorting to frivolous litigation. ■■■

> CAs must ensure that there is adequate documentation on record to substantiate that the foreign investor is indeed fulfilling the BO test. Where BO has not been evaluated, it would be a worthwhile exercise to undertake the same before certifying applicability of beneficial rate under DTAA.

Doctrine of Judicial Discipline-Meaning, Importance, Exceptions and its Practical Applicability

Many a time, adjudicating and appellate authorities appear to pass orders without duly considering the orders of the higher appellate authorities like the Tribunals, the High Courts and the Supreme Court of India, on the identical set of facts and on question of law, which may be brought to their attention by the Noticees/Appellants in their submissions. Such orders are assailed to be passed in a rather casual, cursory, perfunctory and superficial manner in as much as the binding judicial precedents on the issue are ignored while passing such orders. We face orders wherein the allegations in the show cause notice are reproduced in a summarised form and with only cosmetic changes are presented as findings of the adjudicating/appellate authority. Read on...

CA. Rajeev Kumar

The author is member of the Institute. He can be reached at rks9814214503@gmail.com and eboard@icai.in

Binding judicial precedents are either just quoted or declared as not applicable to the matter in hand without speaking a word as to how and why these precedents are not so applicable. In some cases, even such precedents are not referred to in the order. This tantamount to casual and indifferent exercise of powers vested in the official acting in the quasi-judicial capacity.

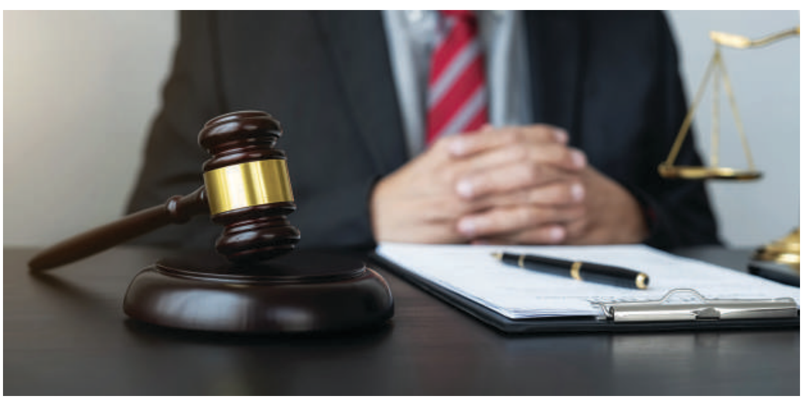
Such orders are bad in law, for not following the cardinal principle of demonstrating the inapplicability of a particular binding precedent to notice/ appellants.

Besides, such orders are against the doctrine of judicial discipline.

The objective of this article is confined to highlight the meaning and importance of the doctrine of judicial discipline, exceptions to it, related practical aspects and citations with the readers that may be referred to while putting forth the contentions in the case whenever this doctrine is not followed by the authorities.

The Doctrine of Judicial Discipline

The doctrine of judicial discipline requires that the orders of the higher appellate authorities should be followed "unreservedly" by the subordinate authorities, held in the **Union of India and Others Vs Kamlakshi Finance Corporation**[1]. The



1. AIR 1992 SC 711

> The Rule of Law in respect of Judicial Discipline is that the orders of the higher appellate authorities should be followed "unreservedly" by the subordinate authorities, if the orders of the higher appellate authorities are not so followed by the subordinate authorities, it amounts to judicial indiscipline which will instead of achieving harmony in the judicial system, lead to anarchy by lower authorities.

order of the Commissioner (Appeals) is binding on the Assistant Commissioner working under him within his jurisdiction and the order of the Tribunal is binding upon the Assistant Commissioners and the Commissioner (Appeals) functioning under the jurisdiction of the Tribunal. The Rule of Law in respect of Judicial Discipline is that the orders of the higher appellate authorities should be followed "unreservedly" by the subordinate authorities, if the orders of the higher appellate authorities are not so followed by the subordinate authorities, it amounts to judicial indiscipline which will instead of achieving harmony in the judicial system, lead to anarchy by lower authorities.

Judicial Discipline is also referred to as the principle to follow the binding precedents.

Precedents, Original Precedents, Declaratory Precedents and Binding Precedents.

- **Precedent:** Precedent is a judgement or decision of a court higher in hierarchy on the similar set of facts which may be cited or followed by the subsequent courts[2].
- **Original Precedent and Declaratory Precedent:** When a new law is laid, it is called original precedent; otherwise, it is a declaratory precedent.
- **Binding Precedent:** Precedents of a court higher in hierarchy are binding upon the court lower in hierarchy that we normally call, 'binding precedent'. A binding precedent is a precedent which must be followed by all lower courts under common law legal systems[3].

To Follow the Ratio of the Decision and Not Finding of Facts

It is to be noted that subordinate authorities are bound to follow the ratio of the decision and not any finding of facts made by the higher appellate authorities. It is 'the law laid down in the decision' which is binding and the oral or written opinion by a judge that is not essential to the decision, is not a binding precedent.

In the case of **Commissioner of Income Tax Vs. M/s Sun Engineering Works Private Limited**[4], the Hon'ble Supreme Court held that, *"While applying the decision to a latter case, the court must carefully try to ascertain the true principle laid down by the decision of Supreme Court and not to pick out words or sentences from the judgements divorced from the context of question under consideration by the court to support their reasoning."*

High Courts Cannot Question the Correctness of the Decision of the Supreme Court

It is also trite law that High Courts cannot question the correctness of the decision of the Supreme Court. Regarding the binding nature of the Judgement given by the Supreme Court with regards to the High Courts, the Supreme Court held in **Suganthi Suresh Kumar Vs. Jagdeeshan**[5] that, *"It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that Supreme Court laid down the legal position without considering any other point. It*

2. *Salmond*
3. *Precedents as a source of law; https://www.lawctopus.com/academike/precedents-as-a-source-of-law/*
4. *AIR 1993, SC 43*
5. *(2002)2 SCC 420*

is not only a matter of discipline for the High Courts in India; it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India. It was pointed out by this Court in ***Anil Kumar Neotia v. Union of India, AIR 1988 SC 1353*** *that the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court."*

To further understand the utmost importance of this principle, readers may also refer to:

- **M/s Gujarat Composite Ltd Vs CCE, Ahmedabad-II**[6],
- **Commissioner of Central Excise, Nasik Vs Jain Vanguard Polybutylene Ltd**[7],
- **M/s Nirma Ltd Vs CCE, Ahmedabad,**[8]
- **Ram Partap Vs Union India and Others**[9].

Orders of higher appellate authorities to be followed 'unreservedly", unless its operation has been suspended by competent court.

Even if adjudicating/appellate authority does not agree to what is laid down by the higher appellate authority, it cannot ignore the orders of the higher appellate authority. The golden law is that the orders of the higher appellate authorities should be followed "unreservedly" by the subordinate authorities unless the operation of the orders of the higher appellate authority has been suspended by a competent court.

It is also settled law that a mere appeal that has been filed against the order of the higher authority is also not a ground for not following it. (Held in **Infinity Infotech Parks Ltd. versus Union of India**[10]**).**

The Honourable Supreme Court of India in **Union of India and Others Vs Kamlakshi Finance Corporation**[11], even observed that the clause, "the order of the appellate authority is not 'acceptable' to the department" to be an objectionable phrase by itself. In this case, the Court quotes through Justice S Ranganathan,

> *"The mere fact that the order of the appellate authority is not 'acceptable' to the department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to the assessees and chaos in administration of tax laws".*

> Subordinate authorities are bound to follow the ratio of the decision and not any finding of facts made by the higher appellate authorities. It is 'the law laid down in the decision' which is binding and the oral or written opinion by a judge that is not essential to the decision, is not a binding precedent.

The Constitution of India, the Doctrine of Judicial Discipline and the Hierarchy

Importance of the principle of Judicial Discipline is also well enshrined in the Constitution of India [the Constitution] wherein; vide Article 141 of the Constitution, the law declared by the Supreme Court is binding on all courts within the territory of India.

Further, Article 227 of the Constitution confers superintendence to the High Court over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction.

6. *2005-TIOL-1307-CESTAT-MUM*
7. *2010-TIOL-911-HC-MUM-CX*
8. *2011-TIOL-1027-CESTAT-AHM*
9. *2014-TIOL-649-HC-P&H-ST*
10. *2018 (18) G.S.T.L. 223 (Cal.)*
11. *AIR 1992 SC 711*

> There may be a case that adjudicating/appellate authority feels that if the orders of the higher appellate authorities should be followed "unreservedly", it may cause loss to the revenue, even in such cases, the principles of judicial discipline should be followed.

The law declared by the Supreme Court, being the highest court in the hierarchy, shall be binding on all Courts within the territory of India. The general principles laid down, by the Supreme Court are binding on each individual 'including those who are not a party' to an order[12]. It may also be noted that the 'Supreme Court is not bound by its own decisions', it may in some circumstances lay down a new law on the same very set of facts.

Also, the subsequent lesser or co-equal strength of benches are bound by the law laid down by a bench of larger strength. A bench of lesser quorum cannot disagree from the view of larger bench. The principle applies in such a manner that only a bench of co-equal strength may express an opinion, share doubt on correctness of the view taken by earlier co-equal strength bench, in which case the matter may be put for hearing before a Bench larger than the other co-equal bench which had pronounced the decision laying down the law the correctness of which is doubted[13]. Readers may also refer State of W.B. Vs. Kesoram Industries Ltd. & Others, AIR 2005 SC 1646 on the subject.

Judicial Discipline and Interest of Revenue

There may be a case that adjudicating/appellate authority feels that if the orders of the higher appellate authorities should be followed "unreservedly", it may cause loss to the revenue, even in such cases, the principles of judicial discipline should be followed.

In-built Sufficient Legal Mechanisms for Protection of Interest of Revenue

Readers may note that sufficient legal mechanisms are provided in the legislations for such eventualities wherein the Adjudicating/Appellate Authority may feel that if the orders of the higher appellate authority are followed, it may cause loss of revenue to the department.

For example, readers may note, in context of the Central Goods and Services Tax Act, 2017[*CGST*] that Section 107 thereof gives statutory right to file an appeal, even to the Revenue, whereby **'any person'** and not just the taxable person, may file appeal against by any decision or order passed under the Central/ State/Union Territory Goods and Services Tax Act, 2017 by an adjudicating authority. Similarly, Section 35-E of the Central Excise Act, 1944 also confers adequate powers on the department in this regard.

Department Having Accepted the Principles Laid Down in the Earlier Case Cannot Be Permitted to Take a Contra Stand in Subsequent Cases

It is also well settled law that the department having accepted the principles laid down in the earlier case cannot be permitted to take a contra stand in the subsequent cases, readers may refer to the Hon'ble Supreme Court in the case of **Commissioner of C. Ex, v. Novapan Industries Ltd**[14]. In context with the indirect taxes, readers may refer to Circular No. 1063/2/2018-CX[15], 16th of February, 2018 of the CBIC that contains reference to the Orders of Supreme Court, High Courts and CESTAT accepted by the Department and on which no review petitions, SLPs have been filed by the department as such the department having accepted the principles laid down in the earlier case is not permitted to take a contra stand in the subsequent cases.

12. *Article 141 of the Constitution, 141; the law declared by the Supreme Court shall be binding on all courts within the territory of India*
13. *Commissioner of Central Excise v. Mahindra and Mahindra Ltd [(2015) 13 SCC 441]*
14. *Civil Appeal No. 5278-5282 Of 2001 [(2017) 13 SCC 738]*
15. *https://pdicai.org/docs/Circular-No-1063-02-2018-CX_17220181014565O9.pdf*

Exceptions to the Principles of Judicial Discipline

The noticee/appellant need to keep in view some exceptions to the principle of judicial discipline if he seeks to obtain relief under this principle. A decision of the higher appellate authority may be there on some issue, but that decision may not be a binding precedent as per other legal principles, such exceptions, are the following:

A. "Per Incuriam decisions" are not binding precedents. 'Incuria' means 'carelessness'. When courts ignore law or other binding authority and proceed to pass judgement, the said decision is *per incuriam* and need not necessarily be followed. The order of the Supreme Court, on 25th November, 2014, **in Hyder Consulting (UK) Ltd. v. State of Orissa**[16] may be referred for understanding this principle in which the Apex Court held;

"A decision can be said to be given per incuriam when the court of record has acted in ignorance of any previous decision of its own, or a subordinate court has acted in ignorance of a decision of the court of record. As regards the judgements of this Court rendered per incuriam, it cannot be said that this Court has "declared the law" on a given subject matter, if the relevant law was not duly considered by this Court in its decision."

B. "Judgement Sub-silentio" is also not the binding precedent. A judgement/ decision is sub-silentio, when the particular point of law involved in the decision is not perceived by the court or present to its mind. Orders of higher appellate authority in which the point in issue is either not argued or not considered by the Court or decision is rendered without argument on that point of issue, are not the binding precedents.

i. The Supreme Court in **Municipal Corpn. of Delhi v. Gurnam Kaur**[17] quotes, *"Professor P.J. Fitzgerald, editor of the "Salmond on Jurisprudence", 12th Edn. explains the concept of sub-silentio at p. 153 in these words 'A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub-silentio."*

> "Judgement Sub-silentio" is also not the binding precedent. A judgement/ decision is sub-silentio, when the particular point of law involved in the decision is not perceived by the court or present to its mind.

ii. Meaning of a "Judgement Sub-silentio", may also be well understood by studying the following Apex Court's judgements, relevant extracts whereof are quoted for your reference.

a) "A decision not expressed, not accompanied by reasons and not proceeding

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16. *CA 3148 of 2012*

17. *(vide paras 11 and 12) [1989] 1 SCC 101]*

on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgement is not the ratio decidendi. This is the rule of sub-silentio, in the technical sense when a particular point of law was not consciously determined." (Reference: **State of U.P. v. Synthetics & Chemicals Ltd**[18]).

b) Decisions passing "Mere directions" are also sub-silentio and are not binding precedents. It is the principle of law which is laid down by the higher appellate authority that is a precedent. When the Supreme Court gives a direction, without laying down any principle of law, such mere direction is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent. (Reference: Supreme Court in **State of UP & Others Vs Jeet S Bisht**[19]).

c) The Supreme Court of India in the case of **Delhi Admn. v. Manohar Lal**[20] has also observed that a mere direction without laying down any principle of law is not a precedent.

d) Readers may also refer to the Supreme Court's decisions in the **State of U.P. & Anr. Vs. Synthetics & Chemicals Ltd. & Anr**[21]., **Arnit Das Vs. State of Bihar**[22], **A-One Granites Vs. State of U.P. & Ors**[23], **Divisional Controller, KSRTC Vs. Mahadeva Shetty & Anr**[24] and **State of Punjab & Anr. Vs. Devans Modern Breweries Ltd. & Anr**[25] for better understanding of the principle and concept of sub-silentio.

