Union Budget 2019-20: Aiming at Inclusive Growth with Exclusive Vision of the Decade

'Yakeen ho to koi raasta nikalta hai, hawa ki ot bhi le kar Chiraag jalta hai" *(Where there is a will and belief - there is a way, and then the lamp burns bright even in the face of gushing wind).*

This Urdu couplet by Manzoor Hashmi, with which the Budget speech started, not only set the tone and tenor of a growth agenda of a new India, but also summed up its conclusive, concomitant and future proof intent—*inclusive and investment-led growth with an exclusive 10-point vision of the decade.* Coming in the difficult macro backdrop of a slowing economy, the Budget did a fine balancing act between populist expectations and fiscal prudence and discipline aimed at leveraging all the potential to lay a launch-pad to make India leap into the 5 trillion dollar economy club in the next five years. The Budget did well in targeting fiscal consolidation rather than going for fiscal stimulus as some had clamoured for. The fiscal deficit has been projected to reduce to 3.3% that will keep the fiscal parameters within bounds. This was indeed a Budget for building a new India, where all the strata of economy and society stand strengthened— particularly rural Bharat, farmers, youth and women besides the enterprises, entrepreneurs and infrastructure, etc.

"*Soul of India lives in villages*," so said Mahatma Gandhi. The Finance Minister not only quoted this but also corroborated it by announcing a slew of related schemes. This time the Budget acquired a new dimension with added focus on ease of living by ensuring last mile delivery, in addition to ease of doing business and ease of compliance through simplification of taxation process. "*Mazboot desh ke liye, mazboot nagrik*' (strong citizen for a strong country), the Finance Minister proclaimed the Government's key objective, backed by the guiding principles of "*Reform, Perform, Transform*" and "*Minimum Government, Maximum Governance*."

On the tax front, the Budget brings in the blue-print to boost growth and "less cash" economy, incentivise affordable housing, encourage start-ups, sunrise industries and MSMEs and nudge the high income taxpayers to contribute more while at the same time ushering in improved transparency and compliance, and simplifying tax administration by reducing the human interaction between tax payers and the tax authorities. Although the Budget, to spur consumption, proposes that the reduced corporate tax rate of 25% be extended to companies with turnover of up to ₹ 400 crore in previous year 2017-18 instead of ₹ 250 crore at present (that will cover 99.3% of corporate India), it fell short on rationalising the DDT.

Other highlights on Direct Tax front included 'mandatory filing of returns based on expenditure/other criteria,' 'making PAN and Aadhaar interchangeable,' 'tightening of noose on cash economy by way of TDS of 2% on cash withdrawal exceeding ₹ one crore in a year from a bank account,' 'level playing field for NBFCs by subjecting interest on bad and doubtful debts to tax on receipt basis like other banking and financial institutions,' and 'exemption from tax on interest payable by Indian company or a business trust to a non-corporate non-resident or foreign company on Rupee denominated Bonds issued between 17.09.2018 to 31.3.2019. Here it is worth mentioning that several of ICAI suggestions vis-à-vis taxation have been positively considered and incorporated in the Finance (No.2) Bill, 2019.

On the indirect tax front, several customs duty proposals are all aimed at promoting *Make in India*, reducing import dependence, protection to MSME sector and promotion of clean energy. A major and welcome initiative has been Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 for quick disposal of pending central excise and service tax cases involving ₹ 3.65 lacs crore. It is welcome that many key amendments have been proposed in Central Goods and Services Tax Act, 2017 to give effect of changes recommended by GST Council.

What deserves the most immediate attention is India's somewhat ailing financial sector. While credit markets for NBFCs are frozen, public sector banks have the liquidity but not the growth capital. On the other hand the private sector banks are stretched to their limits with rising incremental credit-deposit ratios. The Budget has tried to strike the right notes in this sphere too. Public sector banks will be re-capitalised by another ₹ 70,000 crore, and some of this will hopefully translate into growth — and not just resolution — capital.

The Union Budget 2019-20 has indeed all the right intentions and orientations. However, to 'walk the talk' will be the key to achieving the desired goals. According to Neeti Ayog CEO Amitabh Kant, India will have to grow at 8 per cent annually to become USD 5 trillion economy by 2024-25 from USD 2.6 trillion at present. For this, India requires investments averaging ₹ 20 lakh crore every year. The task is difficult but quite achievable provided the guiding vision is put to effective execution. This will require the Government's commitment in the spirit of Chanakya Neeti Sutra as quoted in the Budget speech: '*Kaarya purusha kare na lakshyam sampadayate*'. (*With determined humans efforts, the task shall surely be completed*).

-Editorial Board (ICAI – *Partner in Nation Building*)

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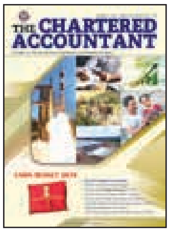

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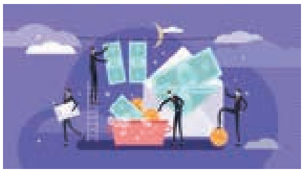

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From the President

My dear Professional Colleagues,

Today Chartered Accountants stand for high degree of reliability, integrity, values and financial discipline. With the criticality of their functions towards stable financial system and strong economy at large, I must say, they have so far played a stellar role in the rise of our economy. ICAI has ensured the mandatory presence of a high degree of integrity and accountability in all its members, by constantly educating and inspiring them towards professional excellence. In its 70-year history, it has remarkably transformed the national economic and accountancy landscape, while generously sharing its knowledge and experience globally with its peers from other nations. With the globalisation of businesses and commercial operations, and resulting complexity and change in the international legal frameworks, role of Chartered Accountants has become all the more important and encompassing.

Welcoming the First President of India Hon'ble Dr. Rajendra Prasad in the Institute, the then ICAI President CA. S. B. L. Vaish had proclaimed: "*...your Government know how vital a part the profession is playing and will play in the well-being of the body economic. A Chartered Accountant is being called upon to assume fresh responsibilities in the fields of management accounting, budgetary control, financial planning, industrial organisation and other allied spheres*." Coming strong on the expectations of our Government, we the members of CA profession have continued to contribute to the nation-building since the inception of our Institute in 1949.

Maintaining the legacy, ICAI has played a pivotal role in providing value-added services to its stakeholders. It has guided its stakeholders and led their organisations as creators, enablers, preservers, and reporters of sustainable value through the process of embedding sustainability deep within the economy. Perceived as an indispensable part of all business establishments, Chartered Accountants today are also called guardians of tax revenue of the country.

In the Union Budget of the country, ICAI plays a key role by communicating its stakeholders' voice, submitting their concerns in form of the pre- and post-budget memorandum. I find it apt to recall the words of ICAI past President CA. G. Basu: "*...we are fully alive to the responsibilities, duties and obligations of the Chartered Accountants to the Government, to the public in general and to their clients and we are doing and would do our best to see that the expectations are duly fulfilled*." Maintaining its tradition, this year too, ICAI had submitted its Pre-Budget Memorandum in the month of June. And, when the Finance Minister presented the Union Budget on 5th July 2019, our suggestions were duly considered, especially with regard to the inclusion of other permitted modes of electronic payments, incentives to non-banking finance companies (NBFCs), consequential amendment to Section 56 and provision of credit of relief provided under Section 89. We have also submitted the Post-Budget Memorandum to the Ministry of Finance.

In the interest of the nation as a whole and for the valid reasons, ICAI had submitted a comprehensive representation requesting the CBDT to extend the due date of filing of income-tax returns for the assessees mentioned under clause (c) of Explanation 2 to Section 139(1) by at least a month from the prescribed date of 31st July 2019 for the AY 2019-20. It is my pleasure to inform that CBDT has favourably considered our request and extended the due date to 31st August 2019. I thank the Ministry of Finance for favourably considering our representation.

Growth-Oriented Union Budget 2019-20

With a strong resolve to maintain fiscal discipline and phase out tax exemptions, the Government through its Union Budget 2019-20 has sought to boost investments while continuing its focus on social-sectors spending. It has announced its intention to invest ₹ 100 lakh crore in infrastructure in the next five years, while its resolve is to boost investment by attracting foreign investors to India. The Government has shown its faith in the infrastructure and construction sectors as drivers of growth and job creation in India. Former Union Finance Minister Shri Arun Jaitley has said: *The Budget...serves the larger interests of all sectors of economy*. Corporate India is of the opinion that the Budget is focused on the long-term goals. The Government has also sent a strong message to the more privileged section of our society to share the responsibility by paying higher taxes in the interests of the underdeveloped.

ICAI organised a live webcast on the *Preliminary Highlights of Tax Proposals of Union Budget* for our members on the day of presentation of Union Budget 2019-20 by the finance minister. I shared the Institute's viewpoint in a panel discussion on the Union Budget that was aired on *Doordarshan*. A Lecture Meeting was organised on the Finance Bill, 2019 in Mumbai by WIRC, which incidentally was the last budget meeting for the ICAI past President CA. Bansi S. Mehta, who carries the legacy of the great Shri Nani Palkhivala, who had an uncanny ability to analyse and assimilate, and quickly visualise the complete picture. In 1981, when

From the President

CA. Bansi Mehta had taken charge of the CA profession, he had said: "*The economic prospects of our profession are constantly widening and there is no doubt that if the foregoing educational reforms are implemented, the accountant of tomorrow would contribute to the economic effort of the nation in abundant measure*." The resolve of the profession has always been to grow along with the nation.

ICAI Celebrated Its Platinum Jubilee CA Day

We celebrated the 70th Chartered Accountants' Day with enthusiasm across the nation at all 5 Regional Councils and 164 Branches, by organising a plethora of programmes and events. Platinum Jubilee CA Day celebrations at the ICAI headquarters began in the morning, where I along with ICAI Vice-President, IFAC President Dr. In-Ki Joo and ICAI Central Council members hoisted the flag in the presence of members, students and the employees of the Institute.

Later in the evening special function was organised at the Vigyan Bhawan, New Delhi, where the Chief Guest on the occasion, Hon'ble Vice-President of India Shri M. Venkaiah Naidu graced our celebrations and said: "*Today is a historic day for the Institute of Chartered Accountants of India (ICAI) and the Indian accounting profession as this Institute completes 70 years of existence. I am indeed delighted to join you all on the occasion of your Platinum Jubilee. I also wish you all a very happy CA Day*." He further proclaimed that *the* Chartered Accountants are *like doctors, since they play a vital role in ensuring the economic health of the country*. Also present on the occasion, were our dignitary and honourable guests MCA Secretary Shri Injeti Srinivas, IFAC President Dr. In-Ki Joo and NIRC Chairman CA. Harish K. Chaudhary Jain. All of them heartily appreciated the endeavours of ICAI encouraging us to continue contributing to the nation-building and the accountancy scenario globally. On the sidelines, a technical session was also organised, where IFAC President Dr. In-Ki Joo, ICAI senior member CA. Girish Ahuja and the Executive Director & Chief Investment Officer of SBI Mutual Fund CA. Navneet Munot made presentations. A unique attraction of this special evening was the National Anthem played by the Indian military band.

During the function, we also felicitated Mrs. Sudha Janardhan, wife of our late member from Bengaluru CA. Sadhu Janardhan, who volunteered and decided to generously donate their prime multi-crore Bengaluru residential property to the ICAI. Several publications were also released on the occasion. A brief report on the CA Day celebrations has been published elsewhere in the Journal.

Promoting the Professional Interests Pan India

Over the last one month, I had the opportunity to meet the Union Ministers and my professional colleagues during my visit to various Regional and Branch offices of the Institute and the message that went across to all of them was loud and clear, which may be summed up in the words of our past President CA. N. R. Mody and I quote: "*A profession such as ours exists on the respect of the public towards its members, but it is our members only who, by integrity and independence of judgment, can make the Institute. We are forever, and with our best efforts, striving to serve the public and the nation in its endeavour to increase its economic well-being*." We have to continue working in the same spirit that takes us on to our national duty.

I had the opportunity to meet the Union Home Minister Shri Amit Shah and Union Railway and Commerce and Industry Minister Shri Piyush Goyal to discuss the matters of professional interests. Then I met my professional colleagues at various *Members Meets* and also on the sidelines of other programmes organised in Agra, Mumbai, Aurangabad, Guwahati, Shillong, Kolkata and Ahmednagar. I am sure, these engagements will go a long way in promoting our professional and national interests.

Regional Chairmen Meet at ICAI Headquarters

Continuing with the tradition, a meeting of the Chairmen of Regional Councils was held on 12th July 2019 where the *Vision* and *Mission*, and the concerns of profession were discussed. During the meeting, I made it a point to appeal towards strengthening of the Chartered Accountants' Benevolent Fund (CABF), since that always supports the members in distress as well as the families of deceased members. Here, I would also like to appeal to all my professional colleagues to come forward, take responsibility and contribute generously to the CABF so that the fund remains available to the families of our members in times of distress.

FROM THE PRESIDENT

Meetings at IRDA

I had attended the 105th meeting of the Insurance Regulatory and Development Authority (IRDA) in Hyderabad, where an Apex Committee had been constituted to ensure the timely implementation of Indian Accounting Standards (in line with International Financial Reporting Standards), risk-based capital and risk-based supervisory framework in the insurance sector of India. Then I attended the first meeting of the newly-constituted *Apex Committee* held on 26th June 2019. My Central Council colleague CA. M. P. Vijay Kumar attended the meeting of IRDA's *Advisory Committee on Accounting Issues.*

GO-Green Move - Online FAFD Examinations

As you know, ICAI was the first accounting body to constitute Digital Accounting and Assurance Board (DAAB) in the year 2017 to analyse the impact of digital and information technology, big data, blockchain and artificial intelligence and improve the internal operations and dealing mechanism at the Institute. I take pleasure to inform that, supporting the green measures of ICAI, DAAB has recently conducted online examinations for

From the President

its *Certificate Course on Forensic Accounting and Fraud Detection* (FAFD) in a paperless mode at 12 centres across the country, which witnessed as many as 622 candidates taking the online test.

UDIN Touches 2-Million Mark

To safeguard our members from misrepresentation by miscreants vis-à-vis the attestation of financial documents/ certificates, ICAI has now made the innovative UDIN (Unique Document Identification Number) mandatory for all attest and assurance functions effective from 1st July 2019, which is our brainchild and the fact that many other professional bodies are emulating our pioneering initiative, makes us a proud institution. Chartered Accountants with full-time Certificate of Practice should register and generate their UDINs on the UDIN Portal by registering the certificates attested/certified by them. I am happy to inform that the number of UDINs generated touched the noteworthy 2-million mark.

CDS Portal in Service of Members and Students

Since July 2017, all student and member publications of ICAI are dispatched centrally through the CDS (Central Distribution System) Portal (www.icai-cds.org) to the registered students of the Institute at the click of mouse, saving their time and transportation cost. The portal also hosts all the latest member-related publications and mementoes that ICAI has brought out. I am sure, this pathbreaking system will go a long way in serving our students and members, apart from catering to the needs of those who are interested in research pertaining to the profession.

ICAI Launches Its e-Learning Hub

I am happy to inform that the Digital Learning Hub of ICAI has been successfully launched at https://learning.icai.org/elearning, which is an integrated learning management system (LMS) to bring a new knowledge ecosystem with an effective collaboration of pedagogy and participatory learning. Providing professional and academic content in multiple formats, the Hub will provide a platform to you helping in your interaction with your peers using technology to disseminate learning snippets. So far, 172 books along with videos and lectures have been uploaded in the interests of our members. It has been decided that few CPE credit hours can be provided to our members using the digital *Hub*.

ICAI to Hold Overseas Campus Placement

In a bid to provide global opportunities to the Chartered Accountants, ICAI is organising its overseas campus placement on 18th-21st October 2019 towards our endeavour to promote Accountancy and financial sector services under champion sector initiatives. In a step forward to the ICAI's initiative that started last year, semi-qualified budding accountant professionals have been included in this overseas placement drive. I request all professionals who wish to avail themselves of this opportunity to register for the placement programme, which starts from 18th August 2019.

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IFAC has urged the G20 countries to pursue smart regulation, heightened transparency, and inclusive growth, thus recommending them to strengthen the economy, ensure progress toward sustainable development, and create an empowered digital economy. Another green initiative our nation can undertake is the strengthening of resilient public-sector practices.

While all of us enjoy development and change, it will be responsible of us to be a part of the journey to that development and change. With transparency and accountability in professional space, all professionals can take informed and effective decisions, and strengthen our journey to long-term goals.

Being members of a noble and responsible profession, this is the least we should do for our generation next. With our wide experience in business economy, and in business and administration, and with our expertise in accountancy, our presence in various institutions and organisations would always be a competitive advantage. Let me quote the ICAI past President CA. S. Vaidyanath Aiyar, who had rightly observed six decades ago: "*…for the professional accountant is not merely an auditor; he, as the Chartered Accountants Act recognises, can be a financial and business adviser; he can usefully function on company boards of directors; he can equally competently fill the office of liquidator, trustee, executor, administrator, arbitrator, receiver, costing or management expert and tax adviser.*" And we Chartered Accountants have had the privilege of setting up precedence before other professional communities. On the coming *Independence Day*, i.e. 15th August, let us vow to protect and consolidate our future for the sake of our children.

Emulating the ICAI past President CA. C. S. Sastri, I would like to tell my professional colleagues that *honesty and integrity* have been our *watchwords* and that we must bear ourselves *with self-respect and dignity*. We will keep emerging victorious if we tread our path with our conviction to transparency and accountability.

Before I conclude—let me wish all of you a very happy *Independence Day* in advance. I would also like to wish all of you for *Id-ul-Zuha* (Bakrid or *Eid-ul-Adha*), *Raksha Bandhan*, Parsi New Year (*Nauraj*), and *Janmashtami* (celebrating the birthday of Lord Krishna and the people of Gujarat and Maharashtra celebrate the event of *Dahi-Handi* on the occasion), which fall in the month of August.

Best wishes

CA. Prafulla P. Chhajed
President, ICAI
New Delhi, 26th July 2019

From the Annals of History of Indian Accountancy Profession

CA. Amal Chandra Chakrabortti
ICAI President (1984-85)
(36th Annual Meeting of Council, 16th September 1985)

"…the present Council has made its best of the Council held on endeavours for further advancement of the profession. However, professional development is a continuous process and the present Council leaves behind it several unfinished tasks which the new Council will have to pursue with full vigour and devotion…During the last thirty-five years or so of its existence in this country, our profession has witnessed a phenomenal growth in both qualitative and quantitative terms, and it is now comparable with the accountancy profession in advanced countries."

"The professional competence, outlook and integrity displayed by our members all through has built up an enviable public image of our profession. The society and the Government are now placing increasingly greater reliance on our work and are entrusting us with newer duties and responsibilities…The Council of the Institute is fully aware of the need for imbibing new skills and updating the existing fund of knowledge and skills of its members as well as students in the context, of the rapidly changing economic and technological environment."

"It gives me pleasure to inform you that recognising the need for providing training and education to its members and students in computer applications, the Council has decided to establish its own computer centres at the five regional offices…the curriculum for chartered accountancy course puts a great deal of emphasis on newer areas like electronic data processing, systems analysis and management information systems. This emphasis has been further strengthened in the recently introduced new syllabi."

…the Institute has directed its attention…(to) the simplification and rationalisation of the Companies Act. As it is, the Companies Act has become by far the heaviest statute and difficulties are being experienced in its implementation. The Institute has made an in-depth study of the matter and has submitted to the Government a memorandum containing suggestions for simplification and rationalisation of the Companies Act to achieve the basic objectives underlying the Act."

"At a conference on Accounting Education for Development held in 1984 in Manila, Philippines, it was emphasised that the level of accountability should be suitably raised for the developing countries which aspire to achieve higher levels of economic development…I am glad to state that our Institute has always recognised the potential of accounting to support economic development and has taken adequate steps for the development of accounting education in the context of our multisectoral cultural and social environment. The Institute follows a conscious policy of periodic review of the education and training scheme for the chartered accountancy course to ensure that it remains responsive to the changing needs and environment."

CA. N. P. Sarda
ICAI President (1993-94)
(44th Annual Meeting of Council, 17th January 1994)

"The Institute initiated two series of chain seminars…one on financial strategies and investment consultancy to upgrade the skills of the members and equip them with in-depth knowledge of several specific aspects of financial services, and the other on the new Companies Bill. It gives me much pleasure to say that the Institute provided its expertise and services to the government through the Corporate Laws Committee in its exercise of the recodification of the Companies Act. We also provided inputs to SEBI, RBI and other authorities in their quest to implement systems of management for excellence in the economy."

"The Institute is one of the founder members of the South Asian Federation of Accountants (SAFA). The SAFA had organised a seminar on 'Poverty Alleviation' in SAARC countries at Chittagong, Bangladesh, in October 1993. The experiences of SAARC countries in the area of poverty alleviation were discussed at the seminar. It was felt that accountants should not confine their activities only to the micro level but should also contribute effectively at the macro level in the formulation of national economic policies."

