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THE CHARTERED ACCOUNTANT

JOURNAL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

Technology & the Future Fit Accountant

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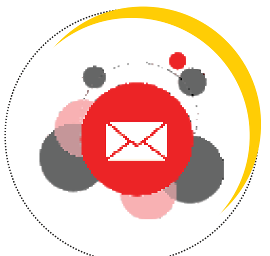

#Any other professional topic in mind?

Write and send to eb@icai.in

Technology: Shaping the Future of the Accountancy Profession

In the modern society, technology has acquired such a quintessential space that it is impossible to imagine life without it. Today technology is enabling business organisations to improve processes, enhance productivity, remove redundancies, drive down costs and streamline compliances. Use of technology is freeing up more time for organisational management to act proactively and focus on the strategic work that adds value. Managing a business is a complex process and requires a proactive approach as they are confronted from all sides by technological visionaries, forerunners and developers seeking to disrupt existing processes. Technological solutions and the ability to rapidly adapt is helping dynamic businesses to move ahead strategically to disrupt rather than get disrupted.

In the area of finance, new technologies are driving the change as they are closely intertwined with its core functioning. Finance function amalgamated with technology led to the development of Fintech, thus facilitating banking and finance services to many. A direct advantage of use of technology is providing better opportunities for inclusiveness. In spite of decades of growth, a very significant proportion of population in the emerging Indian economy remains underbanked or underserved with income and wealth disparities. Technology is bringing financial services to their doorsteps opening avenues for paradigm change.

These changes have a far and wide impact on the way things are done. Blockchain, robotics, automation, artificial intelligence, data analytics, forensic accounting – there seems to be no dearth of the innovative tools transforming business and society and impacting the profession of Chartered Accountancy. There has been metamorphic transformation in basic accountancy as there is no need to write accounts by hand. Use of accounting software has helped systematize financial system in business organisations to automate processes. In modern accounting checks and balances are created within the system and even the complex task of account finalisation has become simple, gets completed quickly and drastically reduces chances of errors. In the evolving technological landscape there is a gradual shift to the triple entry system wherein all accounting entries are cryptographically sealed by a third entry and thus making manipulations and financial frauds extremely difficult, if not impossible.

There is a plethora of initiatives that have been taken consistently by ICAI imbibing the best of technological tools to improve services and upskill members with the latest knowledge and gain professionally. With the pace of rapid technological changes, rising regulatory expectations, and the aim in making interaction with the members simple, the Institute has introduced a self-service portal where members can place requests eliminating the need for paperwork. While this was completed prior to the pandemic, the results of this were much enjoyed during the last year and half amid the lockdown. Another recent initiative was to introduce a state of art Digital Learning Hub to deliver multiple courses which were self-paced coupled with assessments, making it friendly for members and students. It is also a matter of great pride to successfully conduct, prior to the pandemic, the first digital exam for members in the domain of forensic accounting and fraud detection and information systems audit. Complimenting regulatory function, e-hearing of disciplinary cases is helping in faster and smoother disposal of cases. ICAI has also introduced Version 2 of the Digital competency maturity model for CA firms along with the implementation guide. The same was pushed into the e-learning portal as a digital course and self-assessment questionnaire. The list is endless as many such changes are routinely happening.

In the past, the profession has adapted and thrived adopting technology, but success is not a given. The most common myth is that technology is a magic wand which can solve all problems. Technology is only an enabler and using it effectively is the most crucial aspect. The profession will achieve success only by careful and thorough responses to the challenges and remain proactive to those that are likely to come. In the words of Steve Jobs, *'Let's go invent tomorrow instead of worrying about what happened yesterday.'*

-Editorial Board ICAI: Partner in Nation Building

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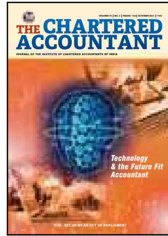

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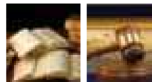

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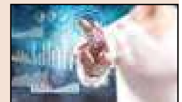

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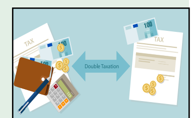

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From the President

CA. Nihar N. Jambusaria
President, ICAI

Dear Professional Colleagues,

In the 2021 report released this month, the United Nations Conference on Trade and Development (UNCTAD) expects the Indian GDP to grow at 7.2% in the year 2021. The UN body also discerns India to outpace all other major economies to achieve the highest growth rate next year, though it shall be slower at 6.7%. It is indeed a healthy recognition of the potential and resilience of the Indian economy. In the bewildering confines of the pandemic, we all have learnt to work our ways around new challenges that transformed our ways of working, living, and getting around with everything.

"One can choose to go back towards safety or forward towards growth. Growth must be chosen again and again; fear must be overcome again and again", said Abraham Maslow. In order to face new challenges posed by the pandemic, the personal characteristics like hard work, perseverance, adaptability, independence, integrity and excellence have been the lifeline for the professionals to respond to new requirements and continue working in all possible aspects. Technology has been truly a great saviour in these challenging times. Businesses, offices, and educational institutions have been able to keep going, all thanks to technology that connects us and enables essential functions to continue despite the obstacles. What has become a vital component of growth for the accounting profession is the shift towards the digital workspace. Accounting professionals have the benefit of ascertaining processes in a seamless way and arriving at decisive results efficiently while assisting other constituents of economy.

Learning how to adapt, accommodate and fine-tune the digital mode of functioning including learning theoretical and practical skills, can ensure that future professionals will have attributes that will be relevant not only to the qualified professionals like CAs but also ensure continuation of services and other essential functions that are primarily based on digital platforms in the face of disruptions. With this, the future professionals will be able to keep pace with both technological and societal challenges. Every challenge is an opportunity to improvise and develop innovative ways of dealing with it and as such we must continue to learn and grow from such events.

This September, ICAI has formally set the ball rolling for ICAI's triennial elections to choose the members of 25th Central and 24th Regional Councils. The elections provide an opportunity for members of the Indian Accounting profession to assert themselves and choose the persons whose priorities and ideas best suit for the profession. I am sure that you are going to vote with integrity and responsibility to elect worthy candidates in the overall interests of accountancy profession and Indian economy.

Presentation before Parliamentary Standing Committee

ICAI, as a partner in Nation Building works closely with the Indian Government on various matters to ease out challenges and build a conducive growth ecosystem. Recently, Department-related

Parliamentary Standing Committee on Transport, Tourism and Culture, comprising 31 Members of Parliament, headed by Shri T.G. Venkatesh, Hon'ble M.P., Rajya Sabha, invited ICAI as well as industry representatives to hear views/ inputs on the efficacy of the relief and audit measures put in place by the Government of India for various sectors viz., civil aviation, road, shipping, hospitality, heritage and culture, to tackle the difficulties faced on account of the Coronavirus pandemic. A meeting of members holding senior positions in some of the industries was held virtually to discuss the matter and take inputs on the same. Based on these views, I made a presentation before the Parliamentary Standing Committee on 9th September, 2021.

Union Cabinet Minister of Fisheries, Animal Husbandry and Dairying visits ICAI

I am pleased to inform that Union Cabinet Minister of Fisheries, Animal Husbandry and Dairying, Shri Parshottam Rupala visited the Institute and addressed the Council meeting on September 17th, 2021. He complimented ICAI and its Members for contributing to the economic development of the Country and towards nation building efforts. He also launched a handbook on MDP-CAs in Practice-Guidelines, FAQs & Reference Material during his visit. We assured him to provide comprehensive support and contribution in strengthening the process of growth and development in the concerned sectors. Further, discussions were made on the challenges faced by the cooperatives and how the accounting profession can contribute in their functioning and growth. ICAI assured its services and offered helping hand to the Ministry.

Residential Meet of CA Members in Public Service

A Residential Meet of CA Members in Public Service was recently organised in Udaipur which witnessed participation of our Members in Parliament, Judiciary and Appellate Authority, from administrative services like IAS, IFS, IPS, IRS and Others. The Inaugural session was graced by Hon'ble Maharaj Kumar Sahib Lakshyaraj Singh Ji, Mewar of Udaipur. He expressed that Chartered Accountants are the backbone of economy and play a critical role in the industrial development. CA. Suresh P. Prabhu, Hon'ble Member of Parliament & Former Union Minister also graced the occasion with his words of appreciation for ICAI about its increasing role in Governmental policy making and implementation in discharge of justice, ensuring law and order or foreign policy or statutory administration. CA. Thomas Chazhikadan, Hon'ble Member of Parliament, Lok Sabha and CA. Subhash Chandra Baheria, Hon'ble Member of Parliament, Lok Sabha expressed that such Residential Meets help in bringing the profession closer with discussions and suggestions.

Leadership and Positioning the Profession at Global level

In the present challenging times, globalisation has acquired a new, fast, and more comprehensive form, with India emerging as a potentially dominant player. The rapidly growing Indian economy and the efforts taken by the Indian Government to improve the ease of doing business have reemphasised the need for globalisation for Indian accountants. Earlier, the Union Cabinet approved a proposal of the Department of Commerce to focus on 12 Champion Services Sectors for promoting their development and realizing their potential. With accounting and finance services as one of the champion sectors, ICAI has an important role to play. ICAI has been expanding its network and activities to various countries in order to bring new dimensions to collaborative growth. In this regard, I am pleased to inform about the following developments:

Virtual Signing Ceremony of MoU with CA ANZ

We signed an MoU with Chartered Accountants Australia and New Zealand (CA ANZ) at a virtual event on September 10, 2021 for a period of 5 years. With this MoU, the two Institutes shall recognize the qualification, training and admit the members in good standing by prescribing a bridging mechanism and would pave way for enhanced professional opportunities for members at either end.

Approval of MoUs by Union Cabinet

In a further development, the Union Cabinet, chaired by the Hon'ble Prime Minister, Shri Narendra Modi, has approved the MoU between the Institute of Chartered Accountants of India (ICAI) and Institute of Professional Accountants

From the President

of Russia (IPAR) on August 25, 2021 and MoU between the ICAI and The Chamber of Auditors of the Republic of Azerbaijan (CAAR) on September 8, 2021. Both these MoUs are expected to be signed soon. These MoUs would help in establishing mutual cooperation with the respective Institutes and with these additions ICAI now has a total 23 MoUs/MRAs with global organisations.

Virtual launch of South Africa (Johannesburg) Chapter and Thailand (Ang Thong) Representative Office of ICAI

ICAI inaugurated its 44th Chapter in South Africa (Johannesburg) and Representative Office at Ang Thong, Thailand in a virtual ceremony on August 21, 2021. The event was graced by Ms. Anju Ranjan, Hon'ble Consul General of India to Johannesburg, South Africa; CA. Mahaveer Singhvi, Joint Secretary, Ministry of External Affairs, Govt. of India; Mr. Freeman Nomvalo, Chief Executive Officer, South African Institute of Chartered Accountants (SAICA) and other eminent guests. The Institute now has 44 Overseas Chapters and 25 Representative Offices in 69 cities of the world spanning across 45 countries.

FROM THE PRESIDENT

International Research Awards

ICAI under the aegis of the Research Committee organised an Award Presentation Ceremony for the "ICAI International Research Awards 2021" on 31st August 2021 (Tuesday) in the presence of Chief Guest Shri Ramesh Bais, Hon'ble Governor of Jharkhand. Mr. Allan Johnson, President IFAC addressed the awardees through virtual mode. A total of 14 Research papers were awarded in "ICAI International Research Awards 2021".

Promoting Hindi Language

At a time when the whole world is looking at India as a global leader, successor and torch bearer, our language must also be a global beacon. With the government's focus on making India, 'Aatmanirbhar Bharat', it also focuses on us being 'Aatmanirbhar' with our mother tongue and its nationalistic approach. 14th September is marked as Hindi Diwas and this day gives us a message to be proud of our heritage with a focus on language. I believe there should not be a specific day for Hindi, rather, Hindi should be part of our life. This day reminds us of our heritage and linguistic identity. We should be proudly speaking our *rajbhasha* on any occasion. Realising the power of our mother tongue Hindi, ICAI is trying to incorporate more use of Hindi into its work culture. As part of the professional behaviour, all the employees took the *Rajbhasha Pledge* to use and promote Hindi in our lives on this day. Members are also encouraged to adopt Hindi language in their work and interactions with other stakeholders.

Hearty Congratulations to meritorious ICAI Students

This month ICAI released the results of Chartered Accountancy examinations held in July 2021. In a brilliant streak, girls swept the top ranks in both old and new courses in final examinations. The achievers proved that success needs just dedication and stern will power. The high percentages secured by these, and other students prove the abilities and mettle of CA students. On our part, we have always motivated the younger generation to give their best in academics so that they can contribute to the success of the country with their honest approach and zeal.

Heartiest greetings on Gandhi Jayanti!

Mahatma Gandhi said *"Men often become what they believe themselves to be. If I believe I cannot do something, it makes me incapable of doing it. But when I believe I can, then I acquire the ability to do it even if I didn't have it in the beginning."* While life has ups and downs, frustrations and happy moments, it also offers satisfaction and success. For professionals, knowledge, skills, leadership, purpose, responsibility, creativity, discipline, independence, integrity, and excellence are some traits to vouch for to be successful life. As professional accountants, you must imbibe best values and provide the best of the learning to the budding accountants during practical training.

Stay safe, stay healthy. Best wishes.

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

Photographs

ICAI President CA. Nihar N. Jambusaria presenting a memento to Shri Ramesh Bais, Hon'ble Governor of Jharkhand at the Award Presentation Ceremony of 'ICAI International Research Awards 2021' in Ranchi (31-08-2021).

ICAI President CA. Nihar N. Jambusaria with Union Cabinet Minister of Fisheries, Animal Husbandry and Dairying, Shri Parshottam Rupala releasing a handbook on Multidisciplinary Partnership – Chartered Accountants in Practice. Also seen in picture ICAI Past Presidents CA. Prafulla Chhajed and CA. Atul Gupta, Central Council Members Adv. Vijay Jhalani (Govt. Nominee), CA. G Sekar, CA. M P Vijay Kumar and CA. Babu Abraham Kallivayalil (17-09-2021).

ICAI President CA. Nihar N. Jambusaria with Central Council Member (Govt. Nominee) Adv. Vijay Jhalani meeting Shri G. S. Pannu, Officiating President, Income Tax Appellate Tribunal (ITAT) (06-09-2021).

ICAI President CA. Nihar N. Jambusaria at the Tax Summit organised in Anand. Also seen in picture CA Manish Gadia (Chairman- WIRC of ICAI), CA. Hardik Patel (Chairman - Anand Branch), CA. Vinod Pahilwani (Chairman - Vadodara Branch), (14.09.2021).

ICAI President CA. Nihar N. Jambusaria with Central Council Member CA. Babu Abraham Kallivayalil on the occasion of signing of Memorandum of Understanding with Chartered Accountants Australia and New Zealand (CA ANZ). Also seen in picture, Ms. Nives Botica Redmayne, President, CA ANZ; Mr. Simon Grant, Group Executive, Advocacy & International, CA ANZ; Ms. Ainslie van Onselen, Chief Executive Officer (CEO), CA ANZ; Chairmen of ICAI Chapters at Australia and New Zealand and CA. Mudit Vashishtha, Secretary, International Affairs Committee (10-09-2021).

Photographs

ICAI President CA. Nihar N Jambusaria with Central Council Member CA. Jay Chhaira addressing the participants from ten countries with Dr Ashminder Singh Bahal, Consultant Dean, Centre of Excellence, Hyderabad at the inaugural session of Management Development Programme – Leadership beyond Boundaries (4-09-2021).

ICAI President CA. Nihar N Jambusaria with ICAI Past President CA. Jaydeep Narendra Shah on the occasion of designating a road as ICAI Bhawan Marg. Also seen in picture CA Manish Gadia Chairman WIRC, CA Sunil Salampuria Chairman, Amravati Branch with other members of Managing Committee (20-09-2021).

CA. Nihar N Jambusaria, President, ICAI inaugurating ICAI Marg in Akola in the presence of CA. Manish Gadia, Chairman, WIRC of ICAI, CA. Keyur Dedhia, Chairman, Akola Branch and other Managing Committee Members of Akola Branch of WIRC (21-09-2021).

ICAI President CA. Nihar N. Jambusaria with ICAI Past President CA. Prafulla Chhajed, at NISM-FRRB Webinar on Expectations from Listed Companies on Financial Reporting. Also seen in picture Mr. Avishkar Naik, Vice President, NSE, Mr. Rajesh Gujjar, General Manager, SEBI, Mr. M Krishnamoorthy, Faculty, NISM, Shri. Nagendraa Parakh, Executive Director, SEBI, Dr. V R Narasimhan, Dean, NISM, Mr. Sunil Kadam, Registrar, NISM, and and CA. Aakanksha Kapoor, Secretary, FRRB-ICAI (1-09-2021).

CA. Nihar N Jambusaria, President, ICAI with CA. Manish Gadia, Chairman, WIRC of ICAI, CA. Keyur Dedhia, Chairman, Akola Branch and other Managing Committee Members of Akola Branch of WIRC during the programme at branch (21-09-2021).

ICAI President CA. Nihar N Jambusaria with ICAI Past President CA. Jaydeep Narendra Shah inaugurating Tax Conclave in Nagpur. Also seen in picture CA. Manish Gadia, Chairman WIRC, CA. Saket Bagdia - Chairman, Nagpur branch and other Members Management Committee of Nagpur Branch (20-09-2021).

ICAI in Action

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

Aligning the Time Limit of Generating UDIN From 15 Days To 60 Days

Standard on Quality Control (SQC 1) on Retention Period for Engagement Documentation (Working Papers) requires firms to establish policies and procedures for the timely completion of the assembly of audit files. It further provides for an appropriate time limit within which the assembly of the final audit file is to be completed, ordinarily in not more than 60 days after the date of auditor's report. Due attention is also drawn to Standard on Auditing (SA)- 230 on Audit Documentation, paragraphs A21 to A24 on assembly of the audit file. With an aim to align the time limit for generating UDIN with the Standards on Auditing and Standard on Quality Control, it has been decided that the time limit of generating UDIN would be 60 days from the date of the signing of certificates/ reports/ document instead of 15 days henceforth.

For more details, please visit https://www.icai.org/post/aligning-the-time-limit-of-generating-udin-from-15days-to-60days.

Release of Exposure Drafts

From time to time ICAI releases various exposure drafts soliciting public comment on proposed standards and guidance notes: Opinions and comments received from members and other interested persons are used in the finalisation of documents and minimise any unintended consequences before document is actually put into practice. Recently, ICAI has released following documents where comments were invited:

- Exposure Draft of Revised AS 36, Impairment of Assets. Please visit https://www.icai.org/post/ed-of-revised-as-36-impairment-of-assets
- Exposure Draft of Guidance Note on Division I - Non Ind AS Schedule III to the Companies Act, 2013 - Please visit https://resource.cdn.icai.org/66368clcgc53609-a.pdf
- Exposure Draft of Guidance Note on Division II - Ind AS Schedule III to the Companies Act, 2013 - Please visit https://resource.cdn.icai.org/66369clcgc53609-b.pdf
- Exposure Draft of Guidance Note on Division III - NBFCs that are required to comply with Ind AS Schedule III to the Companies Act, 2013 – Please visit https://resource.cdn.icai.org/66370clcgc53609-c.pdf

15th ICAI Awards & Leadership Summit 2022

ICAI Awards is a mechanism devised to recognize the best out of the best to showcase a leading path for the others to follow. To implement this exercise, the Committee for Members in Industry & Business (CMI&B) of ICAI organises the ICAI Awards every year, to celebrate the success and hard work of its members working in industry or in business. The 15th ICAI Awards and Leadership Summit, 2022 will be organised on 15th January, 2022 in New Delhi.

For more details, please visit https://awards.icai.org/

Exemption of CA Course fee for students who have lost their any parent during Covid-19 pandemic

Registration fee of the CA Course at all levels including ICITSS [consisting of Information Technology (IT) and Orientation Course (OC)] and AICITSS [consisting Advanced Information Technology (Advanced IT) and Management and Communication Skills (MCS) Course] would be exempted for such students who have lost any of their parent during the Covid-19 pandemic after submission of requisite documents while registering in the CA Course. This scheme is applicable for the period 1st April 2020 to 31st March 2023.

For more details, please visit https://resource.cdn.icai.org/66451bos53709new.pdf

Relaxation in Study Period

Students who have cleared the July, 2021 Foundation Examination are required to register in the Intermediate Course till November 1, 2021 in order to appear in May, 2022 Intermediate Examination. Such students are hereby allowed to appear in the Intermediate Examination to be held in May, 2022 after completion of six months Study Period in place of eight months Study Period.

For more details, please visit https://www.icai.org/post/relaxation-study-period-for-students-appearing-may2022-interexam

Students converted from earlier scheme to revised scheme from July 21, 2021 to August 20, 2021 allowed to appear in Old/ New scheme in November, 2021 examination

"Opt out option" was given to examinees in case examinee himself/ herself or his/ her grandparents, parents, spouse, children and siblings (residing in the same premises) were infected with COVID-19 (with carryover of fee paid and exemptions granted) to the November, 2021 examination cycle. Thereafter, the last attempt to appear in CA Final and Intermediate Old Course examination was extended to November, 2021 examination irrespective of opting out of May, 2021 examination cycle. Accordingly, the students who have converted from earlier scheme to revised scheme from July 21, 2021 to August 20, 2021 are hereby allowed to appear in Old/ New scheme in November, 2021 examination. Accordingly, such students while filling the examination form for November, 2021 examination cycle, are required to specify the scheme they intend to appear.

For more details, please visit https://www.icai.org/post/students-converted-from-earlier-scheme-to-revised-scheme

Know Your Ethics

Q. Can a practicing Chartered Accountant secure any professional business through the services of a person who is not his employee or partner?

A. No, Clause (5) of Part-I of First Schedule to the Chartered Accountants Act, 1949 prohibits a practicing Chartered Accountant from securing any professional business, either through the services of a person who is not an employee of such Chartered Accountant, or who is not his partner.

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

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

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

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

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

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

A. A member in practice, engaged in coaching/ teaching activities in accordance with general and specific permission of the Council should

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abstain from advertisement of such coaching / teaching activities, as it may amount to indirect solicitation, as well as solicitation by any other means, and may therefore be violative of the provisions of Clause (6) of Part I of the First Schedule to the Chartered Accountants Act,1949. However, subject to the above, members engaging in teaching may display, outside their coaching/teaching premises, sign board mentioning the name of coaching/ teaching institute, contact details and subjects taught therein only. Please refer to paragraph 2.14.1.6 (iv) H under Clause (6) of Part I of First Schedule to the Chartered Accountants Act,1949 appearing in Volume II of Code of Ethics.

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

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

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

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

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

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

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

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

A. As per Paragraph 2.14.1.6 (iv) D under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949 as appearing in Volume II

of the Code of Ethics, a member is not permitted to mention in a book or an article, published by him, or a presentation made by him, any professional attainment(s), whether of the member or the firm of Chartered Accountants, with which he is associated. However, he may indicate in a book, article, or presentation the designation "Chartered Accountant" as well as the name of the firm.

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

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

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

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

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

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

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

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

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

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

Q. Can a Chartered Accountants firm give advertisement in relation to Silver, Diamond, Platinum or Centenary celebration of the firm?

A. Yes, as per Paragraph 2.14.1.6(iv)F under Clause (6) of Part-I of First Schedule to the Chartered Accountants Act,1949 appearing in Volume-II of Code of Ethics, considering the need of interpersonal socialization/relationship of the members through such get-together occasions, the advertisement for Silver, Diamond, Platinum and Centenary celebrations of the firms has been permitted to be published in any newspaper or in the newsletters.

Accounting Treatment of Government Grants

A. Facts of the Case

1. A Company (hereinafter referred to as 'the Company') is a wholly owned undertaking of Government of Gujarat, domiciled and incorporated in India. The Company is a Power Sector company. The Company including its subsidiaries are involved in generation, transmission and distribution of power in the State of Gujarat. The Company along with its group companies came into operation w.e.f. 1st April, 2005 after restructuring of State Electricity Board under the provisions of Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003 and Electricity Act, 2003. The following restructured corporate entities came into operation w.e.f. 1st April, 2005:

   (a) State Electricity Corporation Ltd., the Generation Company

   (b) State Energy Transmission Corporation Ltd., the Transmission Company

   (c) Dakshin State Vij Company Ltd., the Distribution Company

   (d) Madhya State Vij Company Ltd., the Distribution Company

   (e) Paschim State Vij Company Ltd., the Distribution Company and

   (f) Uttar State Vij Company Ltd., the Distribution Company

   (g) The Company, the residual entity and the holding company of above-mentioned 6 companies

Entities listed at (c), (d), (e) and (f) are collectively referred as DISCOMs.

2. The querist has stated that as per the Roadmap and the Notification dated 16th February 2015, issued by the Ministry of Corporate Affairs, the Company and its group companies adopted and prepared their financial statements as per Indian Accounting Standards (Ind ASs) notified under section 133 of the Companies Act, 2013 read with Companies (Indian Accounting Standards) Rules, 2015 (Rules) in the phase 1 of the transition from Accounting Standards (referred to by the querist as 'Indian GAAP' (IGAAP)) to Ind ASs. These being the group's first financial statements prepared and presented under Ind ASs, as per Rules, Ind ASs are to be applied retrospectively. Hence, even the comparative period for the first Ind AS financial reporting period, i.e., Financial Year (F.Y.) 2015-16 is required to be transitioned to Ind AS. The transition date in case of the Company and group companies, therefore, was 1st April 2015.

3. According to the querist, the above referred retrospective application of Ind AS is subject to certain mandatory exemptions and voluntary exceptions as specified in the Rules; one of the relevant rule for the extant case, is that accounting estimates cannot be based on hind sight, i.e., an entity's estimates in accordance with Ind AS at the date of transition and for the comparative period to the first Ind AS financial statements shall be consistent with estimates made till the same date in accordance with IGAAP (after adjustments to reflect any difference in accounting policies), unless there is objective evidence that those estimates were 'in error'. Paragraphs 14-17 of Ind AS 101, 'First-time Adoption of Indian Accounting Standards', are reproduced below for reference:

   "14 **An entity's estimates in accordance entity Ind ASs at the date of transition to Ind ASs shall be consistent with estimates made for the same date in accordance with previous GAAP (after adjustments to reflect any difference in accounting policies), unless there is objective evidence that those estimates were in error.**

   15 An entity may receive information after the date of transition to Ind ASs about estimates that it had made under previous GAAP. In accordance with paragraph 14, an entity shall treat the

receipt of that information in the same way as non-adjusting events after the reporting period in accordance with Ind AS 10, *Events after the Reporting Period*. For example, assume that an entity's date of transition to Ind ASs is 1 April 2015 and new information on 15 July 2015 requires the revision of an estimate made in accordance with previous GAAP at 31 March 2015. The entity shall not reflect that new information in its opening Ind AS Balance Sheet (unless the estimates need adjustment for any differences in accounting policies or there is objective evidence that the estimates were in error). Instead, the entity shall reflect that new information in profit or loss (or, if appropriate, other comprehensive income) for the year ended 31 March 2016.

16 An entity may need to make estimates in accordance with Ind ASs at the date of transition to Ind ASs that were not required at that date under previous GAAP. To achieve consistency with Ind AS 10, those estimates in accordance with Ind ASs shall reflect conditions that existed at the date of transition to Ind ASs. In particular, estimates at the date of transition to Ind ASs of market prices, interest rates or foreign exchange rates shall reflect market conditions at that date.

17 Paragraphs 14–16 apply to the opening Ind AS Balance Sheet. They also apply to a comparative period presented in an entity's first Ind AS financial statements, in which case the references to the date of transition to Ind ASs are replaced by references to the end of that comparative period."

4. The querist has informed that the Company and its subsidiaries being government entities, are subject to Comptroller and Auditor General (C&AG) audit including appointment of the independent auditors under the Companies Act for all the entities involved. C&AG conducts a supplementary audit over and above the audit as required under the Companies Act, 2013 (earlier Companies Act, 1956) and issues a supplementary audit report/ note on the financial statements prior to its issuance to the shareholders, i.e., the Government of Gujarat in this case.

5. The querist has stated that the Company gets grants from the Government of Gujarat for various purposes including against acquisition/ creation/construction of depreciable assets, subsidies for power supply to various category of consumers, etc. The grants received against depreciable assets are usually for a part of the cost of the asset, other sources of funding the cost through an appropriate debt: equity proportion. The Company has followed deferred grant approach for grants related to depreciable assets as its accounting policy in compliance with Accounting Standard (AS) 12, 'Accounting for Government Grants' under IGAAP framework and later under Ind AS 20, 'Accounting for Government Grants and Disclosure of Government Assistance' under the Ind AS framework.

6. All depreciable assets (including against which grants are received) are depreciated as per the relevant Electricity Supply Act requirements which provide for depreciation of assets on Straight Line Method (SLM) at a fixed percentage for the first 12 years and thereafter the remaining depreciable value to be depreciated over the remaining useful life of the assets as specified by the Electricity Supply Rules.

7. Government grants against depreciable assets which are deferred, are recognised as per Ind AS 20 'Accounting for Government Grants and Disclosure of Government Assistance', i.e., are recognised on deferred basis and are recognised in the Statement of Profit and Loss on a systematic basis over the useful life of assets. The accounting principles specify 'systematic basis' as against an arbitrary / ad-hoc basis of recognising such grants in the Statement of Profit and Loss. This requirement is the same under both Ind AS and IGAAP.

8. The Company and the group companies had assessed that Reducing Balance Method (RBM) or Written Down Value (WDV) to be an appropriate systematic basis to recognise government grants in the Statement of Profit and Loss based on relevant considerations in case of the Company and the group companies. One of the important considerations for selection of RBM / WDV method was the mismatch / difference in the timing when the asset is created / acquired and the recognition of grants on compliance of the conditions to recognise grant. Usually, the asset would be created / acquired first before becoming reasonably assured of complying with the conditions for receipt of grant and hence the grant recognition to the Statement of Profit and Loss would be in a period different from when the depreciation is charged to the Statement of Profit and Loss. The selection and application of RBM would lead to a sort of catch-up adjustment over the period of the assets. Hence, RBM was selected in the given backdrop and applied from F.Y. 2004-05 i.e., from the year when the State Electricity Board (SEB) was unbundled into the Company and group companies. This method was consistently applied till F.Y. 2015-16.

9. It may be further pointed out that IGAAP did not have a general concept of catch-up adjustment as is the case under Ind AS in the relevant years nor does it have a catch-up adjustment even now. Hence, in order to address the matter of timing mismatch and its consequential effect on the Statement of Profit and Loss where the cumulative depreciation as against the cumulative government grants recognised in the Statement of Profit and Loss would have been significantly different, RBM was selected so as to ensure that higher grant recognition in the initial years would lead to sort of a catch up adjustment as against the accumulated depreciation of the assets against which the grants have been received. This was assessed and understood to be an acceptable systematic basis as required under AS 12, given the facts as obtained at the time and the subsequent period when this was applied.

10. Selection of RBM was also noted as complying with the Accounting Standards by the independent auditors of all the concerned entities. The selection of RBM was reviewed by the independent auditors not only initially in F.Y. 2004-05 but also the continued selection of RBM during the years from F.Y. 2004-05 till F.Y. 2015-16 was also reviewed by not less than 15 independent auditors in light of the facts and circumstances as obtained for such selection. All the independent auditors noted the selection to be in compliance with the extant Accounting Standards.

11. The supplementary audits of C&AG right from the initial year of selection of RBM, i.e., F.Y. 2004-05 and during the continued period of selection of RBM i.e., from F.Y. 2004-05 till F.Y. 2015-16, did not note such selection and application either to be an error nor as a non-compliance with the extant Accounting Standards.

12. The Company and group companies revisited, reviewed, assessed, analysed and evaluated all accounting policies / methods / estimates in addition to presentation and disclosure requirements in F.Y. 2016-17 in the light of applicable Ind AS transition and implementation. The Company and group companies noted the facts and circumstances as obtained in F.Y. 2016-17 during Ind AS implementation and noted that Straight Line Method (SLM) was a more appropriate basis of recognising government grants in the Statement of Profit and Loss given the facts currently obtained, primarily as the mismatch or the timing difference as discussed in paragraph above has reduced. Hence, the Company and group companies selected and applied SLM from F.Y. 2016-17. It may be pointed out that recognition of grants in the Statement of Profit and Loss every year on SLM basis would reduce the variation with the depreciation charged to the Statement of Profit and Loss but not eliminate the variation. The change was made after assessing the present status and the expected future timing of asset creation/acquisition and recognition of grant against the assets.

13. The Company and group companies noted that the timing mismatch in the earlier years has reduced significantly over the period, though not completely eliminated. The Company also noted that the need for the consequential catch-up adjustment required due to such mismatch has also reduced. Hence, the method was changed due to change in the circumstances. This change is in compliance with the relevant accounting standards i.e., it is allowed to be made as well as how such change should be accounted.