C) Only "a statement of law in a decision is binding" and "Statements on matters other than law have no binding force"[26].

D) "Obiter-dictum", i.e., is an expression of opinion by a judge spoken in court or in a written judgement, but not essential to the decision, it is not legally binding as a precedent.

Judicial process demands looking into the facts before deciding a judgement is binding or not

The factual background of the case is to be looking into before deciding whether reliance could be placed on a decision. Every judgement is not binding precedent. Only that judgement of a higher court is binding upon the subsequent courts 'which is on the similar set of facts'. Judicial process demands that while deciding whether such judgement is binding precedent or not, the court or adjudicating authority has to arrive at the conclusion as to how the factual situation of the case in hand fits in with

18. [1991 SCR (3) 64].
19. (2007) 6 SCC 586]
20. (1999) 6 SCC 172
21. (1991) 4 SCC 139
22. (2000) 5 SCC 488
23. (2001) 3 SCC 537
24. (2003) 7 SCC 197
25. (2004) 11 SCC 26
26. Municipal Committee, Amritsar v. Hazara Singh, [(1975)1 SCC 794)

the factual situation of the decision on which reliance is sought to be placed. Reference may be made to the words of Lord Denning, a famous English lawyer, judge and the King's Counsel in the UK, who delivered more than 2000 reported judgements, quoted by the Supreme Court of India in State of Rajasthan vs. Ganeshi Lal[27]

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

In the above judgement, the honourable Apex Court held the orders passed by the Labour Court and the High Court to be unsustainable for the reason that lower courts had held that Law Department was an 'industry' by merely stating that in some cases Irrigation department, Public Works Department were held to be covered by the expression "industry" in some decisions, and the lower court did not even indicate as to how the Law Department is an industry.

Arbitrator of Applicability or Inapplicability of an Alleged 'Binding Precedent'

The formation of decision on the applicability or inapplicability of an alleged 'binding precedent' is a matter of formation of considered opinion of the person who alleges that a precedent is binding or not binding, thus the question of who is to arbitrate on the applicability or inapplicability of an alleged 'binding precedent' is more academic in nature.

Takeaways from Pleading Point of View

From pleading point of view, readers may note that,In case the Apex Court lays down the law during the pendency of any matter in hand, its decision becomes a binding precedent notwithstanding the fact that it was pronounced during the pendency stage of the matter in hand provided the Court indicates in the order that law is to prevail prospectively. It is settled law that what is enunciated by the Supreme Court is, in fact, the law from inception and there shall be no prospective overruling, unless it is so indicated in the particular decision.

- Before a person places reliance on a particular judgement put forth by him in her case, she should make sure that the factual situation in her case fits in with the factual situation of the decision on which reliance is being placed by her. Straightaway reliance should not be placed on decisions without forming concrete opinion on how the factual situation fits in with the fact situation of the decision on which reliance is placed.
- In case judicial indiscipline is noticed in any order, review application should be filed if the relevant law permits such review like in the GST law which does not provide for review, further appeal must be filed, challenging the decision making process of the concerned authority for not following the judicial discipline.
- No authority is empowered to allow relief that is not sought by the Noticee/

> "The formation of decision on the applicability or inapplicability of an alleged 'binding precedent' is a matter of formation of considered opinion of the person who alleges that a precedent is binding or not binding, thus the question of who is to arbitrate on the applicability or inapplicability of an alleged 'binding precedent' is more academic in nature.

[27] *AIR 2008 SC 690*

> In case judicial indiscipline is noticed in any order, review application should be filed if the relevant law permits such review like in the GST law which does not provide for review, further appeal must be filed, challenging the decision making process of the concerned authority for not following the judicial discipline.

Appellant. This principle of dispensation of justice demands that the Noticee/ Appellant include in pleadings, this judicial indiscipline that the first appellate authority will be obliged to reach a finding in the appellate order. And such finding (or the omission) by first appellate authority will be open for review before Appellate Tribunal. The maxim, *vigilantibus non dormientibus jura subveniunt* doctrine provides that the law will lend its assistance to one who is vigilant and not one who is dormant or asleep about their rights in law. By bringing such judicial indiscipline out in the open, not only the omission by adjudicating or appellate authority is exposed, the superior appellate authority will be obliged to record a finding whether there was a violation by omitting to take binding precedents into consideration while passing their orders.

Conclusion

Doctrine of Judicial Discipline not only promotes certainty and consistency in judicial decisions but also enables the stake holders to take decisions in the light of settled law. Before we contend for a decision to be followed, not only this doctrine but also the relevant exceptions must be kept in mind. It is equally important to keep an eye on the decisions of higher authorities on the matters similar to those lying pending with us and put them forth before the adjudication or appellate authority at the earliest available opportunity with us. Let the justice prevail! ■■■

Governance Code for Managing "Family" in Indian Family Businesses

Most family business are likely to fail as they do not address governance issues. Insufficient planning and preparation on succession, balancing family concerns and business interests, inclusion of non-family members in the Board of Directors, and a host of many other issues relating to family firm governance can lead to breakups and sustainability of many family businesses. Recognising this, many countries have developed best practice code that help family firms to grow and sustain across generations. India does not have a governance code or a national guidance specifically for family-owned businesses. In this paper, we present family business code (FBC) for Indian family business, listed and unlisted, that helps them address all facets of governance and sustainability. Read on...



Dr. T R Madan Mohan* Sharadha V Mukund Mohan K

Authors are experts in field of Business Management. They can be reached at eboard@icai.in

Introduction

Family ownership is the most prevalent form of ownership structure in many countries. Family business can be a single-owner firm or large industrial houses. India has a rich business history with a significant number of businesses still being controlled and managed by families (Chahal and Sharma, 2020). Majority of the family business are unlisted companies and sound governance of unlisted companies is key for larger economic stability. Unlisted companies have large borrowings from financial institutions, including public sector banks. Without adequate governance practices, inequality exists between the promoters and stakeholder interests. Recognising the importance of unlisted companies with effect from April 1, 2021, the Indian government has narrowed the definition of "listed company" to exclude those companies which have only listed their debt securities. Even a large systematically important company that has only its debt securities listed will now be classified as an unlisted company. With this amendment, we expect the role of governance in unlisted companies to be robust and mature to arrest any wrongdoings.

Without good operating norms,

families have less direction when conflicts arise (Sinha and Govindaraj, 2020). Many family businesses do not have a clear demarcation between personal and business areas and expectations and responsibilities in the business. Indian culture certainly plays a role in the affairs of family business. With a strong patriarchal presence, preference to male and firstborn is implicit in some family boards. Sometimes, a traditional mindset and cultural factors prohibit women's representation in the family council or the holding company's board. Family businesses have their share of intra-family divisions and suffer from nepotism and adhocism. In volatile and testing economic situations, family businesses not only need good corporate governance practices and systems, but also robust family business practices to sustain profitable business.

Good corporate governance of both family and their business are key to survival, growth and sustenance. Family businesses require simple and flexible governance mechanisms that can be adopted and evolve with the family and the business as their needs change. Family business governance is all about preserving the action-oriented mindset that allow the family and its employees to turn an opportunity into a thriving business, also preserve and sustain the business for long-term (Egloff and Bhalla, 2014). Several companies have adopted good governance practices to defuse certain problems in their business management. Several countries have instituted committees to formalise a code of practices for listed and unlisted family businesses as a cornerstone for the creation of sustainable and profitable growth.

The FBC is a list of mechanisms and rules (or expectations) to which everyone adheres to in a family business. A family business code covers the governance mechanisms for family, interfaces with corporate governance at the business level, professionalisation, limits on insiders, remuneration for family and family members, succession and social responsibilities. Family business code assists family-owned businesses to adopt a holistic approach to balance family and business interests and successfully preserve the business for generations to come.

Family business owners and their board recognise that they need a list of mechanisms and rules (or expectations) to which everyone adheres to in a family business. What they need is a code that is cognizant of the size and development of both family and business and effective enough to meet the evolving business context. They desire to have a family business code that covers the governance mechanisms for family, interfaces with corporate governance at the business level, professionalisation, limits on insiders, remuneration for family and family members, succession and social responsibilities. Their interest in investing and adhering to a family business code is to adopt a holistic approach to balance family and business interests and successfully preserve the business for generations to come. Family business owners and the boards lack a touchstone for common decision-making to build profitable and sustainable businesses, define boundaries and rules for family and business interactions, and mechanism to preserve long-term ownership of the businesses. Lack of a standardised family business code also limits Governance, Risk Management and Compliance (GRC) professionals in their assessments of a family business and identifying which areas need improvements. Towards filling this gap, we have attempted to develop a family business code for Indian family-owned businesses.

> "A family business code covers the governance mechanisms for family, interfaces with corporate governance at the business level, professionalisation, limits on insiders, remuneration for family and family members, succession and social responsibilities.

> Lack of a standardised family business code also limits Governance, Risk Management and Compliance (GRC) professionals in their assessments of a family business and identifying which areas need improvements.

Method

We adopted a two-step approach to develop the family business code. We first analysed the family business codes of Germany, Switzerland, Italy, Belgium and Gulf Cooperation Council (GCC) countries to generate an exhaustive list of variables. We adopted a survey to reach out to members of ICAI, ICSI, family business owners, academicians, legal professionals across India eliciting their response on the appropriateness of each variable and its relevance to family business governance for Indian environment. We also conducted telephonic interview with board members, chartered accountants and family business advisers to get their views and insights on the measures and family code.

Results

Based on the interviews and survey, we present 12 dimensions that emerged as family business code measures for Indian family businesses.

Family business goals refer to the family's unwritten and written objectives of doing business and include vision, core values and practices that are embedded in governance and policies of its business including successions plans, way of carrying on day-to-day activities of the business, business ethics, loyalty, employee welfare and social relevance.

Family governance structures refer to dispute resolution mechanisms and FBC or cousin consortia (CC) or other forms, both informal and formal, that family business use to manage their business and family interests. Governance structures bring in professionalism to a family business. This includes family board (size 5-8 members), tenure and rotation of family members, equal representation amongst all family branches or otherwise, women representation on FBC, succession rights of wife and daughters to FBC, FBC composition of family and non-family, non-family and nominated members (with and without voting rights), and family board activism (collective process and access to information and decision-making).

Family governance processes include number of board representation amongst different siblings, voting rights, nominations, decision rights, meeting rules, accountability of FBC, removal of members from FBC, decision-making, intra-family buying and white knight limitations, if any (restricting one family to buy shares of one family tree and vest complete control) and financial reporting and proprietary audits (both internal and external), Compliance and technological changes and advancements to be managed by one member each for the entire business.

Conflict and dispute resolution includes conflict resolution mechanisms that sets means and processes for resolving conflicts amongst family members and the businesses owned by the family. This may include advisory and dictatorial roles, formal and informal dispute resolution mechanisms within FBC and amongst family members, internal member's mediation mechanisms, third party professional involvement, and options on when to litigate. The Family council

> Family governance structures refer to dispute resolution mechanisms and FBC or cousin consortia (CC) or other forms, both informal and formal, that family business use to manage their business and family interests. Governance structures bring in professionalism to a family business.

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or the Family Business Board (cousin's consortia) can create or nominate an individual or a group of family members to address the conflicts. Family Business Board can also refer to external arbitrators or trusted advisers to provide an objective or neutral suggestion. Finally, in case the recommendations are unaccepted, the Family Business Board must have provisions for legal recourses.

Family ownership control refers to the legal structures and mechanisms that are adopted to protect the business and family from opportunism and guile. This includes separation of the CEO and chairperson role for the business units, choose or select to positions for business units owned by family, rotation or stability amongst family members on FBC, inheritance of shares of companies whenever a separation or marriages affects the business, issuance of dual-class stocks to control family ownership and ward off any potential hostile takeover. This can cover distributions amongst owners, mediation options, and restrictions on transfer of shares because of divorce or death, buy-sell provisions, dissolution of companies, spousal consents, and automatic buy-out mechanisms to protect ownership interests among others.

Family Communications include formal communications through FBC or respective business groups on business and other areas, code of conduct in formal meetings, communication protocols for sharing and receiving feedbacks through formal mechanisms only, communication codes for FBC or any of its members seeking information from a business unit, FBC Media policies among others.

Family rituals and preserving identity refer to the assets and allocations family businesses make to preserve their identity (cultural or religious grants and activities). Family Business builds and reinforces the culture to balance personalities and self-interests across generations using rituals, traditions and routines. Rituals such as all annual family meet, back to root celebrations, founder's oath ceremony, among others have a symbolic meaning to the family and show cultural, religious and ethnic practices of the family. Traditions and routines are choice-based events such as village fest or cultural meet or dinner meet to encourage informal getting together and discussions about the business and family. This will however, have to be financed by the Family Business Board through the royalties they earn or the interest from the corpus and not by the company.

Corporate governance of family business units includes number of family and independent directors on board, occupation and professional expertise of independents, advisory board composition (insiders vs professionals), women directors, separation of chair (FBC chairperson or nominee) and CEO (professional), formal audit, remuneration and risk committees, performance review of boards (inclusion of FBC or nominees or self-managed) and adoption of robust GRC tools to track and report ESG.

Family member assessment and assimilation includes formal structures and process through FBC or other informal mechanisms reporting to FBC to support each family member to see their fitment with business, periodic assessment of family members in business, remuneration benchmarks, family member replacement policies from business units, family member career management policies in non-business areas.

Succession Management refers to the next successor, their method of appointment or election and induction, mode of succession on cases of adopted children, no children or heir, and stepchildren, Succession on emergency, marriage, prenuptial or divorce implications on the succession, Restrictions and Inclusion of gender, firstborn bias, in-laws into business, method of transfer of ownership, succession mechanisms (intrapreneurship, education, learn from shop-floor), involvement of insiders and non-family professionals in identification, grooming, evaluation and continual mentoring of successors, succession tenure, number of attempts and exit options.

Family wealth management includes creation of corpus, family office set-up, involvement of family in Family Office or professional managements, profit sharing or royalties to family trust, management of corpus, percentage to be reinvested into existing business, allocation areas and risk preferences, buy-backs, mergers and acquisitions, reporting and review of wealth growth.

Philanthropy and Corporate Social Responsibility (CSR) includes the family business commitment to social causes, focus areas for investment and continued support. Mechanisms to involve family members, options to create Section 8 or Section 25 Companies or foundations headed by family members and its relationship and governance by FBC, alignment of causes to vision and values, reporting and review of CSR.