"It could be inferred from the proceedings of the Conference ("13th All India Conference of Chartered Accountants") that before the turn of this century, professional accountants would be found deeply involved in making policy decisions and strategic planning. It is, therefore, necessary that we should prepare to respond more effectively to the changing economic environment and emerging challenges in our march towards the 21st century." (March 1993, *The Chartered Accountant* Journal)

"Our Institute has now 65,000 members. The total membership is expected to cross the figure of 1 lakh by the turn of this century. The tremendous increase in the number of members has presented new challenges and exerted a great deal of pressure on our quest to maintain level of excellence in the widely diversified roles performed by our members. With the recent trends in our economy in the direction of economic liberalisation, deregulation and privatisation, the role of our profession and the scope of the services rendered by our members are likely to undergo a deep and quick transformation". (February 1993, *The Chartered Accountant* Journal)

Computation of Effective Interest Rate on Borrowings

A. Facts of the Case

1. A company is a leading public sector undertaking in India operating in the power sector. To finance the capital expenditure, the company borrows term loan from multilateral/bilateral agencies such as World Bank, Asian Development Bank and KfW etc.

2. The company entered into a loan agreement (a copy of which has been supplied by the querist for the perusal of the Committee) for Euro 500 million with a foreign lender for financing its projects. The loan agreement with the lenders sets out the rate of interest and fees payable by the company to the lenders. This loan is guaranteed by the Government of India (GOI) for due and punctual payment of the principal, interest and other charges through separate guarantee agreement.

3. The company is required to pay an initial guarantee fee to the GOI on the sanctioned amount and thereafter subsequent guarantee fee is payable on first April of every year on the amount outstanding at the beginning of the year as per the office memorandum of Ministry of Finance, Government of India (a copy of which has been supplied by the querist for the perusal of the Committee).

4. As per the company's accounting policy, financial liabilities are recognised at fair value minus transaction costs that are directly attributable to the issue of financial liabilities. After initial recognition, financial liabilities are subsequently measured at amortised cost using the effective interest rate method. Amortised cost is calculated by taking into account any discount or premium on acquisition and fees or costs that are an integral part of the effective interest rate (EIR).

5. During the audit of accounts for the financial year (F.Y.) 2017-18, Government auditor made an observation that the company did not consider subsequent guarantee fee for the purpose of calculation of effective rate of interest on borrowing while the same should be considered for calculation of effective rate of interest on borrowing in line with Indian Accounting Standard (Ind AS) 109, 'Financial Instruments'. Auditor referred, *inter alia*, to paragraphs 5.4.1, B5.4.1, and B5.4.2 of Ind AS 109 in his audit query.

6. The querist has stated that Appendix A to Ind AS 109, *inter alia*, states that when calculating the effective interest rate, an entity shall estimate the expected cash flows by considering all the contractual terms of the financial instrument (for example, prepayment, extension, call and similar options) but shall not consider the expected credit losses. The calculation includes all fees and points *paid or received between parties* to the contract that are an integral part of the effective interest rate (see paragraphs B5.4.1– B5.4.3), transaction costs, and all other premiums or discounts. (Emphasis supplied by the querist.)

7. According to the querist, a perusal of the above clearly shows that for calculating the effective interest rate, only cash flows arising under the loan agreement towards interest and fees payable to the lenders are to be considered. Since *guarantee fee is not payable to the lenders, but it is payable to the Government of India,* the same should not be considered for the purpose of computing the effective interest rate. (Emphasis supplied by the querist.)

8. Paragraph B5.4.2 of Appendix B to Ind AS 109 states as follows:

   "B5.4.2 Fees that are an integral part of the effective interest rate of a financial instrument include:

   (a) origination fees received by the entity relating to the creation or acquisition of a financial asset. Such fees may include compensation for activities such as evaluating the borrower's financial condition, evaluating and recording guarantees, collateral and other security arrangements, negotiating the terms of the instrument, preparing and processing documents and closing the transaction. These fees are an integral part of generating an involvement with the resulting financial instrument.

   (b) …

   (c) origination fees paid on issuing financial liabilities measured at amortised cost. These fees are an integral part of generating an involvement with a financial liability. An entity distinguishes fees and costs that are an integral part of the effective interest rate for the financial liability from origination fees and transaction costs relating to the right to provide services, such as investment management services."

As per the querist, the definition of origination fee as per the above-reproduced paragraph B5.4.2 of Ind AS 109 is the upfront/front-end/ arrangement fee levied by lenders for providing the loan facility and is also a means to improve their overall returns on the loan. The reference to guarantee in paragraph B5.4.2 is in the context of the nature of activities performed by lender such as *"evaluating and recording guarantees, collateral and other security arrangements" and does not refer to guarantees provided by third parties.* As such, guarantee fees payable to the GOI is not the origination fee as per paragraph B5.4.2 and should not be considered for computation of the effective interest rate. (Emphasis supplied by the querist.)

9. The querist has further stated that as per paragraph B5.4.8 of Appendix B of Ind AS 109, "Transaction costs include fees and commission paid to agents (including employees acting as selling agents), advisers, brokers and dealers, levies by regulatory agencies and security exchanges, and transfer taxes and duties. Transaction costs do not include debt premiums or discounts, financing costs or internal administrative or holding costs." The initial guarantee fee is considered as a transaction cost in terms of paragraph B5.4.8 above and has been considered for computation of effective interest rate. The company pays subsequent guarantee fee on first April of every year on the loan amount outstanding at the beginning of the year. The company considers the subsequent guarantee fee, as in the nature of *holding cost* of the loans in line with above paragraph. Subsequent guarantee fee is a periodical cost and is expensed / capitalised in the period in which it accrues. Accordingly, it is not included in the calculations of effective interest rate. (Emphasis supplied by the querist.)

B. Query

10. On the basis of above, the querist has sought an opinion from the Expert Advisory Committee of the Institute of Chartered Accountants of India as to whether subsequent guarantee fee paid to the Government of India as stated above should be considered for computation of effective interest rate in compliance with the provisions of Ind AS 109.

C. Points considered by the Committee

11. The Committee notes that the basic issue raised in the query relates to accounting for guarantee fee paid to the Government of India in relation to the loan taken from the foreign lender. The Committee has, therefore, considered only this issue and has not examined any other issue that may arise from the Facts of the Case, such as, accounting for the loan obtained by the bank, measurement of amortised cost of the loan, EIR computation etc. At the outset, the Committee notes that the financial liability in the extant case is being subsequently measured at amortised cost using the effective interest rate method.

12. The Committee notes the following clauses of loan agreement between the company and KfW:

"2.1 After all conditions precedent to disbursement according to Article 11 have been fulfilled, KfW will disburse the Loan in accordance with the progress of the Project and upon request of the Borrower. …"

"Article 7

Guarantee

As security for this Loan, India, acting by its President (Guarantor) will enter into a separate guarantee agreement (Guarantee Agreement) with KfW prior to the first disbursement from the Loan."

"Article 10

Events of Default

10.1 KfW shall be entitled without having to resort to any legal procedure whatsoever to suspend disbursement or to terminate this Loan and to demand immediate payment of all amounts payable under this Loan Agreement, if any event constituting an important reason under German Law ("Event of default") shall occur, such as:

a) …

c) this Loan Agreement or the Guarantee or any parts thereof cease to have a binding effect upon the Borrower or the Guarantor or ceases to be enforceable against the Borrower or the Guarantor;

…"

"Article 11

Conditions Precedent

The obligation of KfW to make disbursements of any amount under this Loan Agreement shall be subject to satisfaction of the following conditions precedent:

11.1 The following documents have been submitted to KfW not later than 2 months after the date of signing of this Loan Agreement but in any case prior to the initial disbursement date without any cost for KfW and have been accepted by it as satisfactory in form and substance:

a) ...

f) original of the Guarantee Agreement mentioned in Article 7 duly executed by the Guarantor has been submitted to KfW;"

From the above, the Committee notes that guarantee provided by the GOI in the extant case is a pre-condition for obtaining and continuing with the loan facility as per the loan agreement. Hence, as long as the loan continues, guarantee will also continue and therefore, during the term of loan, the guarantee is not cancellable.

13. Further, with regard to the issue raised regarding accounting for guarantee fee, the Committee notes the following paragraphs of Ind AS 109:

"5.1.1 Except for trade receivables within the scope of paragraph 5.1.3, at initial recognition, an entity shall measure a financial asset or financial liability at its fair value plus or minus, in the case of a financial asset or financial liability not at fair value through profit or loss, *transaction costs* that are directly attributable to the acquisition or issue of the financial asset or financial liability."

"5.3.1 After initial recognition, an entity shall measure a financial liability in accordance with paragraphs 4.2.1–4.2.2."

4.2.1 An entity shall classify all financial liabilities as subsequently measured at amortised cost, except for..."

"amortised cost of a financial asset or financial liability — The amount at which the financial asset or financial liability is measured at initial recognition minus the principal repayments, plus or minus the cumulative amortisation using the **effective interest method** of any difference between that initial amount and the maturity amount and, for financial assets, adjusted for any **loss allowance**."

"effective interest method — The rate that exactly discounts estimated future cash payments or receipts through the expected life of the financial asset or financial liability to the **gross carrying amount of a financial asset** or to the **amortised cost of a financial liability**. When calculating the effective interest rate, an entity shall estimate the expected cash flows by considering all the contractual terms of the financial instrument (for example, prepayment, extension, call and similar options) but shall not consider the **expected credit losses**. The calculation includes all fees and points paid or received between parties to the contract that are an integral part of the effective interest rate (see paragraphs B5.4.1–B5.4.3), **transaction costs**, and all other premiums or discounts. There is a presumption that the cash flows and the expected life of a group of similar financial instruments can be estimated reliably. However, in those rare cases when it is not possible to reliably estimate the cash flows or the expected life of a financial instrument (or group of financial instruments), the entity shall use the contractual cash flows over the full contractual term of the financial instrument (or group of financial instruments)."

"transaction costs Incremental costs that are directly attributable to the acquisition, issue or disposal of a financial asset or financial liability (see paragraph B5.4.8). An incremental cost is one that would not have been incurred if the entity had not acquired, issued or disposed of the financial instrument."

"Effective interest method

B5.4.1 In applying the effective interest method, an entity identifies fees that are an integral part of the effective interest rate of a financial instrument. The description of fees for financial services may not be indicative of the nature and substance of the services provided. Fees that are an integral part of the effective interest rate of a financial instrument are treated as an adjustment to the effective interest rate, unless the financial instrument is measured at fair value, with the change in fair value being recognised in profit or loss. In those cases, the fees are recognised as revenue or expense when the instrument is initially recognised.

B5.4.2 Fees that are an integral part of the effective interest rate of a financial instrument include:

(a) origination fees received by the entity relating to the creation or acquisition of a financial asset. Such fees may include compensation for activities such as evaluating the borrower's financial condition, evaluating and recording guarantees, collateral and other security arrangements, negotiating the terms of the instrument, preparing and processing documents and closing the transaction. These fees are an integral part of generating an involvement with the resulting financial instrument.

(b) commitment fees received by the entity to originate a loan when the loan commitment is not measured in accordance with paragraph 4.2.1(a) and it is probable that the entity will enter into a specific lending arrangement. These fees are regarded as compensation for an ongoing involvement with the acquisition of a financial instrument. If the commitment expires without the entity making the loan, the fee is recognised as revenue on expiry.

(c) origination fees paid on issuing financial liabilities measured at amortised cost. These fees are an integral part of generating an involvement with a financial liability. An entity distinguishes fees and costs that are an integral part of the effective interest rate for the financial liability from origination fees and transaction costs relating to the right to provide services, such as investment management services."

"B5.4.8 Transaction costs include fees and commission paid to agents (including employees acting as selling agents), advisers, brokers and dealers, levies by regulatory agencies and security exchanges, and transfer taxes and duties. Transaction costs do not include debt premiums or discounts, financing costs or internal administrative or holding costs."

The Committee notes from the above that *fees paid or received between parties to the contract* that are an integral part of the effective interest rate and transaction costs are to be considered while applying effective interest method. Further, the fees that are an integral part of the effective interest rate of a financial liability include the origination fee paid on issuing such liability. Accordingly, the Committee is of the view that the origination fee referred above is applicable in the extant case if the fees is paid/ received between the parties to the contract (viz., lender and the borrower in case of a loan). Since the guarantee fee (initially as well as subsequently) in the extant case is not paid between the lenders and the borrowers, the Committee is of the view that the same cannot be considered as 'fees paid or received between parties to the contract that are an integral part of the effective interest rate'. The Committee further notes that transaction costs are incremental costs that are directly attributable to the acquisition or issue of a financial liability and an incremental cost is one that would not have been incurred if the entity had not acquired or issued the financial instrument. In this context, the Committee is of the view that the guarantee fee paid (initially as well as subsequently) in the extant case is an incremental cost which is directly attributable to the acquisition of the loan facility as this cost would not have been incurred if the company had not incurred the loan liability. Accordingly, the Committee is of the view that the financial guarantee fee paid (initially as well as subsequently) by the company should be considered in the extant case for computation of effective interest rate while measuring the loan liability at amortised cost in compliance with the provisions of Ind AS 109.

D. Opinion

14. On the basis of the above, the Committee is of the opinion that the financial guarantee fee paid (initially as well as subsequently) by the company should be considered in the extant case for computation of effective interest rate while measuring the loan liability at amortised cost in compliance with the provisions of Ind AS 109.

1.	The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
2.	The Opinion is based on the facts supplied and in the specific circumstances of the querist. The Committee finalised the Opinion on January 08, 2019. The Opinion must, therefore, be read in the light of any amendments and/or other developments subsequent to the issuance of Opinion by the Committee.
3.	The Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in thirty six volumes. A CD of Compendium of Opinions containing thirty six volumes has also been released by the Committee. These are available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur.
4.	Recent opinions of the Committee are available on the website of the Institute under the head 'Resources'.
5.	Opinions can be obtained from EAC as per its Advisory Service Rules which are available on the website of the ICAI, under the head 'Resources'. For further information, write to eac@icai.in. ■

Vice President of India Lauds ICAI for Its Contribution and Achievements on Its Platinum Jubilee CA Day

This year, celebrations on 1st July were very special one, since The Institute of Chartered Accountants of India (ICAI) celebrated its Platinum Jubilee CA Day. Chief Guest on the occasion, Hon'ble Vice-President of India Shri M. Venkaiah Naidu launched the celebrations at Vigyan Bhawan in New Delhi. Calling the Chartered Accountants change agents, Hon'ble Vice-President said that the Chartered Accountants are also the conscience keepers of the profession since it is they, who ensure that their clients pay their taxes truthfully. Secretary of the Ministry of Corporate Affairs Shri Injeti Srinivas and IFAC President Dr. In-Ki Joo also joined the celebrations as guests of honour on the occasion. Earlier IFAC President was also part of a technical session, organised hours before the formal launch of Platinum Jubilee CA Day, at the same venue to update our members' knowledge base. In fact, the celebrations had begun in the morning itself with the hoisting of ICAI flag in the Institute's headquarters. Read on for details about the main (special) event organised in the Vigyan Bhawan in New Delhi by the ICAI…

70th Chartered Accountants' Day of the Institute of Chartered Accountants of India (ICAI) was celebrated across the country with great enthusiasm and zeal, to commemorate the foundation of ICAI in the year 1949. This year, the CA Day was all the more special as ICAI reached its Platinum Jubilee year of its glorious existence.

Platinum Jubilee CA Day celebrations began in the morning of 1st July 2019 at the ICAI headquarters, where ICAI President CA. Prafulla P. Chhajed and Vice-President CA. Atul K. Gupta, along with the guest of honour IFAC President Dr. In-Ki Joo, hoisted the flag of ICAI, in presence of the ICAI Central Council members, NIRC Chairman, various other members, students and the employees of the Institute. Remembering the role of First ICAI President Shri G. P. Kapadia in the foundation and strengthening of Indian CA profession, the ICAI President and Vice-President addressed the gathering and planted saplings.

Platinum Jubilee CA Day celebrations were formally launched in a Special Session at the Vigyan Bhawan in New Delhi by the revered and befitting Chief Guest on the occasion Hon'ble Vice-President of India Shri M. Venkaiah Naidu. The event also witnessed the august presence of our guests of honours the MCA (Ministry of Corporate Affairs) Secretary Shri Injeti Srinivas, and the IFAC President Dr. In-Ki Joo. ICAI President and Vice-President along with NIRC Chairman CA. Harish Kumar Chaudhary Jain and ICAI Secretary Shri Rakesh Sehgal joined the dignitary guests of the CA Day celebrations on the dais. The mega event was attended by over 1200 members of CA fraternity and stakeholders, including the students and employees of the Institute.

ICAI President CA. Prafulla P. Chhajed took the opportunity to welcome the Chief Guest and guests of honour on the occasion and said: *Since beginning ICAI has been contributing to national & global economy. Chartered Accountants are constantly making positive effect in business & industry. ICAI is making all possible efforts to place Indian accountancy profession at global pedestal by signing more mutual recognition arrangements with global accounting bodies*. He reminded the present stakeholders and dignitaries about the achievements of the ICAI in brief and recalled the efforts of ICAI in moving ahead with the time. He said: *ICAI is the first accounting body to constitute Digital Accounting and Assurance Board to analyse the impact of digital and information technology, big data, blockchain and artificial intelligence and improve the internal operations and dealing mechanism at the Institute*. He also referred to a unique initiative of the Institute, UDIN (Unique Document Identification Number), which has been successfully implementing in a phased manner to safeguard the Chartered Accountants from the misrepresentation by miscreants vis-à-vis the attestation of financial documents/certificates. He said: *ICAI is serving the nation in the field of GST and Ind AS implementation. It has come up with the unique and innovative concept of UDIN.*

Mentioning how the ICAI Curriculum was benchmarked with the best in the world and that the CA course conformed to the International Education Standards of IFAC, the ICAI President CA. Prafulla P. Chhajed called upon all the stakeholders of CA profession to welcome the Chief Guest and requested him to come on the dais and address the CA fraternity and their stakeholders.

Last year in his CA Day message to the ICAI, **Hon'ble Vice-President of India Shri M. Venkaiah Naidu** had said: *I am confident that ICAI will continue to play a strategic role in providing value-added services to all its stakeholders*. This year, Hon'ble Vice-President has accepted: *Indian accounting professionals have been working relentlessly working to fulfil the dreams of the founding fathers of their role of quality services envisaged by them.*

This year, Hon'ble Vice-President of India expressed the Government's faith in the Indian accountancy profession when he recalled: *Accountancy has been included in the top 12 champion sectors by the government that will have the power to boost the economy of the country*. He credited the India CA profession for the countrywide success of GST: *Success of GST would not have happened without the support and active contribution of ICAI*. He further proclaimed that the Chartered Accountants are *change agents and also the conscience keepers of the profession as well as for their clients*, who ensure that *their clients pay their taxes truthfully*.

Following are the excerpts from his CA Day speech which was delivered on 1st July 2019 at Vigyan Bhawan in New Delhi:

Accountants Ensure Economic Health in India, said Vice President of India on Platinum Jubilee CA Day

"Today is a historic day for the Institute of Chartered Accountants of India (ICAI) and the Indian accounting profession as this Institute completes 70 years of existence. I am indeed delighted to join you all on the occasion of your Platinum Jubilee. I also wish you all a very happy CA Day. Interestingly, today also happens to be Doctors' Day. It indeed is a happy coincidence. In a way, Chartered Accountants are also, like doctors, since they play a vital role in ensuring the economic health of the country."

"I must acknowledge that Indian accountancy profession has been relentlessly trying to live up to the expectations of the founding fathers of Indian Constitution. The fact that autonomy was granted to the profession through the Chartered Accountants Act, 1949 before the adoption of the Constitution shows the paramount importance accorded to the profession to act as custodian of transparency and integrity."

"The Indian accountancy professional has evolved from a number-crunching statistician to a strategist to a value-creator and finally to be a change agent. Today, the profession is regarded as an 'institution of public trust' and the Chartered Accountants are expected to act as 'conscience keepers of the economy.' No doubt, the Hon'ble former President of India Dr. Abdul Kalam had rightly described the Institute as a "Partner in Nation Building!"

"Besides other stakeholders, the Government and regulators also repose a high level of faith in your profession, ability and integrity in ensuring that your clients comply with all the legal formalities and contribute to the growth of the nation. As we all are aware, taxes paid to the Government are used for the development of the nation. Therefore, Chartered Accountants have an onerous responsibility in guiding the taxpayers to fulfill their duties honestly."

"Dear Sisters and Brothers! As India forges ahead to be an important player in the global economy and in promoting a peaceful world order, the need of the hour is to focus on inclusive growth and ensure that the fruits of various measures taken to spur the economy reach poorest of the poor…professional ethics must be followed by all and not only by CAs."

"With the Government initiating a series of reforms and initiatives like the Insolvency and Bankruptcy Code and GST, I have no hesitation to acknowledge that successful implementation and smooth rollout of all these schemes could not have been possible without the active support of this profession. Today, on the occasion of 'GST Day,' I would like to compliment your profession for its contribution, suggestions and support for the successful implementation of GST regime."