14. The Company's group assessed that the change in the method is determined to be a change in accounting estimate and not a change in accounting policy. The group's assessment was reviewed, assessed and evaluated by the independent auditors of all the concerned group companies and they also concluded the change to be change in accounting estimate arising on account of changed circumstances and more experience.

    It may be further pointed out that the C&AG office also concludes that the change in the method is a change in accounting estimate.

15. The Company and group companies had clearly disclosed facts of the case and the group's assessment of the change being the change in accounting estimate and effected the accounts accordingly, in the year of change i.e., F.Y. 2016-17. Further, the Company and group companies also disclosed in F.Y. 2018-19, the possible impact if the change were to be made retrospectively (as per C&AG view), with a clear indication that this is for disclosure purpose only and has no impact on the financials.

16. C&AG office, though accepting that the change is a change in accounting estimate, believes it to be a correction of prior period error and hence any correction of prior period error should be applied retrospectively. C&AG's contention is that the RBM selected and applied earlier from F.Y. 2004-05, though noted and found to be in compliance with the accounting standards by all the auditors of the individual companies over the years as well as by C&AG, is to be considered as an error which is being corrected now by applying SLM. As may be noted from the C&AG office comments reproduced verbatim in paragraph 18 below, the C&AG office has noted that any change to reduce mismatch to be acceptable, but such change would mean that the earlier method was an error.

    The issue for consideration is whether the selection and application of the RBM be considered as a prior period error which is being corrected now.

17. The company had also obtained an independent opinion relating to this matter on the urging of C&AG in the year 2020. The independent opinion obtained also supports the company's position, opining that it is not an error and such changes are to be considered as change in estimates and to be applied prospectively and opinion was also submitted to C&AG and has been appropriately disclosed in the notes to the financial statements for the financial year ended 31st March 2020. However, C&AG has insisted for Expert Advisory Committee opinion on the matter and hence, the Company seeks opinion of the Committee on the matter.

18. The querist has given extracts of Observations of the C&AG as follows:

    "With effect from 01 April 2016, the group companies have changed the method of computing the grants/consumer contribution received against depreciable assets to be recognized in Statement of Profit and Loss from reducing balance method to the straight-line method and consequently the rates at which grant is recognized in the Statement of Profit and Loss. The Company has determined that the change to recognize grants in proportion of the depreciation expenses is a change in accounting estimates and is to be applied prospectively.

    As per Accounting Standard 12, grants related to depreciable assets are treated as deferred income which is recognised in the Statement

of Profit and Loss on a systematic and rational basis over the useful life of the asset. Indian Accounting Standard 20 also states that, grants related to depreciable assets are usually recognised in the Statement of Profit or Loss over the periods and in the proportions in which depreciation expense on those assets is recognised.

The above change in method was made by the group companies as there was a mismatch of the grants recognized in the Statement of Profit and Loss versus the related depreciation expense. Thus, the company has changed the method of recognition of deferred income in order to align the recognition of deferred income with the related depreciation expense. As the provisions for treatment of deferred income to be recognised in the Statement of Profit and Loss on a systematic and rational basis over the useful life of the asset are same in AS 12 and Ind AS 20, the change was not mandated by Ind AS 20. *Hence, the company changed the method in order to correct an error.*

Since the depreciable assets related to which grants/ consumer contribution received have been capitalized in the books of account, the effect of such change should have been worked out retrospectively and accounted for in the opening balance of Deferred Government Grants, Subsidies and Consumer contribution."

19. The querist has also given the summary of the Company's Management Response as follows:

(i) The Company has been following RBM or WDV method from its inception in F.Y. 2004-05 and continued it till F.Y. 2015-16; and kept on recognising income from year to year out of its government grant, accumulated in deferred income on that basis.

(ii) Useful lives of fixed asset as also expected pattern of consumption of future economic benefits embodied in such assets are estimates; (paragraph 32 of Ind AS 8); use of such estimates, made reasonably being an essential part of preparation of the financial statements, does not undermine the reliability of such financial statements. The differentiation of accounting policy vis-a-vis accounting estimate is dealt with in paragraph 35 of the said Standard.

(iii) Being an estimate, circumstances or new information or more experience may necessitate suitable revision therein in forthcoming year(s), as clearly recognised by paragraph 34 of Ind AS 8, which also states that revision of estimate does not relate to prior period and is not the correction of error.

(iv) As per paragraph 48 of Ind AS 8, the accounting estimates by their very nature are approximations that may need revision as additional information becomes known or when better presentation of financial statements warrant; such revisions when made, are clearly distinct from errors and these require rectifications. Thus, all the revisions of accounting estimates are not necessarily rectifications of an error of prior years. *Errors are meant to be act of omissions, oversight or lapses (including the effects of mathematical mistakes, mistakes in applying accounting policies, misinterpretations of facts, and fraud) in recognition and measurement principles of the reported items of financial statements.* (Emphasis supplied by the querist.)

(v) As informed, in all the years, all the independent auditors of the concerned group companies noted the selection and the application of RBM to be in compliance with the extant Accounting Standards. It may be further emphasised that the selection of a method whether it be for depreciation or deferred grants in the current instance is a part of the significant accounting principles / practices which were consciously selected based on detailed deliberations after careful assessment of the facts and circumstances in light of the acceptable accounting principles and practices. This selection was assessed and evaluated by the independent auditors and found to be in compliance with the extant Accounting Standards.

(vi) Further, the C&AG supplementary audit neither had any comments on the independent auditors' opinion on compliance of accounting standards in all the years nor did the supplementary audit raised any questions or observations about the said treatment.

(vii) The above position reflects that the Company and group companies' assessment and consequential selection of RBM was found to be compliant with the extant accounting standards in light of the facts and circumstances obtained on initial selection and the continued selection over the years.

(viii) The contention of CAG's observations implies that, had the Company continued its method and consequently continued recognising grant based on RBM, it would have been considered compliant with the accounting framework; but a change in the said methodology would deem to be a correction of error of earlier years. In the view of the querist, this appears to be a contradiction.

(ix) Hence, in the view of the querist, the revision of an estimate, based on availability of some new information / development or for the reason of better presentation of financial statements, is far from being an error of earlier years; change in estimate has to be applied prospectively and not retrospectively.

(x) In the financial year 2016-17, the Company changed its method of recognising government grants from RBM to SLM for better presentation of the carrying value of the assets. Consequently, the Company recognised the government grant related to the concerned assets in proportion of its depreciation charge, which is also a systematic basis of recognising such deferred income as per the principle of Ind AS 20. In the year of such change, the Company is observed to have duly disclosed the fact and quantified effect of such change, as required by the applicable Standard.

(xi) It is reiterated that the selection of method or its change is based on the facts and circumstances as obtained. The Company's group noted that there is a change in the facts and circumstances as relating to reduction in the timing difference between asset acquisition/creation and government grant recognition over the period occasioning reconsideration of the method to be selected.

20. In addition to the Company's management detailed replies to C&AG, the auditors of certain group companies had replied to C&AG with the specific considerations of relevant Ind AS as basis in which the auditors concluded the change of method to be change in accounting estimate.

B. Query

21. In view of the above, the querist has sought the opinion of the Expert Advisory Committee on the following issues:

(i) Is the selection and application of RBM (or WDV) for recognising government grants in the previous years i.e., from F.Y. 2004-05 to F.Y. 2015-16 an error?

(ii) If the above, is in affirmative, then what are the implications on the audit opinions including supplementary audit on the compliance of accounting standards in the earlier years as well as on the truthfulness and fairness of the financial statements?

(iii) If conclusion to question 1 is that it is not an error, can the selection and application of SLM from F.Y. 2016-17 be considered as a correction of prior period error?

C. Points considered by the Committee

22. The Committee notes that the basic issue raised in the query relates to the method of recognition of government grants followed by the Company in the previous years i.e., from F.Y. 2004-05 to F.Y. 2015-16 and change in such method of amortisation from WDV to SLM from F.Y. 2016-17. The Committee has, therefore, considered only this issue and has not

examined any other issue(s) that may arise from the Facts of the Case, such as, appropriateness of the accounting/adjustments arising due to transition to Ind AS, nature of grant under Ind AS 20, accounting for grants received in the form of subsidies for power supply to various category of consumers, timing of recognition of grant and the appropriateness of the reason for the mismatch as stated by the querist due to difference in the timing when the asset is created / acquired and the recognition of grants on compliance of the conditions to recognise grant, accounting for the catch-up adjustment required due to the afore-mentioned timing difference, amount of grant to be recognised, accounting in the books of group companies, etc. Further, the opinion, expressed hereinafter is purely from accounting perspective and not from the perspective of interpretation of any Act/Rules such as Electricity Supply Act/Rules etc. The Committee wishes to point out that the Indian Accounting Standards referred to in the opinion are the Standards notified by the Companies (Indian Accounting Standards) Rules, 2015, as revised or amended from time to time.

23. The Committee notes from the Facts of the Case that the Company had been following the Reducing Balance Method (RBM) or Written Down Value (WDV) to recognise deferred income in respect of government grants related to assets in the Statement of Profit and Loss from F.Y. 2004-05 till F.Y. 2015-16. Thereafter, in the F.Y. 2016-17, which was the first year of implementation of Indian Accounting Standards as per the requirements of the Companies Act, 2013, the Company changed the method of such recognition of deferred income from RBM/WDV to straight line method.

    Further, the Committee notes that one of the considerations for selection of RBM / WDV method was the mismatch / difference in the timing when the asset is created / acquired and the recognition of grants on compliance of the conditions to recognise grant. Usually, the asset would be created / acquired first before becoming reasonably assured of complying with the conditions for receipt of grant and hence the grant recognition to the Statement of Profit and Loss would be in a period different from when the depreciation is charged to the Statement of Profit and Loss. The selection and application of RBM would lead to a sort of catch-up adjustment over the period of the assets. Hence, RBM was selected in the given backdrop. From these facts, it appears that the above change in method was made by the Company as there was a mismatch of the grants recognised in the Statement of Profit and Loss versus the related depreciation expense. Thus, the Company has changed the method of recognition of deferred income in order to align the recognition of deferred income with the related depreciation expense. The Committee also notes that the Company noted the facts and circumstances as obtained in F.Y. 2016-17 during Ind AS implementation and noted that Straight Line Method ('SLM') was a more appropriate basis of recognising government grants in the Statement of Profit and Loss, primarily as the mismatch or the timing difference as discussed above has reduced and the SLM basis would reduce the variation with the depreciation charged to the Statement of Profit and Loss. Thus, for better presentation of the carrying value of the assets, the Company changed its method of recognising government grants from RBM to SLM and recognised the government grant related to the concerned assets in proportion of its depreciation charge.

24. With regard to the depreciation charge, the Committee notes that the Schedule II to the Companies Act, 2013 and Ind AS 16, allow both the methods of depreciation, viz., straight line and WDV. However, Part B to schedule II, states that "The useful life or residual value of any specific asset, as notified for accounting purposes by a Regulatory Authority constituted under an Act of Parliament or by the Central Government shall be applied in calculating the depreciation to be provided for such asset irrespective of the requirements of this Schedule." Thus, where a Regulatory Authority prescribes useful life, rate of depreciation

or residual value for any specific asset for accounting purposes, the company should use that useful life, rate of depreciation or residual value even though it is different from that as estimated by the management.

The Committee further notes that the querist has stated that the relevant Electricity Supply Act requirements provide for depreciation of assets on Straight Line Method (SLM) at a fixed percentage for the first 12 years and thereafter the remaining depreciable value is to be depreciated over the remaining useful life of the assets as specified by the Electricity Supply Rules. Further, the querist has stated that as per the above requirements, all depreciable assets (including against which grants are received) are depreciated at SLM. Thus, considering the regulatory requirements, the Company has been following straight line method consistently and there has been no change in the method of depreciation. The Committee notes that method of depreciation represents the pattern of consumption of economic benefits embodied in the asset and is considered as an accounting estimate. However, since there has been no change in the method of depreciation, it cannot be considered that there has been a change in the estimate due to change in the pattern of consumption of economic benefits.

25. Further, with regard to method of recognising deferred income to the statement of profit and loss in respect of grants related to depreciable assets in previous years till financial year 2015-16 and thereafter, the Committee notes the following paragraphs of Accounting Standard (AS) 12, 'Accounting for Government Grants', which was applicable for accounting years 2004-05 till 2015-16 and Ind AS 20, 'Accounting for Government Grants and Disclosure of Government Assistance', which was applicable thereafter:

AS 12

"5.5 It is fundamental to the 'income approach' that government grants be recognised in the profit and loss statement on a systematic and rational basis over the periods necessary to match them with the related costs. Income recognition of government grants on a receipts basis is not in accordance with the accrual accounting assumption (see Accounting Standard (AS) 1, Disclosure of Accounting Policies).

5.6 In most cases, the periods over which an enterprise recognises the costs or expenses related to a government grant are readily ascertainable and thus grants in recognition of specific expenses are taken to income in the same period as the relevant expenses."

"8. Presentation of Grants Related to Specific Fixed Assets

8.1 Grants related to specific fixed assets are government grants whose primary condition is that an enterprise qualifying for them should purchase, construct or otherwise acquire such assets. Other conditions may also be attached restricting the type or location of the assets or the periods during which they are to be acquired or held.

8.2 Two methods of presentation in financial statements of grants (or the appropriate portions of grants) related to specific fixed assets are regarded as acceptable alternatives.

8.3 Under one method, the grant is shown as a deduction from the gross value of the asset concerned in arriving at its book value. The grant is thus recognised in the profit and loss statement over the useful life of a depreciable asset by way of a reduced depreciation charge. Where the grant equals the whole, or virtually the whole, of the cost of the asset, the asset is shown in the balance sheet at a nominal value.

8.4 Under the other method, grants related to depreciable assets are treated as deferred income which is recognised in the profit and loss statement on a systematic and rational basis over the useful life of the asset. Such allocation to income is usually made over the periods and in the proportions in which depreciation on related assets is charged..."

"14. Government grants related to specific fixed assets should be presented in the balance sheet by showing the grant as a

deduction from the gross value of the assets concerned in arriving at their book value. Where the grant related to a specific fixed asset equals the whole, or virtually the whole, of the cost of the asset, the asset should be shown in the balance sheet at a nominal value. Alternatively, government grants related to depreciable fixed assets may be treated as deferred income which should be recognised in the profit and loss statement on a systematic and rational basis over the useful life of the asset, i.e., such grants should be allocated to income over the periods and in the proportions in which depreciation on those assets is charged. ...”

Ind AS 20

“16 It is fundamental to the income approach that government grants should be recognised in profit or loss on a systematic basis over the periods in which the entity recognises as expenses the related costs for which the grant is intended to compensate.…

17 In most cases the periods over which an entity recognises the costs or expenses related to a government grant are readily ascertainable. Thus grants in recognition of specific expenses are recognised in profit or loss in the same period as the relevant expenses. Similarly, grants related to depreciable assets are usually recognised in profit or loss over the periods and in the proportions in which depreciation expense on those assets is recognised.”

“24 [1]Government grants related to assets, including non-monetary grants at fair value, shall be presented in the balance sheet either by setting up the grant as deferred income or by deducting the grant in arriving at the carrying amount of the asset.

25 [1]Two methods of presentation in financial statements of grants or the appropriate portions of grants related to assets are regarded as acceptable alternatives.

26 [1]One method recognises the grant as deferred income that is recognised in profit or loss on a systematic basis over the useful life of the asset.

27 [1]The other method deducts the grant in calculating the carrying amount of the asset. The grant is recognised in profit or loss over the life of a depreciable asset as a reduced depreciation expense.”

From the above, the Committee notes that AS 12 and Ind AS 20 contain similar requirements in respect of recognition of deferred income in relation to grants related to depreciable asset and therefore, there is no change in the accounting requirements that required a change in the method of allocation of deferred income over the useful life of the asset to which the grant pertains.

The Committee notes that paragraph 14 of AS 12 specifically provides that, government grants related to depreciable fixed assets may be treated as deferred income which should be recognised in the profit and loss statement on a systematic and rational basis over the useful life of the asset, *i.e., such grants should be allocated to income over the periods and in the proportions in which depreciation on those assets is charged*. Thus, as per the requirements of AS 12, till financial year 2015-16, for grants received in respect of depreciable assets, the Company should have allocated the deferred income to the statement of profit and loss, in the proportion in which depreciation was charged over the useful life of the asset. Since straight line method of depreciation has been followed by the Company for the asset to which the grant relates, the grant should have also been recognised in proportion, depreciation was charged over the useful life, i.e., on a straight line basis. Similarly, Ind AS 20 (paragraph 17) also requires to amortise deferred income on a systematic basis over the useful life of the asset and in the proportions in which depreciation expense on those assets is recognised. However, since the same has not been followed while recognising the grant in the earlier

[1] Substituted vide Notification No. G.S.R. 903(E) dated 20th September, 2018.

years till financial year 2015-16 (when AS 12 was applicable to the Company), it results into an error in the recognition of grant.

Further, the Committee notes from the above that both the standards prescribe two methods for *presentation of grants* related to depreciable assets. Under one method, the grant is deducted from the gross value of the asset concerned in arriving at its book value/carrying amount. Under the other method, grants related to depreciable assets are treated as deferred income which is recognised in the profit and loss statement on a systematic and rational basis over the useful life of the asset and in proportion, the depreciation is charged. Thus, under both the methods of presentation, the grant is recognised in the profit and loss statement over the useful life of a depreciable asset; under one method, by way of a reduced depreciation charge and as per the other method, as income in proportion to depreciation over the useful life of a depreciable asset, resulting into similar impact in the statement of profit and loss. The Committee notes that if for recognising the depreciation, one method, say straight line is followed while for amortising deferred income, another method, say WDV is followed, the result/impact under both the methods will not be the same, as discussed above and therefore, the Standard does not prescribe to follow different methods to be followed for charging depreciation and for amortising deferred income.

The Committee also notes from the above-reproduced requirements of AS 12 and Ind AS 20 that grants should be recognised in the income statement on a systematic basis that matches with the related costs that they are intended to compensate. Further, depreciation is the systematic allocation of the depreciable amount of an asset over its useful life. Thus, in a way, depreciation represents the allocation of cost of depreciable asset over its useful life. Therefore, in case of grants related to depreciable assets, the grant should be recognised in the income statement on a systematic basis that matches with the depreciation charged which represents the related costs of the depreciable asset. Accordingly, the Committee is of the view that as per the requirements of AS 12 as well as Ind AS 20, both the grant as well as depreciation should be charged in the same proportion over the useful life of the depreciable asset.

26. On the basis of the above discussion, the Committee is of the view that, since the Company in the extant case, did not follow the above-mentioned requirements of AS 12 till financial year 2015-16, the same should have been rectified and the method of amortisation or recognition of deferred income should have been changed to the SLM (as the method of depreciation followed for the asset to which the grant relates is the SLM), considering it as an accounting error, as per the requirements of the then applicable AS 5, 'Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies (till F.Y. 2015-16) and Ind AS 8, 'Accounting Policies, Changes in Accounting Estimates and Errors'(from F.Y. 2016-17). Accordingly, the Committee is of the view that in the financial year 2016-17, the change in the method of recognising deferred income/grant should be considered as prior period item and not a change in an accounting estimate. In this regard, the Committee notes the following paragraphs of AS 5 and Ind AS 8:

AS 5, Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies

"4.3. Prior period items are income or expenses which arise in the current period as a result of errors or omissions in the preparation of the financial statements of one or more prior periods."

"Prior Period Items

15. The nature and amount of prior period items should be separately disclosed in the statement of profit and loss in a manner that their impact on the current profit or loss can be perceived.

16. The term 'prior period items', as defined in this Standard, refers only to income or expenses which arise in the current period as a result of errors or omissions in the preparation of the financial statements of one or more prior periods. The term does not include other adjustments necessitated by circumstances, which though related to prior periods, are determined in the current period, e.g., arrears payable to workers as a result of revision of wages with retrospective effect during the current period.

17. Errors in the preparation of the financial statements of one or more prior periods may be discovered in the current period. Errors may occur as a result of mathematical mistakes,

mistakes in applying accounting policies, misinterpretation of facts, or oversight."

Ind AS 8, 'Accounting Policies, Changes in Accounting Estimates and Errors'

"*Prior period errors* are omissions from, and misstatements in, the entity's financial statements for one or more prior periods arising from a failure to use, or misuse of, reliable information that:

(a) was available when financial statements for those periods were approved for issue; and

(b) could reasonably be expected to have been obtained and taken into account in the preparation and presentation of those financial statements.

Such errors include the effects of mathematical mistakes, mistakes in applying accounting policies, oversights or misinterpretations of facts, and fraud."

"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."

Further, the Committee is of the view that since the method of recognition of recognising deferred income from straight line to WDV was changed in F.Y. 2016-17, which is the first year of implementation of Ind ASs on transition to Ind ASs, the Company should also follow the requirements of Ind AS 101, 'First-time Adoption of Indian Accounting Standards'. In this regard, the Committee notes the following requirements of Ind AS 101:

"10 Except as described in paragraphs 13–19 and Appendices B–D, an entity shall, in its opening Ind AS Balance Sheet:

(a) recognise all assets and liabilities whose recognition is required by Ind ASs;

(b) not recognise items as assets or liabilities if Ind ASs do not permit such recognition;

(c) reclassify items that it recognised in accordance with previous GAAP as one type of asset, liability or component of equity, but are a different type of asset, liability or component of equity in accordance with Ind ASs; and

(d) apply Ind ASs in measuring all recognised assets and liabilities.

11 The accounting policies that an entity uses in its opening Ind AS Balance Sheet may differ from those that it used for the same date using its previous GAAP. The resulting adjustments arise from events and transactions before the date of transition to Ind ASs. Therefore, an entity shall recognise those adjustments directly in retained earnings (or, if appropriate, another category of equity) at the date of transition to Ind ASs."

"24 To comply with paragraph 23, an entity's first Ind AS financial statements shall include:

(a) reconciliations of its equity reported in accordance with previous GAAP to its equity in accordance with Ind ASs for both of the following dates:

(i) the date of transition to Ind ASs; and

(ii) the end of the latest period presented in the entity's most recent annual financial statements in accordance with previous GAAP.

(b) a reconciliation to its total comprehensive income in accordance with Ind ASs for the latest period in the entity's most recent annual financial statements. The starting point for that reconciliation shall be total comprehensive income in accordance with previous GAAP for the same period or, if an entity did not report such a total, profit or loss under previous GAAP.

(c) if the entity recognised or reversed any impairment losses for the first time in preparing its opening Ind AS Balance Sheet, the disclosures that Ind AS 36, *Impairment of Assets*, would have required if the entity had recognised those impairment losses or reversals in the period beginning with the date of transition to Ind ASs.

25 The reconciliations required by paragraph 24(a) and (b) shall give sufficient detail to enable users to understand the material adjustments to the Balance Sheet and Statement of profit and loss. If an entity presented a Statement of cash flows under its previous GAAP, it shall also explain the material adjustments to the Statement of cash flows.

26 If an entity becomes aware of errors made under previous GAAP, the reconciliations required by paragraph 24(a) and (b) shall distinguish the correction of those errors from changes in accounting policies."

The Committee notes from the above that adjustments arising from events and transactions before the date of transition to Ind ASs should be recognised directly in retained earnings (or, if appropriate, another category of equity) at the date of transition to Ind ASs. Further, in accordance with paragraph 26 of Ind AS 101, if an entity becomes aware of errors under the previous GAAP, the reconciliations and disclosures required by paragraph 24(a) and (b) should distinguish the correction of those errors from changes in accounting policies.

D. Opinion

27. On the basis of above, the Committee is of the following opinion on the issues raised in paragraph 21 above:

(i) Yes, the selection and application of RBM (or WDV) for recognising government grants in the previous years, i.e., from F.Y. 2004-05 to F.Y. 2015-16 is an error, as discussed in paragraphs 25 and 26 above.

(ii) The audit opinions including supplementary audit are the opinions/views of the respective auditors and therefore, the Committee does not wish to express its opinion on the same.

(iii) In view of (i) above, answer to this question does not arise.

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 May 31, 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.

Data Science and Analytics Capabilities in Accounting and Finance

The world is not the same as it has been a few decades back. The pace at which change takes over us is massive and sometimes overwhelming to deal with. Amidst this tsunami of digitization, data plays a central and pivotal role. All digital capabilities have evolved around the need to process data faster and in real time, harness as much insights as possible and deliver it to business users with agility to create maximum impact. Read on...

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Without much surprise, data is becoming more and more ubiquitous in accounting and finance professions and is disrupting the world of finance and accounting as much as it has impacted other business functions like operations, supply chain management, demand forecasting, etc. Traditionally, data was derived from research studies. Nowadays, it is being created in real time by machines across various industries. With the rise of machine learning algorithms along with AI, accounting professionals need to keep up with the latest technological developments so they can interpret data to make informed business decisions. Every action a business user takes is being converted into actionable insights and data and the more this is generated, the greater becomes the need to process them in real time.

This article intends to give you a very high-level overview of the world of data science in general and how is it playing a role in the world of accounting and finance.

What is Big Data, Data Science and Data Analytics?

Not far away from its nomenclature, 'Big data' is just that—BIG data. This refers to the generation, storage and processing of very large volumes of data which is typically characterized by the following three features:

- **Volume:** Big data typically operates at a massive data scale, with approximately 80% data lying in the semi structured to unstructured realm.

- **Velocity:** Big data is characterized by rapid data flow and dynamic data systems which need real-time analysis, automated insights generation and continuous tweaking of the underlying analytics algorithms to continually move up through the ranks of mere descriptive analytics, through to predictive, diagnostic and prescriptive analytics.

- **Variety:** Big data typically comprises of highly diverse data types using a combination of emails, files, images, videos, IoT data streams and other proprietary data elements.

Big data enables the CFO and his team to proactively identify issues with real-time access to the data, so that businesses can base their decision-making on hard evidence and facts, rather than emphasizing guesswork and assumptions about customers, employees, and vendors.

Key questions enterprises are asking about Big Data:

- How to store and protect big data

- How to backup and restore big data

- How to organise and catalogue the data that you have backed up

- How to keep costs low while ensuring that all the critical data is available when it is needed.

To get a better idea of big data, it's important to understand four types of data analytics.

1. Descriptive analytics
   - Answers the question of "what" happened.
2. Diagnostic analytics
   - Historical data can be measured against other data, to uncover "why" something happened.
3. Predictive analytics
   - "What is likely" to happen.
4. Prescriptive analytics
   - Indicates recommendations or "best course of action".

What is **Data Science?**

Data Science is an interdisciplinary field that uses scientific methods, processes, algorithms, and systems to extract knowledge and insights from data on various forms.

What is the importance? What role it is playing for Finance & Accounting professionals?

Data Analytics is used to help businesses uncover valuable insights within their financials and process improvement opportunities which can further help increase in efficiency. As businesses increasingly try to position themselves to reap benefits from data analytics, Finance & Accounting professionals are also poised to play a leading role in managing that transition.

Digitalisation in modern business means that Finance & Accounting professionals with the skills and aptitude to identify, analyse and use vast amounts of financial data are in high demand.

Applications of Data Analytics capabilities in Finance & Accounting

Data analytics play a key role in many aspects of finance and accounting.

- **Eliminate inefficiencies**
  Predictive analytics can be used to eliminate inefficiencies and waste by identifying when transactions are at risk of being fraudulent or lost, allowing company leaders to act before it happens. This approach also enables the company to identify which customers are most likely to respond favourably to special offers, allowing businesses to build stronger relationships.

Big data enables the CFO and his team to proactively identify issues with real-time access to the data, so that businesses can base their decision-making on hard evidence and facts, rather than emphasizing guesswork and assumptions about customers, employees, and vendors.

Data Science is an interdisciplinary field that uses scientific methods, processes, algorithms, and systems to extract knowledge and insights from data on various forms.

- **Better corporate governance**: The Board of Directors has a challenge to ensure that the company is run in the best way possible, while also ensuring that its stakeholders are not being taken advantage of. This can be done by focusing on good corporate governance practices, which includes transparency and accountability. Create a match between strategy and resources. Companies are increasingly using the Balanced Scorecard to align their strategies with available resources.

- **Improve control processes**: Effective control processes help businesses to realise their potential and improve performance while reducing risk. They should be integrated into the business strategy, governance structures and information systems to create a culture of compliance and control that is sustainable over time. Manage compliance. In the past, the primary purpose of a financial controller was to ensure that an organization complied with all relevant legislation and accounting standards. Today, however, organizations need to be aware of a far wider range of legislation and regulation that includes social responsibility requirements such as fair-trade practices or ISO14001 environmental management systems.

- **Reduce fraud**: Using data analytics, fraud can be reduced by classifying data and transactions to allow for early detection of fraud attempts. Fraudulent activity is easier to detect when the fraudulent activity is similar in style and character to previous frauds, allowing for simple recognition of anomalies.

- **Identify financial reporting issues**: Data analytics can also be used to identify areas of concern with financial reporting, such as the existence of duplicate accounts or changes in a company's reported earnings that seem inconsistent with economic factors.

Role of CFO

The facet of CFOs in India playing the role of an operator and controller is surely changing.

The role played by a CFO has ever been evolutionary. He/she was traditionally seen as someone in charge of ensuring the right accounting governance, managing working capital, controlling the costs of the organization, balancing inventory, and managing capital expenditure.

He/She was seen as a controller with a focus on transaction processing and financial reporting. In some cases, the CFOs were able to break out of the archetype and craft a role of finance as a true enabler for business decisions. However, this process of evolution has been a long journey and required significant change management at various levels.

Now, a CFO is looked upon as a strategic business partner. The challenge is to prepare the finance leaders for this new ask from the business and society. The digital revolution in India has made this ask even more competitive–not only is the CFO expected to excel as a business partner, but the role also requires the incumbent to thrive and contribute to an ever-changing digital ecosystem.

As we are on the verge of digital disruption. Initiatives

Using data analytics, fraud can be reduced by classifying data and transactions to allow for early detection of fraud attempts.

such as Aadhar, the Unified Payment Interface (UPI), and the Jan-Dhan Yojana are classic examples of how the economy is being introduced to Digitalization.

It has been a step-by-step implementation by the government. It first established the platform and the ecosystem which paved the inspiration for subsequent steps, a classic example being the Aadhar enabling Direct Bank Transfer (DBT). It is needless to mention that demonetisation has only accelerated the method. If the whole frontend is becoming more digital and autonomous, it's only natural that the functions that support this ecosystem should continue with these rapid economic and business model changes. The way Indian businesses and finance leaders are approaching the challenge, Indian finance organisations will soon be recognised as one of the most digitally advanced over time, well aligned to the government's vision for Digital Bharat.

Big Data and Data Mining techniques can be used where massive volumes of fraudulent online transactions happen and data models can be created in a manner that will allow to detect or foresee fraud in the future.

Can F&A professionals excel in Data Science and Analytics?

There are three strong foundations on which an F&A professional can make excellent data scientist:

1. **Technical Skills:** They naturally aggregate information in a manner that summarises details of transactions and other numbers. Because they already have quantitative skills, they find it easier to work with descriptive analytics, predictive analytics, and prescriptive analytics.
2. **Problem Solvers:** The jump to predictive and prescriptive analytics requires a shift to an inquisitive mindset – from stacking and sorting information to figuring out how to use that information to make key business decisions. F&A professionals are most equipped to make this shift.
3. **Business Implications over pure numbers:** The true value of data analysis comes not at the point when the data is compiled, but when decisions are made using insights derived from the data. A data scientist must first understand the business context to uncover these insights. F&A professionals understand the context better than any external data scientist because of their connections within the organisation.

Detailed and diverse customer profiles are created by banks and financial institutions using external and internal customer data. It can be used to provide highly personalized services.

What about Fintech?

Data Science is used in Fintech

Machine learning, artificial intelligence, predictive analytics, and data science technologies are used by Fintech firms to improve financial decision-making and offer superior solutions.

Data analytics in Fintech

Digital platforms create an algorithm-driven, automated financial planning, and investment services for the investors. The client data is used to provide financial advice or to automatically invest client assets in instruments and asset classes that are better suited to their needs and goals.

Fraud Detection with Data analytics in Fintech

Big Data and Data Mining techniques can be used where massive volumes of fraudulent online transactions happen and

data models can be created in a manner that will allow to detect or foresee fraud in the future.

Acquiring and Retaining the Customers

Detailed and diverse customer profiles are created by banks and financial institutions using external and internal customer data. It can be used to provide highly personalized services. For instance, an algorithm could be constructed to predict what additional goods or services the consumer would want to buy based on their historical purchasing behaviour.

F&A arenas where Data Science is already playing a major role

- **F&A Decision Making** - Finance & Accounting professionals are now expected to add value to decision making and manage risk. Strong data analytics gives them the required tool set for informed decision making to strengthen business leadership.
- **Audit Data Analytics**- Auditors monitor much larger data sets instead of sample-based model. This will result in reduction of errors and more precise recommendations.
- **Tax Consulting** - Tax accountants use data science to analyse complex taxation queries related to investment.
- **Investment Advisory** -Big data is used by investment advisors to figure out the behavioural patterns of both customers and the market. This also assists the businesses build analytical models to handpick the best investment opportunities.
- **Forensic Support Program**- Forensic and analytics expertise is applied to selected audits, fraud brainstorming, journal entry testing, tailored analytics, etc.