Application of Family Business code

The proposed family business code addresses unique requirements of different constituents. For family business owners, the code works as a checklist to self-rate, as shown below in Table 1. This assessment serves as a starting point for their board to realise the best practices and the gaps. It would serve as a roadmap for the family business owners to invest and direct "governance structures, process and practices" required to support growth and expansions with requisite controls.

Table 1: Family Business Code assessment

Sl. No	Dimensions	Not Addressed	Considered, Yet To Be Implemented	Implemented Partially	In Force And Extensively Covered
1	Family business goals				
2	Family governance structures				
3	Family governance processes				
4	Conflict and dispute resolution				
5	Family ownership control				
6	Family Communications				
7	Family rituals and preserving identity				
8	Corporate governance of family business units				
9	Family member assessment and assimilation				
10	Succession Management				
11	Family Wealth Management				
12	Philanthropy and CSR				

Family businesses and GRC consultants can also use the family business code to develop a family business governance maturity model. External agencies like analysts, bankers and investors can use the code to evaluate an unlisted/listed family business and create maturity models on the lines of Capability Maturity models (see Madan Mohan et al., 2020). We have used FBC to assess current state of governance maturity and what changes must the family pursue to strengthen governance dimensions of the "family side" of business. Table 2 presents family business maturity assessments using the FBC.

Table 2: Family Business Governance Maturity Model

Dimensions	Maturity Stage 1	Maturity Stage 2	Maturity Stage 3	Maturity Stage 4
Family Business Goals	Weak vision, value, and goals alignment	Well defined business and family goals	Clear goals, Family charter, council and business units	Well aligned goals, objectives and outcomes for both family and business
Family Governance Processes	Limited Governance structures and mechanisms to manage business and family interests	Presence of a family council, Family Assembly, to manage business and family interests	Presence of a family council, Family Assembly, cousins' consortia or other forms to manage business and family interests with complete professionalisation of business	All of Stage 3 including clear structures and mechanisms to manage business and family interests including equal representation amongst all family branches or otherwise, women representation on FBC, succession rights of wife and daughters
Conflict And Dispute Resolution	Avoiding conflict and no formal resolution	Broad Conflict resolution	Formal conflict resolution mechanisms	Clear conflict resolution with inclusion of internal and external mediators
Family Ownership Control	Limited or no legal structures and mechanisms to protect the family and the business	Broad structures and Mechanisms present to protect the family and the business	Clear legal structures and mechanisms that are adopted to protect the business and family	Well defined legal structures and mechanisms that are adopted to protect the business and family
Family Communications	Limited or no regular communication within the family members	Informal communications within business groups with no documentation or feedback	Presence of family assembly or other structures to regularly conduct and facilitate formal communications within respective business groups on business and other areas	All of Stage 3 including code of conduct in formal meetings, communication protocols for sharing and receiving feedbacks through formal mechanisms, communication codes for FBC or any of its members seeking information from a business unit
Identity Preservation	Little or no importance is provided towards family's business legacy or identity preservation	Members are broadly made aware of the business legacy, history and what it stands for	Structures and mechanisms in place facilitate irregular rituals, traditions and routines to preserve family identity and culture	Structures and mechanisms in place regularly reinforce the culture to balance personalities and self-interests across generations using rituals, traditions and routines among other forms

Governance Of Family Business Units	Limited or no governance within the family Business units	Broad governance over business units with no formal structures to facilitate feedback	Presence of formal structures to outline major details (family and independent directors on board, occupation and professional expertise of independents, advisory board composition (internal and external), women directors, separation of ownership and management	All of Stage 3 including includes number of formal audits, remuneration and risk committees, performance review of boards and adoption of robust GRC tools
Member Assessment And Assimilation	Limited or no evaluation or support to members	Irregular performance evaluation and little support to family members on career management	Formal structures present to periodically assess family members in business, remuneration benchmarks and family member replacement policies from business units	All of Stage 3 including assessment of members with their fitment in business and family member career management policies in non-business areas
Succession	Weak succession planning	Succession plans with emphasis on a male heir and firstborn restrictions	Succession plans with gender bias but no restrictions on the firstborn	Succession planning and execution without any gender/ firstborn limitations taking into account adopted children, no children or heir, and stepchildren
Wealth Management	Informal wealth management	Broad wealth management structure	Presence of Family office and a formal Wealth Management mechanism	Efficient Investment council and a Family office with regular reporting on the same
Philanthropy And CSR	Limited philanthropy and compliance to CSR	Irregular philanthropic duties with compliance to CSR	Presence of philanthropy, and reputation management	Formal and clear public engagement, political donations and philanthropy

At Stage 1, family firms have a weak alignment of the company's vision mission and goals with limited governance structures and mechanisms to manage business and family interests. At Stage 2, broad governance structures to manage business and family interests exist, but with inadequate conflict resolution mechanisms. Wealth management may be ad hoc, it does not tie family members remuneration to their contributions, business units have no formal structures to facilitate feedback and communication, and it limits succession to male heir and

> "Family businesses and GRC consultants can also use the family business code to develop a family business governance maturity model.

firstborn. At Stage 3, the family business governance is more matured, with a clear definition of company goals, presence of governance structures like family council or cousin's consortia to manage business and family interests. Formal structures to assess family members in business, remuneration benchmarks and family member replacement policies from business units; succession plans with gender bias but no restrictions on the firstborn may be in force.

At Stage 4, all fronts of governance and risk management are optimised. Governance structures optimally manage business and family interests, and of all family branches. Succession is based on merit and competence. Formal and informal mechanisms exist for successor identification and preparation for the role. Family business employs mechanisms to reinforce the culture to balance personalities and self-interests across generations using rituals, traditions and routines among other forms. At this stage, a family office supported by an investment council helps to diversify investment and de-risk family business fortunes from vagaries of the market. Philanthropic engagements and donations are formalised and aligned to support the growth and sustainability of the family business.

> "Stage-wise maturity helps family businesses to invest and support appropriate structure, process and systems to drive superior governance and effective risk controls.

In conclusion, the FBC presented here presents a governance framework that helps family businesses to survive and grow across multiple generations. Stage-wise maturity helps family businesses to invest and support appropriate structure, process and systems to drive superior governance and effective risk controls.

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Towards audited financial statements of urban local bodies in India: Key issues and way forward

In a recent development, audited financial statements have been made mandatory for urban local bodies (ULBs) across the country to access the 15th Central Finance Commission (CFC) grants. To circumvent capacity gaps in the present statutory audit arrangements (discussed later in this article), State governments are in a rush to get ULB financial statements audited by Chartered Accountants for complying with the grant conditions. This article attempts to highlight certain issues pertaining to the mandate of the financial statements audit and it's scope, and attempts to offer recommendations for addressing the issues. Doing so will help in placing financial statements audit on a firm footing and contribute to better fiscal accountability of ULBs. Read on...


CA. Ashok Rao **CA. K R Praveena**

Authors are members of the Institute. They can be reached at eboard@icai.in

Accrual accounting in ULBs

Although the transition to accrual accounting in ULBs began many years ago, the reforms never took off in the real sense. Even after almost two decades, in states where the transition is supposedly complete, the accrual accounting system is yet to fully stabilize. The transition continues to be plagued by issues that include incomplete or piecemeal information for accounting, underlying business processes not aligned with accrual accounting requirements, low capacities of accounts department personnel, dysfunctional information technology solutions, and a widespread lack of awareness amongst stakeholders on using financial statements for governance. These issues have fostered a tendency to fall back to the legacy system after the initial euphoria of the transition to accrual has died down.

Audited financial statements to access grants

Successive CFCs have highlighted these issues and recommended ways to create better reward mechanisms for states to implement and sustain accounting reforms in ULBs. Several central urban renewal programs such as the Jawaharlal Nehru National Urban Renewal Mission – JNNURM, Urban

> Although the transition to accrual accounting in ULBs began many years ago, the reforms never took off in the real sense. Even after almost two decades, in states where the transition is supposedly complete, the accrual accounting system is yet to fully stabilize.

Infrastructure Development Scheme for Small and Medium Towns – UIDSSMT, Atal Mission for Rejuvenation and Urban Transformation – AMRUT, and the 14th CFC grants have touched upon the subject of accrual accounting reforms in ULBs, either encouraging the transition as a soft reform or by directly linking it to grant eligibility. The 15th CFC has gone a step further and made audited annual accounts an entry-level criterion for accessing the grants. The adoption of accrual accounting, which was expected to pick up in response to market forces, is, unfortunately, now having to be forced by the federal government. Policymakers are hoping that this time around, it will work and stir the states and ULBs to action.

Early trends look promising

The initial reaction to the 15th CFC recommendations offers some hope. The recommendations have been accepted by the government. The Ministry of Finance has released the scheme operational guidelines. The Ministry of Housing and Urban Affairs (MoHUA) has released the marking scheme and has set up a web portal for ULBs to upload their audited financial statements[1]. The number of financial statements uploaded on the portal is steadily increasing. There is a buzz around this at the state government levels as well[2]. Many states and/or ULBs that have already transitioned to accrual have floated Requests for Proposals from Chartered Accounts for financial statements audit[3]. Other states, realizing that accrual accounting is the gateway to ULB audited financial statements, are scrambling to quickly implement the reforms.

A few challenges remain though

Notwithstanding the proactiveness within government circles to comply with the entry-level grant conditions, there are increasing signals that the initial enthusiasm will, once again, be relegated to a "tick-in-the-box" exercise, as has been the case with many reform conditions in the past. The underlying reason for this apprehension is that, barring a few exceptions, in most states, financial statement audit is being positioned as an exercise distinct from external audit under the statute governing the ULB (commonly called 'statutory audit'). Thus, the approach to getting annual accounts audited can be compared to the certification of utilization certificates under specific programs/schemes ('UC audit'), where the auditor has a restricted mandate, and the audit serves a limited purpose of opening up access to grants for the ULB.

The authors attempt to highlight two key issues with this approach and provide recommendations for ensuring that efforts behind producing audited annual financial statements of ULBs are properly channelized and result in meeting the objective behind the CFC's recommendations of establishing ULB financial reforms on concrete ground.

Issue 1: Primary audit mandate

www.cityfinance.in, a portal launched by the MoHUA last year carries an interesting comparison of municipal statutes of different states governing accounts, finance, and audit-related matters of ULBs[4]. On reviewing the provisions relating to audit, one can observe that in most states the state audit department (called State Audit Department or Local Fund Audit Department or Examiner of Local Funds) is entrusted with the statutory

1. *http://www.cityfinance.in/fc_grant*
2. *Action at the state level is anchored either in the urban development department or the directorate of municipal administration.*
3. *Karnataka, Odisha, Himachal Pradesh to name a few states.*
4. *Disclaimer: MaGC is the knowledge partner for the portal.*

audit responsibility. Under the Bihar and Jharkhand statutes, a Chartered Accountant (CA) appointed by the State Government may be the statutory auditor of ULBs.

A 'financial audit' is widely understood to result in attestation of the financial statements[5]. However, barring certain exceptions, in most states, the state audit department, which is the primary auditor, does not undertake attestation of financial statements since there is no such requirement under the governing Acts[6]. In Tamil Nadu, the Local Fund Audit Department undertakes certification of financial statements as part of its audit of ULBs. In Karnataka, by statute, the Financial Statements Auditor – a CA firm engaged by the Urban Development Department (UDD) – is required to submit the audit report to the state audit department, which relies on this report in its audit.

Most state audit departments are beset with their own set of problems which include a backlog of audit arrears running into several years, acute staff shortages, and archaic audit processes. More importantly, they lack internal capabilities to be able to audit financial statements produced by the accrual accounting system[7]. The gap in legal mandate coupled with these problems has ensured that audit of financial statements has hitherto remained untouched.

To meet the grant eligibility conditions, State UDDs have charted workarounds to produce audited financial statements of ULBs. The usual *modus operandi* is to engage CA firms to undertake financial statements audit. Such audited financial statements serve the limited purpose of satisfying the grant eligibility criteria and are forgotten after that. The state audit department (the primary auditor) does its audit in due course and its report has the legal sanctity of statutory audit. This has, at times, resulted in instances where ULBs have ended up with two sets of audited financial statements for the same financial year – one audited by the CA firm and another audited by the state audit department.

Unless this anomaly in audit mandates is addressed, it is evident that the financial statement auditor's report would never be accorded the importance of the primary auditor's report and will continue to be an additional exercise to the primary audit. There are multiple ways to address this:

a) Introduce necessary amendments in the state municipal Acts to recognize a CA firm appointed by the state government as the primary auditor – this would preclude the need for the state audit department to separately undertake ULB audit[8]. Apart from addressing the issue of lack of clarity in the mandate, it would help lessen the workload of state audit departments, which are reeling under staff shortages on one hand and an increasing number of auditee institutions on the other;

b) Retain the state audit department as the primary auditor, specifically include certification of financial statements in the mandate, and establish a mechanism for the outsourcing of audit work by the department to CA firms – this would help enhance internal resources and capacities of the state audit department[9];

c) Delineate the role of the financial statement auditor and the primary auditor in the statute, clearly specifying how the financial statement auditor's work fits into the primary auditor's work – this would avoid overlap in mandates[10].

Issue 2: Scope of audit

"Audit of accounts"[11], as generally practiced by state audit departments, goes beyond financial audit. It includes a large

5. The definition of Financial Audit used in the C&AG Auditing Standards is aligned to the definition adopted by INTOSAI, It focuses on determining whether an entity's financial information is presented in accordance with the applicable financial reporting and regulatory framework. This is accomplished by obtaining sufficient and appropriate audit evidence to enable the auditor to express an opinion as to whether the financial information is free from material misstatement due to fraud or error.

6. Namely, the Acts governing municipal corporations and municipalities and the Local Fund Audit Acts.

7. The 15th CFC report in Para 7.95, states that audited accounts shall include a minimum of: a) balance sheet; b) income and expenditure statement; c) cash flow statement; and d) schedules to balance sheet, income and expenditure statement and cash flow statement.

8. As in the case of Bihar and Jharkhand.

9. Presently followed in Odisha, although it still does not include audit of financial statements.

10. Followed in Karnataka.

11. This is term generally used in the governing municipal Acts and Local Fund Audit Acts.

element of compliance audit[12] and covers propriety aspects as well. The strong focus on compliance and propriety stems from the fact that there is no system of independent internal audit[13] in ULBs which would have addressed these aspects. Moreover, the audit by the state audit department is based on a hundred per cent check of transactions[14]. The financial audit, in this case, does not include within its ambit a certification of the full set of financial statements[15], even in cases where the definition of "annual accounts" under the applicable statutes covers them.