"I understand that the scope of Chartered Accountants, in today's dynamic world, has not remained limited to be just that of an accountant, auditor or a taxation expert but has widened to other critical areas like Goods and Services Tax, Financial Reporting, Corporate Finance, Investment Banking, Fund Management, Credit Analysis, Capital Markets, Arbitration, Risk Management, Valuation of businesses and Insolvency Law, among others. With accounting having become the language of global business, the scope of your profession has really broadened and today's CA has to be truly versatile. I note with immense satisfaction the global strides your profession has made and the larger role the institution is playing in global forums. Equally satisfying is your re-orientation of the accounting profession to the imperatives of the digital era. With the growth of the economy, the expectations from your profession have increased manifold to appropriately guide the business houses on the path of development."

"The CA fraternity must isolate and take action if anybody was found to have committed wrongdoing. I am sure that the Institute and its members will come up to the expectations of our countrymen and would set the highest ethical standards thereby contributing to the task of nation-building…Friends, your profession represents a larger duty of upholding trust; something which was bestowed upon your institution and has been carried on in a steadfast manner all along. Your stamp carries an indelible impression of right and correctness. By providing sound and sagacious advice, Chartered Accountants can play a vital role in ensuring financial prudence and discipline by various stakeholders."

Report

MCA Secretary Shri Injeti Srinivas, while addressing the stakeholders of CA profession, acknowledged the contribution of the ICAI over the years and said: *It is because of the inherent strength of this great institution that has helped it sustain all these decades with such greatness. The world economy is changing rapidly and these times are a great opportunity for ICAI to emerge as the steel frame of corporate governance in India.* He extended his warm wishes to the ICAI for completing the 70-year long journey of excellence and celebrating its Platinum Jubilee CA Day. He said: *Chartered Accountants' views*

should be reliable; it should depict true and fair view of the financial wealth of the organisation. He further said: *Professional standards and professional ethics are the backbone of CA profession which bring good governance.* He also thanked ICAI for making tremendous contribution to the Government and their initiatives, in all possible ways.

Congratulating the ICAI on its CA Day and addressing the audience in the Special Session of the day, **IFAC President Dr. In-Ki Joo** said: *ICAI has done a great job in implementing*

GST and tax reforms in India. Since the very beginning, ICAI has been contributing immensely to the CA Profession not only in India but also globally. He further complimented the ICAI for time and again being able to convert challenges into opportunities. He was of the view that ICAI would adapt well to the changes and needs of the economy and would continue to contribute its best.

Recording his sincere and humble vote of thanks on the occasion, **ICAI Vice-President CA. Atul Kumar Gupta** said: *ICAI continuously innovates to find better way of doing things and strive for professional excellence. Every CA of this profession is like a soldier of Indian army who acts not only as a catalyst to the growth of Indian economy but also ensures the adoption of prudent practices & standards that safeguards the interest of common man.* He profusely thanked the Hon'ble Vice-President of India for gracing the Platinum Jubilee CA Day function of the Institute and responded to his appreciations: *CA education is really meant for the poorest of poor as advised by the Hon'ble Vice-President of India. Whole CA course can be completed with ₹ 65,000/-.* ICAI Vice-President was of the view that ICAI has been ever ready to play a substantial role in changing the global landscape of profession and in strengthening of the foundations of resurgent India.

Technical Session on the Sidelines

Earlier in a technical session organised at the same venue, **ICAI senior member CA. (Dr.) Girish Ahuja** delivered an informative address on the issues on *Capital Gains and Income from Other Sources* and explained the relevant Sections and Sub-Sections of the Income-tax Act.

In the same session, **IFAC President Dr In-Ki Joo** also addressed the CA fraternity on the Accountancy Profession for aiding Governance and Reforms, after profusely thanking the ICAI for inviting him to be part of its Platinum Jubilee celebrations. He said: *ICAI has upheld the mandate of IFAC*. Speaking on good governance, he stressed on inclusive growth, integrity and transparency. Appreciating the role of ICAI, he said: *It is India's time to shine*. Appreciating the initiatives of ICAI, Dr In-Ki Joo praised the Institute for supporting the Indian Railways in the transformation of their accounts and bookkeeping, and appreciated it for spreading awareness on how technology would benefit the future-generation of accountants. ICAI President CA. Prafulla P. Chhajed and Vice-President CA. Atul Kumar Gupta felicitated the IFAC President Dr In-Ki Joo at the conclusion of the IFAC President's address.

At the end of the technical session, **SBI-Mutual Fund Executive Director & Chief Investment Officer CA. Navneet Munot** spoke on the *Economy and Markets: The Road Ahead*, touching upon the relevant issues in investments, market stability and economic reforms. He briefly mentioned some of the challenges before the Indian economy including the issues in inequality and climate change which must be attended to on immediate basis. He said: *...the opportunities would be bigger for the business community and business professionals... ongoing urbanisation and rural reforms will prove to be big drivers of growth.*

After the technical session's conclusion, MCA Secretary Shri Injeti Srinivas joined the ICAI's Platinum Jubilee CA Day celebrations and began by felicitating **Mrs. Sudha Janardhan**, the wife of ***late CA. Sadhu Janardhan***, appreciating her magnanimous gesture and donation of their own residential property in the prime location of Bengaluru. Later, the Chief Guest Hon'ble Vice-President of India Shri M. Venkaiah Naidu also congratulated her in person for her generous act.

It was **ICAI member and Doordarshan media professional CA. Amit Arora** who beautifully compered throughout the day covering the proceedings of Platinum Jubilee CA Day celebrations that took place at Vigyan Bhawan.

Release of Publications

Several publications were e-released on the occasion, including Series 3 of *Valuation Professionals' Insight, Guide to Cloud Computing for Accountants, Frequently Asked Questions on the Insolvency and Bankruptcy Code, 2016 (Revised Edition),* and *Cross-Border Transactions and Investments, Accounting Standards Snapshots - Accountants' Guide, Compendium of Accounting Standards as on July 1, 2019, IFRS 9 Financial Instruments - A Study: Transition Impact on Banks Across the Globe, Technical Guide on Accounting treatment of Bullion (Gold) Lending and Borrowing Transactions, Compendium of AS as on July 1, 2019* and e-book of *Compendium of Indian Accounting Standards.* Other relevant publications that were released include *Glossary of Terms*

used in Financial Statements, Technical Guide on Accounting for Motion Picture Films, Handbook on Accounting Treatment under Goods and Services Tax (GST), Educational Material on Indian

Accounting Standards (Ind AS) 8, Accounting Policies, Changes in Accounting Estimates and Errors, Indian Accounting Standards (Ind AS): An Overview (Revised Edition), *Compendium of Opinions - Volume 36, Part II of the Compendium on Accounting Standards for Local Bodies*. On a separate note, the Board of Studies of ICAI launched e-Journal for CA students, Training Guide (Revised Edition), e-Books for Foundation Course and Model ICAI Syllabus of B.Com(H) for Indian Universities. Revised edition of *Position Paper on Regulation of Accountancy Profession and Oversight Mechanism in India* was also released.

Platinum Jubilee (70th) CA Day Celebrated across India

1st July is considered a landmark in the history of Indian accountancy profession and that of ICAI, as on this day in the year 1949, ICAI was set up to regulate the profession of Chartered Accountants in India. CA Day this year was more special, since the Institute reached a significant milestone, i.e. Platinum Jubilee of its glorious existence.

70th Chartered Accountants' Day of ICAI was celebrated across the country by 164 branches and 5 Regional Councils of ICAI with great zeal by organising various specified activities. Endeavour in this regard was to showcase the momentous journey of the Institute and highlight the contribution being made by the CA professionals. Like every year, this year too July 1st was celebrated as a *solidarity day* through the unified efforts of thousands of members and students of the Institute across the country. Activities such as blood donation/ organ donation camps (in association with local NGOs), and plantation of saplings towards a greener environment were also organized.

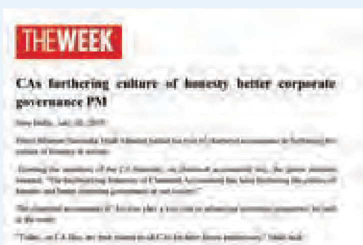
Earlier, it had been decided to mark "*CA Week*" starting from 24th June (till 1st July) or from 1st July (till 7th July), so that activities like organising *financial literacy* programmes on GST/ Career Counselling at local academic institutions and colleges, *investor awareness* programmes for public at large and Members, activities under *Swachh Bharat Abhiyan* and *Marathon* could be organised. Several dignitaries attended and graced the programmes organised by the Regional Councils and Branches of ICAI. Also, united efforts of entire CA fraternity helped in the dissemination of relevant information and messages towards creating awareness on the social causes and concerns, which today is the need of the hour.

The Institute of Chartered Accountants of India, over the years since its inception, has achieved many significant milestones in its core professional domains; it is poised to play a greater role in changing the global landscape of economic empowerment and strengthening the foundation of resurgent India by taking the Indian accountancy profession to newer and higher zeniths.

Platinum Jubilee *CA Day* Celebrated across India

Platinum Jubilee *CA Day* Celebrated across India

Platinum Jubilee CA Day Celebrations Coverage in Media



Suggestions of ICAI Relating to Direct Taxes Considered/Accepted in Finance (No. 2) Bill, 2019

S. No.	Topic	Section	Suggestion of ICAI	Changes proposed by Finance (No.2) Bill, 2019
1.	**Inclusion of other permitted modes of electronic payments**	13A, 35AD, 40A, 43, 43CA, 44AD, 80JJAA, 269SS/ST/T	It was suggested that payment made through banking channels, including debit cards, credit cards and e-wallets etc., may be permitted under the various provisions of the Income-tax Act, 1961. Alternatively, use of 'electronic clearing system' through a bank account may be specifically defined in the Income-tax Act, 1961 to include reference to these modes of payment.	The aforesaid suggestion is favourably considered. Multiple sections such as 13A, 35AD, 40A, 43, 43CA, 44AD, 80JJAA are proposed to be amended so as to include such other electronic mode as may be prescribed, in addition to the already existing permissible modes of payment/receipt in the form of an account payee cheque or an account payee bank draft or the electronic clearing system through a bank account.
2.	**Incentives to Non-Banking Finance Companies (NBFCs)**	43D, 43B	It was suggested that an amendment should be made to Section 43D of the Act, to extend the benefit of Section 43D to "Non- Banking Financial Company" (other than housing finance companies which are already covered by the provisions of Section 43D), whereby interest income on non-performing assets should be taxed only on receipt basis. Further, consequential amendment should also be made in Section 43B of the Act which provides a list of deductions which are allowed to the payer on actual payment basis presuming interest income on NPA for "Non-Banking Financial Company" should be taxed on receipt basis, deduction to the payer of interest on NPA to "Non-Banking Financial Company" should be allowed on actual payment basis.	The suggestion was favourably considered as both Sections 43D and 43B are proposed to be amended on suggested lines. Section 43D is proposed to be amended so as to include deposit-taking NBFCs and systemically important non deposit-taking NBFCs within the scope of this section. Further, Section 43B is proposed to be amended to provide that any sum payable by the assessee as interest on any loan or advances from a deposit-taking NBFCs and systemically important non deposit-taking NBFCs shall be allowed as deduction if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year.
3.	**Consequential amendment to Section 56**	56(2)(viii)	It was suggested to give reference of Section 145B(1) and to remove the reference of Section 145A(b) in Section 56(2)(viii) (as a consequential amendment is required due to the substitution of Section 145A with 145A and 145B vide the Finance Act 2018).	The Finance (No. 2) Bill, 2018 proposes to amend Section 56 of the Act to provide the correct reference of Section 145B(1) in Section 56, in place of the existing reference of Section 145A(b) w.r.e.f. 01.04.2017.

(Contributed by Direct Taxes Committee of the ICAI. Comments can be sent to dtc@icai.in)

S. No.	Topic	Section	Suggestion of ICAI	Changes proposed by Finance (No.2) Bill, 2019
4.	**Provision of credit of relief provided under section 89**	89	It was suggested to amend the provisions of Section 234B and 234C appropriately so as to levy interest after computing/ providing for relief under section 89 with retrospective effect.	The suggestions is favourably considered as the Finance (No. 2) Bill, 2019 proposed to amend Section 140A, Section 143, Section 234A, Section 234B and Section 234C so as to provide that computation of tax liability shall be made after allowing relief under section 89. Further, these amendments will take effect retrospectively from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-08 and subsequent assessment years.
5.	**Clarification with regard to provisions of secondary adjustment and giving an option to assessee to make one-time payment**	92CE	It was suggested: (a) that the proviso to Section 92CE(1) may be restated as under: (i) the amount of primary adjustment made in any previous year does not exceed one crore rupees; ~~and~~ **OR** (ii) the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016.	The Finance (No. 2) Bill, 2019 proposes to amend Section 92CE so as to provide that: (a) the condition of threshold of one crore rupees and of the primary adjustment made upto assessment year 2016-17 are alternate conditions;
			(b) that the Government may issue a clarification that Section 92CE will be applicable from A.Y. 2018-19.	(b) the provision of this section shall apply to the agreements which have been signed on or after 1st April, 2017;
			(c) to clarify that Section 92CE applies only to international transaction and not domestic transactions as covered under section 92BA.	(c) the excess money may be repatriated from any of the associated enterprises of the assessee which is not resident in India.
6.	**Mandatory furnishing of return of income by certain persons**	139	It was suggested that scope of Section 139 pertaining to mandatory filing of ITR be enlarged for certain transactions like a person having foreign tour, a person paying electricity expense above certain limit, if the aggregate amount deposited in the current account exceed certain limit etc.	The aforesaid suggestion is favourably considered. Section 139 is proposed to be amended so as to provide that a person shall be mandatorily required to file his return of income, if during the previous year, he- (i) has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current account maintained with a banking company or a co-operative bank; or

S. No.	Topic	Section	Suggestion of ICAI	Changes proposed by Finance (No.2) Bill, 2019
				(ii) has incurred expenditure of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or (iii) has incurred expenditure of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity;
7.	**Clarification provided w.r.t. account maintained with a particular bank**	194N	It was suggested to clarify that whether the term 'account' as used in proposed section 194N will include all the accounts maintained with a particular bank or a single account maintained with that particular bank.	The Notice of amendments to the Finance (No.2) Bill, 2019 proposed to amend section 194N by substituting the term 'from an account' with 'from one or more accounts'.
8.	**Consequential amendment made for claiming of credit of TDS matching with income offered for tax**	198	It was suggested to make suitable amendment in relevant provisions or to issue clarification on mode of claiming refund of TDS under proposed section 194N in the absence of any corresponding income in relation to cash withdrawal.	The Notice of amendments to the Finance (No.2) Bill, 2019 proposed to amend section 198 by inserting the following second proviso: *"Provided further that the sum deducted in accordance with the provisions of section 194N for the purposes of computing income of an assessee, shall not be deemed to be income received".*
9.	**Relaxing the provisions of Sections 201 of the Act in case of payments to non-residents**	201	The benefit of the first proviso to Section 201 has only been provided to a person in respect of payments made to resident and the conditions mentioned therein on being fulfilled. With a view to bring more relief to assessee, it was suggested that the benefit of the said proviso shall also be extended in respect of payments made by persons to non-residents.	The suggestion is favourably considered as the proviso to Section 201(1) is proposed to be amended so as to extend the benefit of this proviso to a deductor, even in respect of failure to deduct tax on payment to non-resident.
10.	**Rationalisation of the provisions of Section 276CC**	276CC	Regarding failure to furnish return of income as per Section 276CC, the threshold for not launching the prosecution for any assessment year in the case of assessees other than companies is kept at ₹ 3,000/-. It was suggested to increase this threshold to a certain amount.	The Finance (No.2) Bill, 2019 proposes to amend the said section so as to increase the threshold of tax payable from the existing rupees three thousand to rupees ten thousand.

Putting Some Key Provisions of Finance Bill (No.2), 2019 in Perspective—What Lies Ahead

The most awaited Union Budget 2019 has seen light of the day! With a vision of making India a US $ 5 trillion economy, this Budget focuses on infrastructure development, education, ease of doing business and strengthening of the rural economy. On the tax front, the Finance Bill, 2019 proposes changes on one side giving fillip to the eligible startups and on the other intends to plug in the loopholes in terms of reporting and compliance. With thrust on bringing greater transparency and ease of living, this bill emphasis on digitisation and reducing the human interaction between tax payers and the tax authorities. The Finance Bill also proposes to introduce certain provisions for promotion of real estate and use of electric vehicles. The present article highlights important changes proposed in the Finance Bill relating to Personal and Corporate Taxation.

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Rates of Taxes

With no changes in the slab rates and tax rates for individuals/HUFs/AOP/BOI, considering responsibility of taxpayers in the highest tax bracket to contribute more to the nation's development, Finance Bill, 2019 proposes to levy higher rates of surcharge as follows:

Taxable income in INR	Surcharge (%)	Effective tax rate (%)
>50 Lakhs up to 1 Crore	10	34.32
> 1 Crore up to 2 Crore	15	35.88
>2 Crore up to 5 Crore	25	39.00
> 5 Crore	37	42.74

It may be noted that higher surcharge shall also be applicable to Foreign Portfolio Investors (FPIs) set up as trusts.

Further, continuing Government's commitment to reduce the corporate tax rates, it is proposed to extend the benefit of concessional corporate tax rate of 25 percent (increased by applicable surcharge) to domestic companies having a turnover up to INR 400 crore as against INR 250 Crores until last financial year.

Moving towards digitisation and less cash economy

India is at the cusp of a massive digital transformation. Moving towards digital / less cash economy has been one of the key focus areas of the Government. Some of the major tax proposals to promote less cash economy are as under:

Facility for accepting payment through electronic mode – Section 269SU

Every person carrying on business whose total sales, turnover, or gross receipts exceeds INR 50 Crores during the immediately preceding previous year, shall be required to provide a facility for accepting payment through prescribed electronic modes, in addition to existing electronic facility they have if any.

Non-compliance would attract penalty of INR 5,000 for every day during which the failure continues. These amendments will take effect from 1st November, 2019.

TDS on withdrawal of cash - Section 194N

This section casts responsibility on Banking company, Co-operative society, Post office to deduct TDS at the rate of 2 percent upon payment of any sum or aggregate of sums in cash in excess of INR 1 crore.

However, Bill does not clarify if such limit of 1 crore applies to each bank or bank accounts or aggregate of payments from all banks. Also, it has to be clarified that though cash withdrawals are not income, credit of TDS will be allowed.

Prescription of electronic mode of payments/ receipts

There are various provisions in the Act prohibiting cash transactions. To encourage other electronic modes of payment, it is proposed to amend following sections to include "***such other electronic mode as may be prescribed,***" in addition to the already existing permissible modes for payment or receipt:

- Donation received by political party [Section 13A]
- Expenditure of capital nature on specified business [Section 35AD]
- Disallowance of any expenditure [Section 40A]
- Determination of actual cost on acquisition of an asset [Section 43(1)]
- Full value of consideration for transfer of assets in certain cases [Sections 43CA, 50C]
- Special provision for computing profits and gains of business on presumptive basis [Section 44AD]
- Deduction in respect of employment of new employees [Section 80JJAA]
- Mode of taking or accepting certain loans and deposits [Section 269SS]
- Mode of undertaking transactions [269ST]
- Mode of repayment of certain loans and deposits [Section 269T]

Further, Government had earlier introduced concept of e-assessment. *To ensure the idea meets its objective, this Bill proposes to introduce* ***Faceless e-assessment (jurisdiction free assessment).*** *Under this, cases shall be allocated to assessment units in a random manner and notices shall be issued electronically by a central cell, without disclosing the name, designation, or location of the Assessing Officer. The central cell will be the single point of contact between the tax payer and the department.*

Tax incentives for individuals

Tax relief for affordable housing - Section 80EEA

Individual buyers (not owning any other property at the time of sanction of loan) can claim deduction for interest on home loan up to INR 150,000 provided that loan is sanctioned by financial institution during the period 1 April 2019 to 31 March 2020 and stamp duty value of the property does not exceed INR 45 Lakhs.

Tax relief on interest on purchase of electric vehicle- Section 80EEB

An individual can claim deduction up to INR 150,000 for interest paid towards loan for purchase of an electric vehicle provided loan has been sanctioned by financial institution during period 1 April 2019 to 31 March 2023.

Incentives for National Pension Scheme (NPS) subscribers

Upon closure of an account or opting out of the scheme, out of 60 percent that can be withdrawn as lump sum only 40 percent was tax exempt. It is now proposed to increase tax exemption to 60 percent.

Further, eligible deduction on contribution by Central Government to NPS for its employees is proposed to increase to 14% as against 10% applicable till last FY.

Also, it is proposed then, Central Government employee will be eligible for deduction under section 80C upon contribution to a specified account of pension scheme, subject to fulfillment of prescribed conditions.

Additional compliances by tax payers introduced

Mandatory furnishing of return of income

Section 139 is proposed to be amended to provide mandatory filing of returns in following cases :

- Person claiming exemption under sections 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB, if before claim of exemption, total income is more than the maximum amount not chargeable to tax.
- To ensure persons entering into certain high-value transactions furnish the return of income, it is proposed to provide that a person shall be mandatorily required to file his/her return of income, if during the previous year, he undertake any of the following transaction:

(i) Has deposited an amount (in aggregate) exceeding INR 1 Crore in one or more current accounts maintained with a banking company or a co-operative bank

(ii) Has incurred expenditure exceeding INR 2 Lakhs (in aggregate) for self or another person on foreign travel

(iii) Has incurred expenditure exceeding INR 1 lakh (in aggregate) towards consumption of electricity

Further, provision of Section 239 are proposed to provide that every claim of refund shall be made by furnishing return of income.