Emerging Industry Trends and closing remarks

A 2019 survey of U.S. executives found that most – 63% – do not believe their companies are analytics-driven and 67% say they are not comfortable accessing or using data from their tools and resources*. Therefore, organizations across the spectrum are being earnest and nimble-footed about the analytical and technical up-skilling of their workforce. There is a huge investment going into technology and training. Amazon's USD700m towards reskilling its employees in tech training over the next 4 years is just one example. A prime example is the banking system in India. Computerization of public sector banks and their evolution from the hardbound ledgers to core-banking would have never been achieved if the employees did not adapt to the change, adopt new technology, and most importantly bring about a shift in mindset.

* Source: Harvard Business Review

Conclusion

With the rise of new technologies and data analysis capabilities, accounting and finance teams are facing significant changes. These changes are impacting the way they evaluate new opportunities, develop strategies, and optimize their performance. To enhance their abilities associated with advanced analytics, F&A professionals have to upskill themselves through on-the-job training programs and professional courses which will further develop both the foundational areas of data and competency alongside data science and analytics competence. The leaders of tomorrow are going to be those that understand data and therefore the impact of data quicker and are ready to influence it within the most effective way possible by leveraging all the tools, techniques, and processes available in this new Digital Age. ■■■

Creation of Digital Twin for Accounting and Controllership

Controllership is a key function within the CFO's organization. In the nineties, controllers were mere accountants and had no role to play within the management realm or financial decision making. Fast forward to the current era and we see that the role of the controller has evolved. They are no longer solely "spreadsheet jockeys". Due to intense scrutiny from regulators in every industry, the controllership organization is an independent authority and plays second fiddle to none. Read on...

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In order to take away the tedious, cumbersome tactical execution, it is a prime candidate for digitization. Digital controllership has enabled accounting leaders to take on operational roles, applying their knowledge of accounting to strategic planning, risk and compliance mitigation and internal controls.

Enter: The Controllership Digital Twin

Digitization has also evolved from automation of routines and controls to creation of intelligent processes. Automation technologies can automate tedious, time consuming tasks like inter-company reconciliation, fixed asset accounting, closing and consolidation etc. These tasks usually require hours of daily manual calculations, but automation technology can streamline their processes. These not only measure KPI's and therefore, the compliance to external and internal accounting rules and policies, but also seamlessly define the finance transfer functions within the upstream and downstream processes. Though the Six Sigma methodology has taught us this within the DMAIC (Define, Measure, Analyse, Improve and Control) framework for decades now, the digital definition of finance data diagrams is now being recognized as one of the key contributors to forensic accounting and auditing. Though this machinery has existed within the protocol of sophisticated auditing and controllership networks such as the SEC and other regulatory agencies in different forms and shapes, it is for the first time available to organizations within their internal

> Automation technologies can automate tedious, time consuming tasks like inter-company reconciliation, fixed asset accounting, closing and consolidation etc. These tasks usually require hours of daily manual calculations, but automation technology can streamline their processes.

network. This is achieved via the Digital Twin technology which essentially is the application of decades of sophisticated finance learning to transactional and operational finance processes in order to put them on 'cruise control' and auto-pilot the execution of compliance.

How Does Digital Twinning Work within the Controllership arena?

Let's talk about Digital Twinning within the finance space first. Financial Planning & Analysis as an example lends itself intuitively to digital twinning. Let's look at an example. Management Reporting within the organization at different levels requires aggregations, roll ups, consolidations, etc. In addition, there are always the cumbersome tasks of making sure that definitions are standardized, comparisons are apples to apples and numbers are normalized for recast etc. in the event of reorgs and restructures. Digital Twinning in this arena would involve ensuring that the transfer functions and calculations are the exact same by inducing operational definitions into the black box. It would then ensure that mathematical calculations and roll forwards makes sense not only from calculation perspective but also basic financial engineering such as change in trends, outliers, sudden jerks and movements in the data etc. Finally, it would throw out digital diagrams of missing data and create management alerts for anomalies. It would of course do the basic job of digitizing the process as well. The reporting process therefore goes from being a dumb replica of structured data to a well thought out, live analysis of KPI's. Now the icing on the cake is that it also has the capability to calculate rolled throughputs similar to an assembly line in a manufacturing organization once the inter- relationships between input, output and processes are defined as in a typical SIPOC mapping. Again, the similarity to what we do in a DMAIC project stands out which is not surprising since every digital twin has Six Sigma at the very foundation of its measurement and analysis. therefore, lending itself to Six Sigma like results, i.e. 1.2 defects per million opportunities.

Similar to this, management analysis has another parallel. I remember, in the eighties, when Jack Welch had sat down with his management team in the small village of Tarrytown in Connecticut, the executive dashboard that used to run and proclaim the success stories of the entire General Electric Corporation (christened the Tarrytown 21) had only 21 metrics across all business units and functions. How was this possible? Because, Jack had mastered the art of financial engineering way back then and reversed engineered the Six Sigma project around all failure modes that would impact the GE profitability. Therefore, the digital twin now mimics the fine art of masterminds coming up with how the best minds can be memorialized for tried and tested results.

Controllership has taken its cues from financial management. Similar to its emerging leadership, the digital twin for controllership involves a few techniques in addition to SIPOCs and process mapping for transactional accounting. It also involves Failure mode and effects analysis (FMEA) to look at big and small compliance issues and use the same reverse engineering to ensure control- based processes. Therefore, the digital twin 'lights up' the control-based track for the process and signals red, green or yellow depending upon not only to compliance to tactical steps but also frequencies, repeatability and the reliability of the data coming through. From that perspective, the controllership digital twin is a little more 'suspicious' than its management twin, since it signals integrity of not only process but also data and compliance. Of course, to make this work, well documented, tried and tested processes must have existed within the organization for some period and a controllership legacy must have been defined.

> Controllership has taken its cues from financial management. Similar to its emerging leadership, the digital twin for controllership involves a few techniques in addition to SIPOCs and process mapping for transactional accounting.

Information Technology

Digital twins are identical twins and further conjoint twins but not necessarily fraternal. The science of twinning involves one for one measurement imagery only unlike a mirror image, every part and parcel is replaced by a virtual anatomy of the process.

Why 'Twins'?

When it comes to digitizing processes, I guess siblings or steps-siblings sometimes would work just as well. This is because digitization looks for similar ways of working efficiently not necessarily mimicking the current state of being. Therefore, simplification, standardization, process streamlining are all inherent within digitization. However, the term twinning implies an exact replica, thereby inherently assuming that there is no other way to be. In that sense, digital twins are identical twins and further conjoint twins but not necessarily fraternal. The science of twinning involves one for one measurement imagery only unlike a mirror image, every part and parcel is replaced by a virtual anatomy of the process. This virtual anatomy similar to a living and breathing entity has its own set of vital statistics which based upon upper and lower thresholds defined and comparison thereof to actuals, render the process healthy or not. Therefore, similar to the different streams of medicine, different functions and processes and their thresholds must be mapped out by SMEs for that specific area in that specific organization. To carry on the comparison a little further, just like oxygen is circulated to all parts of the body but pumped by the heart, the circulatory system must be 'pumped' by a central data hub that carries all vital metrics to the specific part of the digital twin that requires it in order to function and spew out the necessary analytics.

Easier said than done

When all is said and done an industrial machine is easier to replicate than a 'living and breathing' process. For the same reason, human beings are not as reliable as machines. The process is fluid, is volatile, is dynamic because it is run by humans who may choose to change it almost on a daily basis. Therefore, digitization is a necessary first step to digital twinning in order to render the process repeatable and reliable. Statistical interventions are necessary for complicated equations and analytics but are just as inevitable as MRI to assess the root cause of the problem. While digital twins have been in existence for a lot of industrial machines such as aircraft engines and power turbines, it is somewhat novel for processes in general, more so financial ones. Further, controllership digital twins are almost unheard of and while some may pass off and automated account reconciliation system as a digital twin for account recs, that is almost illiterate in its assessment. The need for techno-functional finance experts are therefore an emerging trend due to this exact reason.

Digitization is a necessary first step to digital twinning in order to render the process repeatable and reliable. Statistical interventions are necessary for complicated equations and analytics but are just as inevitable as MRI to assess the root cause of the problem.

Conclusion

Let's recap. With the utilization of cognitive technologies, financial controllers have the potential to achieve a much better harmony between the virtual and reality. The symbiosis therefore has created a completely new job profile, replacing functional experts with techno-functional ones. Assuming that the rule-based work is largely automated, the focus shifts to management analysis and anomaly investigations, making the process more value based. Artificial Intelligence can be used to analyze voluminous transactional 'big' data in order to reveal patterns, generate forecasts, and make more effective decisions. Machine learning can do accurate predictive planning, and cognitive agents can give financial controllers the acumen required to be a strategic partner to the management. Routine processes will be handled by algorithms that are evaluated on an ongoing basis. Finally, controllership digital twins for cost accounting, lease accounting, fixed assets, inter-company reconciliations, accruals, account reconciliations, compliance to regulatory rules, external and internal audit areas including revenue recognition, expense management, delinquencies, conflicts of interest and other 'touchy feely' areas will all be detached via the implementation of digital twins.

Robotics Process Automation and Audit – A transformation

The advent of Robotic Process Automation (RPA) has the plausible ability to reinforce the traditional audit model. Applying its skill of automation of the task that is rule-based, repetitive, and manual, an RPA can remodel the role of an auditor by substituting stereotype tasks and labour the point on higher-order thinking skills that lead to enhanced audit quality. This paper contemplates the future of audit by unveiling the concept of RPA technology and describing its budding usage in the audit field. The focus will be on the methodology for effective implementation of RPA-based audits and exploring the audit methods where RPA can show its performance and finally, displaying RPA working style to perform significant audit areas. Read on...

***CA Nisha Kapur** **# Abhishek Kumar Singh**

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1. Robotic Process Automation (RPA)

A layman may fancy RPA robots to be physical machines moving around the office replacing human labour. An RPA robot is a pre-configured software that performs the task on a computer.

RPA bots can unbelievably improve processes and economies of scale when the steps to perform are rule-based tasks which are repetitive and manual. Conversely, RPA bots are not well suited for those tasks that require elements of human judgment, have uncertain outcomes, or that occur infrequently. When implementing RPA robots for the first time, organizations should look for enhanced productivity; hence, shun away from complex and subjective tasks.

RPA technology adoption leads to providing superior service quality, exceptional ROI, matchless process automation, enhanced compliance, upgraded business agility, and towering total business value.

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2. Characteristics of Processes for Automation

Processes considered suitable for automation are identified based on the characteristics:

1) High volume and value of transactions,
2) Limited exception handling,
3) Stable environment,
4) Frequent access to multiple systems,
5) Ease of breakdown into defined and small processes,
6) Clear understanding of manual processing cost,
7) To Involve a significant amount of human effort to execute them,
8) To be repeatable at the interval,
9) The solution is based on a clear set of rules.

3. Work performed by RPA Robots

Digital workers are virtual employees who comfortably assist human workers by performing various business functions. These software bots mimic human beings and replicate tasks performed by them, saving time and energy to be fruitfully associable to a complex task requiring intellectual judgment. After configuring the tasks to show these smart bots what to do, then allow them do the work they perform dexterously. Figure1, displays the task which an RPA bot can perform.

> Audit assures independent scrutiny and verification of business performance, the ethics of the officer in charge, and the obedience to rules, regulations, and law; to safeguard the confidence of customers, shareholders, suppliers, and public authorities.

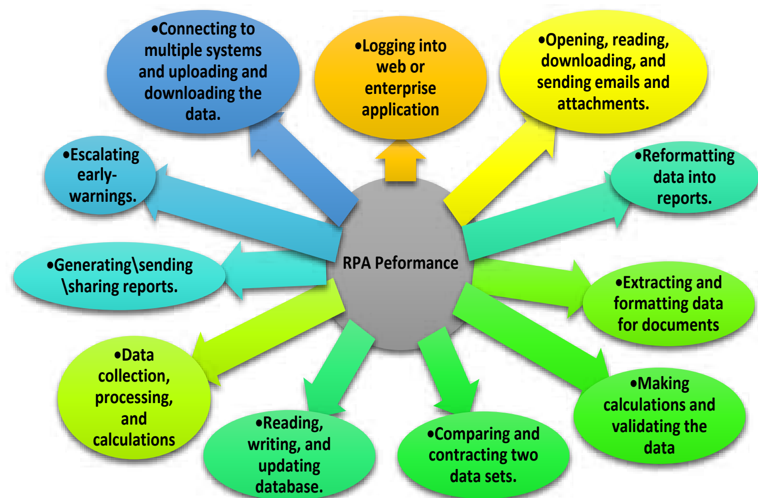

Figure 1. Showing the work performed by RPA bots

4. RPA technology in Auditing

Audits carry lots of weight as a mechanism to control and constrain violation and corruption in the modern world. Audit assures independent scrutiny and verification of business performance, the ethics of the officer in charge, and the obedience to rules, regulations, and law; to safeguard the confidence of customers, shareholders, suppliers, and public authorities.

An RPA-enabled audit targets the audit quality. RPA bots step into the shoes of an auditor and perform all structured, time-

consuming, and repetitive activities; as a result, the auditors get plenty of time to focus on complex testing and investigation of accounting anomalies making the audit process more productive and valuable. The paper aims to give an eagle eye view of RPA implementation in the auditing domain on the following parameters:

4.1 On the road towards RPA-based Audits – This section will discuss the factors to be kept in mind on the journey to implement RPA technology to embrace an audit job.

4.2 RPA robots encounter Auditing operations – This section will discuss the impact on auditing operations that RPA is gifted to perform.

4.3 RPA bots models in Auditing areas–This section will discuss how RPA will perform the two significant auditing functions.

- Revenue Audit
- Stock Audit

RPA robots are a hidden gem for the audit profession as they can change the role and responsibility of an auditor by shifting the focus from data collection, testing, and analysis to complex and high-risk areas of control testing and exception scrutiny.

4.1 On the road towards RPA- based Audits

RPA robots are a hidden gem for the audit profession as they can change the role and responsibility of an auditor by shifting the focus from data collection, testing, and analysis to complex and high-risk areas of control testing and exception scrutiny. An auditor for yielding the maximum profit from RPA bot employment must address the following points:

a) **Process Recognition-** The first and foremost step for an auditor is to identify the process capable of automation. The process is a series of tedious, manual, and repetitive transactions and requires minimal decision power, most importantly, it should be rule-based and can be automated.

b) **Defining steps for Automation-** RPA workers follow the pre-embedded conditions build in the small steps of an audit process that executes the task as a human being would perform. For example, for performing the simple task of checking unread e-mails, A software bot follows a series of commands to open the browser, log in with their credentials, identify and read e-mails.

Thus, the next vital step for an auditor is to select those audit procedures having the potential of breaking down within the process into narrow categories and define the steps for software bots who can execute the task in series to accomplish the perfect results.

Data is the root of an auditing function. For the software program to successfully interpret the inputs (data attributes) in the auditing compilations, it should essentially be in a structured format.

c) **Data Standardization-** Data is the root of an auditing function. For the software program to successfully interpret the inputs (data attributes) in the auditing compilations, it should essentially be in a structured format.

Audit data is voluminous and

gathered from various and different sources. There is a possibility that collected information lacks uniformity. For example, one report might label sales while the other report might label revenue. Such contradiction may puzzle the robot and create challenges in decoding and portraying the required results. The solution to this problem is simple—to standardize data in a structured format to get the best results of RPA implementation.

d) **Selection of Audit Procedures for Automation** - Several audit procedures may be rule-based and seem to fit the criteria to be automated by preliminary analysis, but it may not be beneficial to automate them all. Each audit procedure chosen further needs critical study and scrutiny on the following parameters for the final selection.

- Possibility of collection of data inputs digitally or can convert the data in a digital format quickly and accurately.
- Perform cost-benefit analysis by comparing and evaluating the value to be added over its life to the cost to be incurred for setting up operations and any further anticipated maintenance cost.

The auditor must evaluate and choose the process that has readiness in digital format and gives the maximum payoff.

e) **Prototyping and Experimentation** - After identifying and selecting the audit procedures to be automated, the next step that pops up is designing a prototype; whose implementation would award the desired outcome of successful automation.

Prototype implementation would start from configuring the steps to be performed by software bots, followed by running the project by feeding a sample data, evaluating the results, diagnosing the errors and deviations, and finally debugging and rectifying them. The procedure validates the pre-programmed conditions to mitigate any detour.

f) **Evaluation and Feedback** - The audit environment is dynamic by having many amendments and reforms. After the RPA tool has been successfully launched and implemented in real-audit engagements, there is a need to regularly update and refine the embedded rules and instructions to match the right outcome.

4.2 RPA Robots encounter Auditing Operations

An RPA-enabled audit targets the audit quality. RPA robot steps into the shoes of an auditor by performing all structured, time-consuming, and

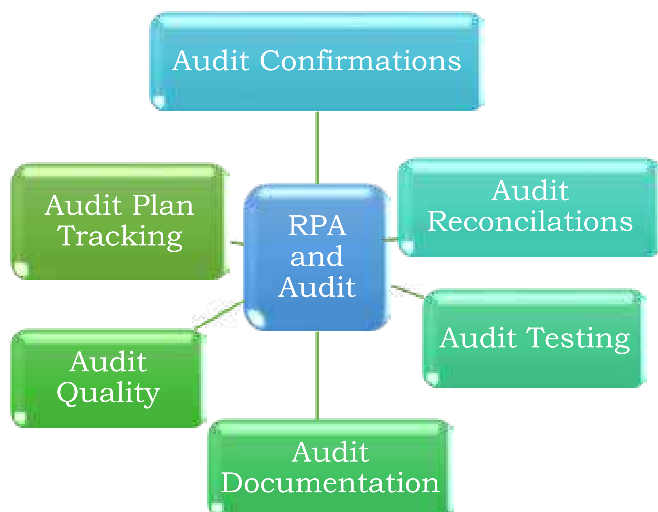

Figure 2. Shows the areas RPA Robots can impact in Auditing.

Working with software bots makes the entire process automated; they can easily perform the tedious task of studying and matching two jumbo sets of data tirelessly with accuracy and give exact results.

repetitive activities. Resultant, the audit team gets a good amount of time to focus on complex testing and investigation of accounting anomalies making the audit process more productive and valuable.

a) **Audit Confirmations**
Confirmations are a necessary tool of an auditing procedure that aids in increase of the reliance on the period-end balance. They support optimally mitigating the audit risk. Traditionally, sending confirmation is a manual process where letters are prepared and sent to period end titleholders, namely, banks, customers, and vendors requesting to confirm the balance. Implementation of RPA bots relieves the auditor with its ability to cover the entire population in no time, reduces the time and energy spent in the process, and ensures mailing of prompt and timely reminders in case of non-receipt.

RPA enabled confirmation process builds in automation, starting with logging the system to extract the list of account holders in conjunction with their period-end balance and communication address to send the confirmation. Next, the RPA worker prepares personalized confirmation letters for each recipient based on the model format. Then all confirmation letters are posted via online correspondence, replies received are downloaded and compared with, and finally the discrepancies are highlighted. Thus, the entire process gets automated, leaving just digging reasoning for inconsistency as a manual process.

b) **Audit Reconciliation**
Reconciliations are an essential auditing technique to find out the questionable, problematic, and undependable transactions. Working with software bots makes the entire process automated; they can easily perform the tedious task of studying and matching two jumbo sets of data tirelessly with accuracy and give exact results.

RPA worker enables the reconciliation process by performing a series of tasks to push away manual labour, originating from logging the system, downloading all the statements for reconciliation, followed by vigorous matching, and comparing the transactions in every data set. This performance works with the help of unique identification, for example, invoice number or voucher number. Lastly, it terminates with perfect and detailed identification and compilation of the mismatched entries to formulate the entries to be posted in the ledgers

c) **Audit Testing**
Transaction testing is a vital auditing technique to look after the assessment of the risk of a material misstatement, done by performing analytical procedures, internal controls, and substantive testing.

This technique comforts the auditor to get assurance on the effectiveness of client operations and the established

internal controls including, verifying the management's assertions of existence, completeness, and valuation.

RPA robots excel by thoroughly testing the entire population of millions of items to assure the auditor about data veracity. The RPA robots refine the workflow by enabling the management team to focus their in-depth audit lenses on exceptional items. RPA isolates about 60-70 odd transactions to be examined by the management for discussion and comments. Software bots can be easily programmed to automatically perform a 3-way match testing of the invoice, purchase order, and shipping documents for the entire population eliminating sampling risk.

d) **Audit Documentation** Documentation is a storehouse of the grounds and scenario that enabled the auditor to form its opinion. All the data gathered from varied sources are compiled together and stored as audit evidence. An auditor needs to maintain it properly to support its conclusion whenever required in a review or scrutiny. The exercise demanding manual work can turn out to be burdensome for auditors.

RPA robots assist in regularizing the activity of audit documentation by fashioning the mode of collecting audit evidence by taking standardized data from each of the different sources and combining them into one audit report with minimal effort. As a result, the records maintained are well-organized, systematic, and precise.

e) **Audit Quality** – A clear-cut intent of the client and the integral pressure for the auditor is to maintain the quality of an audit.

Robots stimulate clients by gifting them a methodical, dependable, and standardized audit process flow by gathering data in a reliable and consistent format. Further, they potentially permit a means to design a robust process-oriented auditing approach by a complete analysis of the financial position by RPA auditor and focus on vital management decisions by human auditors.

RPA robots can

RPA robots assist in regularizing the activity of audit documentation by fashioning the mode of collecting audit evidence by taking standardized data from each of the different sources and combining them into one audit report with minimal effort.

effortlessly evaluate the quality of the auditing data in any system. For example, concerning master data files, they take care of the completeness of all fields together including diagnosis of all duplicates and their validation. The RPA-based system can automate the data collection and classification operations identifying the core trends knocking as a medium of the annual risk assessment process.

f) **Audit Progress tracking** - An audit plan not timely tracked can prove to be a disaster. Manual progress tracing not done dutifully may doom the assignment and reputation of an auditor.

RPA robots excel when used to track

the progress against the annual audit plan. In other words, they work efficiently to track and monitor key risk indicators (KRIs).

RPA workers can automate by identifying open items, sending electronic mails to responsible parties, conducting regular follow-ups with escalating concerns when due dates spill over, and documenting remediation status.

The above discussion makes it clear that RPA technology is a powerful means to automate all the major audit procedures. The most apparent benefit of RPA robots in the audit is reduction of the time spent within the highly repetitive processes. Other benefits include more reliability, perfect audit trails, enhanced service quality, and improved security.

Software bots perform the reconciliation process, starting by logging the client secure file transfer protocol (FTP) server extract transaction listing compile and comparing total sales as per the trial balance.

4.3 RPA models in Auditing areas

After understanding the stupendous capability of software bots to perform audit tasks with all accuracy and ease, this section will scrape talent to further exploit the power by illustrating how RPA robots will operate in some important audit areas.

a) **Revenue Audit** - Revenue by default is one of the most high-risk areas in audit engagements. Revenue reconciliations and transaction testing are the best audit measures to provide comfort. They are most suitable to be performed by RPA robots being manually repetitive and do not require complex reasoning. RPA worker simulates the job by performing the following operations:

- **Revenue reconciliation** - Software bots perform the reconciliation process, starting by logging the client secure file transfer protocol (FTP) server extract transaction listing compile and comparing total sales as per the trial balance.
- **Analytical procedures** - RPA robots can retrieve the total revenue amount from previous years' records, compare with the current year, and generate an alert when the difference exceeds the 5% threshold of materiality.
- **Revenue testing**- If no difference comes across, the RPA bots can test the internal control and substantive testing by accessing and extracting the audit evidence in the form of the purchase order, invoice, and shipping listing provided by the client. After comparing all the three factors, they flag the discrepancies. Thus, using RPA expands coverage and empowers the auditor to focus time and energy on risky areas.

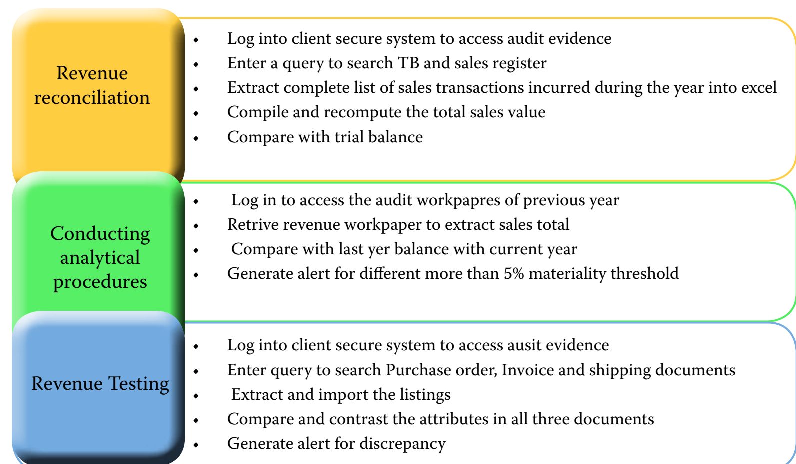

Figure 3. depicts the diagrammatic presentation of the revenue audit.

b) **Stock Audit** - Testing inventory is the most crucial area in auditing a financial statement. It is the most time-consuming and requires manual checking; thus, RPA becomes the best choice to unburden the auditors. RPA employees can be a handy asset for inventory management involving automation through the following operations:

- **Stock reconciliation** – RPA robots log into the system and extract the stock quantity outstanding on the closing date along with the stock quantity physically verified by management from e-mail. Then effectively compares and reconciles the stock quantity escalating the variances.
- **Stock verification** - RPA software bots extract the date of receipt of each item from the customer's inventory system and retrieves the delivery date by searching for the tracking number on the goods carrier's website. Next, it compares the two sets of data to determine the accuracy of the receipt date.

Conclusion

We can conclude that RPA advocate robots can execute audit tasks in an error-free manner, which results in higher-quality data and refined reports. In addition, robotic auditing work can produce reliable records and deliver superior audit service. Further, it ensures reliability on audit tools and audit data by regular checks and evaluation along with privacy, security and satisfaction of both auditor and auditee. ■■■

RPA advocate robots can execute audit tasks in an error-free manner, which results in higher-quality data and refined reports. In addition, robotic auditing work can produce reliable records and deliver superior audit service.

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Reg Tech: Technology - Driven Revolutionary Compliance

The ascent of FinTech has not just advanced the operational effectiveness of the financial industry but also presented difficulties with effective regulatory compliance. RegTech - a revolutionary and essential dimension of FinTech – is the promising enabler of regulatory technologies (RegTech). To make regulatory compliance more viable and efficient, RegTech is emerging as mainstream. There is a growing development on the significance of regulatory control administrators to upgrade their ability using RegTech. RegTech holds great potential to enhance regulatory compliance. Although RegTech is considered to be in the early stage of developments, there is a need to discuss and apply it to streamline financial regulations and supervision. This paper focuses on the basic and organisational aspects of RegTech by using AI, Blockchain, Big Data and other embedded technologies—which improves overall RegTech framework.

CA. Piyush H Mekhia

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1. Introduction and History of RegTech

1.1 Introduction

FinTech, through which RegTech originates, depicts technology that looks to automate and improve the delivery and application of services. FinTech can be utilized to help entrepreneurs, customers and businesses better manage their financial tasks, lives and processes using specific applications' and algorithms which can be applied to PCs as well as progressively, cellular phones. FinTech, is a derivation from "Financial Technology".

RegTech is derived from the words "Regulatory and technology". It is sphere that provides a variety of regulatory services for businesses inside the monetary, health, insurance coverage, along with other industries.

RegTech is managing of regulating procedures in the company via technology. The key functions of RegTech comprise regulatory monitoring, compliance and reporting. RegTech is composed of a group of companies which uses cloud technologies and processing software-as-a-service (SaaS) to help businesses comply with legislation efficiently and less expensively. RegTech may also be known as regulating engineering. Finance associations and regulators both utilize RegTech to deal with complex compliances.

RegTech is a result of the emergence of technologies being upgraded. Pre RegTech, firms needed to preserve compliances manually and the process was costly and time consuming.

As of now, RegTech firms provide solutions and technology to safeguard issues such as regulating tracking, data analytics, risk management, identity control and compliance.

RegTech helps financial organisations to enhance their handling of compliances. As an integral part of financial organisations' push towards going digital, RegTech claims to:

1. Toughen compliance and risk management.
2. Diminishing fixed cost of the compliance.
3. Boosting safety of clients.
4. Direct enhancements and improvements in resources.
5. Provide an important business understanding.
6. Provide clients with better and quicker help.
7. Drive new items and administrations.

Gradually RegTech is expected to have significant portion of overall regulatory spending. New technologies, very similar to machine learning (ML)/ artificial intelligence (AI), predictive analytics, and data-driven promotion, will get rid of the guesswork and dependence outside of financial conclusions. Learning programs will learn the behaviour to produce automatic, subconscious savings and spendings. FinTech is additionally a point of automatic customer service tech, utilizing chatbots and AI ports to help customers with the main mission not to mention hold down staffing expenses. FinTech is additionally being leveraged to combat fraud through leveraging advice regarding the foundation of payment to detain trades which could be outside the door.

1.2 Conceptualisation of RegTech

RegTech is a network of technology companies that resolve challenges originating from a technology-driven market through automation. The boost in digital products has increased data breaches, cyber hacks, and concealment, along with other fallacious pursuits.

With the usage of both big data and machine-learning technologies, RegTech lowers the opportunity to a firm's compliance division by offering data on concealment actions conducted online. These are the actions that a normal compliance team may not know, due to the development of underground marketplaces on the internet.

RegTech tools conduct searches to detect instances that manifest itself online in the interval to spot issues or irregularities inside the electronic payment world. Any outlier is relayed into the establishment to research and confirm any fraudulent activity. Institutions which establish potential dangers to financial security can minimize the dangers and costs associated with lost data and funds breaches.

RegTech businesses team up with financial institutions and prohibitive bodies, utilizing cloud calculating and big data to share information. Cloud computing could be low-cost technology where users will discuss data in a quick and secure manner with different firms.

In short, RegTech is the practice of using a software process for regulatory management. A bunch of firms came along when realizing that technology could build the regulatory process easier. RegTech uses Software as a service (SaaS)—cloud computing, big data, and artificial intelligence—to manage regulatory compliance, and it reduces the strain on compliance groups by automating the process.

Cyberattacks, security breaches and money laundering are the most common occurrences in such an environment. RegTech helps organisations reduce these threats and is principally used in, however not restricted to, financial sectors and applications.

1.3 A quick history of RegTech

The financial disaster in 2008 culminated into a boom in financial sector law. There was a growth in the unrestrained use of technologies within the

RegTech firms provide solutions and technology to safeguard issues such as regulating tracking, data analytics, risk management, identity control and compliance.

financial industry. Technology led to a growth in the number of FinTech businesses that produced technology-driven tools to improve the consumer experience and involvement with financial firms. The dependence on customer data to generate electronic products has resulted in worries among regulatory bodies, calling for more legislation on data privacy utilization and supply. The coupling of regulatory laws and measures using a business more reliant on technologies caused the demand for technology. The Government of UK published a report stating that "FinTech has the potential to be applied to regulation and compliance to make financial regulation and reporting more transparent, efficient and effective – creating new mechanisms for regulatory technology, 'RegTech."

Many firms are not able to keep themselves updated with expanding compliance requirements and transparent data security measures. These firms needed a robust technological resolution to assist with the following problems:

- Extreme outlay and complication of compliance;
- Dense automation methods;
- Unsafe financial trades;
- Human engagements causing mistakes

2. Elements of RegTech

2.1 From KYC to KYD

RegTech is not a new category, yet as such distinct applications of technology; it is growing tremendously, driven by an increase in computing capability, the decreasing cost of technologies and big data explosion. We take a look at RegTech's background into three stages:

1. RegTech 1.0 emerged around the 1990s and 2000s when financial institutions started introducing new technology to detect and investigations risks of particular regulations or procedures. These developed into quite a few of the qualitative risk management practices which we are conversant in now.
2. Over the last ten years, RegTech 2.0 has assisted companies to befit rules and better their supervision activities. Many RegTech programs have concentrated on 'know your customer' (KYC) by customer protection and herd behaviours.
3. RegTech 3.0 is a transfer from 'know your client' to 'know your data' as the financial businesses currently on the brink of RegTech institutions have started to appear at regulation and risk as prediction and data issues which might be addressed by technology.