Contrary to this, an **audit of financial statements** is understood by CAs as an opinion on the true and fair representation of the auditee's financial affairs. Although compliance and propriety aspects are important considerations, these are not the primary focus of a financial statements audit. These aspects are reviewed as part of forming the audit opinion on the adequacy and satisfactory functioning of the internal control system of the auditee-ULB. Furthermore, the audit opinion is arrived at adopting a risk-based approach using sampling techniques and does not involve a hundred per cent check of all transactions. Unlike traditional audit by the state audit department, the financial statements auditor certifies the full set of financial statements and not just the closing cash balance.

Differences in scope and approaches in the two audits discussed above give rise to certain legitimate concerns, making "audit of accounts", in its traditional avatar, seemingly appear indispensable. One concern is that certain areas of compliance and propriety may be omitted in financial statements audit[16]. Another concern is that, given the involvement of public money, a sample-based audit may omit to catch irregular transactions when they fall below the sampling threshold, and therefore, a more detailed audit is called for. Lastly, the perception that accountability of the state audit department is higher compared to a CA firm, and hence the primary audit responsibility cannot be delegated.

The authors believe that there are ways to systemically address the above concerns without necessarily having to commission two parallel sets of audits towards the same objective. These are outlined below.

"An audit of financial statements is understood by CAs as an opinion on the true and fair representation of the auditee's financial affairs. Although compliance and propriety aspects are important considerations, these are not the primary focus of a financial statements audit.

a) Compliance and propriety largely fall within the remit of internal audit. The concept of internal audit, in its true sense, is slowly finding takers within government circles in recent years. While larger ULBs can have exclusive internal audit arrangements, for a majority of ULBs, a pooled internal audit arrangement at the state level would be cost-effective. The primary audit (which should encompass financial statement audit), in such cases, would be required to evaluate and comment upon the effectiveness of internal controls and internal audit rather than having to undertake a cent per cent check of all transactions.

b) A system of pre-audit[17] or concurrent audit[18] can ensure a near 100% coverage of transactions and ensure basic correctness and completeness. Such checks would then be an integral part of the ULB's internal control

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[12] *Compliance Audit definition under the C&AG Auditing Standards focuses on whether a particular subject matter is in compliance with the criteria. Compliance auditing is performed by assessing whether activities, financial transactions and information are, in all material aspects, in compliance with the applicable authorities which include the Constitution, Acts, Laws, rules and regulations, budgetary resolutions, policy, contracts, agreements, established codes, sanctions, supply orders, agreed terms or the general principles governing sound public sector financial management and the conduct of public officials.*

[13] *Internal audit here should not be confused with "pre-audit" which is an additional layer of internal control nor with "resident audit" which is a method of audit execution and not internal audit per se.*

[14] *A few state audit departments are in the process of moving to risk-based sampling.*

[15] *The practice of certifying the closing cash balance is followed in some states.*

[16] *For instance, non-compliance with procurement laws and guidelines, non-adherence to delegation of powers, procedural irregularities, lapses in service matters and so on.*

[17] *Pre-audit is a system followed in certain ULBs, under which, every payment is checked by an independent official from outside the ULB before it is made. The pre-audit responsibility is generally assigned to personnel from the State Audit Department.*

[18] *Concurrent audit is a common practice in the banking and financial services industry where the number of transactions is large and correctness of individual transactions assumes high importance.*

system rather than being part of the external audit mandate. With the increasing digitalization of ULB functions, a large part of such checks can be automated, which can, over time generate significant cost benefits.

c) All CAs are bound by the auditing standards, code of ethics, and disciplinary arrangements of the Institute of Chartered Accountants of India (ICAI). This serves as an additional recourse for ensuring accountability of a CA firm discharging the primary auditor role over and above audit accountability aspects covered in the municipal statutes of the state. Further, the audit firm selection criteria can be tailored to ensure that credible firms get selected[19], which serves as an additional assurance on the audit quality and accountability aspects.

d) The Comptroller and Auditor General of India (C&AG), working with the World Bank and the Asian Development Bank, has formulated standard terms of reference for the audit of externally aided projects. On similar lines, it would be advisable for the C&AG, ICAI, and the MoHUA to jointly come out with standard terms of reference for financial statements audit of ULBs. Such terms of reference must elaborate the mandate, scope of work, applicable auditing standards, audit in a computerized environment, and reporting requirements amongst other things. This would ensure uniformity in ULB audit across the country and establish uniform expectations on the content and quality of ULB audit reports. It would also help in undertaking auditor capacity development efforts.

> The Comptroller and Auditor General of India (C&AG), working with the World Bank and the Asian Development Bank, has formulated standard terms of reference for the audit of externally aided projects.

Conclusion

The 15th CFC has set the ball rolling towards institutionalizing accrual accounting reforms in ULBs in the country and ensuring their long-term sustainability. It is now up to the MoHUA and the state governments to ensure that, quick-fix solutions don't proliferate merely to satisfy the grant eligibility, leaving the larger systemic issues relating to audit mandate, legal backing, scope of audit, and capacity of auditors unresolved. Arriving at an acceptable solution would benefit from the active involvement of state audit departments in their capacity as the statutory auditors of ULBs, the ICAI as the premier professional body governing the audit landscape in the country, and the C&AG as the Supreme Audit Institution of India. The 15th CFC has introduced relaxations in eligibility conditions for financial years 2021-22 and 2022-23 by requiring only 25% of ULBs in a state to submit audited annual accounts. The relaxations provide ample time and opportunity to engage with key stakeholders and plug the loopholes. Doing so would ensure that audits of financial statements are not viewed as a ritual for accessing grants but become a means for increased public accountability and better fiscal management of ULBs.

> Given the involvement of public money, a sample-based audit may omit to catch irregular transactions when they fall below the sampling threshold, and therefore, a more detailed audit is called for.

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[19] *It is common to include empanelment with the C&AG as an eligibility criterion while selecting CA firms for ULB audit.*

Income from shares: Capital Gain or Profits and Gains of Business or Profession?

India has witnessed a very high rise in demat accounts from April 2020. According to data from SEBI, the number of demat accounts opened during April 2020 and January 2021, were around 10.7 million. Many people do not show profit or loss from these transactions in their returns due to lack of awareness. Also, there have been doubts in classification of such transactions under different heads of income. Read on…

CA. Prachi Agrawal
The author is member of the Institute. She can be reached at prachiagrawal26@gmail.com and eboard@icai.in

Classification as long-term and short-term

A share listed on the stock exchange is classified as long-term capital asset if it is held for a period of more than 12 months. Long-term capital gain on sell of shares is taxable @10% if capital gain is more than Rs. 1,00,000 and STT has been paid. A listed share is classified as short-term capital asset if it is held for a period of less than 12 months. Short-term capital gains are taxable @15%.

Short-term capital gain vs business income

If transactions are few, they can be classified as short-term capital gain. If transactions occur frequently, then it must be reported as business income. Hon'ble A.P. High Court in case of PVS Raju, has held that the question whether the shares were held as an investment to give rise to capital gain on its sale or as a trading asset to give rise to business income is not a pure question of law but essentially, one of fact.

Intraday trading

Intraday trading is considered as speculative business income. Turnover of trading is absolute turnover. It is sum of profits and loss from intraday trading in absolute terms.

Trading in derivatives

Trading in derivatives is considered as a business activity. As per provisions of section 43(5) (d) and (e), income from derivatives is not considered as a speculative business. Assessee has the option to go for presumptive taxation scheme u/s 44AD if turnover is less than 2 crores.

Dividends

Earlier dividend was tax free in hands of shareholders.

From April 1, 2020, dividend is taxable in hands of taxpayers. Dividend Distribution Tax has been abolished. Dividend is now taxable in hands of shareholders at normal rate of tax. Companies need to deduct TDS @10% on dividends.

India has witnessed a very high rise in demat accounts from April 2020. People have started showing more interest in share market these days. While people have started earning from share market, they are unaware of showing such income in the returns filled by them. They are also unclear about under which head of income shares income should go.

Rise in Share Trading

Conventionally, people in India have been scared to invest in the securities market. There has been a common fear among people. We have always heard from our elders not to invest in stock market as it was thought to be a gamble. But recent trends show that there has been a change in the mentality of people. According to data from Securities and Exchange Board of India (SEBI), the number of demat accounts opened during April 2020 and January 2021, were around 10.7 million. This has been a record-breaking rise.

During the lockdown imposed due to the COVID-19 pandemic, many people saw an opportunity to acquire new skills. The stock market was open during lockdown and the option of online trading made it easy to enter the stock market. As a result, many people started trading in shares. Many youngsters became interested in trading in the stock market. But they do not have enough knowledge to show this in their income tax returns. Many people do not show profit or loss from these transactions in their returns due to lack of awareness.

Also, there have been doubts in classification of such transaction under different heads of income. The most common dispute in this regard is to classify as capital gain or business income. Also, there are doubts in classification as speculative and non-speculative business.

This article attempts to resolve some of these doubts.

Types of transactions in shares

There are different types of transactions that can be done in the stock market. These are,

1. Delivery based: Buying securities in cash and holding them for **long-term**. This can be called investing.

2. Delivery based: Buying securities in cash and selling them after price rise in **short-term**.

3. **Intraday** trading: Generally, these transactions are not settled by actual delivery. They are settled by price difference.

4. Trading in **derivatives**: They are commonly called future and options. They may or may not involve actual delivery.

> Intraday trading is considered as speculative business income. Turnover of trading is absolute turnover. It is sum of profits and loss from intraday trading in absolute terms.

Let us discuss about these types in detail.

1. Long-term delivery based

When you purchase a share, you acquire a right in the company. Share represents a part of the capital of a company. Therefore, shares are an asset for the investor. The value of shares depend on the performance of the company. A share listed on the stock exchange is classified as a long-term capital asset if it is held for a period of more than 12 months. For unlisted shares, the period of holding is 24 months. It is considered as investing in a company. Therefore, it is considered as capital gains.

Long-term capital gain on sell of shares is taxable @10% if capital gain is more than Rs. 1,00,000. Benefit of concessional rate of 10% is allowed only if STT has been paid at time of purchase and transfer of shares. Long-term capital gains on sale of listed equity share up to Rs. 1,00,000 are exempt. If assessee is a share trader and wants to treat it as business income, then it would be treated as business income.

2. Short-term delivery based

A listed share is classified as short-term capital asset if it is held for a period of less than 12 months. Short-term capital gains are taxable @15%. If transactions are few, they can be classified as short-term capital gain. If transactions occur frequently, then it must be reported as business income. Also, intention of assessee should be considered. If assessee has held asset for investment, then it should be classified as capital gain. On the other hand, if assessee has intention to do trading in shares, it should be treated as business income. It has been a debatable issue for a long time. Many times, this issue has also reached the doors of courts.

Hon'ble A.P. High Court in case of PVS Raju, has held that the question whether the shares were held as an investment to give rise to capital gain on its sale or as a trading asset to give rise to business income is not a pure question of law but essentially one of fact. In case of Vaibhav J Shah (HUF), Tax Appeals 77 of 2010, Hon'ble Gujrat High Court held that where number of transactions of sale and purchase of shares takes place, the most important test is volume, frequency, continuity and regularity of transactions.

> A listed share is classified as short-term capital asset if it is held for a period of less than 12 months. Short-term capital gains are taxable @15%.

CBDT vide circular no. 4/2007 dated 15-06-2007, laid down the tests for distinction between shares held as stock-in-trade and as investments. This circular also accepts that it is possible for an assessee to have both investment and trading portfolio. Therefore, we have to see whether transactions amount to business or not will depend on the facts and circumstances of each case. It is a matter of judgement as there are no specific rules to classify as short-term capital gain and business income.

Scenario 1: Assessee has 10-12 transactions during the year on which he has short-term capital gains. Transactions have been executed in June, November and January.

As it is clear that assessee carries transactions rarely and is not involved in trading as businessperson. Hence his income would be treated as capital gains.

Scenario 2: Assessee has around 100-120 transactions in shares during the year. He has sold all the shares that he has acquired within 15-20 days of acquisition. Assessee wants to treat it as capital gains.

In this case, as we can see that assessee is actively involved in share trading. He frequently executes trade in the market.

> Intraday trading is considered as speculative business income. It is so because investing for one day cannot be investment in company. It is only for enjoying the benefits of price fluctuations.

He is not investing; rather, he is treating it as stock-in-trade. In this case, income shall be treated as business income.

3. Intraday trading

Intraday trading means purchasing and selling shares on same trading day. It is also known as day trading. Transactions are squared off at the end of the day even if the desired price is not achieved. Delivery of shares does not take place in intraday trading. Intraday trading is considered as speculative business income. It is so because investing for one day cannot be investment in company. It is only for enjoying the benefits of price fluctuations. Assessee has the option to go for presumptive taxation scheme u/s 44AD if turnover is less than 2 crores. If assessee opts for presumptive taxation, income @6% must be declared mandatorily. Loss cannot be claimed u/s 44AD.

Provisions of audit are applicable in accordance with section 44AB. As it is a business income, all the provisions related to PGBP (Profits and Gains from Business or Profession) are applicable to intraday trading. Turnover of trading is absolute turnover. It is the sum of profits and loss from intraday trading in absolute terms. For example, if a trader has profit of Rs. 2,00,000 and loss of Rs. 50,000 from trading, then his turnover would be 2,50,000 (2,00,000+50,000).

One should note that a single transaction does not amount to business. We must separate speculative business and not speculative transactions. In case there are very few intraday transactions of intraday say 10-15, then they may not amount to speculative business. To decide whether it is in the nature of business or not would require professional judgement. It would differ from case to case depending on facts and circumstances of a particular case.

> Derivative means a financial asset which derives its value from underlying asset or group of assets acting as benchmark. In the stock market, derivatives derive its value generally from shares, commodities, currencies, market index etc. It is commonly known as futures and options (F&O).

4. Trading in derivatives

Derivative means a financial asset which derives its value from underlying asset or group of assets acting as benchmark. In the stock market, derivatives derive its value generally from shares, commodities, currencies, market index etc. It is commonly known as futures and options (F&O). Now-a-days, trading in F&O can be easily done through stock market. We can also trade using our laptops or mobiles through our demat account. Due to ease in trading, trading in derivatives has increased in India. Many people who trade in derivatives do not know its taxation aspects.

Trading in derivatives is considered a business activity. As per provisions of section 43(5) (d) and (e), income from derivatives is not considered as a speculative business in following cases:

- Trading in derivatives of shares and market index if done through recognised stock exchange.
- Trading in commodity derivatives if done through recognised stock exchange on which CTT has been paid.