Inter-changeability of PAN and Aadhaar

To ensure ease of compliance, it is proposed to provide for inter-changeability of PAN with the Aadhaar number and levy of penalty under section 272B of INR 10,000 for each default in quoting PAN or Aadhaar number.

To ensure ease of compliance, it is proposed to provide for inter-changeability of PAN with the Aadhaar number and levy of penalty under section 272B of INR 10,000 for each default in quoting PAN or Aadhaar number.

Compliance of TDS by Individuals/ HUF not covered u/s. 194C or 194J - Section 194M

At present, an individual or HUF not subject to tax audit are not liable to comply with TDS provisions under section 194C or 194J. In order to fix this loophole, new section proposes to provide for levy of TDS on sum paid account of contractual work or professional fees at the rate of 5 percent where such payment exceeds INR 50 Lakhs in a year. For ease of compliance, individuals or HUFs shall be able to deposit the tax deducted using their PAN.

It may be noted that proposed amendment will also be applicable where payment is made for personal purposes. This amendment shall come into effect from 1 September 2019.

TDS on purchase of immovable property – Section 194-IA

Presently, buyer is required to deduct tax at source at 1 percent on the amount of consideration paid on purchase of eMerge

Are you geared up for Quarterly Consolidation?

From 1st April, 2019, all listed companies having subsidiaries are required to submit quarterly/ YTD consolidated financial statements to the Stock Exchange. Quarterly consolidation is a complex activity and doing it manually using spreadsheets is error prone.

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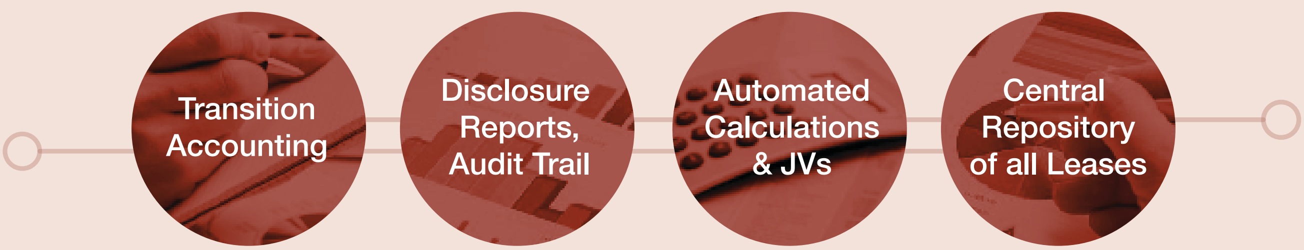

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immovable property. The term 'consideration for immovable property' is currently not defined. Therefore, it is proposed to include all *charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee, or other charges of similar nature*, which are incidental to the transfer of immovable property within the ambit of consideration for immovable property. This amendment shall come into effect from 1 September 2019.

TDS on non-exempt portion of life insurance

Currently, a person paying any sum to a resident under a life insurance policy (which is not exempt under section 10(10D)) is liable to deduct TDS at 1 percent on the gross sum under section 194DA.

To remove difficulties, since taxes are paid on net income (i.e., after deducting the amount of insurance premium paid from the total sum received), it has been proposed to provide levy of TDS on the net income at the increased rate of 5 percent. This amendment shall come into effect from 1 September 2019.

Prefilling of return of income and widening scope of Statement of Financial Transaction (SFT)

The existing threshold of INR 50,000 for reporting in SFT is proposed to be removed with a view to ensure prefilling of information of small amount of transaction as well.

Introduction tax on buy back of shares by listed Indian companies

Currently, proceeds from the buyback of shares by listed companies are taxable in the hands of shareholders as capital gains at applicable tax rates depending on period of holding. Whereas unlisted companies undertaking the buyback of shares are liable to pay additional income tax at 20 percent of the "distributed income", as per Section 115QA.

It is now proposed to extend applicability of Section 115QA to the buyback of shares by a company listed on a recognised stock exchange as well.

Concessional STCG tax rate applicable to equity-oriented fund of funds set up for disinvestment of CPSE (certain equity-oriented fund of funds)

Presently, a concessional LTCG tax rate is applicable under section 112A of the Act, on the transfer of units of equity-oriented fund of funds. To further incentivise such fund of funds, concessional 15 percent tax rate on STCG under section 111A is proposed to be extended to investors on the transfer of units of such fund of funds.

Deemed accrual of gift made to a person outside India

Currently, gifts made by residents to persons outside India are claimed to be non-taxable on the basis that the income does not accrue or arise in India.

With an intent to bring this under ambit of tax, clause (viii) to Section 9(1) is proposed to be inserted, by which provision of Section 56(2)(x) are extended to persons outside India. Therefore, income arising

Currently, gifts made by residents to persons outside India are claimed to be non-taxable on the basis that the income does not accrue or arise in India. With an intent to bring this under ambit of tax, clause (viii) to Section 9(1) is proposed to be inserted, by which provision of Section 56(2)(x) are extended to persons outside India.

from any sum of money paid, or transfer of specified property in India by a person resident in India to a person outside India shall be deemed to accrue or arise in India. Also, exemption provided in proviso to Section 56(2)(x) will similarly apply.

Rationalising of Secondary adjustments provision

Concept of secondary adjustment was introduced vide Finance Act, 2017 requiring adjustment in books of account of assesse and its associated enterprise (AE) to ensure actual allocation of profits between them are consistent with transfer price determined as a result of primary adjustment.

Further, if as a result of primary adjustment there is increase in total income, the excess money available with AE is required to be repatriated within the time prescribed.

Therefore, in order to make

secondary adjustment regime easy to comply with, it is proposed to provide that cash repatriation can be made from any AE that is a non-resident in India. Further, where cash is not repatriated into India within the prescribed time limit, assessees will not be required to make secondary adjustment if they pay a one-time additional tax of 18 percent (with applicable surcharge) on the excess money.

However, no tax credit or tax deduction for such additional tax will be available to the taxpayer.

Carry forward of losses and computation of book profit of distressed company

The restriction on carry forward of loss upon change in shareholding is proposed not to apply to a company and their subsidiary and the subsidiary of such subsidiary where change in the shareholding takes place pursuant to resolution plan approved by the NCLT.

Also, aggregate amount of unabsorbed depreciation and brought forward loss is proposed to be allowed to be reduced while computing the book profit for MAT purposes.

Tax incentives to eligible Startups

Currently, loss incurred by eligible start-ups in earlier years is allowed to be carried forward and set off against the income of the previous year if all the shareholders who held shares carrying voting power on the last day of the year(s) in which the loss was incurred continue to hold those shares on the last day of the year of set-off, and such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.

Apart from this condition, with an intent to provide relief, this Bill extends eligibility to claim carry forward and set of losses where a change in shareholding has taken place during the previous year, where on the last day of the year of set-off the shares of the company carrying not less than 51 percent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51 percent of the voting power on the last day of the year(s) in which the loss was incurred.

Besides, the Finance Minister in her speech proposed to start a television programme exclusively for start-ups.

Incentivising claiming deduction under section 54GB

Currently roll over benefit is allowed upon investment in the equity shares of eligible company relating to LTCG arising out of residential property. To incentivise investment in eligible start-ups, investment made up to 31st March 2021 will be allowed as deduction and condition of minimum shareholding/ voting rights of fifty percent is proposed to be relaxed to twenty five percent.

Incentives to IFSC

To incentivise operation of units in IFSC, it is proposed to increase the quantum of deduction under section 80LA to 100 percent of income for any 10 consecutive years out of 15 years, beginning from the year of obtaining the requisite permission for setting up the unit.

Further, Section 115A is amended to allow deduction under section 80LA to unit of IFSC.

No DDT for dividends paid out of accumulated income

Presently, DDT is not levied on dividend declared, distributed, or paid out of current income by IFSC. Non leviability of DDT is proposed to be extended to dividends declared, distributed, or paid out of *accumulated income.*

Miscellaneous

- It is proposed to relax definition of demerger to comply with IND-AS in terms of recording property and liabilities by the resulting company.
- Any interest receivable by a non-resident by unit in IFSC in respect of monies borrowed is proposed to be exempt under section 10.
- Any interest receivable by a non-resident with respect to rupee denominated bonds is proposed to be exempt under section 10.
- Section 201 is proposed to be amended where deductor shall not be deemed to be assessee in default for the want of deduction of TDS on payment made to non-residents, if such

non-residents pay taxes due, file the return of income. However, deductor shall be liable to interest under section 201 till the date of filing of return by the non-resident.

- It is proposed to empower CBDT to prescribe transaction undertaken by certain classes of persons to which the provisions of Section 56(2)(x) and 50CA shall not be applicable. This aims at avoiding genuine hardships in cases where consideration for transfer of shares is approved by certain authorities and persons transferring the shares may not have control over determination of consideration.
- Section 89 provides for tax relief where salary is paid in arrears or in advance. It is proposed to amend Section 140A, 143, 234A, 234B, 234C to provide that computation of tax liability shall be made after allowing relief under section 89.
- Section 276CC – prosecution on failure to furnish return of income is proposed to be amended to increase the threshold to INR 10,000 from existing INR 3,000 and allow credit of tax collected at source and self-assessment tax paid if any while computing tax payable.
- Transfer pricing documentation provisions-Section 92D are proposed to be amended to provide that every constituent entity of an international group will be required to file a master file even when there is no international transaction undertaken by such constituent entity.
- It has been proposed to clarify with retrospective effect from AY 2017-18 that in case of an Alternate Reporting Entity (ARE) resident in India, the due date of filing CbCR by the ARE in India will be 12 months from the end of the accounting year of the ultimate parent entity, which is not a resident in India.

Black Money (undisclosed foreign income and assets) and Imposition of tax Act, 2015 (BMI Act)

Currently BMI Act applies to persons resident in India. It is now proposed to include non-resident or not ordinarily resident also under the ambit of BMI Act with retrospective effect from 1 July 2015, in relation to income earned or asset acquired during the period they were resident in India.

Currently BMI Act applies to persons resident in India. It is now proposed to include non-resident or not ordinarily resident also under the ambit of BMI Act with retrospective effect from 1 July 2015, in relation to income earned or asset acquired during the period they were resident in India.

New Direct Tax Law

The Government of India constituted a task force in November 2017 to draft a new direct tax law that will replace the existing Income tax Act, 1961 which is expected to submit its report by 31 July 2019. However, it may be noted that there was no announcement in relation to new direct tax law in the Finance Minister's speech.

Thus with this Union Budget, Government sees light at the end of the tunnel, but whether it meets reality, one will have to wait and see. ■

You can never cross the ocean until you have the courage to lose sight of the shore. - *Christopher Columbus*

Budget Provisions Relating to Amendments in TDS Provisions: An Overview and Analysis

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The scope of the TDS has been proposed to be widened by inclusion of some payments made by Individuals and HUFs which are not liable or covered by Tax Audit provisions. The other noted fact that certain expenses which are incurred not for the purpose of the business are also proposed to be brought into the net of TDS deduction, which would help government to monitor such transactions. Two new sections 194M and 194N have been brought in specifying the rate of deduction in cases covered therein. In the Memorandum notes to the Finance Bill, it is stated that TDS on cash withdrawal has been introduced and to further discourage such cash transactions and to further discourage move towards less cash economy, it is proposed to insert a new section 194N in the Act to provide for levy of TDS at the rate of two per cent on cash payments in excess of one crore rupees in aggregate made during the year, by a banking company or cooperative bank or post office, to any person from an account maintained by the recipient. Read on…

It is proposed to exempt payment made to certain recipients, such as the Government, banking company, cooperative society engaged in carrying on the business of banking, post office, banking correspondents and white label ATM operators, who are involved in the handling of substantial amounts of cash as a part of their business operation, from the application of this provision. It is proposed to empower the Central Government to exempt other recipients, through a notification in the official Gazette in consultation with the Reserve Bank of India. This amendment will take effect from 1st September, 2019.

Section	New/Scope Expanded	Applicable to	Brief	Basic Exemption Limit	Effective Date
194M	New	Individuals or HUF not liable for tax audit	Deduct TDS @5% on payments made for services received for personal use from the contractors or professionals	₹ 50 Lacs per person per year	1st September, 2019
194N	New	Banking Company	Deduct TDS@2% for cash withdrawals from Savings/ Current Accounts (Exceptions to certain companies)	₹ 1 Crore per year	1st September, 2019

194IA	Expansion of Scope	All Person	Purchase consideration to include other payments to the Seller. Rate of TDS @1%	₹ 50 Lacs	1st September, 2019
194DA	Modification	Insurance Company	TDS @5% to be deducted on Computed Income as against Policy Payment sum	₹ 1 Lac	1st September, 2019

Provisions Relating to Deductions of Tax

New Provisions

> Section 194M has been made applicable to Individuals and HUFs (not liable for tax audit) to deduct tax from sum payable to resident contractor or professionals. This will be effective from September 1, 2019.

Section 194M has been made applicable to Individuals and HUFs (not liable for tax audit) to deduct tax from sum payable to resident contractor or professionals *[Effective from September 1, 2019]*

The current provisions of Section 194C and Section 194J, an individual or HUF, who are not liable to tax audit under Section 44AB, will be required to deduct tax under these provision, and they continue to be exempt from these provisions. Hence, no tax was required to be deducted by such persons from payment made to contractor or professional in the following cases:

a. Payment made for services received for personal use;

b. Payment made for services received for business or profession if payer is not subjected to tax audit.

By virtue of this exemption, the substantial amount of such payments made to such persons in respect of contractual work or for professional service were escaping the levy of TDS, which is the purpose of introduction of this Section.

Thus, a new Section 194M has been proposed to be inserted in the Act to deduct TDS @ 5% on the sum paid or credited in a year on account of contractual work or professional fees by an individual or a HUF, if aggregate of such sums exceeds ₹ 50 lakhs in a year. It is also stated that to reduce the tax compliance the payment, the TDS to be deposited without obtaining TAN by quoting PAN on the lines of Section 194(IA) of the Income Tax Act, 1961. It is also proposed provisions of obtaining lower rate/NIL of deduction of tax Section 197 has been extended to this provision. Thus, payee can apply to the Assessing Officer to obtain such certificate in respect of sum paid or payable which are subject to TDS under Section 194M.

Section 194N proposes that Banks and Post Offices would deduct tax from cash withdrawals exceeding ₹ 1 crore

The main purpose of the Government behind this move is to discourage cash transactions and move towards digital economy. A step ahead in this area is to discourage cash transactions accordingly a new Section 194N is proposed to be inserted in the Income-tax Act, 1961 applicable from September 1, 2019. Accordingly, tax shall be deducted by a banking company or co-op. bank or post office at the rate of 2% from the amount withdrawn in cash from any account (saving or current account) if the amount of withdrawal exceeds Rs. 1 crore during the year. The exemption is provided to Central or State Government, Banks, Co-op. Banks, Post Office, Banking correspondents, White label ATM operators and Other persons notified by the Govt. in consultation with the RBI.

> Section 194N proposes that Banks and Post Offices would deduct tax from cash withdrawals exceeding ₹ 1 crore. The main purpose of the Government behind this move is to discourage cash transactions and move towards digital economy.

Expansion of Scope of the Existing Provisions

Section 194DA TDS from Payment in respect of Life Insurance Policy (Amendment effective *September 1, 2019]*

Presently, any payments made by the Insurance Company in respect of life insurance policy to a resident person are subject to TDS @ of 1% under section 194DA. The tax is deducted under this provision at the time of payment, provided such payments exceed ₹ 1 lakh. TDS is also required to be deducted if amount payable under an insurance policy is exempt from tax under section 10(10D) or the sum is received on the occasion of death of the insured person. There is no mechanism provided under Section 194DA for computation of taxable income in such payments. There are various types of policies issued by the Insurance Company and the Insurer has various options to receive the payments either at the time of surrender, maturity etc. The income or losses arising on its transfer is chargeable to tax under the head 'Capital Gains' in case of Unit Linked Policy or are exempt under Section 10(10D) of the Income Tax Act, 1961. The present provisions require deduction of tax on whole sum, whereas the tax is required to be deducted only on the income part which is liable to tax. The anomaly in the said provisions is sought to be modified and accordingly the Finance Bill has proposed an amendment to Section 194DA now stating that the deductor has to deduct tax only on the income component comprised in the insurance pay-out. This amendment has been proposed to enable the Department to reconcile the taxable income reported in the Return of Income filed by the assessee. The TDS rate is proposed to be increased to 5% of such taxable computed income component as against 1% as per the present provision. At present there is no mechanism for computation of income under such cases, but the method of computation of income in such cases needs to be specified separately for surrender of Insurance policy, maturity of policy or otherwise.

Section 194(IA) Deduction of TDS for Purchase of Immovable Property of ₹ 50 Lacs or more at any time. *[Amendment to take effect from September 1, 2019]*

The present provisions of Section 194-IA, states that any person (buyer) who is responsible for making payment of sales consideration in respect of purchasing an immovable property of ₹ 50 Lacs or more shall deduct tax therefrom.

Presently, the term 'consideration' for immovable property has not been defined for the purposes of deduction of TDS under this section. It should be noted that any transaction for purchase of immovable property, besides the purchase consideration, the buyer also makes incidental charges through Agreement or otherwise. Accordingly, an *Explanation* has been proposed to be inserted in Section -194IA to provide that the term ‹consideration for immovable property› to include all charges of the nature of club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee or any other charges of similar nature, which are incidental to purchase/transfer of the immovable property.

As a result of this amendment, the purchaser would now have to deduct TDS on all such payments. Other conditions for compliance remain the same.

Procedural Changes for Filings and Applications

Setting Facility for filing of online application to obtain certificate for lower or *nil* rate of TDS in case of sum paid to non-resident *[Proposed Effective date November 1, 2019]*

The provisions of the Section 195 require every payer (either resident or non-resident) who is responsible for deduction of tax at source under this provision from payment of any sum which is chargeable to tax. The tax is to be deducted under this provision only if income of non-resident is taxable in India. Such non-resident recipients whose receipts are taxable in India but the person responsible for making the payment believes that the entire sum shall not be taxable but only a portion thereof shall be taxable in India, he has the option to make an application to the Assessing Officer to determine the appropriate proportion of such sum so chargeable and determine the tax that is required to be deducted on that proportion of the sum which is liable for tax. Accordingly the tax payer has to approach the Assessing Officer and make an

> The Government has introduced Online Application facility for obtaining Section 195 certificates for the facility of the Tax payers as a part of ease of doing business. However, the said facility is now proposed to be expanded to the payments made to Non-Residents

application to issue an order under section 195(2O).

The Government has introduced Online Application facility for obtaining Section 195 certificates for the facility of the Tax payers as a part of ease of doing business. However, the said facility is now proposed to be expanded to the payments made to Non-Residents, which was introduced in the last Finance Act, which will reduce the administration and help in monitoring such payments. It is proposed to expand this facility under the provisions of Section 195(2) to allow for prescribing the form and manner of application to the Assessing Officer and also for the manner of determination of appropriate portion of sum chargeable to tax by the Assessing Officer. CBDT shall prescribe the form and electronic process through which the payer can file an application to obtain the certificate for lower or nil rate of TDS. Similar amendment is also proposed to be made for Section 195(7).

Quarterly return by banks to report interest payment *[Effective Applicability from September 1, 2019]*

Section 206A of the Act requires furnishing of statement in respect of payment of certain income by way of interest to residents where no tax has been deducted at source, by the banking Company. At present the banking company, etc. are required to prepare and file quarterly returns to report such interest other than interest on securities, paid or payable to a resident person on which tax is not deductible, each quarter in the prescribed Form No. 26QAA within one month from the end of each quarter in line with the regular filing of TDS Returns. At present these returns are required to be delivered on floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media to the prescribed Income-tax authority or to the person authorised by such authority. It is proposed in the Finance Bill that such statement can be filed in electronic mode as well. It is also proposed that such statement can be corrected, rectified for any mistake or to add, delete or update the information so furnished. Accordingly, the TRACES portal for submission of such returns needs to be updated.

Sections 201 in case of payments to non-residents *[Effective Applicability September 1, 2019]*

As per the present provisions of Section 201, any resident person, responsible for deduction of tax at source, fails to deduct the whole or any part of the tax or after deduction fails to deposit the same to the credit of the Central Government, shall be deemed to be an assessee-in-default.