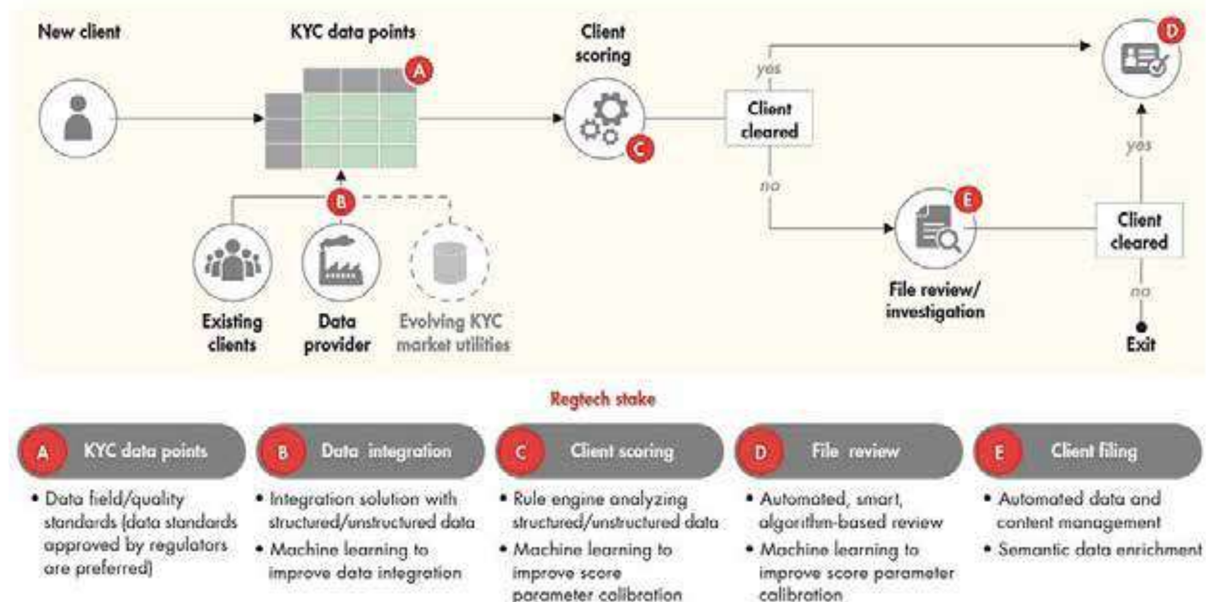

Fig. 1. How know-your-client solutions work

RegTech tools conduct searches to detect instances that manifest itself online in the interval to spot issues or irregularities inside the electronic payment world.

2.2 The 3 Cs of RegTech

Compliance

The pace of regulatory change has shrunk – nonetheless - Compliance requirements will continue to grow as regulators concentrate on reforms beginning from oversight to systemic threat and priorities demonstrating data confidentiality and consumer protection.

Cost

Regulatory limitations and flat interest rates have made it harder for financial institutions to create a steady increase in earnings. Financial institutions' that reduce price and adopt this technology will empower them to increase efficiency and productiveness with inside the dangers and compliance purposes. Since the price of hardware and applications has come down, investing in RegTech has become more affordable.

Complexity

Political events are increasing worldwide uncertainties because the financial region seeks to browse new goods, services and regulations. In addition to these components is the difficulty in the data environment, heritage system and functioning models.

Since RegTech 3.0, all the 3 Cs are about monetary arrangements' agenda. But cautious people are more focussed on compliance while radical companies have moved to handle costs. A couple of global investment banks have entered the reinvention section which permits them to look for responses to complexity and doubt and also make the transition to become a data entity.

2.3 Six priorities to focus

To advantage from this era of technological developments, the organization needs to focus on these 6 key primacies:

1. Modernize IT working system to equip for the 'new normal.'
2. Reduce costs via streamlining legacy systems, utilizing SaaS.
3. Form the tech abilities to get extra wise about your customers' needs
4. Preparing infrastructure to for seamless connectivity.
5. Strengthen cyber-safety to avoid threat of loss.
6. Get access to experts and skilled workforce.

3. Technologies for RegTech

RegTech is based on technologies such as Machine Learning, cloud computing, Big Data and Blockchain. Let us take a look at how RegTech organizations need those tools:

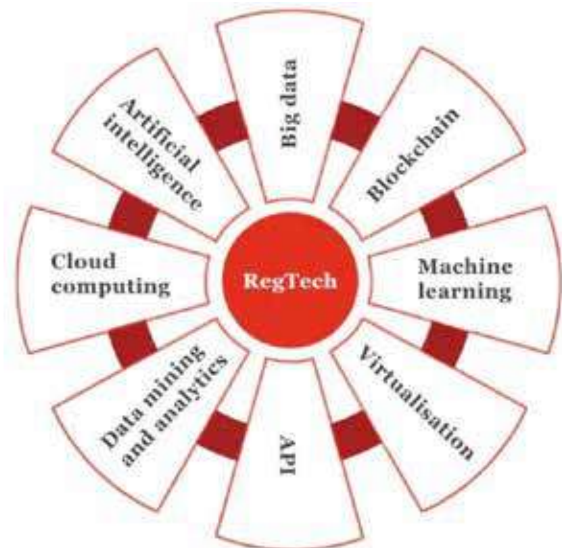

Fig. 2. Technologies for RegTech

3.1 Cloud Computing

RegTech firms use cloud computing to supply their goods or services utilizing Software as a Service model. These SaaS make it possible for corporations in maintaining regulation. Cloud computing decreases the premium for hardware and software and also helping data storage economical. It gives access to data within a fraction of seconds. Further, data is captured on the cloud that offers backup and disaster retrieval while cyber-attacks or human errors.

3.2 Machine Learning

In RegTech, Machine Learning (ML) plays a crucial role. RegTech uses ML to explore patterns through different datasets to select variations. Moreover, ML empowers to recognize frauds and advances the management of risk. These structures likewise

can analyze financial reports and caution firms of tax issues (aiding firm regulatory compliance and evades fines), help firms conduct businesses globally. Some ML algorithms also uncover segments of an organization's software program that need enhancements.

3.3 Blockchain

With the utilization of Blockchain, RegTech firms can ensure that financial instances are executed safely and instantly. Blockchain has a ton of projects within the RegTech business. For example, RegTech firms utilize Blockchain to program documents and data. Blockchain license RegTech firms to approve records, increment in secure DSC and assurance of data due to the Blockchain's discrete nature.

3.4 Big Data

RegTech firms utilize cloud computing and analytics to discover hidden sequences, new tendencies, illegal clients, and dubious transactions – based on large datasets. RegTech firms have embraced big data implementation, by that means; it has gotten more straightforward to administer the data aggregately in a single storage.

4. Core Features of RegTech

Firms were using manual compliance method before RegTech developed advanced technology-driven tools and techniques. RegTech has increased the possibilities for value addition to the compliance industry. The following are the core features of RegTech:

4.1 Agile

To prepare relevant databases quickly, RegTech firms utilize citation, transformation and load techniques.

4.2 High Speed

To process data and generate review in real-time, RegTech takes the help of Big Data and Cognitive Analytics.

4.3 Integrity

SaaS model grants RegTech companies to easily consolidate solutions with Software system of the organization with the product arrangement of the firm they collaborate with.

4.4 Improved Analytics

RegTech companies intently rely upon the capacity of their preparedness for gathering, processing and analyzing large data that too continuously. They use cutting edge analytics systems to offer customers with appropriate data.

5. Categories of RegTech Services

5.1 Compliance

RegTech firms assign tech-driven RPA (Robotic Process Automation), ML, NLP, Biometrics, Blockchain, AI and Big data. They use it to cut the cost, save firm from money laundering, reduce cyber risk, upgrade regulatory requirements, credit worthiness etc.

Technologies used by RegTech Compliance:

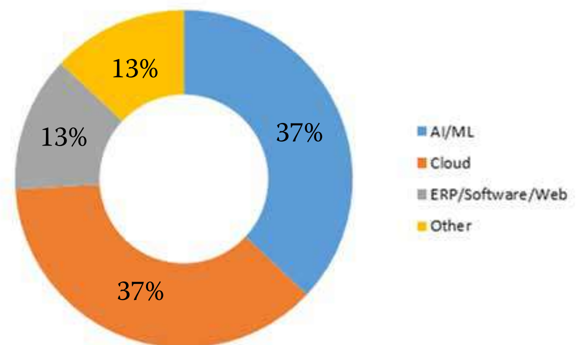

Fig. 3. Key RegTech for compliance management

5.2 Transaction Monitoring

RegTech firms also offer transaction monitoring. In 2017, only payment fraud distressed around 80% of companies. Effective monitoring of transactions is one of the dominant devices to reduce the deception, ultimately saving a huge amount for the firm.

"The big banks are looking into this area (transaction monitoring) because at the end of the day they want the process to be effective and efficient."

Technologies used by RegTech Transaction Monitoring:

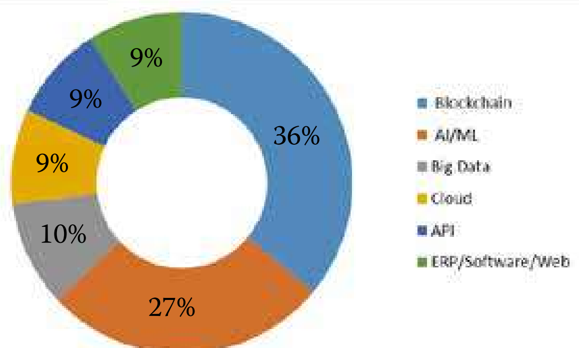

Fig. 4. Key RegTech to monitor transactions

5.3 Regulatory Reporting

RegTech equips firms to noticeably lessen the time taken for making reports by the usage of AI and Cloud-based methods. These processes are machine-driven and hardly require a human touch so the possibility of the error is almost nullified. If such data is up to the mark – then bank authorities, stakeholder and customers' can examine the financial position faster.

Technologies used by regulatory reporting:

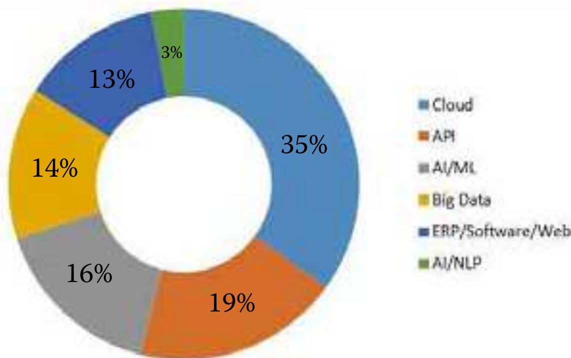

Fig. 5. Technologies used for regulatory reporting

5.4 Risk Management

These are the methods used by RegTech uses to enhance Risk management:

1. It gives custom-designed services with easy to understand model for risk identification;
2. It traces identification theft, money theft and tracks suspicious transactions with ML and RPA;
3. It gathers data from distinct bases.

Technologies used for risk management:

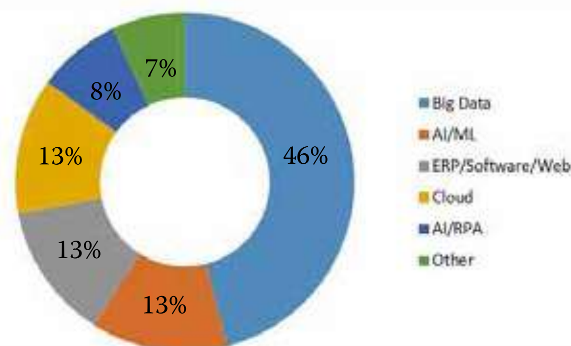

Fig. 6. Key RegTech for risk management

5.5 Identity Management and Control

RegTech firm uses KYC structure along with ML, AI and Biometrics to recognize the customers and the fraud. To give access to the right user for the right data is the main aim of identification and control. RegTech resolves this issue by a fast and exceptionally stable identification control system.

Technologies used for identity management:

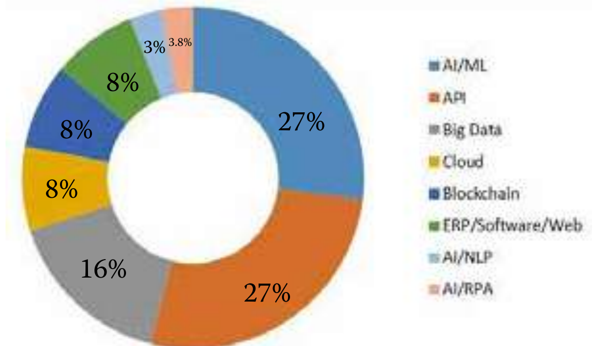

Fig. 7. Key RegTech for identity management and control

Conclusion

This paper draws attention to the main features of RegTech and the issues which can be solved by RegTech firms. It also gives some insights into the technologies used by RegTech. The benefit of RegTech is that it processes the compliance of financial data, which includes financial statements and by which it gives the risk exposure of any entity.

FinTech and RegTech confirmed its value by using improved products and services and reducing costs. In the coming years, we will see which incumbents stay ahead of the curve and which tech companies overcome hurdles to become big players in the space. In the digital age, where consumers face an abundance of choice, the best products will win out. The seven trends illustrated here will contribute to the development of those products and the proliferation of FinTech.

RegTech 3.0 forms a part of the transition from protective mode to reinvention. Financial firms need to consider RegTech as a part of their wider transformation approach and be clear about what they need to achieve. It's crucial to note here that AI and RegTech are not expected to widely replace people. We are seeing early AI entries within the RegTech space, however, they're supporting with lower-hanging fruit and repetitive tasks. AI is improving human tasks, making them extra powerful in their roles. From the start of the regulatory review to the end of the compliance process, AI must work carefully with people, improving activities and balancing the appropriate level of manual oversight.

Usage of Collaboration and Analytics Capabilities in Finance

Today all businesses have understood use of collaboration skills, tools, and technologies that are working for their success. We see robots are working alongside human beings to build machine, perform delivery, generate energy and manage business processes. Construction of infrastructure, software and systems development is much faster today due to agile, collaborative and focus technology driven approach. We see supply and demand being generated through use of analytics, AI and collaboration of business stakeholders. Read on...

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The Government is able to respond to emergencies at a faster pace due to use of automation, analytics and collaborative participative approach. All this is relevant for Finance function. Over the next few years, analytics, RPA, blockchain and AI which are already being used by many organizations would be leveraged by finance function to become more efficient and effective.

In fact, the pandemic has enabled use of collaborative and analytic capability across the world. All the organizations, big or small have adopted use of collaborative tools for video conferencing, instant exchange of messages over informal channels, whiteboarding for ideation and ideation and cocreation and virtual offices.

Analytics and AI have enabled better insight on click of button for quick decision making. Finance function has emerged in recent few years and both actuals and forecasts can be produced instantly on demand rather than only at end of the month, quarter, or year. In fact the distinction between operational and analytical data is slowly disappearing. Success of all these processes is only possible if there is collaboration across functions. This will bring agile business growth and enable businesses to be more profitable and efficient. Finance, through use of collaborative and analytic capabilities can meet external demands for

cyclical information, frequent performance information to investors and input required by internal stakeholders for decision making, so that decision is more researched and accurate. In fact, businesses will be able to leverage value out of existing available information and knowledge in the organization.

Use of collaborative and analytic digital tools like Whiteboard, SharePoint, Google Drive, One Drive, Teams /Zoom video conference with automation and power BI analytic or tool enable analytics by finance function. It can empower the availability of right information at right time at right place to internal and external stakeholders. They can assist in agile automation and improve operational cost efficiency. All this can result in a positive impact on organization culture. Effective collaborative and analytic tools can provide following benefits.

> Finance, through use of collaborative and analytic capabilities can meet external demands for cyclical information, frequent performance information to investors and input required by internal stakeholders for decision making, so that decision is more researched and accurate.

- Enable better project management which can assist to streamline the status tracker, dashboards, approvals, and escalations.
- Enable multi department collaboration in working sheets, during preparation and review of information.
- Assist to design and implement checks and controls over the data like comparison with previous version, analysis, etc.
- Enable better visibility for real time interaction and information.
- Foster better stakeholder experience.

When analytic and data presentation tools like Python, R, Power BI, Tableau, Qlik view, Grafana etc are used along with some of collaborative tools. They are,

- **Data sharing and workflow management tool:** like SharePoint, google drive, MS team, Excel sharing etc.
- **Video conferencing:** Microsoft team, Zoom, Google meet enable collaboration through videoconferencing mode, various add on analytic and sharing feature along with AI enable to frame a Caller face, background change to avoid distraction.
- **Ideation and whiteboarding**: Microsoft, Mural and Miro provide benefit for ideation and problem solving through virtual environment in facilitated lab and similar session. This enables though various template and analytic provide immersive experience.
- **Virtual office:** Pragli, Sococo, Virbela along with Microsoft Teams, Slack, enable real-time interaction.

> Use of collaborative and analytic digital tools like Whiteboard, SharePoint, Google Drive, One Drive, Teams /Zoom video conference with automation and power BI analytic or tool enable analytics by finance function.

They can enable real time interaction and insight and foster faster collaboration anytime and anywhere.

Some of the ways we can use analytics with collaboration tool to bring solution in finance are discussed as follows:

Annual budgeting including scenario planning

Annual budgeting is entity wide effort and require collaboration and analytics across entity. The digital tools when utilized effectively can enable finance to be more effective and efficient in budgeting process.

Annual budgeting is entity wide effort and require collaboration and analytics across entity. The digital tools when utilized effectively can enable finance to be more effective and efficient in budgeting process.

Whiteboarding and ideation tool along with video conferring tool can enable discussion of business strategy for planning and budgeting exercise, insight for the purpose of strategy can be provided by usage of analytic tools, data sharing and workflow management tool like SharePoint, Google Drive, Workday etc. can enable every function to come together and collaborate. These tools can enable functions to contribute in a single platform wherein needs of all can be aligned and understood. Thus, enabling finance function to understand budgeting assumptions of other functions. Analytic tools can bring real time insight and discussion and enable better insight on assumption e.g., production plan depends upon sales plan, procurement plan is linked to both sales and production plan, hiring plan is dependent on sales, production, procurement and other support functions.

The real time analytic tool can provide insight on past and enable foresight on future by cross validation and linking analysis of sale to production to procurement and on support function budgets for HR, Admin, IT etc.

Also, all discussion on assumption for planning and budgeting can be recorded and available for future reference and can be used as future insights for decision making and building much more efficient budgeting process in long run.

In essence, considering volatility, uncertainty, complexity, and ambiguity (VUCA) in the world amplified with ongoing pandemic we are aware that the scenario will keep on changing. In current day, planning is therefore extremely time consuming and requires huge collaboration. These collaborative tools and using advanced analytics can enable real time discussion, document assumption, review scenario based assumption and evaluate impact.

This enables effective deliberation to arrive at various scenarios (aggressive, modest and conservative) for decision making. Further, since all information data is stored in single platform along with assumption, analysis and basis for decision making, they can enable finance function to adjust plan and reduce the timeframe in managing budget, including comparison of budget vs actual and explaining variance for audit purposes.

Complex commercial decision making

Commercial decisions require objectivity, ability to analyze, interpret the data, careful evaluation, and problem-solving skills. The commercial decisions are getting complex due to a variety of options available and risks/reward attached to each option. The options are evaluated through different lenses across departments such as sales, production, project, HR, logistics, finance, risk, governance etc., thereby enhancing the need for better and faster collaboration to arrive at most suitable, yet commonly accepted decision.

For instance, in commercial decision regarding bidding or not or for revenue model of project or for claim management in a project. All these require various teams to collaborate looking at a common data set and provide inputs and approval on common platform with their analysis and comment. Collaborative workflow, data sharing, video conferring, virtual office tool along with data analytics can enable the team to jointly

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come to decision making, any discussion and scenario can pass through diverse mindset to understand varied and sometime conflicting perspective, deliberate multiple options and bring stakeholders to a common platform, thereby increasing the chance of correct decision making.

Financial closing and reporting

Financial closing and reporting are critical month end tasks which are governed by both internal and external reporting requirement. This is a time bound activity, yet has touch points across the organization, hence requiring effective use of tools, technologies, advance analytics and arriving at common understanding across the organization.

The business units require what, when and how of these tasks and Finance Function is required to deliberate on quality of information. Use of these tools can enable them to discuss data submitted by different functions using past data and trends at faster and better way. Analytic based insight can enable them to question and arrive at accurate information for performing financial closing. Collaborative tools can enable them to meet timely to discuss business needs for internal and external reporting.

The Finance Function which uses these tools can use workflow for data gathering and data sharing, video conferring for discussion purposes, virtual office tool along with data analytics for understanding quality of data and recording their analysis all this can enable team to be virtually real time and provide deeper and faster internal reports for business decisions and be more efficient and relevant in the changing landscape.

Preparing for remote future of finance driven by digital technology

The future of finance is changing as rapidly as the operating models, thereby the need for unlearning and relearning is ever expanding than before.

Finance skills are now being be driven by deeper understanding of business models, think like CEO instead of CFO, leverage technology, deliver business insights instead of MIS, ready to evolve and collaborate using cutting edge modern technologies to solve complex business issues. To be relevant, it is therefore highly essential that finance team adopt analytics and collaborative tools to meet the requirement of current and future business needs. The following are few of our suggestions :

1. Use analytics along with online collaboration tool for real time discussion, keep the log of analytic discussion chats and comments for future reference. This will enable to convert insight into foresight in future. Also can be reference point for business discussion and audit.

Finance skills are now being be driven by deeper understanding of business models, think like CEO instead of CFO, leverage technology, deliver business insights instead of MIS, ready to evolve and collaborate using cutting edge modern technologies to solve complex business issues.

2. Use collaborative tool of shared files with version and workflows for efficient, cost-effective finance responses.
3. Develop analytic on workflow for project management within finance function.
4. Leverage hybrid model of online and offline interaction for agile decision making.
5. Bring change agent for technology adoption and Train Personnel to successfully adopt new digital interactive tools for collaboration.

The expectations from finance function are going to intensify further, which is somewhat scary, yet exciting and rewarding journey, the question is whether finance function ready to grab this burgeoning opportunity. The answer to this should be yes considering availability of wide array of digital analytic and collaborative tools. The only thing which is required is to develop tech savvy digital mindset. ■■■

Accounting Under Ind AS For Upstream Oil & Gas Entities: The Backbone of World Economy

Oil & Gas activities are intended to explore, develop, extract, refine, market and sell oil and gas, refined products and petroleum/ hydrocarbon products. Generally, these activities require substantially high capital investment and long gestation period to explore and extract the petroleum/ hydrocarbons with uncertain consequences. Read on...

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Exploration, development and production activities are often structured through joint ventures or joint activities to share the substantial capital costs. There is significant transportation involved through pipelines, tankers, special carriers, etc. The sector can also have a significant impact on the environment consequential and is often obligated to remediate any resulting damage.

This article analyzes the accounting issues under Ind AS that are most significant for the oil and gas industry. The issues are addressed following the oil and gas value chain: exploration and development, production and sales of product, together with issues that are pervasive to a typical oil and gas entity.

Upstream activities

Upstream activities consist of the exploration for and discovery of hydrocarbons (crude oil and natural gas). The development of these hydrocarbon reserves and resources, and their subsequent extraction (production) also takes place at this stage.

Typical stages involved in E&P activity are as below:

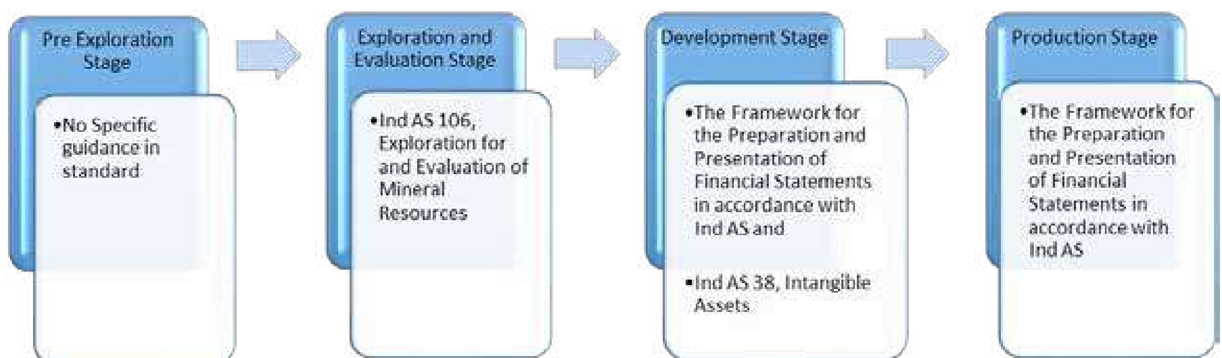
S. No.	Stage	Particulars
i.	Pre-exploration Stage or Acquisition Stage	Activities carried out by an E&P entity towards the acquisition of right(s) to explore, develop and produce oil and gas, constitute acquisition activities.
ii.	Exploration and Evaluation (E&E) Stage	E&E activities cover the prospecting activities conducted in the search for oil and gas after an entity has obtained legal right to explore a specific area, as well as activities towards determination of the technical feasibility and commercial viability of extracting the oil and gas.
iii.	Development Stage	It covers the activities conducted after determination of the technical feasibility and commercial viability of extracting oil and gas.
iv.	Production Stage	It consists of activities for producing oil and/or gas. It can be categorized into a. Pre-wellhead (e.g., lifting the oil and gas to the surface, operation and maintenance of wells, etc.) and b. post-wellhead (e.g., gathering, treating, field transportation, etc.) activities.

The oil and gas natural resources found by an entity are its very important economic asset. Resources are the source of future cash inflows from the sale of hydrocarbons and provide the basis for borrowing and for raising equity finance.

Accounting for expenses on E&P activities depends upon the stage for which expenditure is incurred. Below flowchart summaries the accounting guidance applicable for each stage:

The Institute of Chartered Accountants of India (ICAI) has issued a Guidance Note on Accounting for Oil and Gas Producing Activities (Ind AS) in December 2016 for entities to whom Ind AS is applicable and Guidance Note on Accounting for Oil and Gas Producing Activities (revised 2013) for other entities.

Natural resources are outside the scope of Ind AS 16 *Property, plant and equipment* and Ind AS 38 *Intangible assets.* Ind AS 106 provides accounting policy choice for expenses incurred on E&E activities, however it does not cover accounting aspects for other stages. Broadly speaking, two acknowledged methods have traditionally been used across the world to account for E&P and subsequent development costs: successful efforts and full cost. Many different variants of the two methods exist. Companies in the United States and Canada (two major countries having oil & gas exploration activities) have generally been influenced by the US GAAP for the development of accounting practice in this area.



Natural resources are outside the scope of Ind AS 16 *Property, plant and equipment* and Ind AS 38 *Intangible assets*. Ind AS 106 provides accounting policy choice for expenses incurred on E&E activities, however it does not cover accounting aspects for other stages.

Depending upon the accounting policy adopted by an entity for such expenses, accounting for E&P activities can be broadly classified into

(i) Successful efforts method (SEM): Costs related to the successful identification of new reserves may be capitalized while costs related to unsuccessful exploration efforts (e.g., drilling efforts that result in a dry well) would be immediately recorded on the income statement. Costs incurred in exploring, acquiring and developing reserves are generally capitalised on a field-by-field basis. Capitalised costs are allocated to commercially viable hydrocarbon reserves. Failure to discover commercially viable 15 reserves means that the expenditure is charged to expense. Capitalised costs are depleted on a field-by-field basis as production occurs.

(ii) A method similar to Full Cost Method (FCM): FCM allows companies to capitalize nearly all costs related to the exploration and development of new reserves regardless of whether their efforts were successful. The accounting method used will directly affect how net income and cash flows are reported.

1. Accounting for major costs incurred by an entity during the E&P stage

(a) Pre-acquisition cost: Expenditure incurred before obtaining the right(s) to explore, develop and produce oil and gas assets (e.g., data collection and analysis costs incurred for the purpose of identifying the oil and gas asset to be acquired etc.) are expensed as and when incurred. Normally costs incurred prior to obtaining the legal rights to explore an area are expensed immediately to the statement of profit and loss.

(b) Acquisition or Pre-exploration costs: An entity should capitalize acquisition costs as an intangible asset or tangible asset, based on its nature which are present in obtaining the right to explore/ mine. Acquisition costs cover all costs incurred to purchase, lease or otherwise acquire a property or mineral right proved or unproved. These include lease/signature bonus, brokers' fees, legal costs, cost of temporary occupation of the land including compensation paid to landowners, and all other directly attributable costs which are incurred in acquiring these rights. These are costs incurred in acquiring the right to explore, drill and produce oil and gas including the initial costs incurred for obtaining the PEL/LOA and ML.

FCM allows companies to capitalize nearly all costs related to the exploration and development of new reserves regardless of whether their efforts were successful.

(c) Exploration and Evaluation costs: As mentioned above, accounting policy choice is provided for expenses incurred on E&E activities. An entity should determine an accounting policy (whether FCM or SEM) specifying which expenditures to charge as expense and which to capitalize as E&E assets; and apply the policy consistently.

E&E assets are measured at cost and some examples of initial measurements of E&E assets are as below:

Once the technical feasibility and commercial viability of extracting oil and gas are determinable, the E&E assets should be reclassified as capital work-in-progress (CWIP) or intangible asset under development (IAUD), as the case may be.

i. Topographical, geological, geochemical and geophysical studies;

ii. Exploratory drilling;

iii. Trenching;

iv. Sampling; and

v. Activities in relation to evaluating the technical feasibility and commercial viability of extracting a mineral resource

After initial recognition, an entity shall apply either the cost model or the revaluation model to the E&E assets. An entity shall classify E&E assets as tangible or intangible according to the nature of the assets acquired and apply the classification consistently. Some exploration and evaluation assets are treated as intangible (e.g., drilling rights, etc.), whereas others are tangible (e.g., vehicles and drilling rigs). To the extent that a tangible asset is consumed in developing an intangible asset, the amount reflecting that consumption is part of the cost of the intangible asset. However, using a tangible asset to develop an intangible asset does not change the nature and classification of a tangible asset into an intangible asset.

(d) **Development costs:** Once the technical feasibility and commercial viability of extracting oil and gas are determinable, the E&E assets should be reclassified as capital work-in-progress (CWIP) or intangible asset under development (IAUD), as the case may be.

When a well is ready to commence commercial production, the capitalized costs referred above corresponding to prove developed oil and gas reserves should be reclassified as 'completed wells/producing wells' from CWIP/IAUD to the gross block of assets. With respect to acquisition costs, the entire cost should be capitalized from CWIP/IAUD to the gross block of assets. Normally, a well is ready to commence commercial production on establishment of proved developed oil and gas reserves. This is applicable even if a single well within the block is ready to commence commercial production, if all wells within a block are treated as one single asset. Expenditure incurred on other wells within the same block which are still in development phase are capitalized as tangible/ intangible assets based on the accounting policy of the entity.

Any revenue generated from the sale of crude oil and natural gas (net of levies) produced from Exploratory Wells in Progress / Development Wells in Progress is deducted from expenditure on such wells.

(e) **Production costs:** Production costs become part of the cost of oil and gas produced, along with depreciation (depletion) of capitalized acquisition, E&E and development costs.

(f) **Cost of Profit petroleum:** As per contracts with Government/ regulator for extracting the Oil and Gas Reserves, normally a part of the revenue is paid to Government/ regulator which is called Profit Petroleum. As per Ind AS 115, it does not form part of revenue from sale of products.

(g) **Rig Days' Costs:** Rig movement costs are booked to the next location drilled/ planned for drilling. Abnormal Rig days' costs are considered as un-allocable and charged to the Statement of Profit and Loss.

(h) General and Administrative (G&A) costs: G&A costs are included in the cost only to the extent that those costs can be directly attributable to the related field. In all other cases, these costs are expensed as incurred. For example, G&A costs such as directors' fees, secretarial and share registry expenses, salaries and other expenses of general management, etc., are usually recognized as expenses when incurred.

(i) Other Costs

i. Cost of Support Equipment and Facilities

The cost of acquiring or constructing support equipment and facilities used in E&P activities (for example, equipment, cranes, etc.) should be capitalized in accordance with Ind AS 16. Depreciation on such equipment and facilities should be arrived at in accordance with Ind AS 16, and accounted for as E&E cost, development cost or production cost, as may be appropriate.

ii. Abandonment Costs

Abandonment costs are the costs incurred on discontinuation of all operations and surrendering the property back to the owner. These costs relate to plugging and abandoning of wells; dismantling of wellheads; and restoration of producing areas in accordance with license requirements and relevant legislation.

In accordance with Ind AS 37, *Provisions, Contingent Liabilities and Contingent Assets,* an entity recognizes any obligations for removal and restoration that are incurred during a particular period because of having undertaken the exploration for and evaluation of mineral resources. Thus, an entity should capitalize as part of PPE or intangible asset, as the case may be, the amount of provision required to be created for subsequent abandonment. The provision for estimated abandonment costs should be made at current prices considering the environment and social obligations, industry practice, etc. Where the effect of the time value of money is material, the amount of the provision should be the present value of the expenditures expected to be required to settle the obligation. The discount rate (or rates) should be a pre-tax rate (or rates) that reflect current market assessments of the time value of money and the risks specific to the liability.