Unlike shares, intraday trading in derivatives is not considered as speculative business. Assessee has the option to go for presumptive taxation scheme u/s 44AD if turnover is less than 2 crores. If assessee opts for presumptive taxation, income @6% must be declared

> At the time of payment, there is no certainty that shares would be allotted or not, therefore payment date cannot be considered as purchase date. Date of purchase would be the date on which shares are allotted to the shareholder as that is the date when purchase transaction would be completed.

mandatorily. Loss cannot be claimed u/s 44AD.

Turnover from trading in derivatives is calculated by adding the following:

- Absolute profits or price difference
- Absolute losses or price difference
- Premium from option writing
- In case of reverse trades, difference thereon

For example, Mr. A has entered into the following transactions:

1. Bought 1 lot of TCS Futures @ Rs. 2000 and sold for Rs. 2200.
2. Bought 2 lots of RIL futures @ Rs. 1500 and sold for Rs. 1400.
3. Bought 1 lot of call option of Tata Chemicals for Rs. 80 and sold at Rs. 100.

4. Sold 1 lot of put option of Infosys for Rs. 40 and bought for Rs. 50.

Assume lot size to be 100 shares in each case.

Solution:

Script Name	Transa-ction Type	Purchase Price(i)	Sale Price (ii)	Gain/ Loss [(ii-)*100]	Option Premium	Turnover
TCS	Future	2000	2200	200,000	0	200,000
RIL	Future	1500	1400	(100,000)	0	300,000
Tata Chemicals	Option	80	100	20,000	100,000	120,000
Infosys	Option	50	40	(1000)	40,000	41,000
	Total			**1,10,000**	**1,40,000**	**661,000**

Total turnover of Mr. A will be Rs. 6,61,000.

IPO/FPO

IPO means Initial Public Offer. FPO means Further Public Offer. IPO means first time issue of shares by the company. FPO is offer of more shares by a company already listed on the stock exchange. IPO and FPO transactions are like normal transactions of shares and period of holding is calculated by methods as discussed in delivery-based transactions.

The main issue that some people face is what will be the purchase date of IPO/FPO. As in case of an IPO/FPO, payment date, date of allotment and date of listing are different. At the time of payment, there is no certainty that shares would be allotted or not, therefore payment date cannot be considered as purchase date. Date of purchase would be the date on which shares are allotted to the shareholder as that is the date when purchase transaction would be completed.

For example, ABC Ltd.'s IPO opened on 01.05.2021 and closed on 03.05.2021. It means one needs to apply between 01.05.2021 and 03.05.2021. Date of allotment would be 07.05.2021. Share will be credited to demat account on 10.05.2021 and will be listed on 11.05.2021. Money needs to be paid at the time of application.

> People need to be aware of the need to disclose income in their returns. Also, choosing the right head of income is very crucial.

In this case, date of purchase of shares would be 07.05.2021.

Dividend

Dividend is the share of profit distributed by the company to the shareholders. Earlier dividend was tax free in the hands of shareholders. Companies had to pay Dividend Distribution Tax for distribution of dividends. From April 1, 2020, dividend is taxable in the hands of taxpayers. Dividend Distribution Tax has been abolished. Companies need to deduct TDS @10% on dividends. TDS is not required to be deducted in case total income from dividend of a taxpayer is not more than Rs. 5,000 during a financial year.

Also, Section 115BBDA which provides for taxation of dividend above 10 lakhs @10% has been abolished in Finance Act, 2020. Dividend is now taxable in the hands of shareholders at the normal rate of tax.

Conclusion

Reporting of income from shares is very important. People need to be aware of the need to disclose income in their returns. Also, choosing the right head of income is very crucial. We need to examine the facts of the case carefully before determining the head of income. One of the things that people forget is tax is now payable on dividend income.

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals received during November – December 2021 for the reference of Faculty/Students & Members of the Institute.

1. Accountancy

Convertible Financial Instruments by Siddharth Iyer. *The Chamber's Journal*, November 2021, pp. 11-19.

Equipment Installed at Customer Premises - Whether Lease or Not? by Dolphy D'souza. *Bombay Chartered Accountant Journal*, November 2021, pp. 67-69.

Usefulness of IFRS-compliant Reports: Perceptions of Sri Lankan Investors and Lenders by Saman Bandara and Michael Falta. *Asian Review of Accounting*, Vol.29, No.04, 2021, pp. 525-557.

2. Audit

Caro 2020 Series: New Clauses and Modifications Deposits, Loans and Borrowing by Zubin Billimoria. *Bombay Chartered Accountant Journal*, November 2021, pp. 15-23.

3. Economics

Development Banks and the Changing Contour of Industrial Credit in India by Shromona Ganguly, Mohua Roy. *Economic & Political Weekly*, December 4, 2021, pp. 50-57.

Uncertainty and Disagreement among Professional Macroeconomic Forecasters. *Reserve Bank of India Bulletin*, November 2021, pp. 77-89.

4. Investment

Changing Tides in the Indian Money Market. *Reserve Bank of India Bulletin*, November 2021, pp. 91-110

Does Disclosure of Earning Forecasts Regulation Affect the Valuation of IPO's? Evidence from an Emerging Country by Chui Zi Ong, Rasidah Mohd-Rashid, Waqas Mehmood and Ahmad Hakimi Tajuddin. *Asian Review of Accounting*, Vol.29, No.04, pp. 558-578.

Impact of COVID-19 on the Stock Market and Corporate Firms by Indrani Chakarborty. *Economic & Political Weekly*, November 20, 2021, pp. 50-57.

5. Law

Stamp duty in India- Past and Present by Mithun B. Shenoy. *Chartered Secretary*, November 2021, pp. 61-67

6. Management

Corporate Governance and Corporate Social Responsibility by Dipti Mehta. *Chartered Secretary*, November 2021, pp. 46-52.

Low Yield Environment and Forex Reserves Management. *Reserve Bank of India Bulletin*, October 2021, pp. 233-245.

7. Taxation and Finance

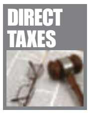
Recent Developments in GST by C.B. Thakar and G.G. Goyal. *Bombay Chartered Accountant Journal*, November 2021, pp. 81-87.

Withdrawal of retrospective Taxation on Indirect Transfers- Impact and Analysis by Rohit Kumar S and Tara Nagraj. *The Chamber's Journal*, November 2021, pp. 66-68.

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.

Rajasthan Samwad

Legal Decisions



Income Tax

LD/70/83; [ITAT Delhi: ITA No. 5224/ Del/2017] The Dy. Commissioner of Income Tax Vs. Attire Designers Pvt. Ltd 29/11/2021

Interest paid on incentive refunded to DGFT on non-fulfilment of specified criteria held to be allowable as business expenditure; During assessment, the AO held that Rs. 93.61 lakhs charged by the DGFT was in the nature of penalty, and therefore not allowable in view of explanation to Section 37(1); The amount disallowed by the AO was penal interest @15% on the export benefit enjoyed; CIT(A) had noted that assessee received incentive of Rs. 1.68 Cr on export of technical textile, which the assessee was later on required to refund since certain exports did not fall in technical textile category for which the incentives were given and no offence under the Foreign Trade Regulation was done by the assessee.

LD/70/84; [ITAT Delhi: ITA No. 515/ Del/2021] AB Sciex Pte Limited Vs. The Asst. Commissioner of Income Tax 26/11/2021

Reassessment proceedings without issuance of valid notice pursuant to transfer of records from another jurisdiction held to be void ab initio; Revenue had issued a notice u/s 148 31/03/2019 to which Assessee raised an objection that correct jurisdictional Assessing Officer was not ITO-Ward 1(1) International Taxation 1(1), Bangalore, but ACIT International Taxation, Circle 1(1)(1),Delhi; ITAT noted that the reasons recorded for re-opening Assessee's case was were recorded by the the AO - ITO(IT)W-1(1) Bangalore and the notice u/s 148 was issued by the same AO for AY 2012-13 at the fag-end of the 6 years limitation to issue notice; ITAT held that merely transferring the assessment records to the ACIT, International Taxation, Circle 1(1)(1), New Delhi which was received on 04/09/2019 and thereafter issuing notice u/s 129 to the assessee cannot be construed as the proper implementation of the reopening of the assessment proceedings under Section 148; Jurisdictional AO at Delhi merely passed assessment order after the transfer of records without issuing a valid notice under Section 148.

LD/70/85; [Rajasthan High Court: S.B. Civil Writ Petition 13297/2021] Bpip Infra Pvt. Ltd. Vs. The Income Tax Officer, Jaipur 25/11/2021

High Court, in the instant case, held that reassessment notices issued u/s 148 on or after 01.04.2021 were not in accordance with mandatory procedure u/s 148A as inserted by Finance Act, 2021 and thus quashed the same; High Court gave liberty to Revenue to initiate re-assessment proceedings in accordance with the amended provisions of the Act; Reliance placed on Allahabad High Court ruling in the case of Ashok Kumar Agarwal where the writ petitions challenging the reassessment proceedings initiated pursuant to CBDT Notifications issued for extending the time-limit for issuing notices u/s 148 were allowed.

LD/70/86; [ITAT Pune: ITA No. 332/PUN/2021] The Dy. Commissioner of Income Tax Vs. Honeywell Automation India Ltd. 24/11/2021

ITAT held that interest on income-tax refund from an assessment was not taxable in the year in which it is granted since it got entirely wiped out against the demand arising from an assessment for another AY; Interest of Rs. 1.18 Crores on refund of Rs. 11.43 Crores granted in AY 12-13 was suo motu adjusted by the Revenue against demand for AY 2009-10 without any intimation to the Assessee; Assessment for AY 2012-13 was concluded with culmination into a notice of demand of Rs.29.53 Cr., whereby interest of Rs.1.18 Cr. granted earlier was added along with interest u/s 234D of Rs.2 Cr; As per ITAT, if it was a case where Assessee received refund along with interest on processing of return u/s 143(1) not followed by any regular assessment, taxing the interest in the year of receipt would be justified.

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/70/87; [ITAT Delhi: ITA No. 2831/ Del/2018]Gem Engineering P. Ltd Vs. The Dy. Commissioner of Income Tax 23/11/2021

ITAT held that interest on loan to sister concerns for incurring capital expenditure and for meeting working capital expenditure, was in accordance with principles of commercial expediency; Revenue had made a disallowance of interest of Rs.2.13 Cr u/s 36(1)(iii) owing to diversion of funds; ITAT observed that the amount advanced to the sister concern was at the same interest rate as that of the borrowed funds and there was no difference in the interest paid and interest received; The sanction letter issued by bank from which Assessee availed loans revealed that amount was to be lent to group companies for meeting their capital expenditure and Revenue had at no point disputed that the loaned amounts were diverted from their original purpose.

LD/70/88; [Bombay High Court: W.P. No 2216 of 2021] River Valley Meadows and Township (P) Ltd.Vs. The Dy. Commissioner of Income Tax 16/11/2021

High Court quashed reassessment notice issued without prior mandatory approval of the Addl. CIT u/s 151(2); Notice u/s 148 was issued to the assessee on 25.06.2019 whereas approval of Addl. CIT u/s 151(2) was dated 26.06.2019; Revenue submitted before the High Court that in one copy of the approval the date was 26.06.2021 whereas in the other copy in the Revenue's file, the date was 25.06.2019; As per High Court, the difference in dates itself shows non-application of mind while granting the approval; High Court accepted assessee's submission that the impugned notice u/s 148 was illegal since there was no prior approval u/s 151(2) and sets aside the consequential assessment order.

LD/70/89; [Bombay High Court: W.P. NO.3263 OF 2019] Rich Feel Health and Beauty Private Limited Vs. The Income Tax Officer 15/11/2021

Reassessment notice issued to the Assessee merely on the basis of change of opinion and pertaining to issues examined in the original assessment, quashed by the Bombay High Court; The assessee was already subjected to assessment u/s 143(3) for AY 2012-13 and subsequently reassessment notice u/s 148 was issued by Revenue stating that marketing expenditure was not deductible expense for assessee as it was prohibited by under the Indian Medical Council Regulations; High Court held that reopening of assessment on account of change of opinion was not justified; High Court noted that in the original assessment, the Revenue was was aware of the issue of expenses incurred on advertisement and marketing and it was not open for the Revenue to reopen the assessment.

LD/70/90; [ITAT Mumbai: ITA No. 3612/ Mum/2019] Cargo Service Centre India Pvt Ltd Vs. The Dy. Commissioner of Income Tax 02/11/2021

For AY 12-13, assessee was subjected to regular assessment whereby the returned income was accepted, however, since the assessment order did not specifically mention about the eligibility for the carry forward of the said loss, Assessee moved a rectification application which was decided by the AO in Assessee's favour; Pr. CIT revised the rectification order u/s 263 by holding that since the AO did not examine Assessee's claim for carry forward of loss in sufficient detail, the loss could not be carried forward; ITAT held that once a loss is disclosed in the return and is undisturbed by scrutiny assessment, it is treated to have been accepted and the quantification cannot be disturbed; ITAT noted that eligibility for set off has to be adjudicated upon by the Revenue in the year in which set off for the loss is claimed and not in the year in which the loss, sought to be adjusted later, is incurred.

LD/70/91; [Karnataka High Court: W.P. No. 13151/2021] Hasham Investment & Trading Co. P. Ltd. Vs. The Addl. Commissioner of Income Tax 28/10/2021

Faceless assessment order quashed by the High Court noting that it was passed without considering assessee's reply and without providing reasonable opportunity of being heard; High Court allowed Assessee's writ petition despite availability of alternative remedy and held that the Revenue violated the principles of natural justice; Assessee had challenged the assessment order passed u/s 143(3) r.w.s. 144B which was without considering Assessee's detailed response to the Show Cause notice issued by the Revenue.

LD/70/92; [Bombay High Court: W.P. No. 15811 of 2021] Sulzer Pumps India Private Limited Vs. The Dy. Commissioner of Income Tax 27/10/2021

Writ petition filed by assessee against order passed by AO u/s 143(3) r/w 144C(3) and 144B of the Act allowed by Bombay High Court; Assessee had an option to choose to file objections before the DRP within 30 days from the receipt of Draft Assessment Order and the section required assessee to e to file a copy of the reference with the AO within the time limit and that section 144C(4) requires AO to pass a final order within one month from the end of the month in which the period of filing of objections before DRP expires; Assessee was under bonafide belief that it was not assessee was not required to communicate the reference to DRP to the AO; The AO, being unaware of objections filed by assessee before DRP, after the expiry of prescribed period of 30 days, proceeded to pass the Assessment Order.