As per the amendment in Finance Act, 2012, he is not to be treated as an assessee-in-default if payment is made to a resident person, who has paid tax on such income and has included such income in the return submitted under Section 139 and has discharged the tax liability applicable on such income, provided the payer obtains a certificate to this effect from a Chartered Accountant in the prescribed Form No. 26A and submit it electronically. This benefit which is now available only to a resident person is now proposed to be extended to the non-resident person also. The same consequential amendment has been made in the provision for computation of interest. Accordingly, the deductor (earlier resident and now included non-resident) if he has failed to deduct the tax from the amount paid or payable to payee, if he is not deemed to be assessee-in-default, then he shall continue to be liable to pay the interest from the date on which tax was required to be deducted to the date of furnishing of return of income by the payee. ■

Tell me and I will forget. Show me and I will remember. Involve me and I will understand. - Confucius

Tax on Buy-Back of Shares, Charitable Entities and Inter-changeability of PAN & Aadhaar

The present government came to power with a decisive majority. Naturally, the country was looking forward to the first budget of this government by the full-time lady Finance Minister. This article deals with provisions of the Finance (No. 2) Bill, 2019 regarding buy-back of shares by listed companies, power to refuse or cancel registration of charitable organisations and inter-changeability of PAN and Aadhaar number. The amendments with respect to tax on buy-back of shares of Listed Companies has become immediately effective and applies to any buy-back scheme implemented on or after 5th July 2019. Companies that have announced buy-back schemes prior to the introduction of the Finance (No. 2) Bill, 2019 will not have taken into account the new tax. Read on...

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Tax on Buy-back of Shares by Listed Companies

With the introduction of Section 77A in the Companies Act, 1956 buy-back of shares became relatively simple and a company could, without going to the High Court, buy-back its shares. Companies Act, 2013 has a similar provision in Section 68. A company having distributable surplus can either declare dividend or subject to the provisions of the Companies Act, 2013, purchase its own shares making the money available to the shareholders. While dividend was chargeable to Dividend Distribution Tax (DDT), the amount disbursed on buy-back of shares was chargeable as capital gains and taxed at a lower rate. In cases where provisions of Double Tax Avoidance Agreements were applicable, amount received on buy-back of shares in certain cases was completely exempt from Indian taxation. It was felt that unlisted companies, as a part of tax avoidance scheme, were resorting to buy-back of shares instead of payment of dividends. Finance Act, 2013 introduced Chapter XII-D consisting of Sections 115QA to 115QC in the Income Tax Act, 1961 (Act) as an anti-tax avoidance measure to curb this practice. The amount received by the shareholder on buy-back of shares was exempted by introduction of Section 10(34A) and the company was made liable to pay tax on consideration paid by the company for buy-back of shares as reduced by the amount which the company had received for issue of such shares. The provision, when originally introduced, was applicable only to the buy-back of shares by unlisted companies.

SEBI Regulations permitting buy-back of shares through stock exchange made the process even easier. In case of buy-back of shares by listed companies, till the introduction of Section 112A with effect from assessment year 2019-20, long-term capital gain was exempt if the shares were transferred on the stock market and Securities Transaction Tax was paid. Thus, the amount received on buy-back of shares through stock exchange was completely exempt in the hands of the shareholders.

Dividend income exceeding ₹ 10 lakhs became chargeable in the hands of the shareholders from assessment year 2017-18 under section 115BBDA. It is also subjected to DDT in the hands of the company. Due to tax on dividends, buy-back of shares became an attractive proposition, particularly where promoters' holding in the company was substantial. In the recent years, listed companies including public sector undertakings have been buying back shares with aggregate amounts running in to billions of rupees. Companies implementing buy-back schemes include some of the large tech companies as well. This attracted the attention of the government and the Finance (No. 2) Bill, 2019 proposes to extend provisions of 115QA to buy-back of shares by listed companies as well. Any buy-back of shares by a listed company on or after 5th July 2019 will attract tax under this Section at the rate of 20% plus surcharge at the rate of 12% and applicable cess. As a consequence, any income arising to the shareholder from participating in a buy-back scheme will be exempt under section 10 (34A).

> The Finance (No. 2) Bill, 2019 proposes to extend provisions of 115QA to buy-back of shares by listed companies as well. Any buy-back of shares by a listed company on or after 5th July 2019 will attract tax under this section at the rate of 20% plus surcharge at the rate of 12% and applicable cess.

The proposed amendment has become immediately effective and applies to any buy-back scheme implemented on or after 5th July 2019. Companies that have announced buy-back schemes prior to the introduction of the Finance (No. 2) Bill, 2019 will not have taken into account the new tax. They may have to reconsider proposed buy-back of shares, particularly if the amount sanctioned for the buy-back by the shareholders is not sufficient to cover the new tax or the buy-back amount along with the amount of the tax under section 115QA puts strain on the liquidity of the company. According to press reports, a listed company has already withdrawn its proposal to buy back its shares.

Section 115QA after its proposed amendment will affect a large number of companies and their shareholders. While it is true that the companies used buy-back schemes as a tax-effective option instead of declaring dividend, a buy-back scheme may be implemented for various reasons. A company may buy back the shares when in its opinion the quoted price on the stock exchanges for its shares does not represent the true value of the shares or where the company does not have avenues to invest its accumulated funds profitably and buy-back is implemented with a view to return the capital. The scheme of buy-back of shares may be implemented to increase the shareholding of the promoters. In such a case, the promoters do not participate in the buy-back. In all such cases, the buy-back amount received by the shareholders will suffer tax under section 115QA though buy-back was never intended to be a substitute for dividend.

The tax under section 115QA is levied on the buy-back amount as reduced by the amount received by the company in respect of shares being bought back. This is computed in accordance with the provisions of Rule 40BB. Rule 40BB contemplates twelve different situations. In case of listed companies, the applicability of Section 115QA may adversely impact the shareholders who acquired the shares at a price higher than the amount that the company had received for issue of such shares. Take an example where the company is buying back share for ₹ 600 which the shareholder has bought for ₹ 400 while the company had originally issued the share for ₹ 10. In such a case, the tax under section 115QA will be levied on ₹ 590 and not on the gain of ₹ 200 of the shareholder. Further, Rule 40BB provides that where shares are held in dematerialised form and cannot be distinctly identified, the amount received by the company in respect of the shares being bought back is to be determined in accordance with provisions of the Rule on the basis of 'first in first out' method. All the shareholders may not have dematerialised their shares, the shares may not have been dematerialised in the order in which they were issued. Considering this, there may be practical difficulties in applying this provision of the Rule.

Although the proposed amendment aims to bring tax on dividend and tax on buy-back of shares at par, in certain cases buy-back of shares may still be tax efficient. In cases where shareholders receive dividend in excess of ₹ 10 lakh, the shareholder has to pay tax under section 115BBD at the rate of 10% plus applicable surcharge and cess on such excess. This is in addition to the DDT payable by the company under section 115-O. The aggregate of this would still be higher than the tax under section 115QA. If the promoter shareholders are in the category attracting higher surcharge proposed by the Finance (No. 2) Bill, 2019, the aggregate of DDT, the tax under section 115BBD and the higher surcharge will be substantially higher than the tax under section 115QA. May be, buy-back of shares is not yet a thing of past and companies may still resort to it.

Proposal Relating to Charitable Entities

In India there are a large number of charitable entities carrying on various activities for the benefit of the society or section of the society. The Act exempts income of charitable organisations from taxation. However, over the years provisions of the Act pertaining to charitable entities have become extremely stringent. In the recent past, there have been a large number of cases where registration has been refused to a charitable entity or exemption under section 11 has been refused or existing registration has been cancelled. The Finance (No. 2) Bill, 2019 proposes to add one more provision empowering the tax Administration to refuse registration or cancel the registration under section 12AA. In India, while there is no Central legislation governing charitable entities generally, various states have laws governing charitable trusts or institutions. The Foreign Contribution (Regulation) Rules 2011 is a Central Act dealing with foreign contributions that may be received by charitable entities and others. The provisions of all these laws are different and complex. It is unlikely that the tax authorities will be conversant with these laws and have expert knowledge in the field. It is on this background that the proposed amendments should be viewed.

Presently, while granting registration the Commissioner has to satisfy himself about the objects of the trust or institution and the genuineness of its activities. By substituting Section 12AA(1)(a), it is now proposed that the Commissioner will also satisfy himself about the compliance by the trust or institution of requirements of any other law that are material for the purposes of achieving the objects of the trust or the institution.

While considering the application for the registration to a charitable entity, under the proposed provision, the Commissioner will decide about compliance or otherwise with the requirements of other applicable law. The satisfaction is in respect of requirements *that are material for the achieving the objects* of the entity. At this stage, the Commissioner has to take an independent decision whether there is a violation of a requirement of other applicable law. While coming to this conclusion, the Commissioner who is not expected to have expert knowledge of the other laws, does not have to wait for any order or decision of the authority under the other law. Further, the Commissioner has to decide if the requirement which has not been complied with is a material requirement for the fulfilment of the objects of the trust or the institution. This is bound to be subjective and will lead to disputes and litigation. A few months delay in filing the audited accounts of the charitable entity with the Charity Commissioner may also be considered as a non-compliance of requirement that is material to the achievement of the objects of the entity.

Further, presently the registration of a trust or an institution can be cancelled if it is noticed that the activities of the entity are being carried out in a manner such that income, either whole or part, of the entity is not exempt on account of operation of Section 13(1) of the Act. It is now proposed to amend Section 12AA(4) and provide that the registration of the charitable entity may be cancelled also on the ground that the entity has violated requirements of other law as are material for the purposes of achieving the objects of the trust or the institution. For cancellation of registration the order, direction or decree holding that such non-compliance has occurred, should either not have been disputed or should have attained finality. It may be noted that while considering the application by a charitable entity for registration, the Commissioner has to decide on his own that there is non-compliance of requirements of other applicable law. On the other hand, for cancellation of registration already granted the Commissioner has to necessarily rely upon order, direction or decree passed under the other applicable law and has to wait till such order, direction or decree has attained finality or has not been disputed. However, as in the case of granting of registration, even while cancelling the registration the Commissioner will decide whether the requirement which was not complied with was material for the fulfilment of the objects of the entity.

> It is now proposed to amend section 12AA(4) and provide that the registration of the charitable entity may be cancelled also on the ground that the entity has violated requirements of other law as are material for the purposes of achieving the objects of the trust or the institution.

Cancellation of registration can have disastrous impact on the charitable entities. Under Chapter XXII-EB consisting of Sections 115TD to 115TF, a trust or an institution which converts itself into any form which is not eligible for grant of registration under section 12AA is liable to pay a tax on accreted income i.e. fair market value of the total assets of the entity as reduced by the total liability of the entity. Under section 115TD(3), a trust or an institution whose registration under section 12AA has been cancelled is treated as an entity which has converted itself into a form which is not eligible for grant of registration. Thus, effectively if the registration is cancelled, the charitable entity will have to pay tax on its net worth calculated based on the fair market value of the assets.

A power giving discretion to decide compliance or otherwise under other law and its materiality for achieving the objects is not desirable. The proposed amendment needs reconsideration.

PAN and Aadhaar

In September 2018, the Supreme Court of India upheld the constitutional validity of Aadhaar and held that Aadhaar number was mandatory for applying for PAN and filing of income tax return. As a consequence, the Finance (No. 2) Bill, 2019 proposes to extend the mandatory use of Aadhaar number and PAN and in certain cases proposes to make the two numbers interchangeable.

> In September 2018, the Supreme Court of India upheld the constitutional validity of Aadhaar and held that Aadhaar number was mandatory for applying for PAN and filing of income tax return. As a consequence, the Finance (No. 2) Bill, 2019 proposes to extend the mandatory use of Aadhaar number and PAN and in certain cases proposes to make the two numbers interchangeable.

In Section 139A, three new sub-sections are proposed to be inserted. Clause (a) of the new sub-section (5E) provides that if a person who is required to furnish or quote or intimate PAN and does not possess PAN but possesses Aadhaar number, then he may instead of PAN use his Aadhaar number and in such a case he will be allotted a PAN. The manner of allotting the PAN shall be prescribed. Further, clause (b) of the sub-section provides that where a person has been allotted PAN, and if he has intimated his Aadhaar number as provided in 139AA(2), he may use his Aadhaar number in lieu of PAN. Provision of this sub-section starts with non-obstante clause and overrides other provisions of the Act. Two new sub-sections (6A) and (6B) have been introduced. Sub-section (6A) provides that a person entering into transactions to be prescribed shall quote either his PAN or Aadhaar number in the documents pertaining to the transactions and also authenticate the PAN or Aadhaar number, as the case may be. Sub-section (6B) on the other hand, casts a duty on the person receiving any document relating to the prescribed transactions to ensure that PAN or Aadhaar number has been duly quoted and authenticated as prescribed. Failure to quote and authenticate the PAN or Aadhaar number as required under sub-section (6A) will attract penalty of ₹ 10,000 for each instance of the default. Similar penalty has been provided for failure to ensure that PAN or Aadhaar number is quoted and authenticated as required under sub-section (6B). All the three new sub-sections effectively make PAN and Aadhaar number interchangeable. May be in future both the numbers will be merged into one.

Sub-section 139AA(2) makes it mandatory for every person holding PAN to intimate his Aadhaar number to the prescribed authority. The existing proviso to Section 139AA(2) provides that in case the person fails to intimate his Aadhaar number, his PAN will be invalidated. The proviso is proposed be amended to provide that the failure to intimate the Aadhaar number will result in PAN becoming inoperative (as against becoming invalid).

While provisions of the Finance (No. 2) Bill, 2019 are generally reasonable, with every passing year the compliance burden on the assessee is increasing manifold. An effort to reduce this burden is the need of the day. ■

In between goals is a thing called life, that has to be lived and enjoyed. - Sid Caesar

International Taxation and Transfer Pricing: Impact of Finance Bill (No.2), 2019

One of the principles emphasised upon by Finance Minister in the Union Budget 2019 is "Reform, Perform, Transform." The Government plans to simplify procedures, incentivise performance, reduce red-tape and make the best use of technology to achieve the desired goals. The changes in the realm of taxation are also driven by the spirit of boosting investment-led growth (particularly start-ups and sunrise industries) besides targeting to plug the loopholes in terms of reporting and compliance. Specifically in the realm of International Taxation, the changes pertain to and include 'relaxation in conditions of special taxation regime for offshore funds,' 'rationalisation of provision relating to recovery of tax in pursuance of agreements with foreign countries,' 'International Financial Service Centre (IFSC),' and 'exemption of interest income of a non-resident arising from borrowings by way of issue of Rupee Denominated Bonds referred to under section 194LC,' among many others. The Transfer pricing amendments proposed in Finance Bill, 2019 include those in Section 92CD, Section 92CE, Section 286 (CbCR) etc. Read on…

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1. International Taxation

1.1 Relaxation in conditions of special taxation regime for offshore funds

- Section 9A of the Act provides for a safe harbour in respect of offshore funds whose eligible fund manager is located in India if certain conditions are satisfied. An eligible investment fund shall not be said to have business connection in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India.
- Sub-section (3) of Section 9A provides for the conditions for the eligibility of the fund to avail the benefit of this Section.
- One of the conditions is that the corpus of the fund shall be more than ₹ 100 crore at the end of the previous year.
- The amendment proposes to provide that the corpus of the fund should be more than ₹ 100 crore at the end of the P.Y or at the end of six months from the end of the month of its establishment or incorporation whichever is later.

(w.r.e.f AY 2019-20)

1.2 Rationalisation of provision relating to recovery of tax in pursuance of agreements with foreign countries

- The existing provisions of Section 228A of the Act provide that where an agreement is entered into by the Central Government with the Government of any foreign country for recovery of income-tax under the Income-tax Act and the corresponding law in force in that country and where such foreign country sends a certificate for the recovery of tax due from a person having property in India, the Board on receipt of such certificate may forward it to the Tax Recovery Officer within whose jurisdiction such property is located for the recovery of tax.

- It is proposed to recover tax from such person whose details of property are not available but the said person is a resident in India.
- Further, it is also proposed to recover tax from an assessee in default under the Act whose details of property are not available but the said assessee is a resident in a foreign country.

(w.e.f 1st Sept, 2019)

1.3 International Financial Service Centre (IFSC)

a. Currently, Section 47 of the Act provides that any transactions entered by a non-resident through a recognised stock exchange located in any IFSC in
   - Bond or Global Depository Receipts;
   - Rupee denominated bond of an Indian company; or
   - Derivative.

   shall not be regarded as transfer, if the consideration is paid or payable in foreign currency.

- It is proposed to widen the types of securities as specified above by empowering the Central Government to notify other securities for the purpose of this Section.
- Further, it is proposed to amend Section 47 to provide that any transfer of a specified security (as listed above) by a Category III Alternative Investment Fund (AIF)
   - Located in any IFSC;
   - Deriving income solely in convertible foreign exchange;
   - Of which all the units (i.e. beneficial interest of an investor in the fund and shall include shares or partnership interests) are held by non-residents

   shall not be regarded as transfer, if the consideration is paid or payable in foreign currency.

(w.e.f AY 2020-21)

b. Section 115-O of the Act provides that no DDT on distributed profits shall be chargeable in respect of the total income of a company, being a unit of an IFSC, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2017, **out of its current income**, either in the hands of the company or the person receiving such dividend.

- To facilitate distribution of dividend by companies operating in IFSC, it is proposed to amend the provision of the said section to provide that any dividend **paid out of accumulated income** derived from operations in IFSC, after 1st April 2017 shall also not be liable for tax on distributed profits.

(w.e.f. 1st September, 2019)

To facilitate distribution of dividend by companies operating in IFSC, it is proposed to amend the provision of the Section 115-O of the Act to provide that any dividend paid out of accumulated income derived from operations in IFSC, after 1st April 2017 shall also not be liable for tax on distributed profits. This will be with effect from 1st September, 2019.

c. It is proposed to amend Section 10 of the Act to provide that any income by way of interest payable to non-resident by a Unit located in IFSC in respect of monies borrowed by it on or after 01/09/2019 shall be exempt.

(w.e.f AY 2020-21)

d. As per Section 115R of the Act, any amount of income distributed by the specified company or a Mutual Fund to its unit holders shall be chargeable to tax and such specified company or Mutual Fund shall be liable to pay additional income-tax on such distributed income.

- It is proposed to amend the said section so as to provide that no additional income-tax shall be chargeable in respect of any amount of income distributed, on or after the 1st day of September, 2019, by a Mutual Fund –

- Located in any IFSC;
- Deriving income solely in convertible foreign exchange;
- Of which all the units (i.e. beneficial interest of an investor in the fund and shall include shares or partnership interests) are held by non-residents.

(w.e.f. 1st September, 2019)

e. Section 80LA of the Act provides profit linked deduction of an amount equal to 100% of income to offshore banking units and IFSCs for the first five consecutive assessment years and fifty per cent of income for the next five consecutive assessment years, to units of an IFSC.

- It is proposed to amend the said section so as to provide that the deduction shall be increased to one hundred per cent for any ten consecutive years. The assessee, at his option, may claim the said deduction for any ten consecutive assessment years out of fifteen years beginning with the year in which the necessary permission was obtained.

(w.e.f AY 2020-21)

f. Section 115A of the Act provides the method of calculation of income-tax payable by a non-resident (not being a company) or by a foreign company where the total income includes any income by way of dividend (other than referred in section 115-O), interest, royalty and fees for technical services; etc. Section 80LA under Chapter VI-A, provides for deduction in respect of certain incomes to a unit located in an IFSC. However, Section 115A (4) prohibits any deduction under chapter VIA.

- It is proposed to amend Section 115A of the Act so as to provide that the conditions contained in 115A (4) shall not apply to a unit of an IFSC which is claiming deduction under section 80LA.

(w.e.f AY 2020-21)

1.4 Deemed accrual of gift made to a person outside India

- A gift of money or property is taxed in the hands of donee, except for certain exemptions been provided in Section 56(2)(x).
- Presently, gifts are made by persons resident in India to persons outside India and are claimed to be non-taxable in India as the income does not accrue or arise in India.
- To ensure that such gifts made by residents to persons outside India are subject to tax, it is proposed to insert clause (viii) to Section 9(1) to provide that **income arising from any sum of money paid, or any property situate in India transferred, on or after 5th July, 2019 by a person resident in India to a person outside India shall be deemed to accrue or arise in India**. However, the existing provision for exempting gifts as provided in proviso to Section 56(2)(x) will continue to apply for such gifts deemed to accrue or arise in India. Further, in a treaty situation, the relevant article of applicable DTAA shall continue to apply for such gifts as well.

(w.e.f AY 2020-21)

> To ensure that gifts made by residents to persons outside India are subject to tax, it is proposed to insert clause (viii) to Section 9(1) to provide that income arising from any sum of money paid, or any property situate in India transferred, on or after 5th July, 2019 by a person resident in India to a person outside India shall be deemed to accrue or arise in India.

1.5 Exemption of interest income of a non-resident arising from borrowings by way of issue of Rupee Denominated Bonds referred to under section 194LC

- ***The exemption announced through the press release is proposed to be incorporated in the law by inserting clause (4c) in Section 10*** so as to provide exemption to income payable by way of interest to a non-resident by the specified company in respect of monies borrowed from a source outside India by way of issue of rupee denominated bond, as referred to in Section 194LC, during the period beginning from the 17/09/2018 and ending on the 31/03/2019 and thereafter.