Changes in the measurement of existing abandonment costs that result from changes in the estimated timing or amount of the outflow of resources embodying economic benefits required to settle the obligation or a change in the discount rate should be added to or deducted from the related field in the current period and would be considered for necessary depletion (depreciation) prospectively. However, the change in the estimated provision due to the periodic unwinding of the discount should be recognized in the statement of profit and loss as it occurs. Since abandonment costs do not reflect borrowed funds, the unwinding cost would not be a borrowing cost eligible for capitalization.

2. Impairment Testing

For impairment assessment as well, separate guidance is applicable for assets under different stages which is summarised as follows:

Stage of E&P Asset	Guidance	Impairment Requirement
Pre-Exploration Stage	Ind AS 16 & 38	Impairment to be tested on triggering of impairment event
E&E Assets	Ind AS 106	Mandatory impairment testing to be carried out on reclassification from exploration to development stage; Impairment to be tested on triggering of impairment event;
Development Assets	Ind AS 16 & 38	Impairment to be tested on triggering of impairment event
Production Assets		

In case of onshore oil and gas fields, if they use common production/ transportation facilities and are sufficiently economically interdependent, then they can be treated as a single cash generating unit (CGU). Accordingly, impairment test of all onshore fields is performed in aggregate.

In all the above cases, impairment loss will be recognized, measured and disclosed in accordance with Ind AS 36. Further, impairment must be carried out at a cash generating unit (CGU) level or group of CGUs but not larger than an operating segment as determined in accordance with Ind AS 108, *Operating Segments.*

Expenditure incurred on exploratory wells which were written off in the past and started producing subsequently, cannot be reinstated.

3. Other Accounting aspects

(a) Presentation of E & P Asset:

i. **Tangible Asset:** It should be a physical asset e.g., a producing well which is used to extract reserves is classified as a tangible non-current asset. Few more examples are:

- Development drilling costs;
- Piping and pumps
- Producing wells.

ii. **Intangible Asset:** An exploratory well may only provide knowledge, and accordingly, is classified as IAUD. Few examples are:

- Acquired exploration rights;
- Costs of surveys and studies;
- Exploratory drilling costs.

(b) Carried Interest: Carried interest is an arrangement whereby the assignee (the carrying party) agrees to defray all costs of drilling, developing, and operating the property and is entitled to all the revenue from production from the property, excluding any third-party interest, until all of the assignee's costs have been recovered, after which the assignor will share in both costs and production, based on the agreed arrangement. Carried cost may be with varied terms and conditions. Accounting treatment of the same may vary based on the specifications of each transaction.

The carrying party is funding the geological risk and should account for that risk as such during exploration phase. During the payout period, the carrying party should record all costs, including those carried, as per its normal accounting policy,

and should record all revenue from the property including that which is applicable to the recovery of costs carried. In case of carried interest during development phase, carried interest should be treated as receivable based on proved and developed reserves in line with exploration contract as applicable.

In such an arrangement, the carried party should make no accounting for any costs and revenue until recoupment (payout) of the carried costs by the carrying party. After payout, the carried party should account for its share of revenue, operating expenses, and subsequent development costs.

(c) **Determination of CGU:** In case of onshore oil and gas fields, if they use common production/ transportation facilities and are sufficiently economically interdependent, then they can be treated as a single cash generating unit (CGU). Accordingly, impairment test of all onshore fields is performed in aggregate.

In case of offshore oil and gas fields, a field is generally considered as CGU except for fields which are developed as a cluster, for which common facilities are used, in which case the impairment testing is performed in aggregate for all the fields included in the cluster.

(d) **Depreciation Method:** Oil & Gas Assets which normally comprise of producing wells are depleted using Unit of Production (UOP) method over proved developed reserves.

(e) **Inventory Valuation:** Finished goods including inventories in pipelines / tanks are valued at cost or net realizable value, whichever is lower. Cost of finished goods is generally determined on absorption costing method.

(f) **Accounting for Side-Tracking Expenditure:** Sometimes an E&P activity requires a second/higher attempt to drill a wellbore after the first wellbore has been junked (generally referred to 'side-track'). This saves re-drilling the top part of the hole but requires drop back to a smaller wellbore size in the sidetrack. Accounting for cost of side-tracking is based upon the nature of related wells.

i. **Exploratory well:** Cost of side-tracking is treated in the same manner as the cost incurred on a new exploratory well and cost of abandoned portion should be treated in the same manner as the cost of dry well, in line with the accounting policy of the entity i.e., SEM/FCM.

ii. **Development well:** Entire costs of abandoned portion and side-tracking should be capitalized and then tested for impairment in accordance with Ind AS 36.

> A joint venture is a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

iii. **Producing wells:** If the side-tracking results in additional proved developed oil and gas reserves or increases the future benefits therefrom beyond previously assessed standard of performance, the cost incurred on side-tracking should be capitalized, whereas the cost of abandoned portion of the well due to side-tracking should be depleted in the normal way. Otherwise, the cost of side-tracking should be charged as expense and the cost of abandoned portion should be depleted in the normal way.

(g) **Accounting for interests in joint arrangements:** It is accounted in accordance with Ind AS 111, Joint Arrangements. The classification of a joint arrangement as a joint operation or a joint venture depends upon the rights and obligations of the parties to the arrangement.

Ind AS 106 provides only limited guidance in relation to exploration and production industry i.e., primarily for exploration and evaluation assets.

A joint operation is a joint arrangement whereby the parties that have joint control of the arrangement have rights to the assets, and obligations for the liabilities, relating to the arrangement. Those parties are called joint operators. A joint venture is a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement. Those parties are called joint venturers. Generally, in the Indian context, unincorporated joint ventures are likely to be in the form of joint operations as described above. Interest in the joint operation is accounted as under:

i. Share of the entity's assets, liabilities and income and expenditure of the joint operation on a line-by-line consolidation basis;

ii. Share of revenue generated through sale of petroleum products is as recorded as turnover of the entity.

4. Disclosure

Besides the disclosures required by applicable Ind ASs and statutes, an E&P entity should also disclose the following in its financial statements:

i. The accounting policies followed.

ii. Net quantities of an entity's interests in proved reserves and proved developed reserves of

   (a) oil (including condensate and natural gas liquids) and

   (b) gas, as at the beginning and additions, deductions, production and closing balance.

iii. Net quantities of an entity's interest in proved reserves and proved developed reserves of (a) oil and (b) gas on the geographical basis.

iv. The reporting of reserve quantities should be stated in metric tonnes for oil reserves and cubic meters for gas reserves.

v. Description and net quantities of an entity's interest in reserves used as a basis for impairment assessment, if applicable.

vi. Basis of determination of cash generating unit used for impairment assessment purposes.

vii. Frequency of reserve evaluation, principal assumptions used and involvement of any external expert(s), if used.

viii. Exploration cost written-off during the period.

5. Conclusion

Ind AS 106 provides only limited guidance in relation to exploration and production industry i.e., primarily for exploration and evaluation assets. In most of the areas, accounting policy choices are available. Availability of accounting policy choices lead to non-comparable financial statements of different entities. However, the guidance note issued by the Institute of Chartered Accountants of India (ICAI) provides detailed guidance on various crucial topics which is being referred by industry members. Thus, it is important to determine the accounting policy by giving due consideration to all factors applicable to an entity and the accounting policy should be followed on a consistent basis.

References:

i. *Ind AS 106;*

ii. *Ind AS 16;*

iii. *Ind AS 38;*

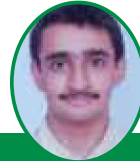
iv. *Guidance Note on Accounting for Oil and Gas Producing Activities (Ind AS);*

v. *ONGC Annual Report FY 2019-20*

vi. *Investopedia*

Faceless ITAT proceedings using Technology-Right to a fair trial

The Finance Act, 2021 proposes to introduce dramatic procedural changes to the existing Assessments and Appeal functions, whether they are faceless assessments and appeals or the new paradigm of reassessments and search assessments. But among these, the proposal to introduce Faceless proceedings at the Tribunal level has opened up a lot of debates and discussions. The primary purpose behind this proposal is to use technology effectively for appellate functions of the Tribunal. But then we are faced with a question whether this mechanism will ensure a Fair trial. The article tries to analyze faceless Tribunal hearings from the standpoint of technology and Fair hearing. Read on ...



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India has been proactive in adopting new technology and moving towards a 'Digital' future. This can be seen through the Digital Quality of Life Index 2020[1], where India outperforms most of the countries when it comes to technology use in governance.

Tax administration, more particularly, Income Tax, has seen a dramatic transition from physical filing to e-filing and e-verification, and now the rollout of the Faceless Income Tax Assessments Scheme and Faceless Appeals at the first level of Commissioner of Income tax (Appeals) – 'CIT(A)'. These rollouts enjoyed their fair share of criticism initially.

Just as the practitioners were getting accustomed to this transition, the Finance Act 2021 came up with yet another surprise—the proposal of Faceless Income Tax Appellate Tribunal (ITAT) to revamp the existing quasi-judicial Tribunal into a Faceless Tribunal. Section 255 of the Income Tax Act, 1961 is proposed to be amended, adding subsections (7) and (8) describing the scheme and that the detailed notification will be rolled out soon. This led the practitioners and Associations like the ITAT Bar Association to file representations to the Finance Ministry. A retired ITAT president too filed a PIL[2] before Delhi High Court, which was dismissed.

Now, coming to the history of ITAT, it dates back to the year 1922 when the Income tax law was being restructured and the need was felt for a distinct forum for hearing Income tax cases. A Select Committee recommendation finally led to the establishment of ITAT in the year 1941. Since then, there have not been any fundamental changes in the functioning of the ITAT.

- **Proposed Amendment**

So, in the light of the announcement of changes in the functioning of ITAT after 80 long years, it would be pertinent to read through the bare text of the Finance Act, 2021:

In section 255 of the Income-tax Act, after sub-section (6), the following sub-sections shall be inserted, namely:

"(7) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeals by the Appellate Tribunal so as to **impart greater efficiency, transparency and accountability** by—

(a) **eliminating the interface** between the Appellate Tribunal and parties to the appeal in the course of appellate proceedings **to the extent technologically feasible**;

(b) optimising utilization of the resources through economies of scale and functional specialization;

(c) introducing an appellate system with dynamic jurisdiction".

(8) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (7), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply to such scheme or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification. **(Emphasis supplied)**

Tax administration, more particularly, Income Tax, has seen a dramatic transition from physical filing to e-filing and e-verification, and now the rollout of the Faceless Income Tax Assessments Scheme and Faceless Appeals at the first level of Commissioner of Income tax (Appeals) – 'CIT(A)'.

Analysis and Concerns

We can see that the intention behind a faceless Tribunal is to impart greater 'efficiency', 'transparency', and 'accountability' to the appellate mechanism. To achieve the same, the interface between the parties and the Judges shall be eliminated by employing technology. Having read this, one may infer that the existing open Court proceedings will be replaced by video conferencing.

But, the interesting aspect to note here is that the objectives of faceless Assessment and faceless CIT(A) are exactly the same as above. Under these mechanisms and more particularly under CIT(A), the proceedings are solely based on written submissions. This might lead one to believe that the same will be followed in the case of ITAT as well rather than having video conferencing.

The Central Government may, for the purposes of giving effect to the scheme made under sub-section (7), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply to such scheme or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification.

There exists a fundamental difference between the ITAT proceedings and the CIT(A) proceedings. The CIT(A) is an Income tax authority with certain powers co-terminus to that of the Assessing Officer. ITAT on the other hand is a dedicated quasi-judicial Tribunal with an identity distinct from the Income tax authorities.

So if a distinct mechanism is being contemplated, there needs to be a suitable change in the objects and reasons of the same as well.

- **Principles of Natural Justice**

Another area which is being debated extensively is whether the faceless ITAT proceedings will be violating the Principles of Natural Justice or a fair trial enshrined in the maxim 'Audi alteram partem' i.e., 'Hear the other side'.

The Faceless scheme by itself does not deny submission of evidence or legal representation. A mere alteration of the methodology of hearing cases to written submissions aided through technology cannot be directly labeled as having denied an opportunity of being heard to the parties.

Broadly speaking, there are 5 crucial elements of Principles of Natural Justice:

1. Notice. 2. Hearings. 3. Evidence. 4.Cross-examination and 5.Legal Representation.

Even though the detailed notification is not released as yet, taking the Faceless CIT(A) notification as a base, these elements appear to have been taken care of. What is changing is the method or the means of communication. The Faceless scheme by itself does not deny submission of evidence or legal representation. A mere alteration of the methodology of hearing cases to written submissions aided through technology cannot be directly labeled as having denied an opportunity of being heard to the parties.

Further, there have been certain areas like search assessments and International tax matters specifically out of the faceless CIT(A) regime if taken as a base to analyze. The CIT(A) notification does provide an option for hearing through video conferencing in certain exceptional cases.

So, considering the above aspects it will be difficult to prove that principles of natural justice have been substantially compromised in this Scheme.

However, some tax and legal practitioners have expressed certain reservations about the fairness of the scheme:

- **Open Court System Vs. Faceless Scheme**

Any conventional hearing before a Tribunal or Court involves:

1. Pitching arguments before the judges.
2. Responding to the questions asked by the judges.
3. Having a reasonable understanding of the body language of the Judges and
4. Conveying all the averments with clarity.

These proceedings are real-time and interactive and not restricted to mere written words or a submission to a blank screen without being aware as to whom we are addressing. Such interactions provide an additional dimension to the written submissions.

- **Fact finding and Tax effects dealt with**

More importantly, ITAT is the last fact-finding authority concerning income tax cases. Even though there exist provisions of further Appeal (High Court and Supreme Court), ITAT is the last Forum for the litigants/assesses to lay down a factual matrix for interpretation before the Judges.

The ITAT deals with the cases having Tax effects of more than Rs. 50 lakh, barring certain exceptional cases admitted on merit. The written submissions in such matters involving high stakes will go into countless pages. With due respect to the Honourable Members, there exists some chance of a particular point in the submission being overlooked inadvertently.

- **Option of Video conferencing facility**

With regard to the option on video conferencing provided to the litigants, the following is prescribed under the Faceless CIT(A) scheme, under Para 12, sub Para 2,3 and 4:

(2) The **appellant or his authorized representative, as the case may be, may request for personal hearing** so as to make his oral submissions or present his case before the appeal unit under this Scheme.

(3) **The Chief Commissioner or the Director General**, in charge of the Regional Faceless Appeal Centre**, under which the concerned appeal unit is set up, may approve the request for personal hearing** referred to in sub-paragraph (2), **if he is of the opinion that the request is covered by the circumstances**

The ITAT deals with the cases having Tax effects of more than Rs. 50 lakh, barring certain exceptional cases admitted on merit. The written submissions in such matters involving high stakes will go into countless pages.

referred to in clause (xi) of paragraph 13.

(4) Where the request for personal hearing has been approved by the Chief Commissioner or the Director General, in charge of the Regional Faceless Appeal Centre, such hearing shall be **conducted exclusively through video conferencing** or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, in accordance with the procedure laid down by the Board. (**Emphasis supplied**)

This indicates that even though the litigants have the option to request a personal hearing, which would be through video conferencing only, it is subject to the approval of the Chief Commissioner or the Director General, in charge of the Regional Faceless Appeal Centre. This approval shall be given if the above authorities find it a fit case as per the reasons in Para 13. The reasons under the Para 13 are yet to be notified.

This makes the option of personal hearing discretionary. There may be certain complex aspects of the matter which the litigant wishes to put up through personal hearing. If this case does not fall in the criteria which would be notified in due course, the litigant will not be afforded an opportunity of personal hearing. If a similar mechanism is also put into place in ITAT, this will impact fair hearing to some extent.

- **Time consuming procedure**

The proceedings are solely on the basis of written submissions; a query raised by the Forum is to be responded to in a written form. If not found satisfactory, it will lead to further communications and a delay in the proceedings which can be avoided if the proceedings are held in real time.

The CIT (A) scheme also has a review mechanism in place. As per Para 5 sub Para xix clause a:

"Where the **aggregate amount of tax, penalty, interest or fee**, including surcharge and cess, payable in respect of issues disputed in appeal, **is more than a specified amount**, as referred to in clause (x) of paragraph 13, send the **draft order to an appeal unit, other than the appeal unit which prepared suchorder**, in any one Regional Faceless Appeal Centre through an **automated allocation system**, for conducting review of such order;"

In case of the matters which exceed the pre-determined threshold of aggregate amount of disputed liability, the draft order shall be allocated to any random unit for carrying out a review of the same. This appeal unit will review the entire draft order and variations if any, will be conveyed to the appeal unit which had originally dealt with the matter.

Similar review mechanism if also introduced in ITAT proceedings will make the process time consuming, since the review unit has to revisit the entire factual matrix.

The proceedings are solely on the basis of written submissions; a query raised by the Forum is to be responded to in a written form. If not found satisfactory, it will lead to further communications and a delay in the proceedings which can be avoided if the proceedings are held in real time.

Considering the above aspects, Faceless ITAT, to a certain extent, might negatively impact fair hearing thereby adversely affecting the chances of the litigant.

- **Concluding remarks**

While the detailed notification of the scheme is yet to arrive, we must hope that the motto with which ITAT had been constituted: 'Nishpaksh Sulabh Satvar Nyay' i.e., 'Unbiased, Easy and Speedy Justice' will remain relevant in the light of the new scheme. It is the need of the hour to effectively utilize technology in governance.

References:

1. Digital Quality of Life Index 2020: https://surfshark.com/dql2020-slides.pdf
2. Praveen Kumar Bansal Vs Ministry of Finance and Ors WP (C) 4237/2021 and CM APPL-02/2021 : http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=69087&yr=2021

Tax on Transfer of Money or Property by FIRM/AOP/BOI to Partners or Members - Finance Act 2021 Amendment

The Finance Act 2021 (FA 2021) introduced over 100 changes to the original Finance Bill presented in Lok Sabha on 1st February 2021. A vital issue addressed by the FA 2021 was the amendment in existing as well as introduction of new sections providing taxation mechanism on income arising out of receipt of money/assets/ stock-in-trade by a specified person (partner or member) from a specified entity (firm/AOP/ BOI) during the dissolution or reconstitution of such entity. This has been a grey area and a subject of intense litigation in the past. Read on…

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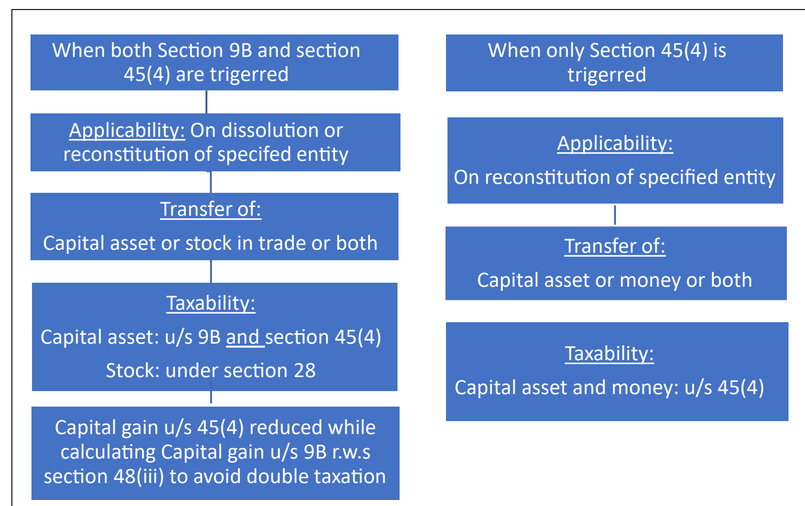
Multiple provisions have been inserted and they function both independently and in conjunction to each other which makes the understanding of these provisions somewhat complex to the reader. These amendments will be effective from assessment year (AY) 2021-22 onwards. We have tried to explain these provisions with the diagram (See box) and discussion.



Detailed discussion

1. **Newly introduced Section 9B - Income on receipt of capital asset or stock in trade by a partner from firm**

   Section 9B provides that where a specified person receives during the previous year any capital asset or stock in trade or both from a specified entity in connection with **dissolution or reconstitution** of such entity, then the entity shall be deemed to have transferred such capital asset or stock in trade or both, to the partner/ member in the year in which such capital asset or stock in trade or both are received by the partner/ member.

   Further, the section provides that, profits arising out of the aforesaid deemed transfer shall be chargeable to tax in the hands of the entity under the head 'business or profession' or 'capital gain' in accordance with the provisions of the Act. For computation purposes, the fair market value of the capital asset or stock in trade as on date of its receipt by the partner/member shall be deemed to be full value of consideration.

   An important point to note here is that this section has introduced the meaning of the term 'reconstitution' of the firm as explained below:

   (i) Reconstitution of the specified entity means, where-

   (a) One or more of its partners or members ceases to be partner or members;

   (b) One or more new partners or members are admitted. However, at least one existing partner or member should continue to be partner or members of the specified entity after admission of the new partner or member; or

   (c) All the partners or members continue with change in their respective share or in share of some of them.

2. **Tax on receipt of money or capital asset by partner/ member in connection with reconstitution of entity [Section 45(4)}**

   The FA 2021 has substituted the earlier sub- section (4) of section 45.

   The new section 45(4) provides that where a partner/member receives during the previous year any capital asset or money or both from a specified entity in connection with reconstitution of such entity, then any profit and gains arising from such receipt of asset/money by partner/member shall be deemed to be the income of the entity under the head 'Capital Gains' of the previous year in which such capital asset or money or both were received by the partner/member.

   The capital gain shall be computed in accordance with the following formula:

   A = B + C – D; wherein

   A = income chargeable under the head capital gain in the hands of entity

   B = value of money received by partner/member on the date of such receipt

   C = Fair market value of the capital asset received by the partner/member on the date of such receipt; and

   D= Balance in capital account of the partner/ member in the books of account of the entity without considering the increase in capital account due to revaluation of any asset or due to self-generated goodwill or self-generated any other asset at the time of reconstitution.

   (Note: If value of A is negative, it shall be deemed to be nil).

   When a capital asset is received by the partner/

> When a capital asset is received by the partner/member of the entity in connection with reconstitution, the provision of the said section shall operate in addition to the provision of section 9B.

A new clause (iii) is inserted u/s 48 to provide that capital gains chargeable to tax under section 45(4) which is attributable to capital asset being transferred by the entity shall be reduced while computing capital gain in the hands of the entity.

member of the entity in connection with **reconstitution,** the provision of the said section shall operate in addition to the provision of section 9B. Thus, the taxation under both the provisions shall be worked out independently.

3. **Mode of computation of capital gain u/s 48 modified to avoid double taxation [Section 48]**

A new clause (iii) is inserted u/s 48 to provide that capital gains chargeable to tax under section 45(4) which is attributable to capital asset being transferred by the entity shall be reduced while computing capital gain in the hands of the entity. The capital gain attributable to such a capital asset shall be computed in a prescribed manner. Till date no such manner has been prescribed.

The computation of capital gain u/s 9B read with section 48(iii) shall be as follows:

Particulars	**Amount**
Full value of consideration received or accrued (FMV of capital asset)	XXXX
Less:	
(a) Expenditure incurred in connection with transfer	(xxx)
(b) Cost of Acquisition/indexed cost of acquisition	(xxx)
(c) Cost of improvement/indexed cost of improvement; or	(xxx)
(d) **The amount chargeable to tax as income of the firm under section 45(4) which is attributable to capital asset being transferred by the firm**	(xxx)
(e) Exemption under section 54 to 54GB to the extent of net result of above calculation.	(xxx)
Income under the head capital gains	**xxx**

Practical example in case of reconstitution of the firm

R, S and P are three partners of a firm RSP & Co. On February 28,2021, P retired from the firm. The following assets were distributed to partners.

Particulars	**Commercial property**	**Money**
Fair market value on February 28, 2021	45,00,000	10,00,000
Cost of Acquisition	20,00,000	-
Written down value as per section 50 of the Act	8,00,000	Not Applicable
Balance in capital account of P	25,00,000 (it includes ₹ 5,00,000 on account of revaluation of asset)	

Solution

Computation of capital gain in the hands of firm for previous year 2020-21 as per section 45(4)

Particulars	Amount (₹)
Fair market value of asset on February 28,2021	45,00,000
Money received by partner on February 28,2021	10,00,000
Less: Capital balance in account of P (without taking into account revaluation of asset credited to partner's account)	(20,00,000)
Amount chargeable as Capital Gain in the hands of firm	**35,00,000**

Computation of capital gain in the hands of firm for previous year 2020-21 as per section 9B r.w.s. 48

Particulars	Amount (₹)
Fair market value of asset on February 28,2021	45,00,000
Less: Cost of Acquisition of asset as per section 50	(8,00,000)
Less: The amount chargeable to tax as income of the firm under section 45(4) which is **attributable** to capital asset being transferred by the firm*	(XXXX)*
Amount chargeable as Capital Gain in the hands of firm	**XXXXX**

***Note:** No specific method has been prescribed to calculate the amount attributable to capital asset being transferred u/s 45(4). One may take a proportionate value of amount calculated u/s 45(4) [i.e., in ratio of money value and FMV of capital asset]. Other possible view is to first apportion the capital gains calculated u/s 45(4) to the money received by the partner and the balance to the capital asset transferred.

Practical example in case of dissolution

R and S are two partners of a firm RS & Co. On 28th February 2021, the firm was dissolved. The following assets were distributed to partners.

Particulars	Commercial property (taken over by R) (₹)	Stock in Trade (taken over by S) (₹)
Fair market value on 28th February 28 2021	45,00,000	11,00,000
Cost of Acquisition	20,00,000	9,00,000
Written down value as per section 50 of the Act	8,00,000	Not Applicable

Solution

Computation of Capital Gain for the previous year 2020-21 in the hands of a firm as per section 9B r.w.s. 48

Capital asset= Commercial property

Particulars	Amount (₹)
Full value of consideration	45,00,000
Less: Expense on transfer	-

Net Consideration	45,00,000
Less: Cost of Acquisition as per section 50	(8,00,000)
Short term capital gain	37,00,000

Computation of Business profit for the previous year 2020-21 in the hands of firm as per section 9B

Stock in trade

Particulars	Amount (₹)
Sale Consideration	11,00,000
Less: Cost of acquisition	(9,00,000)
Business Gain	2,00,000

Note: Section 45(4) is not applicable in case of dissolution of firm

Judicial precedents reversed/nullified

By introducing these provisions, some of the contentious issues where taxpayer enjoyed favorable judgements in past have now been reversed/nullified by the Government. Some of these are highlighted as under,

Earlier issue	Judgement	Position now after FA, 2021.
Transfer of assets on reconstitution of the firm – taxable?	CIT v. G.K. Enterprises [2003] 131 Taxman 181 (Mag.) - Section 45(4) is not applicable where some partners retire and the firm continues to carry on the business with remaining partners and with new partners or without new partners.	New section 9B defines reconstitution which includes scenario when one or more of its partners ceases to be partner, Admission of new partner etc.
Sum of money received by partner in excess of balance in capital account – taxable to firm or partner?	Bangalore bench of Income-tax Appellate Tribunal (ITAT) held that the **retiring partner is liable to capital gains tax** being the excess payment received over and above the sum to the credit of her capital account at the time of retirement.	As per new provision of section 45(4) sum of money in excess of balance in capital account is **taxable in the hands of Partnership firm.**
Consideration received by partner on change in profit sharing ratio – Taxability?	CIT v. P.N. Panjawani [2012] 208 Taxman 22 (Kar)- Section 45(4) is not applicable if on inclusion of new partners, shares of existing partners are reduced. In such a case, there is no provision in the Act for levying capital gain tax on consideration received by a partner for reduction of his share in partnership firm.	As per new section, 9B reconstitution of firm includes reduction in profit sharing ratio.

Multilateral Instruments (MLI) - Decoded

In the throes of the global crisis, tax avoidance was not viewed as a phenomenon pertaining to particular sectors or industries, rather it was perceived to be a phenomenon afflicting the global MNE sector. In some circumstances bad tax avoidances by MNEs are likely to be legal in terms of the strict letter of the law but these tax avoidances rather than tax evasion are viewed as unreflective of the intention of the law. To put an end to these practices, OECD and G20 countries came with an innovative instrument called Multilateral Instrument (MLI). Read on....

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Introduction

Primarily the MLI is a child of OCED's Base erosion and Profit Shifting (BEPS) Project which intends to bring consistency, clarity, transparency and flexibility within a short span of time vis-à-vis amends around 3000 existing bilateral tax treaties. Tax treaty is an agreement between two or more countries to mitigate the hardship of double taxation and to harmonize the conflict arising from overlapping of tax jurisdiction. "Abuse of tax treaties is an important source of (BEPS)"[1]. Renegotiating the existing tax treaties by Governments is a cumbersome and time consuming task. To tackle this and even as a part of BEPS project, Governments have agreed to explore the feasibility of a multilateral instrument that would have the same effect as a simultaneous renegotiation of thousands of bilateral tax treaties worldwide. The objective of the MLI is to "modify existing bilateral tax treaties solely in order to swiftly implement the tax treaty measures developed in the course of the OECD/G20 BEPS Project"[2]. The MLI allows countries to strengthen existing tax treaties and concurrently protect participating Governments against treaty shopping. Giving effect to the MLI will put an end to treaty abuse and "treaty shopping". Action Plan (AP) 15 of BEPS provides for development of the MLI.

[1]OECD, FAQ on the MLI, July 2017, Pg 3.

[2]OECD (2015), Developing a Multilateral Instrument to Modify Bilateral Tax Treaties, Action 15 -2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, Pg 11.

MLI deals with treaty related measures identified in final BEPS Action Plan (AP) 2 – Hybrid Mismatch, AP 6 – Preventing Treaty Abuse, AP 7 – Artificial avoidance of PE & AP 14 – Effective Dispute Resolution. Among these, AP 6 & 14 are treated as basic minimum standards (mandatory provisions), which shall be covered in various articles of the MLI. "The MLI is applied alongside existing bilateral tax treaties modifying their application."[3] MLI will not substitute the Double Taxation Avoidance Agreement (DTA) but operates side by side. Basically, it is a treaty which will be applied as modified by or through the MLI. It does not freeze the tax treaty and countries can continue to renegotiate their bilateral DTAs keeping in view of BEPS measures.

MLI modifies existing tax treaties taking into consideration the BEPS measures. To avoid negotiation between various countries with each other on a bilateral basis, which takes many year or decades, MLI has been chosen. With one negotiation, one signature and one ratification a country can modify its existing tax treaties subject to the acceptance by the signatory countries. The MLI shall be applicable to those bilateral tax treaties where both parties (countries) to such treaty notified it as Covered Tax Agreement (CTA).

Covered Tax Agreement (CTA)

Covered Tax Agreement is a tax treaty in force between the signatories/countries to the MLI and for which both parties have made a notification that they wish to modify the agreement using the MLI framework. It means, if one party notifies a tax treaty and other party to the treaty does not, then it will cease to be a CTA and the MLI changes will not be applicable. For example, India included the Australia and Mauritius treaties in its instrument of ratification while submitting to OECD depository. Australia in turn also included the Indian treaty in its instrument of ratification, however Mauritius does not include the Indian treaty in its documents of ratification. Therefore, the treaty between India and Australia becomes CTA whereas the treaty between India and Mauritius does not become CTA.

Rationale for the MLI

1. Overcoming the treaty abuse: Existing bilateral tax treaties focus on elimination of double taxation. The effect of globalization has changed the way business is done. This provided scope for increased gaps and friction that were present in the bilateral tax treaties resulting into exploitation of treaty provisions. This kind of treaty abuse creates opportunities for BEPS.

2. Necessity to eliminate the opportunities of double non-taxation: Treaty abuse is one of the most important sources of BEPS concerns. A wide range of specific issues, such as, definition of Permanent Establishment (PE), improvement to dispute resolution mechanism, hybrid mismatch arrangements etc create opportunities for double non-taxation. These issues are not addressed properly in the existing bilateral tax treaties. Anti-treaty abuse provisions and the compatibility with tax treaties are facilitated by the anti BEPS measures.

3. Ratification of existing bilateral tax treaties is cumbersome and time consuming: To address the issues of BEPS, bilateral tax treaties need to be ratified. After any changes in the model tax conventions which are agreed multilaterally, it takes a substantial amount of time and resources to introduce those

MLI modifies existing tax treaties taking into consideration the BEPS measures. To avoid negotiation between various countries with each other on a bilateral basis, which takes many year or decades, MLI has been chosen.

[3] *OECD (2017) Legal note on the functioning of the MLI under public international law, Para 11*

changes into existing bilateral tax treaties. Indeed, existing treaties are based on models which are far older and to implement any multilaterally agreed changes to the treaties takes several years.

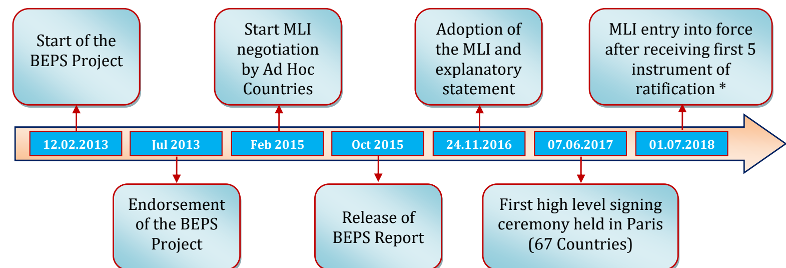
4. Limited time frame: The fight against BEPS is a challenging task due to its time constraint as the need for change is urgent. To address BEPS in a reasonable timeframe, a mechanism to facilitate swifter implementation is hence required. MLI is a solution to address this issue by creating a unique opportunity to modernize the architecture of the international tax treaty network and at the same time it would preserve the bilateral nature of tax treaties.