GST

LD/70/93; [TIOL-2248-HC-MUM-GST] Laxmi Organic Industries Ltd Vs Union of India and Ors 2021 30/11-2021

Where there is no doubt that the adjudicating authority is bound by the circulars and orders issued by the Board, at the same time the adjudicating authority cannot ignore the existing provisions of GST laws and the rules thereunder. Thus, where the circular for compulsive online filing of refund application was issued the said circular would not preclude the taxpayer from making a manual application in accordance with rule 97 of the CGST Rules.

LD/70/94; [TIOL-262-SC-ST (SC)] CGST CCx vs M/S City Bank N/A 2021 9/12/2021

An interchange fee retained by issuing bank is a consideration for the provision of service. The Hon'ble Judges differ in their opinion as to whether the services provided by issuing bank and acquiring bank are different and distinct services and the MDR collected from the merchant which also includes the interchange fees are two separate measures of taxation against two separate services or whether the issuing bank and the acquiring bank are providing one single service of composite nature in a unified manner and jointly. Consequently, the Hon'ble judges differ in their conclusion as to whether the issuing bank, being a person liable to pay tax under section 68 is required to file separate returns and discharge tax separately on the said transaction or not. Hence the matter decided to be placed before Hon'ble the Chief Justice of India for constituting an appropriate Bench in the matter. The court however came to a common conclusion that once the acquiring bank has paid service tax on the entire MDR including the said interchange fees, the recovery of service tax again from the issuing bank on the very same fees would be illegal and would amount to double taxation. The interchange fees cannot be said to be a transaction in money or interest.

LD/70/95; [TIOL-2308-HC-KOL-GST] LGW Industries Ltd and Ors vs UOI and Ors 2021 13/12/2021

Where the GST authorities have issued notices disallowing ITC to the assessee on the ground that the suppliers are fake and bogus and in some cases, the registration of the suppliers are canceled with retrospective effect, the court remanded the cases to GST authorities with a direction that if it is found that the transactions are genuine and ITC is otherwise allowed in accordance with the law and that the purchases are effected before the date of cancellation of registration, then the credit shall be allowed.

Disciplinary Case

Conducting statutory audit of Society by the Respondent without approval of his appointment by the concerned regulator- Serious non-compliance -- Held, Respondent is guilty under Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

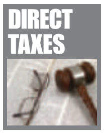
Held:

In the instant case, the charge against Respondent is that he deliberately and intentionally made non-compliance/violation of order of the Registrar of Co-operative society vide which the Managing Committee of the society was restrained from taking major financial or policy decisions. The Committee noted that as per Section 60 of Delhi Co-operative Societies Act, 2003 and Rule 79 of the Delhi-Cooperative Societies Rules, 2007, a co-operative society is required to get its accounts audited by an auditor selected from the panel prepared by the Registrar. The Society made an application in the prescribed format to office of the Registrar of Co-operative Societies, New Delhi for appointment of the Respondent firm as auditor for the specified year. In the said application, the Respondent has signed the acceptance certificate wherein he has given his consent for conducting the audit of the Society subject to the approval by the office of the Registrar of Cooperative Societies, New Delhi. When the Respondent himself has given his consent that his appointment is subject to the approval by the office of the Registrar of Co-operative Societies, he should not have conducted the audit till the time the approval is received by the Society from the Registrar of Co-operative Societies. It is noted that the Registrar of Co-operative Societies, New Delhi rejected the audited accounts of the Society. The Committee read out the language of document submitted by the Complainant pertaining to a form wherein the Registrar of Co-operative society inviting acceptance of the auditor for conducting the audit of a society. The Committee noted that title of the form says that it is an option-cum-appointment letter for conducting the statutory audit of a society. The Committee observed that the same is only an option and not the authorization for conduct of statutory auditor. In this regard, however, the Committee viewed that the conduct of an audit by the Respondent which is not authorized by the concerned regulator is a serious non-compliance. In view of above noted facts, the Committee held that the Respondent guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

File No. : PR-/01/2015-DD/13/2015/DC/606/2016] Sh. Sanjay Chiripal Vs. Rajnish Kumar Agrawal

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. *CBDT substitutes new Form No. 52A vide the Income tax (32nd Amendment) Rules, 2021 - Notification No. 132/2021, dated 23-11-2021*

In exercise of the powers conferred by section 285B r.w.s. 295, the CBDT has substituted Form No. 52A in Appendix II to the Income-tax Rules, 1962. As per Rule 121A, the statement required to be furnished under section 285B by a person carrying on production of cinematograph films to the Assessing Officer shall be in Form No. 52A.

The detailed Notification can be downloaded from the link below:

https://incometaxindia.gov.in/communications/notification/notification-132-2021.pdf

2. *'Haryana State Legal Services Authority' Panchkula notified u/s 10(46) - Notification No. 133/2021, dated 23-11-2021*

The Central Government vide this notification has notified 'Haryana State Legal Services Authority' Panchkula (PAN AAALH0475J), an authority constituted by the State Government of Haryana, in respect of specified income subject to satisfaction of conditions laid therein for the FYs from 2020-21 to 2024-25.

The detailed Notification can be downloaded from the link below:

https://incometaxindia.gov.in/communications/notification/notification-133-2021.pdf

3. *Central Government notifies the Jeevan Akshay-VII plan of the LIC u/s 80C - Notification No. 134/2021, dated 06-12-2021*

The Central Government vide this notification has specified the Jeevan Akshay-VII Plan of the LIC of India, as filed by that Corporation with the IRDA, as the annuity plan of the LIC of India for the purposes of section 80C(2)(xii) for AY 2021-22 and subsequent years.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification-no-134-2021.pdf

4. *DTAA between India and Kyrgyz amended - Notification No. 135/2021, dated 08-12-2021*

In exercise of the powers conferred by section 90(1), the Central Government has notified that all the provisions of the amending Protocol, as annexed in this notification, shall have effect in India w.e.f. 22.10.2020 being the date of the later notification of the completion of the procedures required by the respective laws for the entry into force of the said amending Protocol. The Protocol, amending the DTAA between India and Kyrgyz Republic which was signed at New Delhi on 13.04.1999, has been signed at Bishkek, Kyrgyz Republic on 14.06.2019.

The detailed Notification can be downloaded from the link below:

https://incometaxindia.gov.in/communications/notification/notification-133-2021.pdf

5. *New Rule 21AK inserted vide the Income-tax (33rd Amendment) Rules, 2021 specifying conditions for claiming exemption u/s 10(4E) - Notification No. 136/2021, dated 10-12-2021*

Rule 21Ak provides that the income accrued or arisen to, or received by, a non-resident as a result of transfer of non-deliverable forward contracts u/s 10(4E), shall be exempted subject to fulfillment of the conditions specified therein. It has been further provided that the offshore banking unit shall ensure that the specified condition is complied with.

Matter on Direct and Indirect Taxes is contributed by Direct Taxes Committee, GST & Indirect Taxes Committee and Corporate Laws and Corporate Governance Committee of ICAI respectively. FEMA updates by CA. Manoj Shah, CA Hinesh Doshi and CA. Sudha G. Bhushan.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification-136-2021.pdf

6. *The e-Verification Scheme, 2021 notified u/s 135A (Faceless collection of information) - Notification No. 137/2021, dated 13-12-2021*

In exercise of the powers conferred by section 135A, the Central Government, vide this notification, has notified the e-Verification Scheme, 2021 w.e.f. 13.12.2021. Scope of the Scheme shall be in respect of:

(i) calling for information u/s 133;

(ii) collecting certain information u/s 133B;

(iii) calling for information by the prescribed income-tax authority u/s 133C;

(iv) exercise of power to inspect registers of companies u/s 134; and

(v) exercise of power of AO u/s 135.

The detailed Notification can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/notification/notification-137-2021.pdf

II. CIRCULARS

1. *Guidelines under sub-section (4) of section 194-O, sub-section (3) of section 194Q and sub-section (1-I) of section 206C of the Income-tax Act, 1961 - Circular No. 20/2021, dated 25-11-2021*

Section 194-O(4), 194Q(3) and section 206C(1-I) empowers the CBDT to issue guidelines for the purpose of removing difficulties. Accordingly, earlier vide Circular No. 17/2020 dated 29.09.2020, guidelines were issued by the CBDT in relation to the provisions of section 194-O and section 206C(1H) in certain cases to remove difficulties and provide clarity for certain transactions. Further, vide Circular No. 13/2021 dated 30.06.2021, guidelines were issued in relation to the provisions of section 194Q through which the difficulties arising from the applicability of the provisions of section 194Q in certain cases were removed. Furthermore, guidelines with respect to the cross application of the provisions of sections 194-O, 194Q and 206C(1H) were also issued through the said Circular. In continuation of the aforesaid Circulars, further guidelines are issued vide this Circular.

The detailed Circular and Order can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/circular/circular-20-2021.pdf

III. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM/ORDER

1. *ITD conducts searches in Andhra Pradesh and Telangana & Pune & Delhi and Haryana - Press Release(s), dated 16-11-2021 & 17-11-2021*

The ITD carried out search and seizure operations on 10.11.2021 on three different groups at 30 different premises in Visakhapatnam, Hyderabad, Vizianagaram and Srikakulam. Further, the ITD carried out a search and seizure operation on 11.11.2021 on a group at Pune which is engaged in manufacturing of heavy machinery like excavators, cranes, concrete machinery which are used in mining, piling and port, etc. Also, the ITD carried out search and seizure operations on 09.11.2021 in the case of a Fintech company providing instant short term personal loan through Mobile App.

The complete text of the above Press Release(s) can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1009/PressRelease-ITD-conducts-searches-in-AP-and-Telangana-17-11-2021.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1010/PressRelease-ITD-conducts-searches-in-Pune-17-11-21.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1011/PressRelease-ITD-conducts-searches-in-Delhi-and-Haryana-17-11-21.pdf

2. *ITD conducts searches in West Bengal & Gujarat - Press Release(s), dated 18-11-2021 & 21-11-2021*

The ITD carried out search and seizure operations on 16.11.2021 on a prominent Kolkata based group engaged in manufacturing of cement and real estate. Also, the ITD has carried out a search and seizure operation on a prominent group engaged in manufacturing of chemicals and development of real estate on 18.11.2021. The search action covered more than 20 premises spread over Vapi and Sarigam in Gujarat, Silvassa and also in Mumbai.

The complete text of the above Press Release(s) can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1012/Press-Release-IT-Department-conducts-searches-in-West-Bengal-dated-19-11-2021.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1013/Press-Release-IT-Department-conducts-searches-in-Gujarat-dated-21-11-2021.pdf

3. *ITD's new Office cum Residential complex, 'The Chinars', inaugurated by Hon'ble FM at Srinagar, J&K on 22.11.2021 - Press Release, dated 22-11-2021*

The ITD's new Office-cum-Residential complex, 'The Chinars', at Srinagar, Jammu & Kashmir, was inaugurated on 22.11.2021 by hon'ble Finance Minister Smt. Nirmala Sitharaman in the presence of Lieutenant Governor of Jammu & Kashmir Sh. Manoj Sinha. The Secretary (Revenue) Sh. Tarun Bajaj, Chairman CBDT Sh. J. B. Mohapatra and Chairman CBIC Sh. M. Ajit Kumar were also present on the occasion.

The complete text of the above Press Release can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1016/Press-Release-IT-Department-new-Office-cum-Residential-complex-The-Chinars-dated-22-11-2021.pdf

4. *ITD conducts searches on a leading Gutkha distributor in Gujarat & on two real estate groups based in Delhi-NCR & in Maharashtra, Gujarat and Delhi on certain Indian companies and their associate concerns, controlled by a neighbouring country - Press Release(s), dated 23-11-2021 & 24-11-2021 & 25-11-2021*

The ITD carried out search and seizure operations on a leading Gutkha distributor of Gujarat on 16.11.2021. Further, the ITD carried out a search and seizure operation on two real estate groups based in Delhi-NCR on 17.11.2021. Also, the ITD has carried out search and seizure operations on certain Indian companies and their associate concerns, controlled by a neighboring country on 16.11.2021.

The complete text of the above Press Release(s) can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1017/PressRelease-ITD-conducts-searches-on-a-leading-Gutkha-distributor-in-Gujarat-24-11-21.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1018/Press-Release-ITD-conducts-search-operations-on-two-real-estate-24-11-21.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1019/Press-Release-harashtra-Gujarat-and-Delhi-on-certain-Indian-companies-and-their-associate-concerns-dated-25-11-2021.pdf

5. *ITD's Office Complex at Lucknow, the new 'Pratyaksh Kar Bhawan', inaugurated by Hon'ble Chief Minister of Uttar Pradesh and Hon'ble Finance Minister - Press Release, dated 26-11-2021*

The ITD's new Office Complex, the 'Pratyaksh Kar Bhawan', at Lucknow was inaugurated on 26.11.2021 by Hon'ble Chief Minister of Uttar Pradesh Sh. Yogi Aditya Nath and Hon'ble Finance Minister Smt. Nirmala Sitharaman, in the presence of Hon'ble Minister of State (Finance) Sh. Pankaj Chaudhary. Hon'ble Finance Minister Uttar Pradesh, Sh. Suresh Kumar Khanna and Hon'ble Minister of Law & Justice Uttar Pradesh, Sh. Brajesh Pathak also graced the occasion.

The complete text of the above Press Release can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1020/PressRelease-ITD-Office-Complex-at-Lucknow-29-11-21.pdf

6. *ITD conducts search operations on two major real estate developers of Ludhiana & in Rajasthan - Press Release(s), dated 27-11-2021 & 01-12-2021*

The ITD initiated search and seizure operations on two major real estate developers of Ludhiana on 16.11.2021. The search action covered around 40 premises in Ludhiana. The major finding emanating from these search and seizure operations of both the groups is about the receipt of unaccounted cash by these groups by way of on-money on property transactions. Further, the ITD initiated search and seizure operations on a group engaged in manufacturing and export of jewellery and coloured gemstones at Jaipur on 23.11.2021.

The complete text of the above Press Release(s) can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1021/PressRelease-ITD-conducts-search-operations-on-two-major-real-estate-29-11-21.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1022/PressRelease-ITD-conducts-search-operations-in-Rajasthan-1-12-21.pdf

7. *ITD conducts search operations on a real estate group in Mumbai and Navi Mumbai Region of Maharashtra & in Pune, Maharashtra & Madhya Pradesh - Press Release(s), dated 02-12-2021 & 03-12-2021*

The ITD initiated search and seizure operations on a real estate group, engaged in the construction of residential and commercial projects, in Mumbai and Navi Mumbai Region on 25.11.2021. Further, The ITD has initiated search and seizure operations on a leading group of Pune, engaged in dairy farming and milk products, on 25.11.2021. Also, the ITD initiated search and seizure operations on two major business groups of Indore on 25.11.2021.