(w.e.f AY 2019-20)

1.6 Online filing of application seeking determination of tax to be deducted at source on payment to non-residents

- Currently, a manual process is being followed by a person making payment to a non-resident to obtain certificate/ order from the Assessing Officer for lower or nil withholding-tax.
- In order to use technology to streamline the process, it is proposed to allow for prescribing the form and manner of application to the Assessing Officer and also for the manner of determination of appropriate portion of sum chargeable to tax by the Assessing Officer.

(w.e.f 1 November 2019)

1.7 Relaxing the provisions on failure to deduct or pay in case of payments to non-residents

- The relief in Section 201 is available to the deductor wherein the deductor shall not be deemed to be an assessee in default if he fails to deduct tax on a payment made to a resident, if such resident has furnished his return of income and disclosed such payment for computing his income, paid the tax due such income and furnished an accountant's certificate to this effect.
- Such relief is now available to the deductor in case of similar failure on **payments made to a non-resident**. Also, interest will be levied till the date of filing of return by the non-resident payee (as is the case at present with resident payee).

(w.e.f. 1 September 2019)

- Consequently, there will be no disallowance under section 40 of the Act.

(w.e.f. AY 2020 -21)

2. Transfer pricing amendments proposed in Finance Bill, 2019

2.1 Amendment to Section 92CD:

Clarification with regard to power of the Assessing Officer in respect of modified return of income filed in pursuance to signing of the Advance Pricing Agreement (APA)

(a) Once the APA is entered into, the ALP of the international transaction, which is subject matter of the APA, would be determined in accordance with such APA. Section 92CD provides for mechanism, including filing of modified return of income by the taxpayer and manner of completion of assessments by the Assessing Officer having regard to terms of the APA.

(b) There were apprehensions that the Assessing Officer by resorting to provisions of 92CD(3), may start fresh assessment or reassessment in respect of completed assessments or reassessments of the assessees who have modified their returns of income in accordance with the APA entered into by them.

(c) It is, therefore, proposed to amend sub-section (3) of Section 92CD to clarify that in cases where assessment or reassessment has already been completed and modified return of income has been filed by the tax payer under section 92CD(1), the Assessing Officers shall pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, having regard to and in accordance with the APA.

(d) This amendment will take effect from 1st September, 2019

It is proposed to amend sub-section (3) of Section 92CD to clarify that in cases where assessment or reassessment has already been completed and modified return of income has been filed by the tax payer under section 92CD(1), the Assessing Officers shall pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, having regard to and in accordance with the APA. This amendment will take effect from 1st September, 2019

2.2 Amendment to Section 92CE:

Clarification with regard to provisions of secondary

adjustment and giving an option to assessee to make one-time payment:

(a) Section 92CE of the Act provides for secondary adjustments in certain cases where the primary adjustment to transfer price, has been made suo motu, or made by the Assessing Officer and accepted by assessee; or is determined by an advance pricing agreement entered into by the assessee under section 92CC of the Act; or is made as per safe harbour rules prescribed under section 92CB of the Act; or is arising as a result of resolution of an assessment through mutual agreement procedure under an agreement entered into under section 90 or 90A of the Act.

(b) It is proposed to amend Section 92CE of the Act so as to provide that the condition of threshold of one crore rupees <u>**and**</u> of the primary adjustment made upto assessment year 2016-17 are alternate conditions ("or" has been inserted instead of "and") and not cumulative as worded currently in the proviso below S 92CE (1).

(c) The assessee shall now be required to calculate interest on the excess money or part thereof.

(d) This section is proposed to apply to the agreements which have been signed on or after 1st April, 2017. However, no refund of the taxes already paid till date under the pre amended section would be allowed.

(e) Earlier the section applied if excess money which was available with an associated enterprise was not repatriated to India within the prescribed time period. It is now proposed that the excess money may be repatriated from <u>**any**</u> of the associated enterprises of the assessee which is not resident in India.

(f) In a case where the excess money or part thereof has not been repatriated in time, the assessee will have an option to pay additional income-tax at the rate of eighteen per cent on such excess money or part thereof in addition to the existing requirement of calculation of interest till the date of payment of this additional tax. The additional tax is proposed to be increased by a surcharge of twelve per cent. In case the assessee opts for this option, he shall not be required to compute secondary adjustments as mandated under section 92CE (1) and interest under section 92CE(2).

(g) The tax so paid shall be the final payment of tax and no credit shall be allowed in respect of the amount of tax so paid. Further no deduction in respect of the amount on which such tax has been paid, shall be allowed under any other provision of this Act.

(h) The amendments proposed in para (a) to (e) above will take effect retrospectively from the 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years. Further, the amendments proposed in para (f) to (g) will be effective from 1st September, 2019.

2.3 Amendment to Section 92D: Rationalisations of provisions relating to maintenance, keeping and furnishing of information and documents by certain persons

(a) Section 92D of the Act, provides for maintenance and keeping of information and document by persons entering into an international transaction or specified domestic transaction in the prescribed manner. It is now proposed to substitute section 92D of the Act, in order to provide that the information and document to be kept and maintained by a constituent entity of an international group, and filing of required form, shall be applicable even when there is no international transaction undertaken by such constituent entity.

(b) It is also proposed to provide that information shall be furnished by the constituent entity of an international group to the prescribed authority. This is in the context of the maintenance and filing of a Master file.

(c) This amendment will take effect from the 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

2.4 Amendment to Section 286 (CbCR):

(a) Several concerns were raised regarding the meaning of accounting year in case of an alternate reporting entity (ARE) resident in India whose ultimate parent entity is not resident in India.

(b) In order to clarify the unintended anomaly, it is proposed to amend Section 286 so as to provide that the accounting year in case of the ARE of an international group, the parent entity of which is not resident in India, the reporting accounting year shall be the one applicable to such parent entity.

(c) This amendment is clarificatory in nature. The amendment will take effect retrospectively from the 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years. ■

Faith is all about trusting God even when you don't understand His plan. - Joel Osteen

Amendments in Indirect Taxes Proposed by Union Budget, 2019

On the Indirect tax front, Finance Minister Ms. Nirmala Sitharaman has brought some radical changes driven by the idea of promoting 'Make in India' initiative of the government. Some of the important proposals include Interest subvention for GST compliant MSMEs, increase in customs duties on imports of products like Automobile parts, Electronic & electrical equipment etc. and reduction of customs duties on certain raw materials and capital Goods like inputs of CRGO sheets, amorphous alloy ribbon, ethylene di-chloride. Many key amendments are being proposed in Central Goods and Services Tax Act, 2017 under Finance (No. 2) Act, 2019 to give effect of changes recommended by GST Council such as interest for delayed payment of tax would be calculated net of ITC, permitting transfer of payment from one electronic cash ledger to another electronic cash ledger, introducing electronic invoicing and doing away with e-way bill from Jan 2020. Read on…

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Amendment under GST

Levy of Interest for Late Payment of Tax

Section 50(1) of CGST Act, 2017 provides for levy of interest for late payment of Tax. There has been an interpretational issues as to on which amount the interest is to be charged i.e. whether on gross tax liability as per the return or on the net tax liability after adjustment of input tax credit. A proviso has been inserted in sub-section (1) to Section 50 to provide that interest will be levied on that portion of the tax that is paid by debiting electronic cash ledger. This proviso is not applicable where return under section 39 is furnished after commencement of any proceedings under section 73 or Section 74. This proviso is applicable only prospectively and not retrospectively.

Authentication of Registered Persons

In Respect of Existing Registered Persons

In Section 25, sub-section 6A is inserted to provide that every registered person shall undergo authentication or furnish proof of possession of Aadhaar Number. In the Aadhaar is not assigned, he shall undergo alternate means of identification. If the registered person fails to do so registration allotted to such person shall be deemed to be invalid.

In Respect of New Registrations

Further sub-section 6B is inserted in Section 25 to provide that in respect of new registration authentication is a pre-requisite for grant of registration.

An individual will undergo authentication or furnish proof of possession of a Aadhaar Number. If the Aadhaar is not assigned he shall be offered alternate means of authentication.

Every person other than individual shall undergo authentication or furnish proof of possession of Aadhaar Number of the following persons as is applicable:

Karta,
Managing director,
Whole time director,
Such number of partners, members of the managing committee of Association, board of trustees,
Authorised representative,
Authorised signatory &
Such other class of persons.

If these person have not been assigned the Aadhaar Number, he shall be offered alternate means of identification.

Facility of Electronic Payment

The government has proposed to insert Section 31A to prescribe a class of persons who shall provide prescribed modes of electronic payment to the recipient of supply. This class of registered persons shall give option to the recipient of supply to make electronic payment.

Furnishing of Returns

Section 39 dealing with furnishing of return has undergone a substantial change. The government, subject to the recommendations of the council, proposes to retain power to notify class of registered persons who shall furnish a return for every quarter. However the payment of tax shall be for every month.

The due date of furnishing of the annual return has been prescribed as 31st day of December following the end of the financial year. The extension of the due date of the filing of the annual return has been done by way of removal of difficulty order under section 172 as there was no power in Section 44 of the Act to extend the due date. Now a proviso is inserted in Section 44 to give power to the commissioner to extend the time limit for furnishing the annual return.

Section 52(4) requires electronic commerce operator to furnish a statement of outward supply Effected through it (including returns) within 10 days after the end of the month. A proviso has been added to sub-section 4 giving power to the commissioner for extending the time limit.

Section 52(5) provides that an electronic commerce operator to furnish an annual statement containing the details of outward supply effected through it (including returns) and tax collected at source during the financial year. The time limit for furnishing the statement is 31st day of December following the end of such financial year. A proviso has been added to sub-section 5 giving power to the commissioner for extending the time limit.

Transfer of Payment from One Electronic Cash Ledger to another Electronic Cash Ledger

Sub-section 10 has been inserted in Section 49 to enable the registered person to transfer any amount of tax, interest, penalty, fees etc., available in the electronic cash ledger to electronic cash ledger of integrated tax, central tax, state tax, union territory tax or cess.

A new Section 53A is being inserted to provide that where any amount is transferred by the registered dealer from electronic cash ledger under CGST Act to electronic cash ledger under SGST Act/UTSGT Act, the central government shall transfer the said amount to the State/ Union Territory tax account.

Similarly, in IGST Act a new Section 17A is being inserted to provide that where any amount is transferred from electronic cash ledger under IGST Act to electronic cash ledger under SGST Act/UTGST Act, the Central Government shall transfer the said amount to the State/Union Territory tax account.

Refund of Tax

In Section 54, sub–section 8A is inserted giving power to disburse the refund of the State tax.

Constitution of National Appellate Authority for Advance Ruling

Section 101A, 101B & 101C have been inserted with suitable amendments in Section 95,102,103,104,105&106 for constitution of National Appellate Authority for Advance Ruling.

Penalty for Profiteering

Sub-section 3A is inserted in Section 171 to provide for levy of penalty equivalent to 10% of the amount profited by non-passing of the benefit of any reduction in rate of tax. It is also provided that if the profited amount is deposited within 30 days of the date of passing of the order no such penalty should be levied.

Changes in Central Excise

After the introduction of the Goods and Services tax, expectations from the budget in terms of changes in Central Excise were minimal. The Constitution (101st Amendment) Act, 2016 passed by the Parliament had made changes in Entry 84 of the Union List of the 7th Schedule of the Constitution. This amendment provides that excise duty can be levied only on petroleum and petroleum products and tobacco and tobacco products, thereby limiting the scope of Central Excise Act to these specified products.

Section 3 of the Central Excise Act, 1944 was amended coextensively for the above referred constitutional changes. Accordingly, Fourth Schedule was incorporated in the Act to replace the First and Second Schedule, which prescribed a duty of excise and a special duty of excise respectively. Fourth Schedule is composed of two-chapter viz. 24 - TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES and 27 - MINERAL FUELS, MINERAL OILS AND PRODUCTS OF THEIR DISTILLATION; BITUMINOUS SUBSTANCES; MINERAL WAXES. Hence the changes in Central Excise were expected only to the above referred chapters.

A. Amendments In The Fourth Schedule To The Central Excise Act, 1944

Sr. No.	Heading, sub-heading tariff item	Commodity	From	To
1	2709 20 00	Petroleum Crude	Nil	₹ 1 per tonne

a. The above said proposal was brought to effect from 06.07.2019 i.e. the day the bill was presented.

b. The proposed duty is collected in accordance with the provisions under the Provisional Collection of Taxes Act, 1931.

c. In connection with the above amendment, Honourable Finance Minister in her speech quoted the following:

"Tobacco products and crude attract National Calamity and Contingent duty. In certain cases, this levy has been contested on the ground that there is no basic excise duty on these items. To address this issue, a nominal basic excise duty is being imposed."

B. Amendments In The Fourth Schedule To The Central Excise Act, 1944

01. Cessation of the exemption

Notification No. 02/2019 C.E. dated 06.07.2019 withdrew the exemption, provided vide Notification No. 11/2017 C.E. dated 30.06.2017, to the excisable goods under Chapter 24 of the Fourth Schedule to the Central Excise Act.

Henceforth, the excisable goods will be subject to both Central Excise as well as GST. As per Section 9 (1) of the CGST Act, 2017, supply of all goods except alcoholic liquor for human consumption is liable for CGST. Further as per Section 9(2) of the CGST Act, 2017, central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

When we look into both the provisions, it seems that tobacco and its products will be subject to the levy under excise duty as well as GST.

02. Rectification of an error in the Notification

The exemption in the notification no. 11/2017 C.E. dated 30.06.2017 was meant for the excisable goods of the description and falling within the Chapter, heading or sub-heading or tariff item of the Fourth Schedule to the Excise Act.

However, the column heading in the table of the notification was referring to the chapter, heading or sub-heading or tariff item of the First Schedule. This error was rectified by notification no. 02/2019 C.E.

03. Providing Exemption from duty

Notification No. 03/2019 C.E. dated 06.07.2019 was issued to provide fresh exemption to the excisable goods under Chapter 24 of the Fourth Schedule to the Central Excise Act which was taxable due to omission of the entry no. 1 from the Notification No. 11/2017 C.E. dated 30.06.2017. The exemption for the excisable goods from so much of the duty of excise duty as is in excess of the amount calculated at the rate prescribed in the notification.

04. Increase in rate of Road and Infrastructure Cess on excisable goods.

The Finance Act, 2018 introduced new levy called ROAD AND INFRASTRUCTURE CESS for the purpose of financing infrastructure projects. This levy was an additional duty of excise governed by Section 112 read with the Sixth Schedule to the above referred Finance Act. The Finance Act, 2019 (No. 2) proposed to amend the Sixth Schedule, which is as follows:

Sr. No.	Tariff Item	Description of Goods	From	To
1	2710	Motor spirit commonly known as petrol	₹ 8 per litre	₹ 10 per litre
2	2710	High speed diesel oil	₹ 8 per litre	₹ 10 per litre

The above referred amendment increased the additional duty of excise by ₹ 2 per litre. However, CBIC vide. Notification No. 04/2019 C.E. dated 06.07.2019 exempted from so much of the duty of excise duty as is in excess of the amount calculated at the rate of additional duty (viz.

Road and Infrastructure Cess) prescribed in the notification. The rate is explained in the below table:

Sr. No.	Tariff Item	Description of Goods	From	To
1	2710	Motor spirit commonly known as petrol	₹ 10 per litre	₹ 9 per litre
2	2710	High speed diesel oil	₹ 10 per litre	₹ 9 per litre

From the above table it is apparent that there is an effective exemption of Re. 1 on both the excisable goods.

05. Increase in rate of Special Additional Excise Duty on excisable goods.

The Finance Act, 2002 introduced new levy called SPECIAL ADDITIONAL EXCISE DUTY. This levy was a special additional duty of excise governed by Section 147 read with the Eighth Schedule to the above referred Finance Act. The Finance Act, 2019 (No. 2) proposed to amend the Eighth Schedule, which is as follows:

Sr. No.	Tariff Item	Description of Goods	From	To
1	2710	Motor spirit commonly known as petrol	₹ 7 per litre	₹ 10 per litre
2	2710	High speed diesel oil	₹ 1 per litre	₹ 4 per litre

The above referred amendment increased the additional duty of excise by ₹ 3 per litre. However, CBIC vide. Notification No. 05/2019 C.E. dated 06.07.2019 exempted from so much of the duty of excise duty as is in excess of the amount calculated at the rate of additional duty; which is as follows:

Sr. No.	Tariff Item	Description of Goods	From	To
1	2710	Motor spirit commonly known as petrol	₹ 10 per litre	₹ 8 per litre
2	2710	High speed diesel oil	₹ 4 per litre	₹ 2 per litre

From the above table it is apparent that there is an effective exemption of Rs. 2 on both the excisable goods.

06. Exemption for petroleum oils and oils.

CBIC vide Notification no. 6/2019- CE dated 06.07.2019 exempts petroleum oils and oils obtained from bituminous minerals, crude which is produced either in the fields under the Production Sharing Contracts as specified or in the exploration blocks offered under New Exploration Licensing Policy through competitive international bidding, from whole of the duty of excise leviable thereon under the Fourth Schedule to Excise Act.

Changes in Service Tax – Union Budget 2019

Special provisions have been enacted for granting retrospective exemption from service tax for certain services. The three clauses of the Finance Bill, 2019 are non-obstante clauses meaning that this provision shall prevail over the provisions of Section 66 or 66B which were the Charging Sections in the erstwhile Finance Act, 1994.

The following services will be exempted retrospectively: -

1. Service tax on service by way of grant of liquor licence

   - Each State Government has enacted a law for regulating the alcoholic liquor. Thus, as required under this law, all persons desiring of selling liquor need to obtain registration under the respective law of the State.
   - Effective from 1st April 2016, any service provided by the Government to a business entity was made taxable except services specified in 66D(i) to (iii) of the Finance Act,1994. This led to the Department demanding service tax from all restaurant/bar owners on the licence fee paid for serving liquor by the restaurant/bar owners. Circular No. 192/02/2016-Service Tax dated 13th April 2016 issued by the Government further supported the Department in demanding the service tax as it was clarified that services provided in lieu of fee charged by the Government or a local authority is leviable to service tax and it is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law.
   - The Mega Exemption Notification – No. 25/2012–Service Tax dated 20.06.2012, specifically exempted

service tax on service provided by a Government or Local Authority by way of *registration required under any law for the time being in force*. However, whether obtaining licence under the State laws for dealing in alcoholic liquor could be construed as registration was a subject matter of dispute.

- The dispute has now been put to rest by the Government by issuing a retrospective exemption from 01.04.2016 to 30.06.2017. The clause reads as -

  "No service tax shall be levied or collected in respect of taxable service provided or agreed to be provided by the State Government by way of grant of liquor licence, against consideration in the form of licence fee or application fee, by whatever name called, during the period commencing from the 1st day of April, 2016 and ending with the 30th day of June, 2017 (both days inclusive)."

- Refund shall be made of all such service tax which has been collected towards this service during the above-mentioned period. An application for refund shall be made within six months from the date on which the Finance Bill, 2019 receives the assent of the President.

2. <u>Service tax in certain cases relating to services provided by Indian Institutes of Management to students The IIMs are premier education institutions in India.</u>

- Treating the Indian Institute of Management as a commercial coaching centre, the Department had demanded Service tax on the education courses offered to its students for the period 2003 to 2016.
- Vide Circular No. 09/2016 – Service Tax dated 01.03.2016, Services provided by IIMs by way of educational programmes was exempted vide Entry No. 9B to Notification No. 25/2012 – ST dated 20.06.2012.
- To clear the confusion, a retrospective amendment has been given through the Union Budget to state that the IIMs will be exempted from service tax from 01.07.2003 to 31.03.2016 -
  - *No service tax shall be levied or collected during the period commencing from the 1st day of July, 2003 and ending with the 31st day of March, 2016 (both days inclusive) levied in respect of taxable services provided or agreed to be provided by the Indian Institutes of Management to the students as per the guidelines of the Central Government, by way of the following educational programmes namely:—*

    a) *Two-year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test conducted by the Indian Institute of Management;*

    b) *fellow programme in Management;*

    c) *five-year integrated programme in Management.*
- Executive Development Programmes are not exempted and thus will be liable for Service Tax.
- Refund shall be applied within a period of six months from the date on which the Finance Bill, 2019 receives the assent of the President.

3. <u>Service tax in certain cases relating to long term lease of plots for development of infrastructure for financial business</u>

- Finance Act, 2017 had inserted a Section 104 as a special provision in Finance Act,1994 for retrospective exemption to lease premium/upfront fee in relation to long term lease of industrial plots. If any service tax has been paid for the period 01.06.2007 to 21.09.2016, then the same shall be available for refund by filing an application within 6 months from the date the Finance Bill, 2017 received the assent of the President.
- The exemption was extended for a further period vide Notification No. 41/2016 dated 22.09.2016, taxable services provided by State Government Industrial Development Corporation/Undertaking to industrial units by way of granting long term lease of industrial plots from service tax.
- Similar exemption has been given through the Finance Bill, 2019 too. However, the scope has been restricted only for long term lease amount paid for development of infrastructure for financial business only. The features of the provision are-
  - Upfront amount, called as premium, salami, cost, price, development charges or by any other

name payable by the developers in any industrial or financial business area.