5. Feasible and flexibility of the MLI: Multilateral instrument is more desirable, feasible and flexible in nature and negotiation should be convened quickly, which was done through an international conference open to G20 countries, OECD member countries and other interested countries. The feasibility and flexibility of a multilateral approach is the way to streamline the implementation of the BEPS action plan with a view to responding to the current state of urgency and also to improve efficiency.

6. Consistency in international tax treaty network: The MLI would focus the attention of a large number of highly qualified treaty negotiators on a single document that could incorporate the language deemed most appropriate by all concerned countries. This results in, "Single Text", instead of thousands of similar but slightly varying texts, would be more likely to produce consistency in interpretation across jurisdictional boundries.

Timeline of the MLI Implementation

OECD is moving towards rapid implementation of the far reaching reforms of BEPS, special focus on Action Plan – 15, the MLI to cover more than 3000 tax treaties simultaneously. The journey of the MLI began since February 2013. Following are the milestones of the MLI journey.

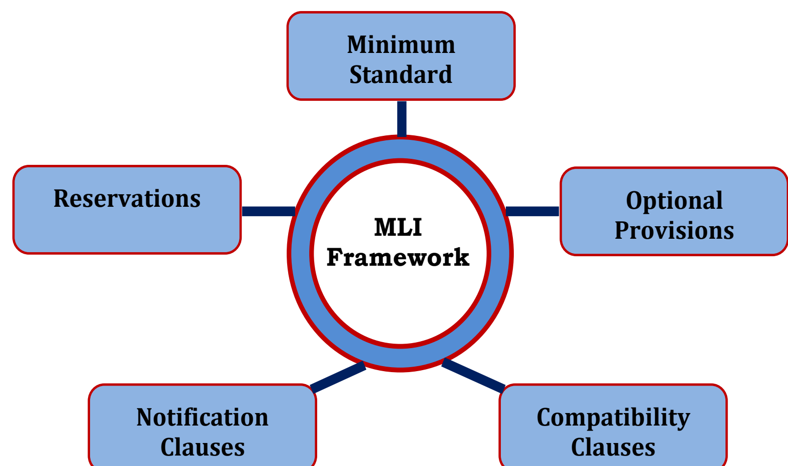


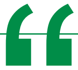
* First five countries with respective date of deposit of ratification instruments

Sl No	Name of Country	Date of Deposit	Remarks
1	Austria	22.09.2017	1st day of expiry of 3months from the date on 5th country submitting its instrument of ratification i.e. 1st July 2018
2	Isle of Man	25.10.2017	
3	Jersey	15.12.2017	
4	Poland	23.01.2018	
5	Slovenia	22.03.2018	

Framework of the MLI

The structure of the MLI consists of minimum standards, optional provisions, compatibility clauses, reservations and notification clauses.





The MLI would focus the attention of a large number of highly qualified treaty negotiators on a single document that could incorporate the language deemed most appropriate by all concerned countries.

Minimum standards: Countries which are signatory and parties to the MLI are mandatorily required to adopt the MLI provisions forming part of *agreed minimum standards* unless existing treaties achieve the objectives of minimum standards of the MLI. There is a minimum leeway to disagree with minimum standards. For example, India has robust provisions of GAAR compared to Principal Purpose Test (PPT) of the MLI. In such cases, signatories can disagree with minimum standards subject to ensuring the commitment towards achieving the objectives of minimum standards. BEPS Action Plan 6 and 14 forming part of minimum standard are covered under article 6, 7 and 16 of the MLI. Once the MLI came into effect, it would modify application of all CTAs at least to the extent of implementation of minimum standards, such as counter treaty abuse (through article 6 – purpose of CTA and article 7 – prevention of treaty abuse), improved dispute resolution mechanism (through article 16 – mutual agreement procedure).

Optional Provisions: Non-mandatory provisions/articles of the MLI are called as optional provisions. Signatories to the MLI are provided the flexibility of opting out of applicability of non-mandatory provisions. Signatories can choose these optional provisions in various ways:

- Choices to apply optional and alternative provisions such as article 5 of the MLI provides three options—Option A, B and C to apply for the elimination of double taxation.
- Reservations to opt out of provisions in entirety or part of provisions or particular paragraph of an article.

These optional provisions of the MLI shall apply to the extent to which both the signatories/countries to the treaty have agreed upon the treaty being governed by the MLI provisions.

Reservations: Article 28 of the MLI deals with reservations, which expresses that “no reservations may be made to this convention except those expressly permitted”. Here, reservations mean allowing the existing treaty provisions to play its role and restricting the applicability of the MLI over it. If a particular article or standard is not a minimum standard then signatory countries have the flexibility to opt out of those provisions through reservations. Reservations cannot be discriminatory in nature but it must be universal. If a country reserves non applicability of article, then it shall not be applicable to all of its CTAs. For example, India has made its reservation on article 3, Transparent Entities, not to apply to its all CTAs.

Signatories cannot have reservation in a selective manner, it shall be universal. For example, Article 13 of the MLI has option A, B & C. India has selected option A which shall apply to all its tax treaties. It is worth to note here that once option A is chosen, it shall apply to all Indian tax treaties subject to acceptance of the same option by other country

Countries which are signatory and parties to the MLI are mandatorily required to adopt the MLI provisions forming part of agreed minimum standards unless existing treaties achieve the objectives of minimum standards of the MLI. There is a minimum leeway to disagree with minimum standards.

also. It means, no country is allowed to choose option A for country X and option B for country Y.

More number of reservations means the existing treaty is unaffected and less number of reservations means the MLI will supersede the existing treaty. Reservations must be made before submitting the instrument of ratification with OECD (Depository). Subsequent to its submission, addition of reservations is not allowed however, withdrawal of reservations is permitted.

Notification Clauses: Article 29 of the MLI deals with notifications which says that notification of applicability or its reservations etc. shall be made at the time of signature or when depositing the instrument of ratification with the OECD (Depository) or its acceptance or approval by the OECD. Signatories to the MLI are required to make a notification specifying which provisions of the MLI will supersede or modify an existing Covered Tax Agreements (CTA). The provisional MLI position of each signatory indicates the tax treaties it intends to cover, the options it has chosen, within those provided by the MLI, and the reservations it has made.

Compatibility Clauses: Flexibility to the MLI is provided through compatibility clauses. In order to bring the compatibility between the MLI and provisions of CTA, the MLI contains clauses called compatibility clauses. These clauses are intended to address the conflicts or overlap between provisions of the MLI and CTA. There are four types of compatibility clauses, they are:

1. MLI provision applies "*in place of*" existing CTA provisions i.e., the MLI provision replaces an existing provision if there is one.
2. MLI provisions "*applies to*" or "*modifies*" existing CTA provisions i.e., the MLI provision changes the application of an existing provision without entirely replacing it.
3. MLI provision applies "*in absence of*" existing CTA provisions i.e., the MLI provision is, in effect, added to the bilateral treaty if there is no existing provision.
4. MLI provision applies "*in place of*" or "*in absence of*" existing CTA provisions i.e., the MLI provision either replaces an existing provision or is, in effect, added to bilateral treaty if there is no existing provision.

Flexibility to the MLI is provided through compatibility clauses. In order to bring the compatibility between the MLI and provisions of CTA, the MLI contains clauses called compatibility clauses. These clauses are intended to address the conflicts or overlap between provisions of the MLI and CTA.

Depending upon the circumstances the above compatibility clauses may be interpreted accordingly. Each article of the MLI contains provisions describing details how the applicable MLI provisions modify a CTA. Applicability of the MLI compatibility clauses when two countries opt in or opt out with different combinations can be summarised below.

Combination	Country A	Country B	*In place of*	*Applies or Modified*	*In absence of*	*In place of or in absence of*
I	Notified (Opt in)	Notified (Opt in)	Yes	Yes	Yes	Yes
II	Notified (Opt in)	Reserved (Opt out)	No	No	No	No

Combination	Country A	Country B	*In place of*	*Applies or Modified*	*In absence of*	*In place of or in absence of*
III	Reserved (Opt out)	Reserved (Opt out)	No	No	No	No
IV	Notified (Opt in)	Silent	No	No	No	Yes
V	Silent	Reserved (Opt out)	No	No	No	No
VI	Silent	Silent	No	No	No	Yes
Applicability			Only when there is an existing provision in the CTA	Only when there is an existing provision in the CTA	Only when the provision is absent in the CTA	Whether existing provision is present in CTA or absent
Effect on existing provisions			MLI provision replaces the existing provision	MLI provision changes the application of an existing provision without replacing it	MLI provision is added to the CTA	It replaces or supersedes existing provision, or is added to CTA in absence of existing provision
Notification requirement			Both treaty partners have to notify existing CTA provision	Both treaty partners have to notify existing CTA provision	Both treaty partners have to notify absence of provision in CTA	See Note 1
Note 1: Where both parties notify existing provision, the provision gets replaced. Where one party notifies and other party does not, the MLI provision supersedes CTA provision to the extent of incompatibility (example – addition of article 6(1) in the existing preamble).						

Effective date of application of the MLI

Article 34 and 35 of the MLI elaborates the dates of entry into force and entry into effect. Entry into force of the MLI is 1.7.2018 i.e., the first day of the month after the expiry of 3 months from the date of deposit of the 5th instrument of ratification. For each contracting jurisdiction on subsequent submission, shall be the 1st day of month after expiry of 3 months from the date of deposit of their ratification. For example, India submitted its instrument of ratification on 25.6.2019 and hence, date of entry into force shall be 1.10.2019.

Entry into effect in respect of each contracting jurisdiction with respect to CTA will be as under[4]:

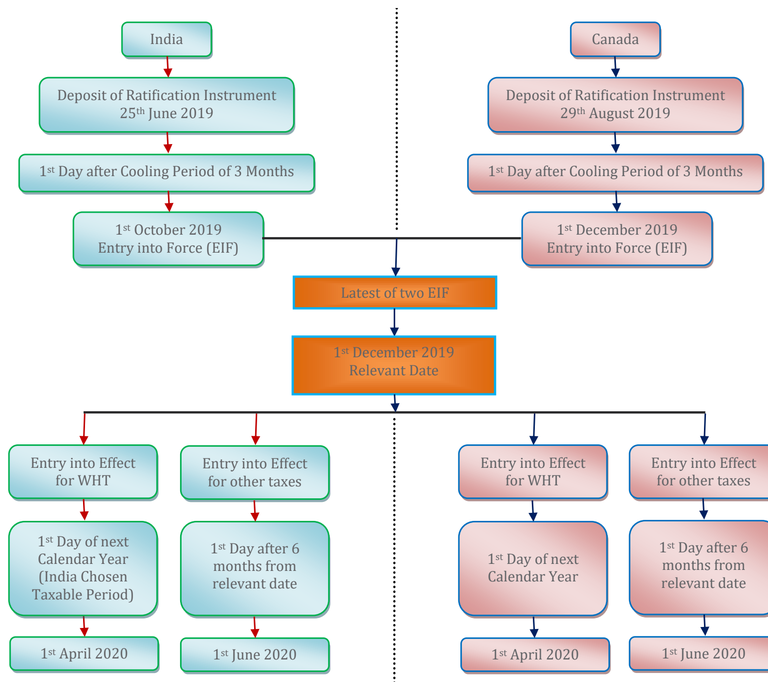
- **With respect to withholding tax (WHT)** 1st day of next calendar year (or taxable year as per option of signatory) on or after the latest dates on which the MLI enters into force for each contracting jurisdiction. For example, in case of India-Canada treaty, India submitted ratification instrument on 25.06.2019, so enters into force on 01.10.2019 for India. Canada deposited its ratification instrument on 29.08.2019, so enters into force on 01.12.2019. So, the relevant date (latest date) is 01.12.2019 and

[4] *Multilateral Instrument (MLI) and its impact on withholding tax, 2020, ARAJ Associates chartered accountant, http://www.arajassociates.com/mli-impact/*

with respect to WHT, it entered into effect on 1.4.2020 for India (taxable year) and 1.1.2020 for Canada (calendar year).

- **With respect to all other taxes**, taxable period beginning on or after the expiry of period of 6 months from the latest dates on which the MLI entered into force for each contracting jurisdiction. In the above example of India-Canada treaty, the entry into effect, for both India and Canada in respect of all other taxes, will be 1.6.2020.

Following figure will illustrate the entry into effect considering India-Canada treaty



Compiled by author

Synthesised Text

Post MLI, the provisions of the MLI must be read alongside CTA. However, it is difficult for the users of the MLI to understand its effects on tax agreements it covers and modifies the CTAs. In view of this, OECD suggested for development of synthesised text which intended to facilitate a better understanding of the MLI.

> Post MLI, the provisions of the MLI must be read alongside CTA. However, it is difficult for the users of the MLI to understand its effects on tax agreements it covers and modifies the CTAs.

"Synthesised texts would take the form of a single document or webpage. It would reproduce (a) the text of each CTA (including the texts of any amending protocols or similar instruments), and (b) the provisions of the MLI that will modify that CTA in the light of the interaction of the MLI positions the parties have taken. Synthesised texts would also include its explanatory information."[5]

Synthesised texts would thereby make it much simpler to understand the effects of the MLI and the way it modifies each CTA. Synthesised texts are not a legal document and there is no any official format to develop it. Parties to the MLI have no legal obligation under the MLI to consult each other to develop the synthesised texts.

Architecture of the MLI

Multilateral Instrument Convention has been drafted into 7 parts consisting of total 39 articles covering from scope of convention to depositary of CTA.

[5]*OECD (2018), Guidance for the development of synthesised texts, Multilateral Convention to Implement Tax Treaty Measures to Prevent BEPS, OECD, Paris. Pg 9 http://www.oecd.org/tax/treaties/beps-mli-guidance-for-the-development-of-synthesised-texts.pdf*

Part	Article	Content	BEPS Action
I	1 to 2	Scope and interpretation of terms	-
II	3 to 5	Hybrid mismatches	Action 2 & 6
III	6 to 11	Treaty abuse	Action 6
IV	12 to 15	Avoidance of PE status	Action 7
V	16 to 17	Improving dispute resolution	Action 14
VI	18 to 26	Arbitration	
VII	27 to 39	Final provisions	

The various articles of the MLI are given below with provisions which are mandatory or optional:

Article Number	Particulars	Mandatory or Optional
1 & 2	Conceptual articles	-
6, 7 & 16	Minimum Standards	Mandatory
27 to 39	Procedural articles	-
Remaining articles	Optional Provisions	Optional

India's Status on the MLI

India has ratified the multilateral convention to implement tax treaty related measures to prevent BEPS (MLI), which was signed by the Honorable Finance Minister at Paris on 7th June, 2017 on behalf of India, along with representatives of 67 countries. On 25th June, 2019, India has deposited its Instrument of Ratification to OECD (depository), along with its final position in terms of CTAs, Reservations, Options and Notifications under the MLI.[6]

India has comprehensive DTAAs with 96[7] countries and among these India notified 93 countries DTAA as its CTA in its instruments of ratification. However, out of 93 countries, till 29th June 2021[8], only 65 countries submitted their instrument of ratification with OECD. Again among, these China, Germany, Oman, Switzerland and Mauritius have not notified India as its CTA. Therefore, treaties with these countries shall not qualify to be CTAs. For the remaining countries MLI shall be applicable as and when those countries submit their ratification instrument subject to India being the notified country. As per the data available till 10th August 2021, 46 CTAs have or would soon become effective as given below:

Sl No	Date of entry into effect of MLI for India	With respect to taxes withheld	With respect to other taxes
1	From 1st April 2020	28	21
2	From 1st April 2021	12	15
3	From 1st April 2022	6	10
		46	**46**

Impact of the MLI on Indian tax treaties

I. Prevents Treaty Abuse

1. Modification to the preamble explicitly mentions that the purpose of treaty is also to prevent treaty abuse and double non-taxation and to prevent the extension of benefit of the treaty to persons resident in a third jurisdiction (prevention of treaty shopping).

2. Adoption of new Principal Purpose Test (PPT) in all CTAs as part of minimum standards of the MLI under BEPS Action Plan 6 to tackle treaty abuse.

3. PPT shall modify or supersede existing GAAR provisions or to be added in the absence of such provisions.

4. Along with PPT, India has additionally chosen to apply Simplified Limitation on Benefit (SLOB), which will generally apply to CTAs if the other party has also opted for its application.

[6] Press Information Bureau, Government of India, Ministry of Finance, 02.07.2019, Ratification by India of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

[7] As per Website of Income Tax Department (https://incometaxindia.gov.in/Pages/default.aspx) accessed on 22 July 2021.

[8] As per Website of OECD (https://www.oecd.org/tax/treaties/mli-matching-database.htm) accessed on 10th Aug 2021.

II. Widens the scope of Permanent Establishment (PE)

1. Independent Agent scope expanded, where agent provides services to closely related entities.

2. PE exclusion for certain activities is restricted only if such activities have a preparatory or auxiliary character.

3. Anti-fragmentation rule to prevent avoidance of PE through artificial disintegration of cohesive activities.

4. Anti-splitting of contracts rules to prevent artificial splitting of contracts between related parties to manipulate time period threshold for PE creation.

5. Dependent Agent PE rule.

6. Authority to conclude.

7. Address the avoidance of PE through commissionaire arrangements & similar arrangements.

III. Improves Dispute Resolution Mechanism

1. MAP request to be implemented through bilateral negotiation or consultation process.

2. Corresponding adjustment in case of related party transactions.

3. Provisions on mandatory binding arbitration (in the event competent authorities are unable to reach a decision under MAP) to not apply to all CTAs.

IV. Other Key Modifications

1. Tie breaker test in case of dual residency of person (other than an individual) to be now decided by competent authority (CA) of the CTA parties.

2. Right of taxation of capital gains by source jurisdiction from alienation of share/ interest deriving value principally from immovable property strengthened.

3. Capital gain from transfer of security whose principal value was derived from immovable property in a country would be taxable not just if such value is derived at the time of transfer but at any time in past 365 days from date of transfer.

4. Lower rate of tax on dividends, only if shareholding is maintained for 365 days.

MLI impact on withholding taxes u/s 195

Post MLI withholding taxes are applicable with effect from 1.4.2020 for all those countries who have submitted their instrument of ratification. While making payment to any person, non-resident or foreign company, section 195 of income tax act is invoked and the payer needs to assess the income tax liability of the payee. Section 90 of the IT act provides the option to choose the beneficial provision among income tax act or DTAA. Earlier submission of Tax Residency Certificate (TRC) and form 10F (for additional information) by the payee to the payer will be sufficient to get the beneficial provisions. Post MLI, the payer should ensure to obtain the PE and PPT declaration as per the articles of MLI. India intends to adopt LOB provision in addition to or in place of PPT vide bilateral negotiations. Payer must ensure in discharging his responsibility to exercise professional due diligence while making withholding taxes. Failure to do so, results in TDS default u/s 201, expenses disallowance u/s 40(a)(i), invoking penalty provision u/s 221 & 271C etc. Payer needs to maintain some of the following key documents as part of the MLI compliances are necessary apart from due diligence.

1. TRC along with form 10F

2. PE declaration along with undertaking with respect to article 12 to 14 of MLI

3. Beneficial ownership undertaking

4. Declaration with regards to PPT and LOB – Article 7 of MLI

5. Dividend transfer declaration (holding period of 365 days) – Article 8 of MLI

6. Declaration with regard to alienation of shares related to immovable property – Article 9 of MLI

Interplay between GAAR vis-a-vis PPT in MLI

General Anti Avoidance Rules (GAAR) under the provisions of Income Tax Act were introduced with effect from 1.4.2017 (AY 2018-19). GAAR provisions are applicable on an arrangement, the main purpose of which is to obtain tax benefit and contains tainted elements in it. It codifies "substance over form" basis of tax law. These provisions are similar to Principal Purpose Test (PPT) of the MLI, where the purpose is to tackle the tax avoidance using either loopholes of domestic tax laws or DTA, through various modes by the tax payer.

Key differences between GAAR and PPT in MLI are summarised below:

Point of difference	GAAR	PPT
Objective	To cover transactions where main purpose is to take the tax benefit	To cover transactions where principal purpose is to take the tax benefit through treaty shopping
Applicability	One of the tainted element test is satisfied with the objective of tax avoidance	Where the arrangements / transactions are not in accordance with object and purpose of treaty
Consequences	Reclassification of transaction, reallocation of income, denial of treaty benefit, etc.	Treaty benefit will be denied
Onus to prove	Tax authority	Primary onus is on tax authority and rebuttal assumption for carve out
Threshold limit	Yes, Rs. 3 crore tax amount	No threshold limit
Administrative safeguards	There is an approving panel	As determined by the contracting jurisdictions
Grandfathering of investment already in existence	Yes	No

India's Position on various articles of the MLI

Article No	Particulars	India's Position
1	Scope of the convention	
2	Interpretation of terms	
3	Transparent entities	Reserves right for entirety of article not to apply
4	Dual resident entities	No Reservation
5	Application of methods for elimination of double taxation	Chosen to apply Option "C" (Credit method for all income)*
6	Purpose of a covered tax agreement	No Reservation
7	Prevention of treaty abuse	Accept PPT as an interim measure and intends to adopt LOB provision, in addition or replacement of PPT, through bilateral negotiations along with Simplified LOB
8	Dividend transfer transactions	Reserves right for article 8 not to apply to CTA that already contain minimum holding period longer than 365 days
9	Capital gains from alienation of shares or interests of entities deriving their value principally of immovable property	Chooses to apply para 4 of article 9 #

10	Anti-abuse rule for permanent establishment situated in third jurisdictions	No Reservation
11	Application of tax agreements to restrict a party's right to tax its own residents	No Reservation
12	Artificial avoidance of permanent establishment status through commissionaire arrangements and similar strategies	No Reservation
13	Artificial avoidance of permanent establishment status through the specific activity exemptions	Chooses to apply Option A No Reservation against 'anti-fragmentation rule' ##
14	Splitting up of contracts	No Reservation
15	Definition of a person closely related to an enterprise	No Reservation
16	Mutual agreement procedure	• First sentence of para 1 not to apply on the basis that it intends to meet the minimum standard for improving dispute resolution under OECD/G20 BEPS Project • By accepting cases in resident country and initiating bilateral consultation process **
17	Corresponding adjustments	Reserves right not to apply to CTA's that already contain provision for corresponding adjustments
Part VI – Arbitration (Art 18-26)		India has not opted to apply part VI of the MLI
Part VII – Final Provision (Art 27 – 33 & 36 – 39)		Procedural Articles
34	Entry into force	01.10.2019
35	Entry into effect	01.04.2020

* Opt A: Credit Method instead of exemption method for any income that is exempt or taxed at a reduced tax rate by other state pursuant to CTA

Opt B: Credit method instead of exemption method for dividends that are deductible for payer in other state

Opt C: Credit method for all income that may be taxed in other state

Para 4 of article 9: Capital gain on shares or comparable interest shall be taxable in the jurisdiction in which the immovable property is situated at any time during 365 days prior to transfer the shares or interest, which derives more than 50% of value (threshold) from immovable property.

Option A: Any specific activity exemption or any place would not be deemed to be PE only if the activity is of preparatory or auxiliary character

Option B: Any specific activity exemption or any place would not be deemed to be PE only if the activity is of preparatory or auxiliary character, Exception where provision explicitly states that an activity is deemed not to be PE.

** Any action of competent authorities not in accordance with CTA – Person may present a case to any one of the competent authority (CA) of the jurisdiction

GAAR provisions are applicable on an arrangement, the main purpose of which is to obtain tax benefit and contains tainted elements in it. It codifies "substance over form" basis of tax law.

Conclusion

India being the active player in implementing BEPS project has come out with various amendments. India on 25 June 2019 submitted its ratified MLI with OECD and as of now more than 50 counter countries of India have also submitted their ratified MLI thereby converting treaty into CTA. Implementation of the MLI worldwide symbolizes conquer over treaty abuse, double non taxation, tax evasion and BEPS. Most of the premiers MNEs are changing their business model to comply with these new MLI provisions. It shows that OCED/G20 countries' BEPS project is becoming successful in achieving its objectives. MLI is expected to ensure that each country will get its share in tax revenue commensurating to its economic activity.

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4. http://kluwertaxblog.com/2020/02/06/india-budget-2020-key-international-tax-proposals-impacting-non-resident-taxpayers-and-mncs/ ■■■

Can Principal Purpose Test and GAAR apply when Specific Anti-Avoidance Provisions are not applied to a covered Tax Agreement?

Multilateral Instrument ('MLI') is historic in terms of curbing tax evasion. It has been effective in India with effect from 01 April 2020. As per MLI, Principal Purpose Test ('PPT') is one of the minimum standards. However, other provisions to implement specific Base Erosion and Profit Shifting ('BEPS') measures referred as specific anti-avoidance rules are optional for which countries may not opt in for the same limiting application of MLI. However, analysis is made to understand as to whether PPT being a minimum standard of MLI can apply in absence of such specific anti-avoidance rules for such Covered Tax Agreements ('CTAs'). Read on...

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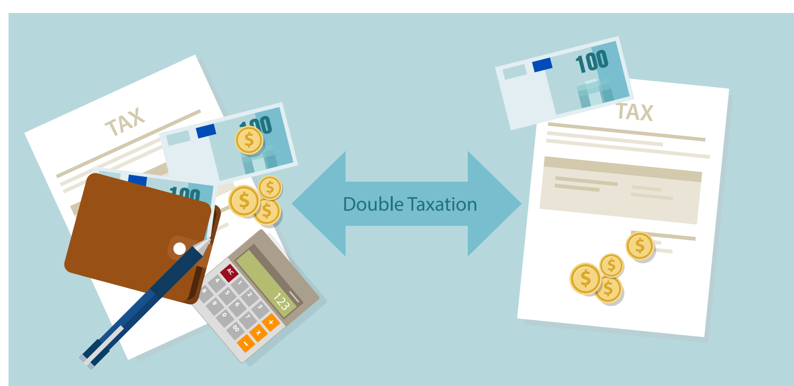
Bilateral Tax treaties define taxing rights between treaty countries. However, based on loopholes in tax treaty network, various arrangements have been devised to avoid fair share of taxes. To address the same, Multilateral Instrument ('MLI') provides for Article 6 and Article 7 as minimum standards for countering treaty abuse.

Article 6 ("Purpose of Covered Tax Agreement") ("CTA") provides text that should be included in the Preamble. It states that the jurisdictions intend to avoid creation of opportunities for non-taxation or reduced taxation through tax evasion or avoidance, and through treaty shopping. The same reads as below:

"Intending to eliminate double taxation with respect to the taxes covered by this agreement ***without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance*** *(including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions)," (Emphasis supplied).*

Another minimum standard, Article 7, introduces Principal Purpose Test ('PPT') to prevent treaty abuse. As per the said rule, treaty benefits are denied



when one of the principal purposes is to obtain tax benefit. The text of the said rule is provided below:

*"**Notwithstanding any provisions of a Covered Tax Agreement**, a benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that **obtaining that benefit was one of the principal purposes of any arrangement or transaction** that **resulted directly or indirectly** in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement" (Emphasis supplied).*

Apart from above, there are specific anti-avoidance provisions included in CTA like Limitation of Benefit clauses, Minimum Holding period in case of dividend for application of lower tax rate, countering Permanent establishment avoidance by Splitting up contracts etc. Such provisions for ease of reference are termed as "Specific anti-avoidance rules" ("SAAR") in CTAs. However, on the account of the nature of MLI, countries may opt-in or opt-out of such provisions of MLI which means that it normally applies only if both the contracting jurisdictions accept these specific anti-avoidance rules.

There are specific anti-avoidance provisions included in CTA like Limitation of Benefit clauses, Minimum Holding period in case of dividend for application of lower tax rate, countering Permanent establishment avoidance by Splitting up contracts etc. Such provisions for ease of reference are termed as "Specific anti-avoidance rules" ("SAAR") in CTAs.

From above, a specific question arises that where a particular CTA is not modified by a specific anti-avoidance rules, can PPT rule apply to such transactions or arrangements?

Interplay between PPT and SAAR

In this connection, two views are possible:

View 1- The absence of such rules in a particular CTA indicates intention of the contracting jurisdictions to grant treaty benefits resulting from transactions.

View 2- The absence of this rule in a particular CTA indicates that contracting jurisdictions intends to rely on the PPT rule to challenge these transactions without adopting such detailed, fact specific, objective limitations.

Whereas View-1 does not require any analysis and is quite clear. Analysis of View-2 considering Commentary to Article 1 of OECD Model tax convention[1], provides that in absence of such specific anti-avoidance rules, PPT is not precluded from its application. This is supported by the fact that the minimum standard requires countries to adopt the amended preamble wherein the emphasised text given below (emphasis supplied) is specifically mentioned,

*"Intending to eliminate double taxation with respect to the taxes covered by this agreement **without creating opportunities for non-taxationor reduced taxation through tax evasion or avoidance……**".*

Moreover, PPT rule begins with *"Notwithstanding any provisions of a Covered Tax Agreement…".* This means it has an overriding impact over other provisions of CTA and can operate independently.

Furthermore, the phrase *"resulted directly or **indirectly** in that benefit"* in PPT rule is deliberately not restrictive in nature and is quite broad to cover all transactions without any exclusion.

It is also important to note that Article 26 of Vienna Convention on the Law of Treaties provides for principle of *"pacta sunt servanda"* which effectively means that -

*"Every treaty in force is **binding** upon the parties and must be performed by them in good faith".*

Hence, based on the above, it would be reasonable to conclude that View-2 is a better view.

[1] *Para 57 to para 65 of OECD Model Tax Convention [2017]*

Example: Article 14 of MLI counters contracts that are artificially split-up to avoid PE in a contracting state. However, Article 14 can be opted out by countries, and many contracting states have done so. However, if a contract is artificially split up then one of the principal purposes of obtaining tax benefit is satisfied for application of PPT and, in such cases, even if specific anti-abuse provisions of article 14 of MLI are absent in the CTA, PPT being the minimum standard rule, can be applied to counter such treaty abuse.

This effectively means that specific anti-avoidance rules provided in convention can be looked at as a guiding principle to determine treaty abuse and in the absence of such specific anti-avoidance rules, PPT shall apply.

Commentary to Article 1 of OECD Model tax convention[2] not only affirms application of PPT in situations where specific anti-avoidance rules are absent, but also provides for possibility of application of General Anti Avoidance Rules ('GAAR') under domestic law of countries.

As per the said commentary, taking into account the fact that taxes are ultimately imposed through the provisions of domestic law, as restricted by the provisions of a tax treaty, any abuse of the provisions of a tax treaty could also be characterised as an abuse of the provisions of domestic law under which taxes are levied. Such guidance in commentary can ultimately lead to a conclusion that for these cases, provision of GAAR as per local laws can apply.

Based on above provision, an important question arises that if PPT applies in the absence of specific anti-avoidance rules and as per above commentary, if GAAR also applies to the same transaction, then ultimately how do both provisions interplay? Should the provision of PPT only apply or GAAR only apply or can both co-exist?

Interplay between PPT and GAAR

Domestic law in India provides for application of GAAR to Impermissible Avoidance Arrangement ('IAA'). To determine an arrangement as Impermissible Avoidance, section 96 of Indian Income Tax Act, 1961 ("the Act") provides as under (emphasis supplied):

"An impermissible avoidance arrangement means an arrangement, ***the main purpose of which is to obtain a tax benefit****".*

Thus, GAAR applies to an impermissible avoidance arrangement meaning an arrangement whose **main purpose** is to obtain tax benefit. As per domestic law, GAAR applies to all domestic as well as international transactions with tax benefit exceeding INR 3 crores. Consequence of application of GAAR is that Tax Authorities can re-characterise, combine, disregard, or reclassify a transaction including reattribution of income as per section 98 of the Act.

As per Article 7 of MLI, PPT reads as below (emphasis supplied):

"Notwithstanding any provisions of a Covered Tax Agreement, a benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that ***obtaining that benefit was one of the principal purposes of any arrangement or transaction*** *that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement.*

Thus, the PPT rule applies when one of the principal purposes is to obtain tax benefit. It applies to international transactions without any threshold. Therefore, as a consequence of the application of PPT, treaty benefits can be denied.

Most of the cases may have a specific set of facts where either only PPT or either only GAAR shall apply. However, column (D) provides for scenarios when both PPT and GAAR apply. To summarise, Both applies when ***"a cross border transaction or arrangement wherein the main purpose is to obtain tax benefit exceeding INR 3 crores.***

In such a scenario, it is important to note that GAAR is imposed by domestic tax law which provides for charge of tax. Thus, GAAR is not displaceable which even the Commentary to Article 1 of OECD Model tax convention[3] provides to apply.