The complete text of the above Press Release(s) can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1023/ITD-conducts-search-operations-on-a-real-estate-group-2-12-21.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1024/Press-Release-ITD-conducts-search-operations-in-Pune-Maharashtra-2-12-21.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1025/PressRelease-ITD-conducts-search-operations-in-MP.pdf

8. *More than 3 crore ITRs filed on the new e-Filing portal of the ITD; Taxpayers who are yet to file their ITRs for AY 2021-22 advised to file at the earliest - Press Release, dated 05-12-2021*

The number of ITRs filed per day is over 4 lakh and increasing everyday as the extended due date of 31.12.2021 is approaching. The ITD strongly urges all taxpayers to view their Form 26AS and Annual Information Statement (AIS) through the e-filing portal to verify the accuracy of the TDS and Tax Payments and avail of pre-filling of ITRs.

The complete text of the above Press Release can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1026/Press-Release-More-than-3-crore-ITR-filed-on-the-new-e-Filing-portal-dated-05-12-2021.pdf

9. *ITD conducts search operations in Delhi & in West Bengal - Press Release(s), dated 06-12-2021*

The ITD initiated search action on 24.11.2021 on a taxpayer in Delhi who has created a beneficiary trust and an underlying company in low tax overseas jurisdiction. The residence and business premises of the assessee were covered in the search action. Also, the ITD initiated a search and seizure operation on a prominent Kolkata-based Group, engaged in manufacturing of TMT Bars and structural construction materials etc. on 01.12.2021. The search action covered more than 20 premises spread over West Bengal and Odisha.

The complete text of the above Press Release(s) can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1027/PressRelease-ITD-conducts-search-operations-in-Delhi-6-11-21.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1028/PressRelease-ITD-conducts-search-operations-in-West-Bengal-6-12-21.pdf

10. *ITD conducts search operations in Tamil Nadu & in Gujarat - Press Release(s), dated 07-12-2021*

The ITD has carried out search and seizure operations on 01.12.2021 in respect of 2 groups engaged in the Retail Sales of Jewellery, Textiles and Home Appliances through their popular chain of Stores in Chennai, Coimbatore, Madurai and Tirunelveli. Also, the ITD initiated search and seizure operations on a prominent business group, engaged primarily in the manufacturing of stainless steel and metal pipes, in Ahmedabad on 23.11.2021.

The complete text of the above Press Release(s) can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1030/PressRelease-ITD-conducts-search-operations-in-Tamil-Nadu-7-12-21.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1029/PressRelease-ITD-conducts-search-operations-in-Gujarat-7-12-21.pdf

11. ITD conducts search operations in West Bengal & Gujarat & Karnataka - Press Release(s), dated 10-12-2021 & 14-12-2021

The ITD initiated search operation in the case of two major manufacturers and suppliers of refined lead, lead alloys and lead oxides on 07.12.2021. The search operation covered 24 premises spread over in the states of West Bengal and Uttar Pradesh. Also, the ITD initiated search and seizure operation on 03.12.2021 on a prominent group of Surat, engaged in the business of construction of residential and commercial complexes, land transactions as well as real estate financing. The search action covered more than 40 premises spread over Surat and Mumbai. Further, the ITD carried out search and seizure operations on 02.12.2021 on four Bangalore based Credit Cooperative Societies (CCS) and their associates.

The complete text of the above Press Release(s) can be downloaded from the link below:

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1032/PressRelease-ITD-conducts-search-operations-in-WestBengal-10-12-21.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1031/PressRelease-ITD-conducts-search-operations-in-Gujarat-10-12-21.pdf

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1033/Press-Release-IT-Department-conducts-searches-in-Karnataka-dated-14-12-2021.pdf

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GST

1. Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices

S. No. 4 of *Circular No. 156/12/2021* has been substituted vide *Circular No. 165/21/2021* to clarify that dynamic QR code is not required on the invoice issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act, 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees, wherever permitted by the RBI. This is so because such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

The complete text of the clarification can be accessed at ***Circular No. 165/21/2021-GST dt. 17.11.2021***

2. Clarification on certain refund related issues

Following clarifications have been issued in regard to refund:

(i) The time period within which an application for refund can be made shall not be applicable in cases of refund of excess balance in e-cash ledger.

(ii) Furnishing of certification/ declaration under rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in e-cash ledger as unjust enrichment clause is not applicable in such case.

(iii) The amount deducted/collected as TDS/ TCS under the provisions of section 51/ 52 of the CGST Act, as the case may be, and credited to e-cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilize such TDS/TCS amount only for the purpose of discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per his choice and availability of balance in the said ledgers. Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act, 2017 and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of CGST Act, 2017.

(iv) Clause (b) of Explanation (2) under section 54 of the CGST Act, 2017 is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports irrespective of the fact whether the refund claim is filed by the supplier or by the recipient. Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier.

Circular No. 166/22/2021-GST dt. 17.11.2021

3. Amendments in relation to services notified under section 9(5) of the CGST Act, 2017, the tax on which is payable by the electronic commerce operator

Notification No. 17/2017-CT (R) dt. 28.06.2017, issued under section 9(5) of the CGST Act, 2017, enlists services, the tax on which is required to be paid by the electronic commerce operator. The said notification has been amended as under:

(i) Hitherto, services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle were included in clause (i) of the notification. The said clause (i) has been amended to the effect that services by way of transportation of passengers by an omnibus or any other motor vehicle have also been included therein.

(ii) A new clause (iii) has been inserted in the notification to include supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises, within the list of services, the tax on which is payable by the electronic commerce operator. Here, specified premises would mean premises providing hotel accommodation service having declared tariff of any unit of accommodation above Rs. 7,500 per unit per day or equivalent.

Parallel amendments have been made in *Notification No. 14/2017-IT (R) dt. 28.06.2017* issued under section 5(5) of the IGST Act, 2017. The above amendments shall be effective from January 1, 2022.

Notification No. 17/2021-CT (R) dt. 18.11.2021 & Notification No. 17/2021-IT (R) dt. 18.11.2021

4. Amendments in relation to rate of tax applicable on services

Notification No. 11/2017-CT(R) dt. 28.06.2017 which prescribes the rate of CGST for services has been amended as under:

(i) Composite supply of works contract services provided for certain specific purposes to Central Government, State Government, Union territory, a local authority, a governmental authority or a government entity is liable to CGST @ 6% (effective rate 12%) or 2.5% (effective rate 5%), as the case may be. With effect from January 1, 2022, such services when provided to a governmental authority or a government entity shall be charged to CGST @ 9% (effective rate 18%). Thus, the lower rate of tax viz., 12%/5% shall be applicable only when such services are provided to Central Government, State Government, Union territory or a local authority.

(ii) With effect from January 1, 2022, job work services of dyeing or printing of textile and textile products shall not be liable to CGST @ 2.5% (effective rate 5%). The same shall be liable to CGST @ 6% (effective rate 12% when undertaken for registered principal) or 9% (effective rate 18%) when undertaken for un-registered principal.

Parallel amendments have been made in rate *Notification No. 8/2017-IT (R) dt. 28.06.2017* issued under the IGST Act, 2017. The above amendments shall be effective from January 1, 2022.

Notification No. 15/2021-CT (R) dt. 18.11.2021 & Notification No. 15/2021-IT (R) dt. 18.11.2021

5. Amendments in relation to exemption available on services

Notification No 12/2017- CT(R) dt. 28.06.2017 providing exemption for services has been amended as under:

(i) Exemption available on supply of pure services (excluding works contract service or other composite supplies involving supply of any goods) and composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution to a Governmental Authority or a Government Entity, has been withdrawn.

(ii) The exemption on services of transport of passengers, with or without accompanied belongings,

a. by non-air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire, or

b. stage carriage other than air-conditioned stage carriage;

shall not be available if such services are supplied through an electronic commerce operator and are notified under sub-section (5) of section 9 of the CGST Act, 2017.

(iii) The exemption on service of transportation of passengers, with or without accompanied belongings, by metered cabs or auto-rickshaws (including e-rickshaws) shall not be available if such services are supplied through an electronic commerce operator and are notified under sub-section (5) of section 9 of the CGST Act, 2017.

Parallel amendments have been made in exemption *Notification No. 9/2017-IT (R) dt. 28.06.2017* issued under the IGST Act, 2017. The above amendments shall be effective from January 1, 2022.

Notification No. 16/2021-CT (R) dt. 18.11.2021 & Notification No. 16/2021-IT (R) dt. 18.11.2021

6. Correction of inverted duty structure in textiles and footwear sector

The GST Council at its 45th meeting had made a recommendation for making GST rate changes to correct inverted duty structure in footwear and textiles sector. To give effect to the said recommendation, *Notification No. 1/2017-CT(R) dt. 28.06.2017* prescribing CGST rates for goods has been amended to provide a uniform CGST rate of 6% (effective rate 12%) on manmade fibre, manmade fibre yarn, manmade fibre fabrics and apparel. At present, CGST rates on manmade fibre, manmade fabric yarn and manmade fabric are 9%, 6% and 2.5% respectively.

For footwear, a uniform CGST rate of 6% (effective rate 12%) has been notified and the price differential has been done away with. At present, CGST @ 2.5% (effective rate 5%) is applicable on footwear up to Rs 1,000.

Parallel amendments have been made in rate *Notification No. 1/2017-IT (R) dt. 28.06.2017* issued under the IGST Act, 2017. The above amendments shall be effective from January 1, 2022.

Notification No. 14/2021-CT(R) dt. 18.11.2021 & Notification No. 14/2021-IT(R) dt. 18.11.2021

7. Tenure of Anti-Profiteering Authority extended to five years

With effect from 30.11.2021, rule 137 of the CGST Rules, 2017 has been amended to extend the tenure of National Anti-Profiteering Authority from existing 4 years to 5 years. Thus, the Authority shall cease to exist after the expiry of five years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

Notification No. 37/2021 – Central Tax dt. 01.12.2021

8. Amendments made in Form GST DRC-03

Following changes have been made in Form GST DRC-03:

(i) The heading of the Form has been changed as under:

"Intimation of payment made voluntarily or made against the SCN or statement or intimation of tax ascertained through FORM GST DRC-01A"

(ii) The causes of payment in item no. 3 have been expanded. Now, the drop-down list will provide "Audit, inspection or investigation, voluntary, SCN, annual return, reconciliation statement, scrutiny, intimation of tax ascertained through FORM GST DRC-01A, Mismatch (Form GSTR-1 and Form GSTR-3B), Mismatch (Form GSTR-2B and Form GSTR-3B), others (specify)"

(iii) Item no. 5 which require to provide the "details of SCN, if payment is made within 30 days of its issue" has been amended to further include "scrutiny, intimation of tax ascertained through Form GST DRC-01A, audit, inspection or investigation, others (specify)".

(iv) A separate column mentioning "Fee" has been inserted in the table of serial No. 7 which requires the details of payments made.

Notification No. 37/2021 – Central Tax dt. 01.12.2021

FEMA Updates

External Commercial Borrowings (ECB) and Trade Credits (TC) Policy – Changes due to LIBOR transition

A.P. (DIR Series) Circular No. 19 dated December 08, 2021

In view of imminent discontinuance of LIBOR as benchmark rate it has been decided to make following changes to all-in-cost benchmark and ceiling for FCY ECBs / TCs:

i. Redefining benchmark rate for FCY ECBs/ TCs:

The benchmark rate in case of FCY ECB/TC shall now be any widely accepted interbank rate or alternative reference rate (ARR) of 6 month tenor, applicable to the currency of borrowing. LIBOR has now been replaced with any accepted interbank rate.

ii. Change in all-in-cost ceiling for new ECBs/ TCs:

To take into account differences in credit risk and term premia between LIBOR and the ARRs, the allin-cost ceiling for new FCY ECBs and TCs has been increased by 50 bps to 500 bps and 300 bps, respectively, over the benchmark rates.

iii. One time adjustment in all-in-cost ceiling for existing ECBs/TCs:

To enable smooth transition of existing ECBs/ TCs linked to LIBOR whose benchmarks are changed to ARRs, the all-in cost ceiling for such ECBs/ TCs has been revised upwards by 100 basis points to 550 bps and 350 bps, respectively, over the ARR. AD Category-I banks must ensure that any such revision in ceiling is only on account of transition from LIBOR to alternative benchmarks.

There is no change in the all-in-cost benchmark and ceiling for INR ECBs/ TCs.

Introduction of Legal Entity Identifies for Cross-Border Transactions

A.P. (DIR Series) Circular No. 20 dated December 10, 2021

The Legal Entity Identifies (LEI) is a 20 digit number user to uniquely identify parties to financial transactions worldwide to improve the quality and accuracy of financial data systems. LEI has been introduced by the Reserve Bank in a phased manner for participants in the over the counter (OTC) derivative, non-derivative markets, large corporate borrowers and large value transactions in centralised payment systems.

In order to get the benefits of LEI it has been decided that AD Category I Banks with effect from October 1, 2022 shall obtain LEI from resident entities (non individuals) undertaking capital or current account transactions of Rs. 50 crore and above (per transaction) under FEMA, 1999.

As regards to non-resident counterparts/overseas entities if LEI is not available, AD Bank may process transactions to avoid disruptions. Further AD Category I Banks may encourage concerned entities to voluntarily disclose LEI while undertaking transactions even before October 1, 2022. Once LEI is obtained, it must be reported in all transactions of that entity, irrespective of transaction size.

Entities can obtain LEI from any of the Local Operating Units (LOUs) accredited by the GLEIF, the body tasked to support the implementation and use of LEI. In India, LEI can be obtained from Legal Entity Identifier India Ltd. (LEIL) (https://www.ccilindia-lei.co.in), which is also recognised as an issuer of LEI by the Reserve Bank under the Payment and Settlement Systems Act, 2007. The rules, procedures and documentation requirements may be ascertained from LEIL.

Committee on Management Accounting
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

About PQC- Diploma on Management and Business Finance (DMBF) Course

The Committee on Management Accounting (CMA) of ICAI is launching its 3rd batch of PQC- Diploma on Management & Business Finance (DMBF) Course to impart the nitty-gritties of finance amongst the members of the Institute. The course has been specifically designed to provide an in-depth and comprehensive knowledge of theoretical as well as practical aspects of Management and Business Finance, in a very practical and simplified manner.