- Long term lease of thirty years or more of plots for development of infrastructure for financial business
- Service to be provided by
  - State Government Industrial Development Corporations or Undertakings or
  - Any other entity having fifty per cent. or more of the ownership of the Central Government or the State Government or the Union territory either directly or through an entity which is wholly owned by the Central Government or the State Government or the Union territory
- Service to be provided between 01.10.2013 to 30.06.2017 (both days inclusive)
  - Refund shall be applied within a period of six months from the date on which the Finance Bill, 2019 receives the assent of the President.

Changes in Customs Duty – Union Budget 2019

- Custom duty on imports of many products have been increased such as automobile parts, Electronic & electrical equipment etc. This will give boost to the domestic industry.
- Section 41 is being amended so as to provide a facility, that the departure manifest can also be furnished to a person notified by the Central Government, in addition to the person-incharge of the conveyance.
- Verification of Identity and Compliance: custom officers has been empowered to carry out verification of a person for ascertaining compliance with the provision of the Customs Act or any other law for the time being in force to prevent smuggling in the manner as may be prescribed. Failure to the same leads to denial of custom benefits.
- Section 103 is being amended to enable officer to scan or screen any person who has any goods liable to confiscation secreted inside his body.
- Section 104 is being amended to empower an officer of customs to arrest a person who has committed an offence outside India or Indian Customs waters.
- Section 110 is being amended to specify the conditions under which the custody of seized goods could be given to certain person. Further, the proper officer has been empowered to provisionally attach any bank account for safeguarding the government revenue and prevention of smuggling, for a period not exceeding six months and also to release said bank account.
- A new Section 114AB is being inserted to provide that any person who has obtained any instrument by fraud, collusion, wilful misstatement or suppression of facts and such instrument has been utilized by such person or any other person for discharging duty, such person to whom the instrument was issued shall be liable for penalty not exceeding the face value of such instrument.
- Section 117 is being amended so as to increase the maximum limit of penalty from ₹ 1 Lacs to ₹ 4 Lacs.
- First proviso to Section 125 is being amended to provide no fine in lieu of confiscation shall be imposed on the infringing goods in respect of cases covered under deemed closure proceedings under section 28.
- Section 135 is being amended to make obtaining of an instrument from any authority by fraud, collusion, wilful misstatement or suppression of facts, where such instrument has been utilized by any person a punishable offence.
- Section 149 is being amended so as to empower Board to make regulations specifying time, form, manner, restrictions and conditions for amendment of any document.
- Section 157 is being amended so as to empower the Board to make regulations for purposes of Sections 99B and 149 respectively.
- Sub-section (2) of Section 158 is being amended so as to increase the maximum limit of penalty for violation of any provision of rules or regulations from ₹ 50,000 to ₹ 2 Lacs. ■

Remember that everything that is happening around you, good or bad, is in some way conspiring to help you. - Debasish Mridha

Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019—*Is It an Absolute End of Pre-GST Regime?*

SABKA VISHWAS (Legacy Dispute Resolution) Scheme, 2019, among the welcoming steps of the Government, appears to be similar to the schemes introduced recently by Maharashtra, Karnataka, West Bengal and Gujarat to conclude the matters relating to VAT. Union Finance minister has proposed a dispute resolution cum amnesty scheme called Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ("LDR Scheme") for the resolution of legacy cases of mainly the central excise and service tax. In this write-up, the authors wish to discuss and highlight criticality the ambiguity and outcome of the proposed Scheme. Read on…

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In spirit of the ease of doing business and to let the exchequer loaded with fund simultaneously giving relief to the businesses from the legacy of litigation, the SABKA VISHWAS (Legacy Dispute Resolution) scheme 2019 will be one among the welcoming steps of the Government. This scheme seems to be broadly similar to schemes recently introduced by the states of Maharashtra, Karnataka, West Bengal and Gujarat to conclude matters related to VAT.

Finance Minister in her maiden finance bill has proposed a dispute resolution cum amnesty scheme called "***The Sabka Vishwas (Legacy Dispute Resolution) Scheme***, 2019" (LDR Scheme). The introduction of LDR Scheme, 2019 was with the following words-

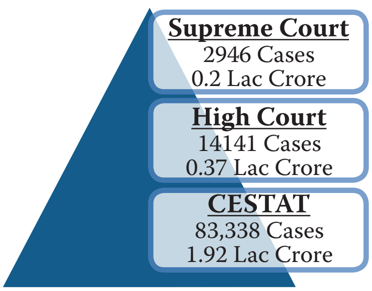
> *"GST has just completed two years. An area that concerns me is that we have huge pending litigations from pre-GST regime.* ***More than 3.75 lakh crore is blocked in litigations in service tax and excise.*** *There is a need to unload this baggage and allow business to move on. I, therefore, propose, a Legacy Dispute Resolution Scheme that will allow quick closure of these litigations. I would urge the trade and business to avail this opportunity and be free from legacy litigations."*

This scheme has been introduced for resolution and settlement of legacy cases of mainly of Central Excise and Service Tax, further includes various central legislatures. The proposed Scheme covers past disputes of taxes which have got subsumed in GST namely Central Excise, Service Tax and Cesses. All persons are eligible to avail the scheme except a few, almost every pending litigation has been covered except a few which are *sub judice* for final consideration before any appellate forum as on 30.06.2019.

Motivation behind Introduction of LDR Scheme, 2019

The government's efforts to make business and commerce easy have been widely acknowledged. The next frontier on the ease of doing business is addressing pendency, delays and backlogs in the appellate and judicial arenas. These are hampering dispute resolution and contract enforcement, discouraging investment, stalling projects, hampering tax collections but also stressing taxpayers, and escalating legal costs.

The picture of the pendency of case of indirect taxes shown in figure as of the quarter ending March 2017, a total of 1.45 lakh appeals were pending with the Commissioner (Appeals), CESTAT, HCs and the SC together, that were valued by the Department at [1]2.62 lakh cores as on last quarter of 2017. The following are the pending cases at all level of the courts and tribunal in the indirect taxes-



Further more interesting fact is success rate of the Department at all three levels of appeal-Appellate Tribunals, High Courts, and Supreme Court-- and for both direct and indirect tax litigation is under 30%. In some cases it is as low as 12%. The Department unambiguously loses 65% of its cases. Over a period of time, the success rate of the Department has only been declining, while that of the assesses has been increasing.

The figures and pendency as discussed above are only of the pre GST regime, however GST in itself coming up with the anticipation of the massive litigation on the various front simultaneously even in the first 2 years of its inception. The issues in the ailment & eligibility of the input tax credit, transitional issues, EWAY bill & detention of the vehicle/ goods, Advance rulings and Anti-profiteering, litigation is coming in the various form, which required a lot of manpower of the revenue authorities and brainstorming to avoid the lower success rate as in the PRE GST regime.

Therefore, by introducing the amnesty scheme like LDR Scheme 2019, will end up the pre GST dispute, which is taking time and manpower of the revenue authority unnecessarily, will end up the legacy of the dispute of PRE GST regime and let both revenue and taxpayer in the win-win situation as success rate of the revenue authority is not too good.

Features of the Scheme

The Scheme is a onetime measure for liquidation of past disputes of Central Excise and Service Tax as well as to ensure disclosure of unpaid taxes by a person eligible to make a declaration. The Scheme shall be enforced by the Central Government from a date to be notified. The authors hereby discussing the highlights and features of the proposed scheme-

1. The Scheme shall become available from a date to be notified. The procedural details and rules regarding the Scheme shall be notified in due course
2. The scheme is applicable on service tax, Central excise and more than 20 other Central Acts (Taxation)
3. There will be designated committee to deal with the declaration made by the declarant for the dispute resolution
4. The declarant taxpayers need to file declaration in the prescribed format before the designated authority
5. The order not attained finality but not appealed, order attained finality, SCN received, and demand quantified on or before 30.06.2019 shall be eligible for this scheme.
6. The tax payable shall be decided by the difference of the tax due and tax relief by the designated authority.
7. The declarant will get a discharge certificate after payment of tax decided by the designated authority, which will immune them from liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration
8. Any amount paid under this Scheme shall not be refundable under any circumstances (even excess deposited).
9. The privileges earned through the scheme will lapsed immediately upon identification of any misstatement or false information in the declaration
10. The taxability of the issues under dispute will remain unchanged for the subsequent period and of the industry as a whole despite the issue of the discharge certificate to the declarant/ Applicant.

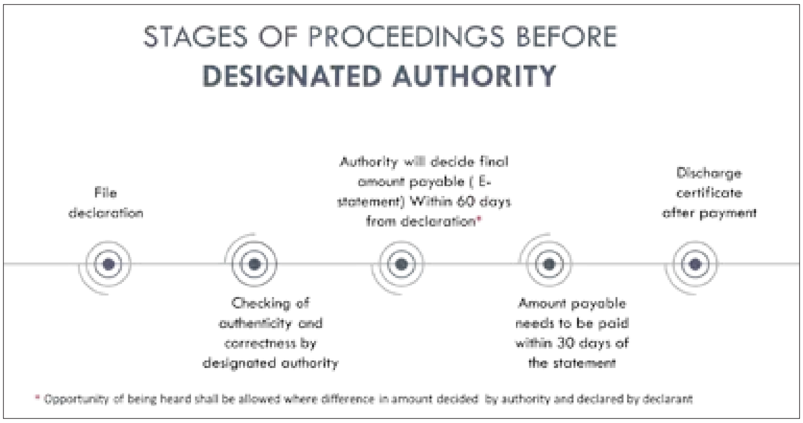
Petition rate & Success rate of tax department in indirect tax cases		
Court/ Tribunal	**[2]Petition rate**	**[3]Success rate**
Supreme Court	63%	11%
High Court	39%	46%
CESTAT	20%	12%

Mechanism and Important Aspect of the Schemes

As it is clear, under this scheme, there will be separate designated authority, which will adjudicate the matter and

[1] *Chapter 9- Ease of Doing Business' Next Frontier: Timely Justice of Economic Survey 2017-18*
[2] *Petition rate means, % of petition filed by the revenue department in case decided in favor of assessee*
[3] *Success rate means, % of cases where the appeals decided in favour of revenue department.*

issue discharge certificate, however constitution, term etc. is yet to be notified by the government. Further there is no appeal mechanism available against any statement for amount payable or discharge certificate issued by the authority. The flow of the proceedings will be as follows-



Further to understand the meaning of the tax payable and intent of entire scheme, certain important definition needs to be discussed on the outset, there are various terminology used in the proposal for LDR scheme such tax relief, tax payable etc. Following are some definition and terms as describe in the proposed scheme :

TERMS	DEFINITION
Amount in arrears	Means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment on account of- • no appeal having been filed by declarant against order in original or Order in Appeal before expiry of the time for filling of appeal • finality (means no appeal filed and time for order in appeal relating to the declarant has lapsed) • the declarant having filed a return under the indirect tax enactment on or before the 30th day of June, 2019, wherein he has admitted a tax liability but not paid
AMOUNT PAYABLE	Means the final amount payable by the declarant as determined by the designated committee and as indicated in the statement issued by it, in order to be eligible for the benefits under this Scheme and shall be calculated as the amount of **tax dues less the tax relief;**
TAX RELIEF	Means the amount of relief granted under section 123

The definition given supra for term amount payable denotes the total amount become payable after the proceedings concluded by the authorities. Further to come upon the amount payable one need to first identify tax due and relief available as per scheme, following is a glimpse of the meaning of the tax due and relief in different scenario-

TYPE OF CASES	MEANING OF TAX DUE (Section 122)	RELIEF (Section 123)
[4]Appeal Cases	**WHERE A SINGLE APPEAL IS FILED AND PENDING AGAINST THE ORDER-** The amount of only duty under appeal **WHERE MORE THAN ONE (BY DECLARANT and/or DEPARTMENT):** The total amount of only duty of both appeal	1. **Where amount of duty is or less than 50 lac:** 70 % of the Tax dues 2. **Where amount of duty is more than 50 lac:** 50 % of the Tax dues
Show Cause Notice	The amount **demanded** (only duty i.e. tax amount) in the SCN **received before 30.06.2019**	
Show Cause Notice (only related to penalty or late fees)	The amount demanded in the SCN received before 30.06.2019	Where amount of duty in said notice has duly been paid or nil, then relief will be total amount of penalty and fees
Inquiry & Investigation	Amount quantified on or before 30.06.2019	1. **Where amount quantified till 30.06.2019 is or less than 50 lac:** 70 % of the Tax dues 2. **Where amount quantified till 30.06.2019 is more than 50 lac**: 50 % of the Tax dues

[4] *Not to be considered where the final hearing has been done in on or before 30.06.2019*

Voluntary Disclosure	Amount voluntarily disclosed as duty i.e. tax only	[5]No relief in respect of tax dues
Amount in Arrears	Amount due in arrear (Such as amount payable as per return)	1. **If amount of duty/ indicated in return is less than 50 Lac:** 60% of the tax dues 2. **If amount of duty/indicated in return is more than 50 Lac**: 40% of the tax dues

One Can't Escape from the Consequences even after the Scheme

Following issues will remain open and prejudice despite the fact of the availment of the scheme and receipt of the discharge certificate:

i. The authority may still issue a show cause notice
   (A) for the same matter for a subsequent time period; or
   (B) for a different matter for the same time period;

ii. In a case of voluntary disclosure where any material **particular furnished in the declaration is subsequently found to be false**, within a period of one year of issue of the discharge certificate, it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted.

The LDR scheme nowhere protects the tax evader for their subsequent default or person making false disclosure in the scheme declaration.

Disqualified Person to File Declaration

- Who have been convicted for any offence punishable under any provision of the PRE GST law for the matter for which he intends to file a declaration.
- Who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund.
- Who have been subjected to an enquiry or investigation amount of duty has not been quantified before 30.06.2019.
- Who have filed an application in the Settlement Commission for settlement of a case.
- The cases for which final hearing has been done before 30.06.2019 (SCN or Appeal).
- A person making a voluntary disclosure
  - ◆ after being subjected to any enquiry or investigation or audit; or
  - ◆ having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it

GLIMPSE - QUALIFICATION AND DISQUALIFICATION TO AVAIL THE SCHEME			
S. No.	**Nature of Cases**	**PERSON/CASES QUALIFY TO FILE**	**PERSON/ CASES DISQUALIFY FOR SCHEME**
1	Inquiry/ investigation	Demand quantified before 30.06.2019	Amount not quantified before 30.06.2019
2	Departmental Audit	Demand quantified before 30.06.2019	Amount not quantified before 30.06.2019
3	SCN	Received before 30.06.2019 and final hearing pending before 30.06.2019 Or Order attained finality	Received after 30.06.2019 or final hearing done before 30.06.2019
4	Appeals (Commissioner Appeals)	Final hearing pending before 30.06.2019 Or Where order in appeal attained finality	Final hearing done before 30.06.2019
5	Appeals (CESTAT)	Final hearing pending before 30.06.2019 Or Where order in appeal attained finality	Final hearing done before 30.06.2019
6	Appeals (HC/ SC)	Final hearing pending before 30.06.2019 Or Where order in appeal attained finality	Final hearing done before 30.06.2019
General Disqualifications: 1. Where person has filed an application to **settlement commission** 2. **Where a person convicted** under indirect tax enactment (Pre GST regime) for the same matter 3. A SCN for a refund or Erroneous refund			

Benefits of the Scheme to Industry & Revenue and to Taxpayers

To Industry and Revenue

- The scheme will be oriented on inclusion of the taxpayers, who have been entangled in the litigation of pre GST regime.

[5] *The relief in relation to voluntary disclosure is exhaustive, scheme defines relief not available instead of available relief*

- This scheme will end up pre GST regime to an extent by way of disposal of the maximum number of cases, which is only legacy of the PRE GST era.
- The ease of doing business will get strengthen and entrepreneur will get rid of the legal repercussion due to pre GST dispute
- The revenue authority will ensure an estimated amount of collection, which is blocked and at stake due to pending dispute.
- There will be notional loss to revenue by analysing this scheme on pretext of time value of money and success rate of the revenue department in tax dispute.

To Taxpayer Availing the Scheme

- [6]The declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration
- This scheme will have a great impact on liquidity, going concern and prospect planning of organisation.
- The declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration.
- No matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment.

Ambiguities and Challenges before the Scheme

Ambiguities Required Clarification and Challenges & Hardships

- Apparently, there is a contradiction in provision related to the relief and ineligibility to file declaration. The cases ***where amount payable in respect of a filed return in pre GST regime*** is specifically in the relief provision as well as in the category of debarred scenario to avail this scheme, which is practically sound against the intent of scheme and causing conflict[7]. *(See disqualification of person to file declaration discussed above).*
- A very critical aspect of the relief from interest, penalty and late fees in case of person granted with relief under this scheme, no specific discussion on this in the proposed scheme.
- The assessee will not be eligible for any sort of refund or ITC in respect of amount excess paid or remain unused after scheme such as redeposit etc., this is a factor of great consideration.
- Scheme pre-requisite in the pending cases is that these cases must have been heard on their final hearing prior to 30.06.2019, but there is no specific meaning in any act for the concept of the final hearing, it is arbitrary to establish whether final hearing has been done or not specifically for cases pending before Commissioner (Appeals).

Challenges & Hardships

- The scheme has been come up with a benchmark date of 30.06.2019, which may restrict the benefit to the assessee and adversely affect the taxpayer's decision to opt.
- There is critical requirement to formulate rules and regulation for each and every aspect to avoid further litigation, as it is happening in various other cases like Anti profiteering authority, where authority allegedly exercising excess delegation.
- This scheme apparently seems to be a dead end for declarant, as there is no mechanism apparently to withdraw the declaration, if amount payable estimated by the authority is not acceptable to the declarant.
- The scheme will NOT be available to assessee who receives adjudication order or appellate order after June 30, 2019 and where hearing may have been conducted earlier as it would be treated as 'finally heard' on the benchmark date.
- The quantum of relief for interest and penalty will play a critical role to encourage the taxpayer to adopt the scheme, if it remains unattractive on this prospect, then scheme may face a big blow.

Conclusion and Way Forward

The Central Board of the Indirect Taxes (CBIC) possess the experience of the VCES, 2013, wherein lot of challenges and post introduction litigation arises and some of those are exist as on date too. Therefore, it become significantly important to make the rules, provision and benefits clear and pro taxpayer, if the intent behind the scheme is to dispose of the legacy of dispute, otherwise it may be a double edged sword which will result in further dispute in comparison to the resolution. The suggestion from the various stakeholders of the industry and experts must be taken prior to formulation of the rules and authority, ambiguity on the practical difficulty may lend the efforts of whole system and scheme into the vein. Further the taxpayers who are planning to adopt the scheme, needs to evaluate the legal merits in the case and have to do a cost benefit analysis inlying time value of money and illicit cost of the mental peace.

Further if issue involve legal merits, it's better to fight a legal battle rather to go for this scheme, because the stake of the subsequent period will also be involved even after discharge certificate obtained in this scheme, as scheme does not provide immunity for the subsequent period.

Further state government should also take inspiration from the central government and also from various other states (like Maharashtra & Gujarat) who have introduced similar schemes, this will become a win-win situation for both taxpayer and government.

The legislature and CBIC needs to be on a pro taxpayer front to encourage them and to accomplish this scheme, further going by the trend of Indian lawmaking process and its implementation, the experience is not up to the mark, if things are going to be remain same, then certainly the exchequer should not expect much from this scheme. Let's see, which way the wind blows and hope for the positive participation of the both i.e. taxpayer and revenue authorities. ■

[6] The quantum of relief from interest and penalty is ambiguous in the proposal for scheme, however notes to clause on page 107 of Finance Bill discuss about relief from payment of interest and penalty

[7] Refer Section 124 123(1)(C)(iii) & 124 (1)(f)(ii) of the Financé Bill, 2019

Don't let what you can't do stop you from doing what you can do. *- John Wooden*

Vision of Growth and Enabling Policy Choices: Macroeconomic Perspective of Union Budget 2019

The Union Budget for the year 2019-20 coming after the interim budget conveys a vision of Government's policy choices to improve investment, boost prospects for growth, and adhere to fiscal prudency. The budget is committed to achieve the fiscal targets, which will enhance the credibility of the Government's policy and increase the investors' trust. The "Virtuous Cycle" of savings, investment, and exports, as enunciated in the economic Survey found its echo in the budget. The government made its priorities clear in the resource allocation without going for big spending after the announcements made in the interim budget. The budget laid out plans for infrastructure building, reforming financial sector, removing structural bottlenecks, and rationalising procedures to improve ease of doing business in the country. While the budget makes the intentions clear, implementation over the years will require consistency in policymaking, clear plans for financing, and political will to carry forward the grand vision. Read on...

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Introduction

The budget for the year 2019-20 coming after the interim budget conveyed a grand vision to take the country to greater heights. It provided glimpse of the Government's forthcoming economic policy that would address the challenges and act as a catalyst for growth. The Economic Survey, presented on the Budget eve said more about the ambitious agenda to make India a $5-trillion economy by 2024-25. The Survey elaborated on the "blue sky thinking", and "Virtuous Cycle" of savings, investment and exports catalysed and supported by a favorable demographic phase required for sustainable growth of 8 per cent. The budget emphasised on adopting fiscal prudence, private investment, facilitating foreign investment and rationalising procedures to shore up economic activities.