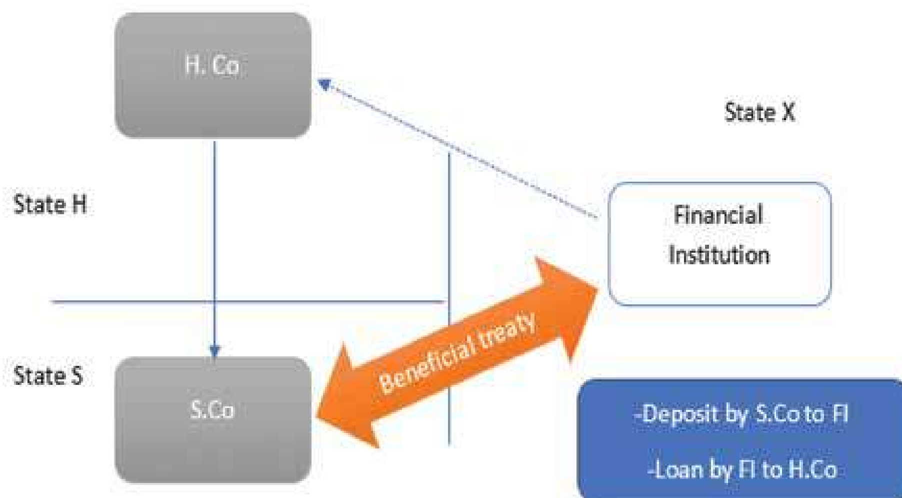
Further, PPT is applicable based on bilateral tax treaties of countries. As per Article 60 of the Vienna Convention on the

[2] *Para 58 of OECD Model tax convention [2017]*
[3] *Para 58 of OECD Model tax convention [2017]*

law of treaties, a breach of treaty by one of the parties entitles the other to terminate the tax treaty or suspend its operation either in whole or in part. Thus, GAAR cannot displace PPT which ultimately means both can co-exist.

Application of PPT shall ensure denial of tax treaty benefits and application of GAAR ensures that Tax Authorities can re-characterise, combine, disregard, or reclassify a transaction including reattribution of income as per section 98 of the Income Tax Act. This ensures appropriate tax revenue is due to the country charging tax on a transaction/ arrangement.

Example: H.Co, a company incorporated in state H, has a subsidiary in state S namely S.Co. H.Co needs funds and S.Co has surplus cash as well as substantial accumulated profits. Dividend attracts a rate of 20% tax in state S. Thus, to avoid such taxation S.Co provides deposit to Financial Institution in State X which in turn provides loan to H.Co of similar amount. Interest income from Financial Institution is exempted from tax in state S under X-S treaty. Domestic law provides for rate of 20% on interest income in State S.



Based on the above example, one can understand that based on PPT, treaty benefits shall not be allowed for X-S treaty. Thus, interest of income shall be taxable in State S at the rate of 20% based on domestic law. Further, GAAR shall also apply on the said transaction as the entire arrangement's main purpose is to obtain tax benefit. If State S would have been India, the entire arrangement avoided deemed dividend or dividend taxation by artificially providing deposit to a Financial Institution which grants the same amount of loan to H.Co. This would have attracted provisions of section 2(22)(e) of the Income Tax Act of India if normal loan transaction would have been undertaken. Thus, as per GAAR, the said transaction by S.Co can be re-classified as deemed dividend disregarding Financial Institution of State X. Hence, based on application of GAAR, over and above interest amount, loan amount shall also be taxable in State S.

Thus, it can be concluded that that both GAAR and PPT can co-exist and this gives more means to tax authorities to have a fair share of taxes for their country.

"Application of PPT shall ensure denial of tax treaty benefits and application of GAAR ensures that Tax Authorities can re-characterise, combine, disregard, or reclassify a transaction including reattribution of income as per section 98 of the Income Tax Act.

Conclusion

Internationally, tax avoidance has been recognized as a concern. MLI is historic in terms of curbing tax evasion and Base Erosion and Profit Shifting ('BEPS'). MLI is effective in India with effect from 01 April 2020. PPT rule is quite broad and can counter all abuses of treaty. Thus, it would be important to consider implications of said rule on any arrangement even if countries have not accepted specific rules of anti-avoidance provided in MLI or GAAR is not part of tax laws. Thus, PPT or GAAR does not restrict but supplements specific Anti-avoidance rules to avoid tax abuse. ■■■

Dividend as an 'International Transaction' – Will the opinion stand divided or united?

Dividend made a big splash in the Finance Act 2020, wherein, the traditional method of taxing dividends in the hands of the shareholders has been reintroduced. In the past, many intercompany transactions like advertising, marketing, and promotion expenses (AMP expenses), issue of shares, inter-company borrowing, guarantees, cost sharing arrangements etc. have been scrutinized, debated, and continue to be contentious issues. This article discusses the applicability of TP provisions to 'intercompany dividend,' which has till date remained an unchartered territory for the Indian Tax Authorities (ITA). Read on...

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I. What is Dividend?

Every company thrives on two main sources of funding, namely capital contribution by its shareholders and borrowings. The word *dividend* comes from the Latin word *dividendum* (thing to be divided). Black's Law Dictionary defines *dividend* as a *portion of a company's earnings or profits distributed pro rata to its shareholders, usually in the form of cash or additional shares*. Dividend in layman's terms is a return on capital in proportion to ownership (shared held) in a company.

a. Dividend is an appropriation of profits

In one of the rulings the Punjab and Haryana High Court, mentioned that dividend is an appropriation of profits in the case of Punjab Distilling Industries Ltd. vs. CIT, (1963) 48 ITR 288.

"Speaking generally, 'dividend' is a sum of money or portion of divisible thing to be distributed according to a fixed scheme being what the shareholder earns as return on his investment; it is his share of corporate earnings credited to his account.

The characteristic feature of 'dividend' is that it is declared and paid wholly from the net profits or undivided earnings leaving intact the shareholder's fractional interest represented by his holding in the capital stock. A 'dividend' is not capital but the produce of capital. Subject to well recognised limitations, 'dividend' is a word of general and indefinite meaning without any narrow, technical or rigid significance. The term 'dividend' is applied to a distributive sum, share or percentage arising from some joint venture as profits of a corporation. In the second sense, it is a proportionate amount paid on liquidation of a company. In this context 'dividend' is being referred to in the sense of corporate profits set apart for rateable division amongst the shareholders, being surplus assets obtained in excess of capital".

Having understood the nature of dividend, i.e., appropriated from a post - tax distributable profit (current or previous year), one needs to understand its implications under the Indian TP Regulations.

The provisions of Section 92 the Indian Income Tax Act,1962 (the Act) which deals applicability of transfer pricing provisions (TP provisions) to transactions between two Associated Enterprises (AE) have now been analysed.

b. Provisions under the Act dealing with TP

Section 92(1) of the Act provides that, *"Any income arising from an **international transaction** shall be computed having regard to the **arm's length price**"*. In order to apply the provisions of Section 92(1) of the Act to dividend payment, firstly it must qualify as a 'transaction'; and secondly it must be possible to benchmark the transaction with 'arm's length price'. Accordingly, it is important to analyze the definition of 'international transaction' and 'arm's length price' as provided in the Indian TP provisions and evaluate its applicability to 'dividends'.

II. Meaning of an International Transaction

As per Section 92B of the Act, the following conditions should be satisfied to be covered by the definition of international transaction:

a. There should be a transaction.

b. The transaction should be between two or more associated enterprises.

c. Atleast, one of the transacting parties should be a non-resident.

d. The transaction should be of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets.

Thus, all the four conditions as listed above should be cumulatively fulfilled for a transaction to be called an 'international transaction' under the Indian TP provisions.

> To ascertain whether the declaration and payment of dividend can be considered to be a transaction, one needs to understand the nature, circumstances permitting payment of dividends and procedural aspects relating to dividend.

III. Can dividend be construed to be a transaction?

For evaluating whether dividend can be a transaction, one needs to refer to its definition under Section 92F(v) of the Act. It refers to any kind of *arrangement, understanding or action* would be a transaction even if it not in writing and intent to transact is evident from the conduct of the parties (i.e., oral). Further, even if there is no legal remedy for enforceability of such arrangement, understanding or action, it would still qualify as a transaction.

a. Whether payment of dividend can be an arrangement, understanding or action in concert?

To ascertain whether the declaration and payment of dividend can be considered

to be a transaction, one needs to understand the nature, circumstances permitting payment of dividends and procedural aspects relating to dividend.

Relevant Judicial Rulings in India on the term 'Transaction'

The term existence of a 'transaction' and consequent 'international transaction' has been deliberated by the ITA while adjudicating whether AMP expenses incurred by an Indian company was an 'international transaction' requiring ALP compensation from Foreign AE.

Based on the above judicial pronouncements, it needs to be evaluated whether declaration and payment of dividend can be considered to be *arrangement, understanding or action in concert* between the company and its shareholders at the time of investing in the shares of the company.

IV. Declaration and distribution of dividend is at Management's discretion

It would be the endeavour of every company to maximize return on investments of its shareholder's funds and maintain a good dividend payout ratio to attract further investments. When the shareholder invests in any company (Private or Public) he is not assured of a yearly return in the form of dividend at the outset (i.e., at the time of investing in the company). This is in consonance with any business activity, which can face either of the extremes, profits or losses. But the ability of a company to pay dividends is governed by the applicable laws and management's discretion. Payment of dividend is discretionary and is dependent on many factors (internal and external) to the organization.

Name	Rulings in the context of arrangement, understanding and action in concert
Maruti Suzuki India Ltd.[1]	Even if the word 'transaction' is given its widest connotation, ….. it is still incumbent on the Revenue to show the existence of an 'understanding' or an 'arrangement' or 'action in concert' between MSIL and SMC as regards AMP spend for brand promotion
Bacardi India Pvt. Ltd.[2]	The Courts held that the existence of an international transaction will have to be established de hors the Bright Line Test (BLT)[3], the burden is on the Revenue to first show the existence of an international transaction. The objective of Chapter X is to make adjustments to the price of an international transaction which the AEs involved may seek to shift from one jurisdiction to another. An 'assumed' price cannot form the reason for making an ALP adjustment. Since a quantitative adjustment is not permissible for the purposes of a TP adjustment under Chapter X, equally it cannot be permitted in respect of AMP expenses either
Daichi Sankyo v. J. Chiguripati (Civil Appeal No. 7148 of 2009) [4]	Supreme Court held that action in concert would necessarily entail a shared common objective or purpose between two or more persons. In the absence of such shared objective or purpose, no presumption of a transaction can be made
Hon'ble Delhi High Courts (HC) decision in the case of Whirlpool of India Ltd[5]	The Delhi High Court while negating the AMP adjustment quoted "A unilateral action by one of the partners without any binding obligation on the other could not be termed as a transaction. There could not be an inference of the existence of such an 'international transaction'. The onus is on the Revenue to demonstrate the existence of such transaction between the two parties".

1. *ITA--710/2015. Case: MARUTI SUZUKI INDIA LTD. Vs. COMMISSIONER OF INCOME TAX. High Court of Delhi (India)*

2. *ITA No. 1970/Del/2017 -Bacardi India Pvt. Ltd. Vs ACIT (ITAT Delhi)*

3. *BLT was first deliberated by the US Tax Court in the case of DHL Inc. and Subsidiaries v Commissioner (TCM 1998-461) and subsequently also challenged in the case of Maruti Suzuki India Ltd. v Additional Commissioner of Income Tax [(2010) 328 ITR 210]. It was held that in order to assess the reasonableness or otherwise of the AMP spend by a domestic company, reference was to be made to similar AMP spend by comparable companies (as a percentage of sales). Any excess of the AMP expenses ((as a percentage of sales) by the taxpayer in question was required to be compensated by the Foreign AE (on whose behalf the said expenses were argued to be incurred by the Domestic company)*

4. *Daichi Sankyo v. J. Chiguripati (Civil Appeal No. 7148 of 2009) -Supreme Court of India*

5. *ITA Nos. 610/2014 and 228/2015 - The Commissioner of Income Tax-LTU v/s Whirlpool of India Ltd. High Court of Delhi (India)*

Management which oversees day to day running of the business must observe prudence and decide when (timing and frequency), whether to pay or not to pay and how much (quantum) based on the following factors:

Thus, from a study of the above factors it can be deduced that declaration and payment of dividend is solely the management's judgement and based on the combination of a variety of internal and external factors and commercial realities specific to the company.

V. Restriction under the Companies Act 2013

Though dividend is a return on capital invested in the company, its declaration and distribution are discretionary upon the Management of the company as per the Companies Act 2013. The relevant provisions of the Companies Act, in relation to dividend have been discussed herewith

Section 123(1) of the Companies Act 2013, provides that dividend shall be paid by a company for any financial year only out of the profits for that year after providing for depreciation, subject to certain exceptions.

Accordingly, the company must comply with the Companies Act 2013 before it decides to declare dividend.

VI. Declaration and payment of dividend is an 'Unilateral act'

The following factors need to be considered and fulfilled by the management before declaring dividend.

If and only if the above conditions have been met, the Board of Directors (BOD) would recommend the dividend out of profit available for appropriation. Such recommendation is presented for approval of the shareholders in the general meeting. Neither the BOD nor the shareholders can have a say in the dividends unless the above conditions have been satisfied.

From the above discussion, it can be observed that declaration and payment of dividends is dependent on Management's sole discretion, after considering internal and external factors and applicable laws.

It needs to be appreciated that no third party would be ready to transact for a consideration which is at the discretion of the recipient of the service (i.e., the company declaring the dividend in the instant case). In other words, if a view otherwise is taken that dividend is a bilateral act, (i.e., it is a return on the capital invested in the company), it needs to be understood that this return is discretionary (timing, quantum, frequency may differ from year to year for the same company) and sometimes never even be paid (if the company continues to be in losses and goes into dissolution).

While a transaction involves two parties who discharge their respective obligations, payment of dividend does not arise from any contractual obligation, whether oral or in writing. The company's ability to declare and pay the dividends for the year is not decided by way of any arrangement or understanding or action between the company and its shareholders. It is merely representing a distribution of post-tax profits that belong to shareholders.

Dividend being merely a distribution of post-tax profit belonging to shareholders, payment of dividend does not partake the character of 'transaction' between company and shareholders.

Therefore, considering the above discussions it can be concluded that **dividend is a unilateral act** and in the absence of a bilateralism, dividend fails the quintessential condition to qualify as a 'transaction' and consequently 'international transaction'.

Declaration and payment of dividend is solely the management's judgement and based on the combination of a variety of internal and external factors and commercial realities specific to the company.

VII. No international transaction – No Arm's Length Price

Another important aspect for any international transaction is to determine what is the arm's length price. The arm's length price under TP provisions (Section 92F) means a **price** which is applied or proposed to be applied in a transaction between third parties, in uncontrolled conditions.

The above-mentioned decisions relating to AMP make it amply clear that in the absence of international transaction, there cannot be an arm's length price for the same. The decisions in CIT v. B.C. Srinivasa Setty (1981) 128 ITR 294 (SC) and PNB Finance Ltd. v. CIT (2008) 307 ITR 75 (SC) further seconds the said view and mentions that in the absence of any machinery provision, bringing an imagined transaction to tax is not possible.

VIII. No available mechanism for determination of ALP

Even if one attempts to determine the ALP, the quantum, timing, frequency of dividends is specific to the facts of each company and cannot be calibrated with respect to similar transaction with a third party.

In the case of dividends declared and paid by Companies to third party shareholders too, there could be a very unpredictable trend in terms of the quantum, timing, frequency of dividends for every company and from year to year for the same company. There is no clear-cut statutory provision / method available to benchmark the payment of dividend, and determination of arm's length price for such dividend is not possible.

Reference is made to the Maruti Suzuki India Ltd.[6] Ruling where a similar issue was discussed. It was held that -

a. AO's could not apply 'best judgment' assessment as a device to disallow what he considers to be an excessive expenditure under section 40A(2) of the Act.

b. There was no corresponding 'machinery' provision in Chapter X to compute excessive expenditure.

c. Brand could derive its value from nature of the industry, the geographical peculiarities, economic trends both international and domestic, the consumption patterns, market behaviour, etc.

d. An alternative approach to what was provided under Section 92C of the Act, was not legally permissible and arbitrary.

e. To address tax avoidance, a provision in the statute giving a clear policy was required to check subjectivity.

IX. International Practices / Rulings in TP[7]

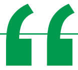
In one of the international precedents analysing the non-applicability of TP provisions to dividend transaction, Poland's Minister of Finance on 6 August 2020 issued guidance on whether a dividend payment among 'associated companies' falls within the scope of the definition of a 'controlled transaction' for TP purposes.

A plain reading implies that any activity to be considered as of 'economic in nature' needs to satisfy the condition of being an activity **(for the purpose of) earning money**. Thus, economic activity would consist of activities of **'economic nature'** i.e., (for the purpose of earning money). Thus, payment of dividends,

Though dividend is a return on capital invested in the company, its declaration and distribution are discretionary upon the Management of the company as per the Companies Act 2013.

[6] *ITA--710/2015. Case: Maruti Suzuki India Ltd. Vs. Commissioner of Income Tax. High Court of Delhi (India)*

[7] *https://mnetax.com/poland-clarifies-treatment-of-dividends-under-transfer-pricing-rules-40110*



Dividend is a unilateral act and in the absence of a bilateralism, dividend fails the quintessential condition to qualify as a 'transaction' and consequently 'international transaction'.

cannot be construed as an economic act in itself (carried out to earn profits). It is the generation, distribution and payment of the profits resulting from an economic activity - e.g., sale of goods or services etc. Accordingly, it was clarified by the Polish tax authority that the dividend payment does not fall within the definition of a 'controlled transaction' and therefore there was no need to prepare (local) TP documentation w.r.t payment of dividends.

Though the judgement is providing a different dimension to the issue under consideration, in principle the Polish tax authority in its clarification mentioned that dividend is 'produce of an economic activity' and not the 'economic activity itself'. It is the fruits of the economic activity which is being distributed to the owners (i.e., profit is appropriated, in proportion to the shareholding in the company) in the form of dividend. Thus, the Polish tax authority also concluded that 'dividend' needs to kept out of the rigors of TP.

X. Conclusion

Based on the detailed discussion above, it can be observed that taxation of 'dividend' till date remains to be a very interesting subject in India. For dividend to be reviewed as an 'international transaction' under the Indian TP Regs, it must satisfy the quintennial condition of being a transaction i.e., it needs to be substantiated to be a transaction. Transaction is a two-way act i.e., an arrangement, understanding action in concert to do something for which there would be a consideration. Dividend is an 'unilateral act' as the declaration of dividend factors into management's discretion and regulatory compliance. Therefore, quantum and timing of declaration and payment of dividend is in the hands of the management and not the shareholders (i.e., recipient of the dividend). Also, there is no mechanism by which dividend can be benchmarked under any of the methods envisaged under section 92C of the Act. In the absence of a 'transaction' and with 'no statutory machinery' to benchmark the transaction, it can be reasonably concluded that Dividend has rightly stayed away from the rigors of TP.

Having said this, dividends declared and paid (or received) by closely held private companies in India need to be properly supported with commercial rational. The timing and quantum of payment / receipts with all the regulatory approvals, needs to be documented proactively while declaring the dividends for ringfencing from penal onsequences[8] for non-disclosure and non-compliance with the arm's length standard. ■■■

[8] *Section - 271AA of the Act - Penalty for non-maintenance of prescribed record/ documents: Prescribes for imposition of penalty equal to 2% of the value of each international transaction on account of failure to maintain information and document.*

Section 271BA - Penalty for failure to submit audit report within prescribed time limit: Penalty equal to Rs.1, 00,000 for failure to furnish audit report from an accountant as required u/s 92E.

Section 271G - Penalty for failure to submit records / documents called for: Penalty of 2% of the value of international transaction for each failure to produce information and document as requisitioned by Income Tax authorities.

Self-Assessment no longer 'at large' in GST Inquiry

Audit is guided by the due process laid down in section 65 and enforcement relies on section 67 of Central GST Act for its due process. Enforcement wing in different states called anti-evasion or intelligence has always had the entire 'assessment at large' to look into every aspect of compliance by taxpayer. GST has spread this responsibility to ensure taxpayer's self-assessment of tax payable in different sections from section 61 to be limited to scrutinize returns, section 65 to conduct audit and section 67 to conduct inspection-search-seizure. Read on…

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Enforcement is not audit

Audit is defined in section 2(13) and the mandate is "to verify correctness" of GST compliance. This is the provision where taxpayer's self-assessment is 'at large' before the Audit Officers. But that's exactly why audit cannot be undertaken when proceedings are undertaken in section 67 of Central GST Act. Enforcement Officers recognize the absence of non-specific and routine nature of review of taxpayer's compliance in the very provision that permits inspection-search-seizure.

To select a taxpayer for audit, there are no pre-conditions to be fulfilled. Commissioner or any delegate may issue a general or specific order stating that audit of a registered person be undertaken. It is the wisdom of the Commissioner to expeditiously deploy limited resources available to audit taxpayers. Risk-based approach would be a possible approach for the Commissioner to follow. There are certain industries that may be considered 'prone to risk of (revenue) leakage', namely, industries that:

a) involve suppliers who operate in a 'impoverished' compliance ecosystem;

b) supply to end-consumers who show 'indifference' to tax compliance;

c) operate with unwritten and implied contractual structure.

Then there's product-risk, that is, those goods or services supplied which are prone to tax avoidance and deficient compliance. And there's entity-risk, where intelligence gathered raises questions about scruples of certain entities. While these categories of risk as well as examples are author's own imagination but is provided to extrapolate to the considerations of each Commissioner.

Commissioner's choice in audit selection – industry or product or entity – does not come in for any judicial scrutiny. Commissioner is at liberty to exercise his discretion and there are no safeguards for a taxpayer except that this discretion is left in the hands of a high-ranking Officer of the tax department. Apex Court held that:

> *"**A discretionary power is not necessarily a discriminatory power** and abuse of power is not easily to be assumed where the discretion is vested in the Government and not in a minor official."*
>
> Matajog Dobey v. HC Bhari AIR 1956 SC 44

Where specific intelligence is gathered that a firm in an industry is indulging in questionable transactions of a specific nature, certainly that firm can be included within the 'Commissioner's discretion' and audit conducted. In so doing, not only can those specific transactions be verified but all other associated transactions of the firm. Audit Officers are free to limit the scope of their review and are not obliged to cover 'all' aspects of GST compliance by that firm. For the reason that even audit must ultimately culminate in the issuance of a show cause notice in the manner prescribed to demand tax or credit. And completion of audit is no bar in issuing show cause notice on any other matter, whether falling within the scope of audit or not, as long as this new demand stays within the period of limitation in law.

It is, therefore, possible to conclude that the authority to audit may overlap with enforcement but the converse does not apply, that is, enforcement proceedings cannot authorize the conduct of proceedings in the nature of audit under section 65, certainly not in the manner contemplated in section 2(13) of Central GST Act.

Jurisdiction for departmental action

Jurisdiction is not a reference limited to the geographical limits to which the authority of an Officer extends. It also refers to the authority of an Officer to act in accordance with law and the circumstances or conditions that confers this authority to so act. GST is a self-assessment-based tax and for this reason, there is no general authority to call for books and records and determine liability akin to departmental assessment (under earlier tax regime). Entire liability stands assessed 'by self' and any intervention must strictly be in accordance with 'due process' laid down in the law. Privy Council held that:

Jurisdiction is not a reference limited to the geographical limits to which the authority of an Officer extends. It also refers to the authority of an Officer to act in accordance with law and the circumstances or conditions that confers this authority to so act.

> ***"When a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all."***
>
> Nazir Ahmad v. King Emperor AIR 1936 PC 253

Where there is no jurisdiction, the action is illegal, and any discovery is vitiated. Preventing leakage of revenue does not authorize glossing over 'due process' in law. Due process is the embodiment of 'justice in action' whether in judicial, quasi-judicial or administrative action touching rights of citizens in those proceedings. To this end, all departmental action remains constrained to uphold the 'Rule of Law'. And following words of Apex Court are apposite:

> *"Legitimacy of the result intended to be achieved does not necessarily imply that every means to achieve it is permissible; **for even if the end is desirable and permissible, the***

***means employed must not transgress the limits laid down** by the Constitution….”*

Sakal Papers (P) Ltd. & Ors v. UoI AIR 1962 SC 305

Passion to prevent leakage of revenue is not the domain of tax administration, Legislature too desires exactly this. And for this purpose, Legislature laid down 'due process' so that not only is leakage of revenue arrested but is done while upholding Rule of Law. And to borrow the words from another decision of Apex Court:

*"From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valent relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. **Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would : amount to mala fide exercise of power** and that is hit by Arts. 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice : in fact the later comprehends the former."*

EP Royappa v. State of TN AIR 1974 SC 555

Principles of natural justice are not limited to judicial actions but is now well accepted to be required in quasi-judicial and administrative actions. Apex Court has held that:

*"15. Effect of civil consequences arising out of determination of lis under a statue is stated in State of Orissa v. Dr (Miss) Binapani Dey and Ors. (1967) 2 SCR 625. **It is an authority for the proposition when by reason of action of the part of a statutory authority, civil or evil consequence ensue, principles of natural justice are required to be followed.** In such an event, although no express provisions is laid down in this behalf compliance of principles of natural justice would be implicit. In case of denial of principles of natural justice in a statute, the same may also be held to be ultra vires Article 14 of the Constitution."*

Rajesh Kumar & Ors. v. Dy.CIT & Ors. (2007) 2 SCC 181

Jurisdiction for commencement of enforcement proceedings

Section 67 of Central GST Act furnishes the jurisdiction for enforcement *qua* 'taxable person' differently from 'any person'. In so far as taxable person is concerned, it is evident that such person ought to attract section 9 and not necessarily be a registered person under section 22 of Central GST Act. Taxable person is defined in like manner in section 2(107) of Central GST Act.

At the outset, authority is vested with Proper Officer 'not below' the rank of Joint Commissioner who must hold 'reasons to believe' about certain specific matters laid down in section 67(1)(a) *qua* taxable person and section 67(1)(b) qua any person to invoke the authority in section 67 of Central GST Act.

Reasons to believe qua taxable person must pertain to any one or all of the matters listed in section 67(1)(a) of Central GST Act and no others. One might argue that in the definition of audit in section 2(13) of Central GST Act that takes within its sweep correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess compliance with provisions of Act or rules, could well cover the specific matters listed in section 67(1)(a) of Central GST Act too. But here, question is

not whether audit under section 65 can inquire into matters covered under section 67 of Central GST Act but whether proceedings under section 67 can inquire into matters covered under section 65 of Central GST Act without the pre-requisites of 'reasons to believe'.

Therefore, it is not only that those very specific matters are to be inquired in proceedings under section 67 of Central GST Act but also that 'reasons to believe' must pre-exist commencement of any proceedings about 'evasion of tax'. Here lies taxpayers safeguards that improper exercise of authority in section 67 of Central GST Act does not authorize going into matters that lie beyond those reasons to believe.

On a perusal of the specific matters listed in section 67(1)(a) of Central GST Act, 'evasion of tax' runs like a common thread in all those matters. First, where taxable person **'has suppressed'** either supply or stock of goods, evasion of tax is inbuilt when there's suppression. Second, where taxable person **'has claimed'** input tax credit in excess of his entitlement is not the result of an exercise to determine 'entitlement' but one where the claim is ex facie in excess. Lastly, where taxable **'has indulged'** in contravention to evade payment of tax needs no elaboration.

Section 67 of Central GST Act furnishes the jurisdiction for enforcement qua 'taxable person' differently from 'any person'. In so far as taxable person is concerned, it is evident that such person ought to attract section 9 and not necessarily be a registered person under section 22 of Central GST Act.

And reasons to believe qua any person identifies (i) such person as one who is engaged in transportation of goods or operates a warehouse (ii-a) where such transportation or warehouse is involved in keeping goods which have escaped tax or (ii-b) where accounts or goods are kept such that evasion is likely to be imminent result. If goods are no longer available (in transit or storage), there is no inference that can be drawn about the conveyance or warehouse. Similarly, past investigation into evasion or other antecedents of taxpayer do not furnish reasons by themselves, unless there is material available in each new and current instance to invoke provisions of section 67(1)(b) of Central GST Act. Therefore, the question of 'reasons to believe' assumes plenary position as it touches jurisdiction.

Reasons to believe

Suspicion is not sufficient to furnish 'reasons to believe'. Suspicion is the product of an analytical mind examining available information and locating some incongruity in the data. Suspicion is a comparison of what is with what ought to be. Suspicion can arise even when everything is matching because it is an ideal that may not be possible in every area of compliance.

Reasons to believe requires that the belief must be held in good faith and it cannot be a mere pretence. Reasons must pre-exist to support the grant of authorization to inspect the premises of taxable person (or any person). Reasons cannot be discovered after conducting inspection. Apex Court held:

> *"**The belief must be held in good faith: it cannot be merely a pretence.** To put it differently it is open to the Court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and, are not extraneous or irrelevant to the purpose of the section."*

S Narayanappa & Ors. v. CIT
AIR 1967 SC 523

Whether a *bona fide* mistake or even misinformation could furnish reasons to believe, requires reference to the guidance of Apex Court which held:

> *"The words 'consider is necessary' postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order................**If the***

Inspection of a premises is an extremely invasive power that may be exercised without prior notice to taxable person (or any person) provided the Proper Officer has 'reasons to believe'.

***impugned order were to show that there has been no careful thinking or proper application of mind as to the necessity of obtaining and examining the documents specified in the order, the essential requisite to the makings of the order would be held to be non-existent*..............** *If, however, there has been consideration of the matter regarding the necessity to obtain and examine all the documents and an order is passed thereafter, the Court would stay its hand in the matter and would not substitute its own opinion for that of the authority concerned regarding the necessity to obtain the documents in question."*

Barium Chemicals Ltd. & Anr. v. AJ Rana & Ors. AIR 1972 SC 591

Since Legislature desired to allow Proper Officer to inspect premises, section 67 of Central GST Act contains all these safeguards, that is, to (i) require that there be reasons to believe (in evasion of tax), (ii) this authority be left in the hands of no less than Joint Commissioner to be satisfied (with evasion) and (iii) specify the circumstances in clause (a) and (b) to inspect the location(s). Compare this law-making effort with the language in section 67(1) with that in section 65(1) of Central GST Act.

Inspection of a premises is an extremely invasive power that may be exercised without prior notice to taxable person (or any person) provided the Proper Officer has 'reasons to believe'. These 'reasons to believe' must be founded on some material or grounds and either stated in the search warrant (INS1) itself or in a record (such as, file noting) anterior in time to the actuall issuance of such warrant. And if these were to be called into question, contemporaneous records would be available for the Court to examine and satisfy itself – that there were reasons to believe in the form and manner specified in section 67(1) of Central GST Act – for authorizing such extreme action and that the action was not taken for extraneous and irrelevant reasons.

Waiver by taxpayer

Failure to explicitly question validity of inspection proceedings or implicitly acquiescing to proceedings by reply on merits may result in waiver of taxpayer-rights, as provided in section 160(2) of Central GST Act. Taxpayers' own acquiescence can result in forfeiture of remedies against invalid proceedings. It is, therefore, imperative that every inspection be questioned as to its validity. Taxable person (or any person) may not be required to prevent inspection on own suspicion about its validity but retain this ground and call it into question in any process such as inquiry or notice issued pursuant to these proceedings. This taxpayer safeguard is evident in the instruction issued by CBIC 1/2020-21 dated 2 Feb 2021.

Whether section 160(2) of Central GST Act will be successfully side-stepping taxpayer's remedies and cause irreparable prejudice even if there were any discovery in illegal inspection without any pre-existing 'reasons to believe', is still to be raised for judicial consideration. But it cannot be ignored that when a notice is issued raising legitimate questions about the correctness of compliance, taxpayer runs risk of responding on merits in view of the prohibition from raising grounds that were not raised in earlier proceedings in rule 112 of Central GST Rules.

Grant of authorization

Authorization must be granted

Taxpayers' own acquiescence can result in forfeiture of remedies against invalid proceedings. It is, therefore, imperative that every inspection be questioned as to its validity.

in Form GST INS1 'before' conducting inspection. And if reasons to believe furnish jurisdiction to inspect, those reasons (with all its ingredients and their due consideration) must also exist prior to grant of such authorization. While it is not necessary to disclose the reasons to believe in the authorization, but it is not permissible for it to be undisclosed on the files.

Authorization in Form GST INS1 contains three Parts. Part A relates to inspection of premises of taxable person. This 'taxable person' is defined in section 2(107) to be a person who is registered or liable to register. Part B relates to inspection of premises of any person who is not the taxable person. Such person is one who (i) is engaged in business of transporting or warehousing goods and (ii) such goods transported or stored, have escaped payment of tax or (iii) such person has kept accounts or goods which could result in evasion. Part C relates to articles liable to seizure.