Course Objectives

- To enable the members to gain acumen, expertise and in-depth knowledge in the areas of Management and Business Finance.
- The programme allows professionals to gain deep strategy and leadership insights, specialize in Finance and enhance their decision-making abilities as well as strengthen their managerial skills.
- Introduce participants to recent developments in theory and practice through multiple case studies of management relating to core business functions and disciplines.
- To sharpen the managerial competencies and skills of the members so that they can contribute to the clients/ organizations/ Firms they work for, more effectively and diligently.
- To provide a framework for business Finance while giving practical advice when using the framework in its application to operational situations on Finance side.
- To gain a competitive edge in their decision making by providing them with advanced knowledge and understanding of some of the very important areas in Finance.
- To provide an opportunity to the participants to understand their self, explore their personal leadership philosophy and style, with a view to reinventing their leadership skills.

Post Qualification Course

Diploma on Management and Business Finance (DMBF) Course is approximately a one-year course which includes:

- 80 hours of class room training sessions
- 80 hours of e- learning Sessions
- Three weekends online program
- Examination by Examination Department of ICAI with negative marking of 0.25 marks.

Eligibility Criteria for appearing in Exams

a. A candidate has to mandatorily fulfil the Minimum Attendance criteria of 75% of 80 Hours of the total online classroom training sessions.
b. A candidate has to mandatorily complete 100% of 80 hours of sessions through e-learning modules.
c. A candidate has to mandatorily fulfil the Attendance criteria of 100% in the Three Weekends Online program.

Exam Pattern

a. Examination department will take the online examinations of two hours each subject for 80 marks multiple choice questions with negative marking of 0.25 marks.
b. For remaining 20 marks, internal assessment would be done by Committee for the various project works/presentations during the online Program w.r.t. each subject.

Passing Criteria

1. A candidate will be declared pass in a group if he/she secures 40 percent marks in each subject of the group and 50 percent marks in project work/internal assessment w.r.t. each subject and a minimum of 50 percent marks in aggregate of that group at one sitting.
2. A candidate will be declared pass in PQC-DMBF course if he/she passes all three groups of PQC-DMBF.

Course Fee:

- The total fee of the course including Online classroom training sessions, e-learning Modules program and Three Weekends Online program (excluding examination fee) is Rs.70,000/-(Rupees Seventy Thousand only).
- Examination Fee: The examination fee will be as decided by the Examination Committee.

Important Dates

Last date of Registration:
18thJan., 2022

Classes to Commence:
22nd Jan., 2022
(subject to minimum required registrations)

For detailed information about the Course and registration
kindly visit the following registration link: **https://learning.icai.org/committee/accounting/dmbf-b3/**
For Prospectus, kindly visit the link: **https://resource.cdn.icai.org/67202cma54115.pdf**
For further clarification, you may contact the Committee Secretariat at:
Telephone No. 011-30110469, | Email Id: cma@icai.in.

INTCON '22

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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29th (Saturday) & 30th (Sunday) January, 2022

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KOLKATA

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Participation Certificate for all	Participation of Students of major International Accounting Bodies	Excellent Opportunity to exchange Ideas	

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Rs. 149/- per student (Virtual)
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Members are requested to promote International Conference amongst the CA Students and Articles.

Campus for Newly Qualified Chartered Accountants (NQCAs)

February- March, 2022

Maintaining strong and spontaneous relationship with the industry and other business houses remains the main focus of the Committee for members in Industry & Business (CMI&B) of the Institute of Chartered Accountants of India (ICAI). An initiative to that effect remains the Campus Placement Programme (held twice a year) that provides a platform to both the NQCAs and the organizations looking for to hire the best available talents to fulfil their human resource requirement. ICAI simply acts as a facilitator to bring the recruiter and NQCAs together.

Invitation to Organisations - Any corporation, irrespective of its size, standing in the market and boundary of its business, can take part in this placement programme being held at several centers across the country during February- March, 2022.

Campus Interview Schedule:

No.	Centre	Dates
1	Mumbai	10th, 12th, 14th, 16th, 17th, 21st & 23rd March, 2022
2	Delhi	11th, 15th, 17th, 22nd, 24th, 25th & 26th March, 2022
3	Bengaluru	12th, 14th, 16th, 17th, 21st & 23rd March, 2022
4	Chennai	14th, 16th, 17th, 21st, 23rd & 25th March, 2022
5	Kolkata	15th, 17th, 22nd, 24th, 25th & 26th March, 2022
6	Ahmedabad & Hyderabad	22nd, 23rd & 24th March, 2022
7	Jaipur & Pune	24th, 25th & 26th March, 2022
8	Durgapur, Nagpur & Rajkot	13th April, 2022
9	Ernakulam & Visakhapatnam	16th April, 2022
10	Kanpur	18th & 19th April, 2022
11	Noida & Thane	20th & 21st April, 2022
12	Bhubaneswar & Chandigarh	22nd & 23rd April, 2022
13	Coimbatore & Indore	25th & 26th April, 2022

Invitation to Candidates: The above Campus is meant for the candidates, who would be passing the CA Final examination held in Dec, 21 and also for others who have qualified earlier and are fulfilling the criteria mentioned in the Announcement.

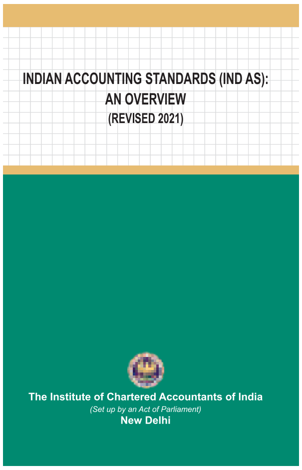
Organizations intending to recruit NQCAs through campus scheme are requested to get in touch with the CMI&B Secretariat, ICAI Bhawan, Indraprastha Marg, New Delhi -110002, and Email: **campus@icai.in,** Tel No. (011)30110555 and to register log on to **https://cmib.icai.org/.**

Candidates may email at **cajob@icai.in,** Tel No. (011)30110491/550 and to register log on to **https://cmib.icai.org/.**

Chairman
Committee for Members in Industry & Business
The Institute of Chartered Accountants of India

Organised By:
Committee for Members in Industry & Business (CMI&B)
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
'ICAI BHAWAN', Post Box No.: 7100, Indraprastha Marg, New Delhi – 110002 Tel. No.: (011) 30110555 | E-mail: campus@icai.in

New Publication Release



Ind AS Implementation Committee of the ICAI has been making relentless efforts in making smooth and effective transition to Ind AS in the country. In this regard, the Committee has recently brought out the following publication:

- Indian Accounting Standards (Ind AS): An Overview (Revised 2021)

Indian Accounting Standards (Ind AS): An Overview (Revised 2021)

Pursuant to amendments made to Ind AS vide notification dated June 18, 2021, the earlier issued publication has been revised and new edition of "Indian Accounting Standards: An Overview (Revised 2021)" has been formulated to suitably capture the said amendments. It is the sixth edition of the publication which contains an overview of various aspects related to Indian Accounting Standards (Ind AS) such as roadmap for the applicability of Ind AS, carve-outs from IFRS/IAS, changes in financial reporting under Ind AS compared to financial reporting under accounting standards, summary of all the Ind AS etc.

Price: Rs. 300/-

The soft copy of the publication is available at the website of ICAI.

Ordering Information:

Available at: The publication can be purchased directly from the ICAI Central Distribution System (CDS Portal) by signing up and placing order on online store through following link: https://icai-cds.org/

To order by post, request may be sent along with a demand draft for the amount of the price of the publication plus the shipping charges in favour of "The Secretary, The Institute of Chartered Accountants of India", payable at New Delhi, to the Postal Sales Department, The Institute of Chartered Accountants of India, ICAI Bhawan, A-29, Sector-62, Noida – 201309 (U.P) or alternatively at postalsales@icai.in

Classifieds

5882 A 34 year old Lucknow based CA firm invites proposals for partnership from new / senior members or retired members from banks or PSUs. Contact : 9415101759, 9120130708, shivnarainabha@yahoo.co.in

5883 Gujarat headquartered CA firm, established in 1980, is looking for Chartered Accountants to onboard as Partners. Please send email at: cafirmgujarat@gmail.com

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Accountants Creating a Digital and Sustainable Economy

ABOUT THE CONFERENCE

Accountants Creating a **Digital** and **Sustainable** Economy

The ICAI has been playing a pivotal role in developing a resilient reporting framework for sustained economic growth of the nation from the past seven decades. The accountancy profession has endeavored to bring in the best global practices and standards for a robust financial reporting and assurance framework, thus inspiriting trust and confidence amongst the stakeholders.

The ICAI, recognizing its role and responsibility to the stakeholder community and contributing in promoting public interest through resilient practices for a vibrant economy, organize the International Conference every year. ICAI is excited to organize its flagship event – the ICAI International Conference "Accountants Creating a Digital and Sustainable Economy" on January 21-22, 2022 at Jio World Centre, Mumbai. The conference would dwell deeper on various issues and challenges being faced by the profession, especially the importance of digitization and the need to create a sustainable world.

The International Conference would be an apt platform for exchange of ideas through interactive discussion amongst the global and local stakeholders and is recommended to be attended by all those who wish to remain updated with the current issues and learnings from the crisis.

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THEMATIC ISSUES

DAY 1

- Building a Sustainable Economy Through Tax Reforms
  - Enhancing Tax Transparency through Sustainable Tax Policy
  - GST- Setting Stage for Self Reliant India
  - Navigating Cross-Border Tax Landscape
- Building Trust Through Ethical Leadership
- Think Equal for a Progressive World
- India@75 – Vision for Self-Reliant India
- Fintech leading India's Growth Story
- Accountants Creating a Sustainable World
- Future of Audit and Finance in Digital Era
- India – The Global Growth Engine

DAY 2

- Future of Leadership
- Young CAs changing the World
- Enhancing Trust through Assurance Function
- Chartered Accountancy – The Global Profession
- Future of Cryptocurrency
- Future of India's Digital Payments System
- Build your Practices in Emerging Avenues
  - Virtual CFO Services
  - Forensic Accounting and Investigation
  - Valuation-Emerging Professional Avenues for CAs

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If you would like to get involved in the ICAI International conference 2022, please contact us:
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ICAI in Media

ICAI in Media : Glimpses of November - December, 2021

BusinessLine
Mumbai, November 27, 2021

Reconsider tax audit threshold limit of ₹10 crore, ICAI tells govt

'Higher limit of ₹10 crore may lead to revenue leakages, especially in the current faceless assessment regime'

KR SRIVATS
New Delhi, November 26

The CA Institute has urged the government to reconsider the new threshold limit of ₹10 crore for tax audit of individuals and small entrepreneurs. The threshold was raised in the 2021 Budget.

This suggestion has been made in the pre-Budget memorandum submitted by the CA Institute to the Finance Ministry, sources said. It has highlighted that digital economy cannot be propped up at the cost of revenue loss to the exchequer.

It maybe recalled that the government had in Budget 2021 offered major relief for companies that transact digitally. To incentivise non-cash digital transactions and reduce the burden of compliance of small and medium enterprises, the government had, this year, increased the threshold limit for tax audit from ₹5 crore to ₹10 crore in the case of certain individuals.

The Finance Act 2020 had increased the tax audit limit for a person carrying on business from ₹1 crore to ₹5 crore, subject to a condition that cash receipts and cash payments during the year do not exceed 5 per cent of the total receipts/payments. The Finance Act 2021 further increased this limit to ₹10 crore.

Accordingly, any person carrying on business shall not be required to get his account audited by an accountant (and file tax audit report) if his total sales/turnover/gross receipts do not exceed ₹10 crore and cash payments during the year do not exceed 5 per cent of total receipts/payments.

ICAI viewpoint

Although the resolve of the government in respect of ease of doing business especially for small and medium enterprises and moving towards digital economy is appreciable, there are certain concerns and issues that merit consideration from a revenue augmentation and tax collection standpoint, the ICAI has said in its pre-Budget memorandum.

Digital economy cannot be done at the cost of revenue loss to the exchequer. Some small and medium enterprises do want to pay taxes because of fear of audit as they are complying with various laws, the ICAI has said.

To incentivise non-cash digital transactions, the government had, this year, increased the threshold limit for tax audit from ₹5 crore to ₹10 crore in the case of certain individuals

"The steep increase in the threshold for tax audit from ₹5 crore to ₹10 crore may pose concerns relating to revenue leakage especially in the current faceless assessment regime," the ICAI said.

Importantly, these assessees presently maintain books only because they are liable for tax audit. By raising the threshold for tax audit, these entities may get to indiscipline of no proper records, the ICAI has said.

The particulars required to be filled in the various clauses in Form 3CD (tax audit report) facilitates the Assessing Officers in carrying out and completing the Assessment. "Further, considering the thrust on faceless assessments, a tax audit is in fact all the more important now. It will help the tax department get information from the tax audit," ICAI said.

The ICAI highlighted that since the time tax audit was first introduced in 1984, the gross tax collections had risen leaps and bounds. From a level of ₹3,000-4,000 crore in 1984, the tax collection is now ₹13.5-lakh crore and tax audit has contributed significantly to such increase. The importance of tax audit, therefore, cannot be undermined as a mere compliance which is viewed as burdensome, without appreciating its contribution to the exchequer, the ICAI has said.

Tax audit report revision

CA Institute also wants the Finance Ministry to allow tax audit reports to be revised for minor clerical errors on the lines of revision allowed for income-tax returns.

Currently, the system allows revision of filed audit report, but in this case a new audit report has to be uploaded and new UDIN has to be generated.

The CA Institute wants a mechanism where for clerical errors, the audit report can be revised with the same UDIN and thereby delays can be avoided.

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sunday pioneer
HYDERABAD | SUNDAY | DECEMBER 19, 2021

ICAI will soon get powers to act against erring partnership

PNS ■ NEW DELHI

Chartered accountants' apex body ICAI will soon have powers to initiate disciplinary action against erring partnership firms as well, with the government proposing amendments to the Chartered Accountants Act.

The apex institutes for cost accountants and company secretaries too will get similar powers. As part of efforts to bolster the disciplinary mechanism of the ICAI as well as the institutes of cost accountants and company secretaries, Corporate Affairs Minister Nirmala Sitharaman on Friday introduced a bill in the Lok Sabha to amend the Acts governing these professions.

Over the years, the government has taken various measures to curb possible corporate misdoings. In recent years, the role of some chartered accountants has come under the regulatory scanner.

Against this backdrop, the proposed amendments seek to empower ICAI to take disciplinary action against partnership firms of Chartered Accountants (CAs).

At present, the Institute of Chartered Accountants of India (ICAI) can only initiate action against its members.

ICAI President Nihar N Jambusaria told PTI that the proposed amendments to the Act would empower the institute to take action against partnership firms. Various amendments have been proposed to the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980. The Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Bill, 2021 was introduced in the Lok Sabha on Friday.

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