Jurisdiction for commencement of search proceedings

Search proceedings under section 67(2) can be initiated *"pursuant to an inspection carried out"*, that is, there may be a 'discovery' during inspection that justifies that search to be conducted. Authorization granted in INS1 with reasons to justify 'inspection only' indicates that there were no reasons to justify 'inspection and search'. Even if there may have been some suspicion earlier but since authorization granted was limited to conduct inspection only, search cannot be conducted beyond the scope of authorization granted.

Section 67(2) also authorizes search to be conducted *"otherwise"* than pursuant to inspection, indicates that reasons may exist *a priori* that are already sufficient to justify both 'inspect and search' to be conducted. In such cases, authorization must be accordingly granted. Form GST INS1 contains Part C, where provision is made for recording reasons that form the ingredients to conduct search.

Once authorized, search can be conducted in respect of (i) goods liable to confiscation are secreted or (ii) documents, books or things (which would be useful for any proceedings) are secreted, under section 67(2) of Central GST Act. It is very important to note that search cannot be authorized by 'guesswork' that the said articles may be 'secreted'. Some material must be available on record and after due consideration of such material along with attendant circumstances, a reasonable conclusion may be drawn that at the said place of inspection, the said articles are 'secreted'. It is not necessary to have proof of said articles being secreted but certainly some reliable material which is more than mere suspicion, howsoever logical and plausible it may be, must exist which furnishes the 'reasons to believe' (discussed earlier).

Out-of-bounds in enforcement

Enforcement extends to all actions authorized by section 67 and 68 and not under section 61 to 65. With respect to inspection under section 67, persons who do not satisfy the criteria listed in section 67(1)(a) or (b), cannot be brought within the operation of enforcement proceedings. Reasons to believe may exist but such reasons must identify the (i) persons to be inspected and (ii) locations to be inspected. Deficiencies in identifying the specific persons and specific locations, would render the inspection unauthorized either against incorrect persons or at incorrect locations.

Further, enforcement action by tax administration cannot take-up matters such as (i) classification (ii) valuation (iii) input tax credit (iv) monthly returns and annual returns (v) other compliance matters, even if there may be errors in taxpayer's self-assessment carried out. Any enforcement action on these matters must involve reasons to believe that taxable person (a) has suppressed supply or stock or (b) has availed input tax credit beyond entitlement or (c) has indulged in any contravention to evade tax. If all these comprehensive ingredients are not found to exist as documented at the time of grant of authorization, enforcement action will be illegal and contrary to law.

Failure to question the legality of such improper authorization

results in forfeiture of remedy available in law due to section 160(2). But the time to question the validity of authorization granted will not lost and are due only after conclusion of inspection and / or search proceedings (discussed later).

Comparison with language in different legislations

A quick comparison with provisions under other legislations can explain the boundaries to the power conferred under section 67 when legislature could have given 'expansive powers' under those legislations which are not found in section 67 only indicates that powers under section 67 is 'limited' and not as much as is permitted in those legislations.

> *"147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income* ***and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section****, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned ....:"*

Section 147 of Income-tax Act

Expansive powers in section 147 of Income-tax Act makes for very interesting comparison in the nature of powers granted by Legislature where not only income escaping assessment (suspected before initiating proceedings) can be brought under assessment but also income *"which comes to his notice subsequently in the course of the proceedings"*. Such expansive powers are conspicuously absent in section 67 of Central GST Act. The guidance, therefore, is that there cannot be 'discovery of reasons' after conducting inspection-search but all reasons which operate as pre-conditions (to furnish jurisdiction to conduct inspection-search) must pre-exist and pre-date visit to premises and clearly stated in INS1 in Parts A, B or C.

Role of Commissioner as Magistrate under section 165(5) of Cr.PC

Code of Criminal Procedure is made applicable to search and seizure under section 67 of Central GST Act. Apex Court has held that:

> ***"We are therefore of opinion that safeguards provided in S.165 also apply to searches*** *made under sub-s.(2). These safeguards are – (i) the empowered officer must have reasonable grounds for believing that anything necessary for the purpose of recovery of tax may be found in any place within the jurisdiction, (ii) he must be of the opinion that such thing cannot be otherwise got without undue delay, (iii) be* (sic) *must record in writing*

Enforcement extends to all actions authorized by section 67 and 68 and not under section 61 to 65.

> *the grounds of his belief, and (iv) he must specify in such writing so far as possible the thing for which search is to be made. After he has done these things, he can make the search.* ***These safeguards, which in our opinion apply (to, sic) searches under sub-s.(2) also clearly show that the power to search under sub-s.(2) is not arbitrary."***

CCT v. RS Jhaver & Ors. AIR 1968 SC 59

In an earlier and authoritative pronouncement it was held that:

> *"The power of search given under this chapter is incidental to the conduct of investigation the police officer is authorized by law to make.* ***Under s.165 four conditions are imposed*** *: (i) the police officer must have reasonable ground for believing that anything necessary for the purposes of an investigation of an offence cannot, in his opinion, be obtained otherwise than by making a search, without undue delay; (ii) he should record in writing is to be made; (iii) be must conduct the search, if practicable, in person; and (iv) if it is not practicable to make the search himself, he must record in writing*

the reasons for not himself making the search and shall authorize a subordinate officer to make the search after specifying in writing the place to be searched, and, so far as possible, the thing for which search is to be made, ***as search is a process exceedingly arbitrary in character, stringent statutory conditions are imposed on the exercise of the power."***

State of Rajasthan v. Rehman AIR 1960 SC 210

In view of these safeguards imported into section 67, it is important that person who is issued a notice under section 73, 74, 76 or any other provision must, before responding to the allegations in the notice, make an application to the jurisdictional Commissioner under section 67(10) to be the Magistrate in s.165(5) of Cr.PC which reads as:

"s.165.............

(5) Copies of any record made under sub- section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched ***shall, on application, be furnished, free of cost,*** *with a copy of the same by the Magistrate."*

It is therefore imperative that taxpayers make this 'application' to Commissioner asking for all the information and then to 'question' matters such as jurisdiction, reasons to believe and the ingredients necessary to invoke the provisions of section 67 of Central GST Act.

Access to business premises in section 71 does not authorize inspection

No authority flows on standalone basis from section 71, much less any authority to conduct inspection or search when there is express provision in section 67 of Central GST Act. Similarly, when these is express authority in section 65 and 66 to conduct 'audit' and in section 22 to grant 'registration' or section 69 to 'arrest' offender, there is no authority to conduct any specific proceeding on standalone basis under section 71 of Central GST Act.

Authority conferred under section 71 is *"for the purposes of"* conducting (i) audit (ii) scrutiny (iii) verification and (iv) checks. . Section 71 cannot compete or operate at cross-purposes with authorized proceedings of audit under section 65 or 66 or inspection-search under section 67 of Central GST Act.

Considering that elaborate procedures along with adequate taxpayer-safeguards have been laid down in case of audit and inspection-search under the CGST Act, use of these expressions – audit, scrutiny, verification and checks – cannot authorize yet another provision to conduct a 'new or special' kind of inquiry without specifying the (i) nature of inquiry to be conducted and (ii) limits to authority for such inquiry, but only machinery provisions authorizing 'access to business premises' for purposes of exercising the authority vested elsewhere in the Central GST Act to audit or inspect premises.

This limitation of authority in section 71 of Central GST Act is forthcoming the fact that *"authorized by the proper officer not below Joint Commissioner"* is found in the opening words in this section and there is neither a rule corresponding to this section nor a form wherein the Joint Commissioner is to grant authorization. As such, section 71 of Central GST Act precludes taxpayer from refusing access to business premises or to the books and records, to person accessing who is either an Officer acting under section 65 or other specified section provisions of law or to the Special Auditor authorized under section 66 of the Central GST Act.

> No authority flows on standalone basis from section 71, much less any authority to conduct inspection or search when there is express provision in section 67 of Central GST Act.

Conclusion

When power is given to do a particular thing, then that thing must be done only in that manner. This holds good for Central GST Act also where the law does not provide unrestricted authority for intrusive actions. And therefore, the taxpayers should take note of the contours of this authority to avoid any action which lacks due authority. GST comes through in ensuring that diligent taxpayers will truly experience 'minimum Government, maximum governance'.

The Conundrum of Taxing: Banking Interest Under GST

The banking sector is the lifeline of a modern economy that acts as an intermediary between people having surplus money and those requiring money for various commercial and non-commercial activities. Since financial services are consumed by all the industries, it is imperative to tax it properly and to maintain the credit chain so that it will not result in increasing the cost of the goods and services. This intermediary service is generally exempted from GST worldwide which sounds innocuous, but has extensive ripple effects. The reason behind this exemption is not linked to any economic motive or relief, rather it is the inability of the governments in determining the value on which tax should be levied for such intermediary or financial service. Read on…

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The article aims to look at the deformation created by this exemption and the possible ways of taxing the financial services highlighting how the recent amendments in the Indian monetary policy to fix interest rates for loans given out by banks, presents an opportunity to tax this sector efficiently.

1. Source of earnings for financial services

Banks are not involved in mere transaction of money. They earn their share of income by charging interest and fees on the loans, deposits and other services, either directly or indirectly and thus making these receipts liable to GST. The typical form of income earned by financial institutions and their treatment under Indian GST law is explained in detail below:

i. **Explicit fee**: Explicit fees are those bank charges wherein a fixed amount is charged by the banks for performing various services. Examples of such services can be performing agency functions, maintaining accounts and other miscellaneous services including ATM, demand draft, locker, foreign exchange transfers, portfolio management, internet banking, etc.

All such explicit charges are liable for GST. Also, no such complications are involved in determining the value of the services and GST can be charged outrightly on the explicit fee amount.

ii. **Implicit margin fee**: It is the margin earned on intermediary services provided by the bank by pooling money as a deposit and lending it as a loan i.e., the difference between interest on loan earned and interest on deposit given. Capital exchange of cash flows in deposits and loans is mere transaction in money and does not have any GST implication. This is the difference between interest earned and interest given that shows the value addition in the services and thus, should be liable to GST.

However, exemption from GST has been granted for every deposit, loan or advance insofar as the consideration is represented by way of interest or discount. Thus, banks are not liable to pay any GST on implicit margin fee earned by them. This seems to be a big relief briefly, but carries several implications of cause and effect.

One of the biggest challenges associated with this exemption is the requirement to reverse input tax credit used in providing such exempted supply.

One of the biggest challenges associated with this exemption is the requirement to reverse input tax credit used in providing such exempted supply. Though, relaxation from reversal of credit associated with such margin has been given to the normal business, however such relaxation is not applicable to the banks. Banks have an option to reverse either the input tax credit associated with such exempted supplies or to reverse fifty per cent of the all the eligible input tax credit on inputs, capital goods and input services claimed in the business.

Thus, such relief in form of the exemption is associated with a cost of ITC which further gets included in the cost of providing the output services by the businesses and impact the pricing of goods and services, directly or indirectly.

2. Inefficiency due to exemption

The activity of lending and depositing from which a bank earns such margin fees is among the core activities of a bank and the major chunk of the revenue is earned by the bank from this activity. The exemptions on such services are the worst form of benefit provided to the industry, given that instead of providing benefit, it adds further complexity and cost to the industry as explained below:

No GST is applied to goods and services exempted from tax, but concomitantly, no input credit is allowed for the GST paid on inward purchases associated with such supplies.

i. **Cascading effect**: No GST is applied to goods and services exempted from tax, but concomitantly, no input credit is allowed for the GST paid on inward purchases associated with such supplies. This blockage of input taxes gives rise to cascading of tax. In the case of supplies made to business customer, where there is no output VAT on the exempted service, the non-deductible input GST paid by the financial institution gets embedded in the cost of the financial supply. This cost, in turn, gets embedded in the price of the product supplied by the business customer and results in the cascading effect of taxes.

ii. **Competitive deformity**: Competitive deformity will be there between supply made by domestic supplier of financial service and foreign supplier of financial service. The domestic supplier would bear an

impact of blocked input taxes, while it may not be there on financial services received from outside India.

iii. **The impact of making a tax-neutral business decision**: If the banking function of an entity is outsourced to some other entity of the same group, the cost charged by such other entity will embed the cost of the restricted part of ITC which is not available on providing banking services. Thus, the exemption system creates a self-supply bias for business inputs resulting in inefficient utilization of resources and not giving the freedom to make a tax-neutral decision.

iv. **Input allocation**: While there are provisions to reverse the input tax credit relating to exempt supplies, in practical terms, it is very difficult to identify the input tax relating to exempt supplies. In India, the law gives the option of reversal considering gross revenue of interest as an exempted service using a method of fixed reversal of 50% of the eligible input tax credit. However, this allocation does not indicate true allocation of input tax to taxable and exempt service, and sometimes may result in major loss of input tax credit associated with taxable supplies.

If the banking function of an entity is outsourced to some other entity of the same group, the cost charged by such other entity will embed the cost of the restricted part of ITC which is not available on providing banking services.

The moot question here is whether the government is aware about such inefficiencies and associated problems. If yes, then why have such exemptions been provided and continued to operate? Is the intention linked to providing tax benefit? Well, the answer is negative. As the title of article suggests, the rationale behind such an exemption is not to provide any economic or social benefit, rather it is the practical difficulty or complexity of determining the value of service on which tax should be discharged.

3. Reason behind the exemption

Interest charged by bank for providing loans and advances is the representative of the following elements:

i. Risk of bad debt
ii. Time value of money
iii. Service charge of pooling funds and distributing i.e., intermediary service.

Where the first two components do not provide any value addition to supply, the third component is the

Interest paid on the deposit reflects the time value of funds provided by the depositors and risk, minus a service charge for the deposit services provided by the bank to the depositors.

real consideration on which GST is to be charged which is often intermingled with the other two elements. Thus, this consideration is not easily identifiable to charge GST.

Similarly, interest paid on the deposit reflects the time value of funds provided by the depositors and risk, minus a service charge for the deposit services provided by the bank to the depositors.

This is the margin between interest charged by the banks on loans and interest paid by the bank on deposits which is the real indicator of value addition which nullifies and balances the impact of risk and time value of money. Thus, it is this margin on which GST is to be charged. This method is easy to conceptualize, yet difficult to implement as it is not practically feasible to map interest on loan and interest on deposit for individual transactions and to be able to compute the difference between the two for applying GST under an invoice-based method.

This revenue cannot be appropriately taxed under

the normal invoice-credit system and there is no readily apparent means under the normal invoice-credit system to allocate the margin to individual transactions. Accordingly, due to such uncertainties and the absence of any basis to calculate such margin, the government must provide exemption for such transactions.

4. Possible solutions/ methods to bring interest transactions under tax ambit

Various alternatives have been adopted by different countries for taxation of financial services to reduce or do away with the distortion created by exemption of such services. One of such method is zero rating or conditional zero rating of B2B supplies of financial services. Here no tax is charged and no credits are allowed for B2B financial services. However, the major issue involved in this method is the identification of input relating to B2B supplies and allocating it accordingly.

Further, tax experts have suggested the following methods for determining the value of such transactions for the purpose of GST:

Various alternatives have been adopted by different countries for taxation of financial services to reduce or do away with the distortion created by exemption of such services.

i. **Basic cash flow method**: As per this method, all cash inflows whether interest earned or capital received by banks would be treated as consideration on which GST should be paid. All cash outflows whether interest paid, or capital would be treated as purchases in respect of which input tax credit can be claimed. This is the simplest approach to determine the value of margin and apply tax accordingly. However, it results in large volume of cash flows to and from Government and taxing capital nature of income which is against the spirit of VAT or GST laws.

ii. **Reverse charging approach**: This method applies reverse charge on borrowing made by banks. This way credit can be claimed on interest paid on deposit. This credit can be used to discharge interest on loan.

    A franking account can be maintained to remove the problem of mapping loan and deposit transaction. This is a weighted average method to use the input tax credit of tax paid on deposit while discharging GST on interest on loan. However, it bring the complexity in implementation.

iii. **Tax Calculation Account (TCA) method**: Under the TCA system, the taxable margin for loan transaction is the interest charged by the financial institution with respect to the loan minus the opportunity cost of funds. In the case of a deposit, the base is the opportunity cost of funds minus the interest paid to the depositor. The impact of such a system shall be that banks will end up paying tax on interest on loans and less interest on deposit.

    If a bank charges 8% interest on a loan, and the opportunity cost of funds is 6%, the taxable margin for GST on loan will be 2%. If the interest on deposit paid by the bank is 4%, and the opportunity cost of funds is 6%, the taxable margin for GST on deposit will be 2%. Thus, effectively, the bank will be paying tax on 8% - 4% that is, 4%.

    In this way banks do away with the problem of matching each individual transaction of loan and deposit. This method operates on the basis of several assumptions. One basic assumption is that deposit and loan has been made at the beginning of period and have been withdrawn or discharged at the end of period. If it is not the case, a notional entry for such assumption has to be made at the end of each period to satisfy such assumption. Another basic assumption is that the value of deposits and loans in the firm are equal.

Most feasible option for calculation of GST

It can be observed that TCA is the most effective method of taxing interest margin. However, the problem associated with this method is to determine the cost of funds. This is because interest rate is generally fixed by the bank as a margin above the benchmark rate based on the Marginal Cost of Lending Rate (MCLR). This benchmark rate represents the cost of funds and it varies from bank to bank.

To explain it further, MCLR is an internal benchmark rate that depends on various factors such as fixed deposit rates, source of funds and savings rate. The price of loan comprises the MCLR and the spread or the bank's profit margin. The biggest problem with this system is the lack of required transparency of policy rates or MCLR. When the RBI cuts repo rate there is no guarantee that a borrower will get the benefit of the rate cut or that it will be transmitted down to him. Also, due to internal benchmarking of loan price, policy rate cuts often don't reach the borrowers.

The Reserve Bank of India (RBI) announced a big change in the way interest rates on loans are calculated. The central bank mandated all banks to link their floating rate loans i.e., benchmark rate to an external benchmark instead of the marginal cost-based lending rate (MCLR).

The Reserve Bank of India (RBI) announced a big change in the way interest rates on loans are calculated. The central bank mandated all banks to link their floating rate loans i.e., benchmark rate to an external benchmark instead of the marginal cost-based lending rate (MCLR).

Banks are free to choose from the options of the external benchmarks provided by Central Government. This system will ensure greater transparency and also ensures that benefit of cut in interest rate will be passed on till customer level automatically. Also, it is now possible to determine the cost of funds of bank due to uniform policies and publicly available rates which will be used to benchmark the lending interest rates.

Thus, TCA method can now become the basis of calculations for ascertaining the value of providing loan services. The valuation for the purpose of GST shall be the value ascribed to the lending service that will be the interest charged by the bank minus the cost of funds ascertained from the RBI Repo rate or whichever rate the bank choses as the benchmark rate.

Before parting

Since interest forms part of all financial transaction and is an integral part of all businesses, it being treated as an exempted service warps the credit chain significantly. In India, all banks lose 50% of their credit, which makes these services costlier. Also, this cascading gets

Since interest forms part of all financial transaction and is an integral part of all businesses, it being treated as an exempted service warps the credit chain significantly.

embedded in the cost of goods and services of the business when they avails these financial services, thus inflating the price of goods and services, defeating the intention of tax on value addition concept. Taxing the interest as per the mechanism discussed in the article may make the system more efficient and restore the credit chain.

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Empowering Women in Accounting profession

The 2030 agenda for Sustainable Development provides with seventeen development goals, which includes "Achieving gender equality and empowering all women and girls". This has put women empowerment at the focus of the international community – rightly so – for women are integral to the growth and development of mankind. Empowering women means encouraging women's sense of self-worth so that they can assert their right and enjoy the power of equal opportunity in all fields and in turn contribute to the society. Women empowerment symbolises inclusion and acceptance of women in decision making roles and breaking the shackles of gender-based impediments. Women are in no way inferior and we all need to value their intelligent capacities and credit their contribution in all walks of life. Despite all challenges, throughout the history women have continued to play a central role in society which has ensured the stability of homes, growth of communities and progress of nations.

Indian growth story and her dream to become a USD 5 trillion economy cannot be achieved without the contribution of women of the country. Every country of the world is keeping an eye on India as one of the fastest growing economies and largest democracy in the world.

The Institute of Chartered Accountants of India, in its existence of more than seven decades, has always played active role in professional development of its members. In the spirit of empowering women members, the ICAI has been keeping women-member specific initiatives high on its agenda. Over the years, more and more women have been equally strengthening the profile of accountancy profession in India with their intellectual skills and acumen.

Our women professionals have grown exceptionally well making their presence felt both at national and international frontiers. Increasingly, the accountancy qualification is getting special attention from women not only because of it offering rich fiscal and social rewards, reasonable flexibility, and sure-shot employability, but also because of it being very cost-effective. Accounting is a powerful profession and can empower women to a great extent. Accounting profession offers various options to choose from and provides a definitive edge to the holder of this qualification. Rising international trade and financial activities has given more impetus to accounting and finance services around the globe. From time to time many women are excelling in their professional lives and taking the profession to a greater pedestal. Naina Lal Kidwai, Dhivya Suryadevara and many more are inspiring industry leaders and are role models for the new generation.

Women professionals can choose to join businesses and enjoy secure employment with admirable pay packages and high professional status. They can choose to run their own firms, enjoying independent work environment. Thus, they can branch out into private equity, finance functions in corporate or even entrepreneurship. With such diverse career options and great recognition, Chartered Accountancy is a lucrative professional option for young Indian women today. Dr M Revathy Sriram a fellow member of the Institute worked as senior finance executive, gave up the position to concentrate on systems audit and initiated the ISACA Chapter in India as one of the cofounders. She is an inductee into the ISACA Hall of Fame 2021 for exemplary dedication. CA Vibha Padalkar, MD & CEO

Contributed by Women Members Empowerment Committee

of HDFC Life, a life insurance company is recognised as one of the 'Top 30 Most Powerful Women in Business' by Business Today. Another women CA Petchi is a shining example of hard work and determination. Coming from humble background, her sincere hard work and unwavering family support brought her to the forefront of this profession paving the way for future generations. Examples are many and list endless.

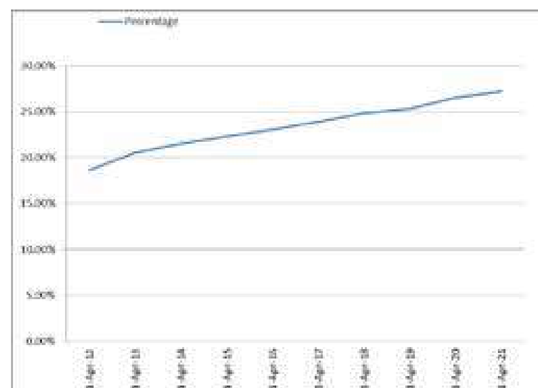
Through a dedicated Women Member Empowerment Committee (WMEC), ICAI has been taking several measures to develop capacities of women members to effectively utilize their professional knowledge and expertise. In today's challenging times, ICAI especially works towards promoting the fulfilment of Women Member's potential through capacity building initiatives, skill development activities, providing awareness of various employment opportunities and by other similar means. The Institute is making efforts to create global opportunities for women members in the digital era and make them aware of the same. The empowerment of the women member's is all about attitudinal, structural, and cultural processes, whereby the women members are encouraged to upskill and brush up their abilities to gain employability and authority. This would enable them to implement the changes they desire and bring independence and freedom to their decision-making capabilities.

Growing numbers of female members and students

In the year 2000, women constituted only 8% of ICAI membership. The situation has changed drastically over the years and their strength increased to 20% in 2012 and 22% in 2014. As on date there are 92,876 women Chartered Accountants which account for more than 27.5% of the total member base (3,37,345) and 2,87,935 female students which account for an impressive 42% of the total student base (6,88,157) while also achieving better results consistently. Female students are not only joining the course, but also doing exceedingly well. In recent final examinations female candidates have recured the top positions showing their mettle and dedication.

The number of women in the Chartered Accountancy profession is growing significantly. This is supported by data available on the rising number of women in accounting profession across the globe. These numbers are encouraging for the future of the Indian Accountancy Profession.

As on date	1st Apr 2012	1st Apr 2013	1st Apr 2014	1st Apr 2015	1st Apr 2016	1st Apr 2017	1st Apr 2018	1st Apr 2019	1st Apr 2020	1st Apr 2021
Total Members	192513	217106	229679	239974	253337	270307	282193	291698	307238	327081
Women Members	35927	44571	49394	53480	58358	64685	70047	73807	81564	88983
% of women members	18.7%	20.5%	21.5%	22.3%	23%	23.9%	24.8%	25.3%	26.5%	27.2%



Activities undertaken by ICAI towards women empowerment

In today's challenging times, the ICAI is constantly making efforts to come out with capacity building initiatives for women members. The various activities conducted for women members empowerment are as follows-

1. **Inspiring stories of women members**: To inspire other women members to set and achieve higher goals, women members who have reached at helm of affairs are invited to share their success stories within and outside of the profession in business, corporate, start-ups, social engineering, NGOs, civil administration, academics etc. These stories are featured on the women portal (https://womenportal.icai.org/) of ICAI.

2. **Networking- Members Meet**: This program pairs the experienced professionals and women members who want to start their own practice and resume their career after a break or switch their profession from industry to practice. These

programmes develop a relationship that yield insights and opportunities to expand women member's knowledge of career options, developing work-related soft skills for career progression and help them to achieve their goals.

3. **Portal for Women Members (www.wmec.icai.org)**: A dedicated portal "Women Portal" provides a platform to women members to articulate their views and concerns pertaining to the Chartered Accountancy profession. The portal is running with an objective to provide flexible working opportunities to women members. A platform has been arranged at the portal where Chartered Accountancy firms and women members can fill their respective fields with the associated ICAI region and branches. It is equally beneficial for both recruiters and job seekers. Women members can register themselves and search for jobs as per their preference/location and expertise. CA Firms can search for qualified professionals as per their requirement i.e., on part time basis, assignment, or location basis.

4. **Customized training programmes**

A. Setu Series - 360° learning of core area of Practice

- For women members who want to start their own practice and have taken a break from their career and want to return to their profession.
- Providing linkage between Woman Members and CA Firms and arrangement of a platform through the Women members portal
- Opportunities to women members, platform for submitting resumes to the committee, opportunities to join local firms to work on full-time/part-time basis.
- Enriching the knowledge and overall confidence building of Women Members by keeping them abreast with the latest amendments.

B. Specialized Programme on "Women Independent Directors"

- Provides insights into the amendments of the new Companies Act which implements the participation of at least one-woman director in the Board of Companies
- Aims towards enhancing skills, knowledge and professional competence of women members who are desirous of holding a position as a director.

C. Workshops on Digital Skills & Competence

- These workshops are organized keeping in view the time gap/break which female members take because of personal reasons.
- It provides opportunity to the female members to brush up their professional skills and resume their careers with updated knowledge in I.T.

E. Train the Trainer: Faculty Development Programme

- Aims at training Women Members for the role of faculty

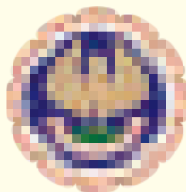
F. Programme on Work–Life Balance amongst Women CA's

Women empowerment is important in every workplace. This includes accounting firms also and they have started realizing the power of women and their massive impact. But the fact that women are becoming champions of this work is not yet highlighted. Women always play a very crucial role in building a diverse as well as dynamic workplace. As per the reports, most of the regulatory bodies of accounting professionals across the globe are making special efforts to make women overcome barriers in their career advancement and move to higher levels of corporate. Women chartered accountants have come a long way through the professional qualification that has equipped them to break the social and economic barriers. The articleship training gives them the exposure to various institutions like corporates, banks, manufacturing facilities, family businesses etc. at a very young age and helps cultivate both macro and micro financial perspectives, which go a long way in developing a key leadership skill – the ability to dig deep when problem solving, while also zooming out to see the larger context in which a decision is being made. It also provides a chance to observe and interact with senior clients and through that one learns the art of negotiation, conflict resolution, and balancing fiduciary responsibility with pragmatism. Simply put, it ensures the holistic growth of women members and helps them achieve success universally. ■■■

Guiding Light… Leading Right

Reaching Pinnacle in Independence, Integrity and Excellence

The Institute of Chartered Accountants of India, a statutory body regulating the accounting profession in India, has a long and chequered history as the second largest Institute in the world. The Institute has delivered to the world high class CA professionals apart from setting benchmarks in the quality of financial reporting in India and abroad. ICAI not only performs its statutory duties as a regulator of the profession of Chartered Accountancy in India by formulating Accounting Standards in keeping pace with changing economic-scenario but also has enforced the ethical values as enshrined in Code of Ethics to progress as envisaged in the Chartered Accountants Act, 1949 and the Chartered Accountants Regulations, 1988.



The Institute of Chartered Accountants of India

Financial Reporting Review Board

Review the general purpose financial statements of the enterprises and the auditor's report thereon suo motto or on a reference made with a view to determine, to the extent possible, compliances on generally accepted accounting principles, disclosure requirements and reporting obligations of the auditor.

Peer Review Board

Enhancing quality of professional work, transparency in technical standards used, world class procedures and techniques resulting into more reliable and useful audit and reports through a system of Peer Review

Disciplinary Mechanism

Proactively act on matters of professional and or other misconduct and take action through well-defined disciplinary mechanism.

Quality Review Board

Initiate reviews of quality of audit services provided by members of the Institute in respect of private limited companies, unlisted public companies below the thresholds specified under Rule 3(1) of NFRA Rules, 2018 and other entities not specified under the Rule; and those referred by NFRA

Monitoring the Tendering issues

Examine Cost Sheets which are to be maintained by members of the Institute while responding to tenders, monitor and analyse these sheet vis-à-vis the bids quoted by CAs in all the permissible tenders and refer the deviations at appropriate levels and call for peer review of the said assignments in cases of abnormal difference.

Taxation Audits Quality Review Board

Carry out reviews to improve the reporting of compliance under various taxation laws (both Direct as well as Indirect) and help the members to exercise greater diligence while certifying various reports prescribed under the taxation laws.

Unique Document Identification Number

Curb the malpractices by third persons misrepresenting themselves as Chartered Accountants and misleading the Authorities and other stakeholders.

and much more…..

ACCOUNTANT'S BROWSER

"PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE"

Index of some useful articles taken from Periodicals received during August-September 2021 for the reference of Faculty/Students & Members of the Institute.

1. Accountancy

Does annual report readability explain the accrual anomaly? By Ming Liu and Zhefeng Liu. *Asian Review of Accounting,* Vol.29/3 2021, pp.307-331.

IFRS adoption and firms' opacity around the world: what factors affect this relationship? By Samuel Mongrut and Darcy Fuenzalida O'Shee. *Journal of Economics, Finance and Administrative Science* Vol. 26/51 2021, pp. 7-21.

Principles-based accounting standards and the timeliness of annual reports: evidence from China by Fei Song and Jianan Zhou. *Asian Review of Accounting,* Vol.29/3 2021, pp. 399-442.

2. Audit

Corporate governance, internal audit quality and financial reporting quality of financial institutions by Twaha Kigongo Kaawaase, Catherine Nairuba, Brendah Akankunda and Juma Bananuka. *Asian Journal of Accounting Research,* Vol. 6/3 2021, pp. 348-366.

Non-GAAP earnings quality in firms with data breach incident by Dongfang Nie and Chunhao Xu. *Asian Review of Accounting,* Vol.29/3 2021, pp. 383-398.

Role of Top Management in Preventing Corporate Frauds by Puzhankara Sivakumar and Anju Panicker. *Chartered Secretary,* Vol.51/08, August 2021, pp.41-45.

3. Economics

Dividend Behaviour of India Companies post Macroeconomic Policy Shock by Ramesh Bhatt. *Economic and Political Weekly,* Vol.56/35, August 28 2021, pp.38-43.

4. Investment

Merger/Amalgamation Without Tribunal's Order by Gopichand Rohra. *Chartered Secretary,* Vol.51/08, August 2021, pp.110-113.

5. Management

Health Insurance as a Healthcare Financing Mechanism in India: Key Strategic Insights and a Business Model Perspective by Rohit Kumar and Aditya Duggirala. *Vikalpa,* Vol.46/02, 2021, pp.112-128.

Real earnings management and stock returns: moderating role of cross-sectional effects by Manish Bansal, Asgar Ali, Bhawna Choudhary. *Asian Journal of Accounting Research,* Vol. 6/3 2021, pp. 266-280.

The risk management role of nonexecutive directors: from capital expenditure perspective by Tho Anh To, Yoshihisa Suzuki, Hong Thu Thi Ho, Siem Thi Tran, Tuan Quoc Tran. *European Journal of Management and Business Economics,* Vol. 30/2 2021, pp. 152-169.

7 tips for starting a client advisory services practice by Courtney L. Vien. *Journal Of Accountancy,* August 2021, pp.14-22.

6. Taxation and Finance

Controversy over levy of GST on residential welfare association by S.V.S. Raghavendra Rao. *Good & Services Tax Cases,* Vol.86/8, 24 August 30, 2021, pp. 81-84.

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.