In India, the annual budget has become the place to provide comprehensive reform plans for the future. The three major features of public budgeting systems - establishing a sustainable fiscal position, setting priorities in spending consistent with Government policies, and providing efficient public services keeping quality and accessibility in consideration, become shrouded in the hopes, apprehensions, and the euphoria surrounding the reform plans. The growth prospects enunciated by the present Government in the economic survey and in the budget 2019-20 heightened the debate regarding policy choices rather than financial aspects performance orientation of the budget.

The Current Macroeconomic Situation

The economic survey (ES) and the macroeconomic statement accompanying the budget delineated the existing macroeconomic situation and prospects in the ensuing fiscal year. The international macroeconomic scenario continues to remain gloomy with fall in the world output growth from 3.8 per cent in 2017 to 3.6 percent in 2018. This is further projected to fall to 3.3 per cent in 2019 due to expected decline of growth of both in advanced economies and emerging economies. The Indian economy recorded growth rates of 8 and 8.2 percent in 2015-16 and 2016-17 respectively. This was moderated to 7.2 percent in 2017-18 and further declined to 6.8 in 2018-19. Despite this slide, the country's performance remained a bright spot given the difficult global situation.

The country's growth story based on the strength of domestic demand and state of other macroeconomic parameters like inflation, fiscal deficit, and current account balance remain crucial in the current situation. The decline in growth seems to have been due to lower growth in agriculture sector and some components like trade, hotel, transport, storage, communication in the services sector. Deceleration in private final consumption in 2018-19 had weakened the demand side. Low farm incomes in rural areas due to declining agricultural growth and low food prices, stressed NBFCs affecting lending are some of the proximate reasons for demand side problem. The growth of exports also declined in 2018-19.

The decline in inflation since 2010-11, which resulted in decline in headline CPI and WPI, was reversed in 2018-19 as the headline WPI inflation increased to 4.3 percent, as compared to 3.0 per cent in 2017-18. The current account deficit (CAD) increased from 1.9 per cent of GDP in 2017-18 to 2.6 per cent in April-December 2018 due to trade deficit caused by international crude oil prices. The problem of twin-balance sheet - that of commercial banks and corporate entities has not been fully resolved yet.

However, foreign investors continue to show confidence in Indian economy. Net Foreign Direct Investment (FDI) inflows has been growing since 2015-16 and it was improved by 14.2 per cent in 2018-19, which went mostly to equity inflows, services, automobiles, and chemicals.

The FRBM Act continues to be the significant feature in the public financial management. After many years of shifting the goalpost to achieve the 3 percent fiscal deficit target due to onerous fiscal challenges, the Government adopted a glide path for fiscal consolidation in 2018-19. This is based on a reducing debt and fiscal deficit path for three years. While fiscal deficit at 3% of GDP remained elusive, there has been a continuous decline. Total liabilities of the Central Government, as a ratio of GDP, have declined due to the fiscal consolidation process. The Central Government Debt as a percentage of GDP for RE 2018-19 is expected to be 48.4 per cent, which is projected to decline to 48.0 percent in 2019-20

The gross tax revenue, which showed a lower growth of 11.84 percent in 2017-18 due to several factors that include the teething problems of GST implementation, has shown an improvement in 2018-19 as it grew by 17.15 per cent. As percentage to GDP, it has increased from 11.23 per cent in 2017-18 to 11.83 per cent in 2018-19 RE.

Table 1: Fiscal Overview

Percent to GDP

Heads	2014-15	2015-16	2016-17	2017-18	2018-19 RE	2019-20 BE
Net Revenue Receipts	**8.83**	**8.68**	**8.95**	**8.40**	**9.10**	**9.20**
Gross Tax Revenues Receipts	**9.98**	**10.57**	**11.17**	**11.23**	**11.83**	**11.54**
Net Tax Revenues	**7.25**	**6.85**	**7.17**	**7.27**	**7.81**	**7.74**
Non-Tax Revenues	**1.59**	**1.82**	**1.78**	**1.13**	**1.29**	**1.47**
Capital Receipts	**3.89**	**4.33**	**3.97**	**4.11**	**3.61**	**3.62**

Heads	2014-15	2015-16	2016-17	2017-18	2018-19 RE	2019-20 BE
Non-Debt Receipts	0.41	0.46	0.43	0.68	0.49	0.56
Borrowings and Other Liabilities	4.10	3.96	3.49	3.46	3.34	3.30
Debt Receipts	3.47	3.87	3.54	3.43	3.12	3.06
Draw-Down of Cash balance	0.62	0.10	-0.06	0.02	0.22	0.24
Total Expenditure	**13.34**	**13.00**	**12.86**	**12.53**	**12.93**	**13.07**
Revenue Expenditure	**11.77**	**11.17**	**11.00**	**10.99**	**11.26**	**11.48**
Interest Payments	3.23	3.21	3.13	3.09	3.09	3.10
Grants for creation of capital assets	1.05	0.96	1.08	1.12	1.05	0.97
Capital Expenditure	**1.58**	**1.84**	**1.85**	**1.54**	**1.67**	**1.59**
Revenue Deficit	**2.93**	**2.49**	**2.06**	**2.59**	**2.16**	**2.27**
Effective Revenue Deficit	**1.88**	**1.53**	**0.98**	**1.48**	**1.11**	**1.30**
Fiscal Deficit	**4.10**	**3.87**	**3.49**	**3.46**	**3.34**	**3.30**
Primary Deficit	**0.87**	**0.66**	**0.36**	**0.36**	**0.25**	**0.20**

Source: Budget Documents, GoI

Revenue expenditure has improved marginally in 2018-19. The capital expenditure, which was showing an increasing trend as percentage to GDP, declined in 2017-18. However, the 2018-19 revised estimates show a rise in capital outlay. Overall, there has been consolidation of revenue expenditure and improvement in capital expenditure, which implies an improved quality of expenditure.

The sluggish demand due to weak global macroeconomic situation and low consumption has been accentuated due to decline in investment and savings. The investment (Gross Capital Formation) has been declining since 2010-11 and it was 30.9 per cent of GDP in 2016-17 as compared to 32.1 percent in the previous year. It showed some improvement in 2017-18 to 32.3 per cent due to improvement in fixed investment. The gross savings rate in the economy declined from 31.1 per cent of GDP in 2015-16 to 30.5 per cent in 2017-18. The private investment climate has not remained conducive to the future growth process.

Going ahead from here is fraught with many difficulties. It was a tough task for the Government to provide signals to revive the private investment while pursuing the fiscal consolidation. The need for focusing on infrastructure, rural sector, particularly agriculture and irrigation and restoring the health of the banking system was paramount. Given the state of private investment, it was imperative to think about innovative financing schemes and revival of PPPs for infrastructural growth. The revival of private investment was also necessary to address the employment problem. The health of banking sector is a matter of concern due to increasing non-performing assets and there is a need to look at this crucial sector.

The ES was optimistic about high growth in the year 2019-20 at the projected rate of 7 per cent, which would signal the recovery after dismal performance in the previous year. The stable macro-economic conditions based on reforms undertaken, expectation of revival of investment, accommodative monetary policy, and political support would facilitate achievement of higher growth. The ES, however, has pointed out that performance of consumption, improvement in rural wages growth, which was declining, pick up in food prices, and decline in oil prices in 2019-20 will be crucial in the recovery of growth. The risk in the revival of farm sector and rural consumption, however, persists and the performance of monsoon will be important in this regard.

The budget is not all about taking policy decisions regarding investment and growth. An annual budget could be one-step in this direction. Providing for the ongoing schemes, priority sector

> The budget chose to stick to the fiscal consolidation process and reduced the fiscal deficit from 3.4 per cent of GDP, as announced in the interim budget to 3.3 per cent. The reduction is a powerful signal to contain the government borrowing and to the RBI to moderate interest rate to revive the private investment.

spending, getting better results from use of public resources and control over unproductive spending are important issues in the budget management process. The policy objectives need to be aligned with the requirement of the financial resources and the way to raise them.

Budget Proposals for 2019-20

Fiscal Consolidation

The budget chose to stick to the fiscal consolidation process and reduced the fiscal deficit from 3.4 percent of GDP, as announced in the interim budget to 3.3 percent. The fiscal deficit reflects the fresh borrowing in a year. A high fiscal deficit has the potential to distort investment climate and raise interest rate. The reduction is a powerful signal to contain the government borrowing and to the RBI to moderate interest rate to revive the private investment. The outstanding liabilities were set to reduce in 2019-20, though marginally. At the same time, the budget announced that a part the gross borrowing would be raised in external markets. While this has risk factors like exposing Indian economy to the disturbances of the global economy, it makes the Government fiscally responsible because of greater scrutiny by global investors.

The fiscal strategy to support the consolidation process in 2019-20 seemingly does not look very favourable. The total net revenue available to the union government increases marginally relative to the GDP (Table 1). The gross tax revenue GDP ratio declines in the budget year, with a growth rate of 9.5 percent as against 17.15 percent in the previous year. The budget projects the direct taxes to be 6.3 per cent of GDP at the end of 2019-20 and indirect taxes at 5.3 percent of GDP in 2019-20. Large part of the increase in collections is expected from proposed tax rise on petrol and diesel and higher customs duties.

The fiscal strategy relied heavily on non-debt capital receipts to the extent of ₹1,19,828 crore, which includes projected disinvestment proceeds of ₹1,05,000 crore. Dividends from the RBI and other public financial institutions are other important sources for the budget. Failure to achieve these targets will result in adjustments in the spending pattern during the year. These sources of revenue may not be sustainable over the years and will affect medium term fiscal roadmap. The Government also relies heavily on revenue collected through cesses and surcharges to meet its expenditure obligations. Total net borrowings in 2019-20 are projected at ₹ 7,03,760 crore, which shows an increase of 10.9 per cent over RE.

On the expenditure side, the Budget has adopted restraint. The budget refrained from announcing major expenditure items. Instead, the policy choices were made to improve the business environment. Lack of higher growth in revenue was balanced by lower growth in spending. The growth of aggregate expenditure at 13.39 per cent in 2019-20 was lower than the growth rate of 14.72 achieved in the previous year. It was the revenue expenditure, which showed a higher spending as the growth of capital expenditure declined in the budget year. The increase in revenue expenditure is mainly because of support to the agricultural sector.

Some Confusion on Growth Numbers

There has been some discrepancy in growth numbers used in the budget arithmetic. The budget documents give a nominal GDP growth rate of 12 per cent. Assuming 3.5 to 4 per cent inflation for the current year, the real GDP growth works out to be 8 to 8.5 per cent for 2019-20. This could have been a welcome change from the loss of momentum on growth front last year. However, the Macroeconomic Framework Statement accompanying the budget puts the nominal growth of GDP at 11 per cent, which brings down the GDP growth to more realistic figure of 7 to 7.5 per cent.

Investment Push

The budget announced several measures to attract foreign capital as the domestic financial savings have been declining. The budget proposed increasing FDI limits in insurance, aviation and the media. The Government removed the Foreign Portfolio Investment (FPI) limits of 24% to Foreign Direct Investment (FDI) sectoral cap. It eased the domestic sourcing requirements for single-brand retail and foreign portfolio flows (FPIs) will now be allowed to invest in real estate investment trusts (REITs) and infrastructure investment trusts (INVITs), and, KYC norms for FPIs are to be rationalised. The budget allowed increase in the cap for small companies to ₹ 400 crore to qualify for a 25% corporate tax. This is expected to help companies to consolidate and grow bigger.

> The budget announced several measures to attract foreign capital as the domestic financial savings have been declining. The budget proposed increasing FDI limits in insurance, aviation and the media.

Building Infrastructure

While emphasising on infrastructure building, the budget made commitment of spending ₹ 100-trillion over the next five years. The proposals include power sector's One Nation, One Grid in highways, waterways, and gas distribution sectors. The budget promised to make available a blueprint this year for developing gas grids, water grids, i-ways (information ways), and regional airports. There is a proposal to carry out a comprehensive restructuring of the national highways program

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to ensure that the national highway grid of desirable length and capacity is created using a financeable model. The budget also talked about National Investment and Infrastructure Fund (NIIF) to augment the available capital for the sector. The Government also will augment the ongoing Bharatmala programme and improve the metro rail reach in several cities.

> The financial sector has been hit due to non-performing assets and liquidity crunch. This area deserved the immediate attention. The budget announced infusion of ₹ 70,000 crore capital in banks, which is expected to spur lending to growth sectors.

Financial Sector Reforms

The financial sector has been hit due to non-performing assets and liquidity crunch. This area deserved the immediate attention. The budget announced infusion of ₹ 70,000 crore capital in banks, which is expected to spur lending to growth sectors. The budget addressed the problems like liquidity, solvency, and poor governance in the NBFC sector that have resulted in credit freeze. The budget made available a liquidity window of ₹ 1 lakh crore to public sector banks through the Reserve Bank of India to buy pooled assets of NBFCs and offered a one-time credit guarantee for first loss of up to 10%. The housing finance companies will come under the RBI's regulatory ambit to remove the distortions. The proposal to set up a committee to study the issue relating to development finance institutions is a welcome move.

Crosscutting Announcements on Reforms in Budget

As noted in an earlier section, the budget made several policy announcements to facilitate investment and growth. Some of these measures are expected to remove structural bottlenecks and facilitate business activities.

- The Government gave commitment to strategic disinvestment and showed willingness to allow its stake to fall below 51% in non-financial PSUs.
- The angel tax issue for the start-ups seems to have been addressed.
- The budget indicated that there could be a single identity card for citizens in the form of Aadhaar. This can be interchangeably used with the PAN card.

- The budget announced faceless e-assessment of tax returns, which will remove the rent-seeking activities.
- The budget announced that the Direct Taxes Code is being examined by a committee, the recommendations of which might be considered.
- The tax concession for affordable housing may create demand, especially in the smaller metros.
- The government nudged to increase digitalisation of money and promoting electric mobility. On the first, there will now be a 2% tax deducted at source when withdrawals from bank accounts exceed ₹1 crore in a year.
- The Government nudged for use of electric vehicles with a facility of tax deduction of up to ₹1.5 lakh on the interest paid.
- The budget contained higher tax provision on super rich, having income above ₹3 crore. Given the scale of tax evasion, it will be interesting to see as to how this measure is earning revenue for the Government.

Concluding Remarks

The budget for the year 2019-20 presented on 5th July 2019 should be read along with the interim budget earlier this year, and the existing global macroeconomic situation. While Government announced several packages and welfare programs like transfers to the farmers in the interim budget, this budget refrained from expanding the government spending. It tried to give a reformist message to enthuse investment and growth. However, many of these policy announcements are intentions that need commitment and political will to implement.

> While the bank recapitalisation was received positively, it should be accompanied with required bank reforms for better results. While the announcement regarding foreign capital on the external front is well intentioned, in the long run, domestic saving should be encouraged.

The fiscal consolidation and push for private investment to serve as a springboard for growth is the theme of this budget. Assessing a single year budget for all the policy announcements and their feasibility may not be possible as some of the budget agenda have been ambitious. The fiscal prudence shown in the budget 2019-20, despite the issues related to the fiscal mathematics, will continue. If the realised resource envelope falls short of the projected revenue, some of the expenditure items will become residuary in the system. The resource targets like disinvestment are difficult to achieve given the past record.

While the bank recapitalisation was received positively, it should be accompanied with required bank reforms for better results. While the announcement regarding foreign capital on the external front is well intentioned, in the long run, domestic saving should be encouraged. More clarity on the ambitious infrastructure-spending plan of ₹100 lakh crore over the next five years is required in terms of its financing plan.

Indeed the fiscal prudence will increase the credibility of the Government's policy and improve the investors' trust. Reviving private investment in the economy, however, will, depend upon many other factors including monetary policy management and capacity of the financial market. The government made its priorities clear in the resource allocation without going for big spending after the announcements made in the interim budget. Generally budgets involve resource trade-offs due to competing demands and limited availability of resources. Given the revenue projection based on the assumptions regarding the GDP growth and the borrowing program limited by the fiscal deficit, the resource allocation in the budget is only incremental. ■

Life is not a problem to be solved, but a reality to be experienced. - Soren Kierkegaard

Tax return filing considerations for NBFCs – 1st Year of Ind-AS adoption

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Last fiscal year (viz. FY 2018-2019) assumes significance for non-banking finance company (NBFC) from an accounting and tax perspective as it was first year of new Indian Accounting Standards (Ind-AS) adoption. The Ind-AS transition is expected to have significant impact on profitability, asset provisioning, taxation and various other aspects. The NBFCs now gear up to file its maiden income tax return under new Ind-AS regime. The article summarises some important tax aspects which can be considered by NBFC as part of tax return filing activities under new Ind-AS regime. Read on to know more…

The month of April and May was a busy season of year-end results for India Inc. and non-banking financial companies (NBFC) world was in limelight during last fiscal (i.e.; FY 2018-19). However, the year was equally very important for NBFC world from an accounting stand-point as it was the first year of adoption of new Indian Accounting Standard (Ind-AS). Ind AS comprises of accounting standards, that are largely converged with International Financial Reporting Standards (IFRS) which have been notified by the by the Ministry of Corporate Affairs (MCA) based on recommendations of the ICAI under section 133 of the Companies Act, 2013. It is given that any transition brings about new challenges and Ind-AS was a significant transition for NBFC sector having a direct impact on profitability, asset quality, taxation and various other aspects. Let me first congratulate the Senior Management, CFOs, overall finance and other support function of NBFCs for smooth adoption of challenging Ind-AS regime. Efforts of MCA and the Institute of Chartered Accountants of India (ICAI) also to be lauded for constant guidance on the evolving and complex subject.

Tax considerations are very critical aspect of Ind-AS transition and filing of tax return of 1st Ind-AS financial statement needs special attention. The tax filings are due in September/November depending upon applicability of transfer pricing regulations. The article covers certain aspects which should be carefully analysed and considered by the corporates as part of tax return filing preparation:

1. **Golden rule of "documentation"**: Tax system in India pre-dominantly relies on "substance over form" concept and proper documentation holds the key for establishing essence of a

> The efficient approach will be to gather documents and supporting data on "as and when basis" rather at the time of filing tax returns. This will lay a strong foundation to determine tax position in tax returns.

transaction. The golden rule equally applies for Ind-AS transition. Ind-AS transition will result in Generally Accepted Accounting Principles (GAAP) differences between Ind-AS and erstwhile Indian GAAP (IGAAP) regime and one should maintain adequate supporting of various GAAP differences on the adoption date ie 1st April, 2018. The supporting may comprise existing accounting treatment under IGAAP, accounting treatment under Ind-AS with reference to relevant literature on specific accounting standard, working papers of GAAP differences, reconciliation etc. In a way, the Ind-AS transition also entails maintaining separate books of accounts for tax purpose which in a way is expected to pose challenges considering voluminous data and reconciliations. The efficient approach will be to gather documents and supporting data on "as and when basis" rather at the time of filing tax returns. This will lay a strong foundation to determine tax position in tax returns. Simplicity helps and it is therefore suggested that simple illustration with hypothetical numbers are maintained for impact of transition and ease of understanding. This will also help in explaining complex subject with ease.

2. **Double-dip deduction or doubly taxed income:** It is a fundamental and basic principles of taxation that an expense cannot be claimed twice as deduction nor an income be taxed twice across financial years. Such principle should equally apply to Ind-AS transitions unless a contrary principle is specified by income tax provisions. Ind-AS transition may result in certain items viz. amortisation of fees expenses over period of year which were expensed upfront in IGAAP regime. Corporates need to review each of such adjustment and provide appropriate tax treatment in return of income. It is also suggested that necessary working papers are maintained to establish that such items are offered to tax or claimed as expense in tax return of prior years (i.e.; pre Ind-AS regime).

3. **Income tax laws is the boss**: The computation of income is prepared in accordance with the provisions of the Income Tax Act, 1961 read with various notifications and circular issued from time to time. It goes without saying that the income tax provisions will prevail over Ind-AS as far as filing of tax return is concerned. The tax accounting standard viz. Income Computation and Disclosure Standard (ICDS) notified by the CBDT should be carefully reviewed by the corporates for evaluating implications on Ind-AS financial statements. While the principle of "*res-judicata*" strictly may not apply to income tax, it is observed that a consistent tax positions on a particular item over a period of years strengthen a tax claim. Accordingly, tax position considered for tax return in erstwhile IGAAP regime should broadly be similar in Ind-AS regime. However, the tax position also depends upon facts and circumstances of individual case, prevailing tax laws, tax litigations and its resolutions, etc. and may vary from case to case.

4. **Common Ind-AS adjustments for NBFC:**

Based on perusal of year-end (YE) results for YE March 2019 for listed NBFC, it would be good to deliberate some common Ind-AS adjustments for NBFC, erstwhile IGAAP treatment and the emerging tax position.

- ***Loans and advances – Expected credit loss (ECL) vis-à-vis provisioning as per prudential RBI norms***

Ind-AS 109 requires NBFC to compute ECL on financial asset (viz. loans, investments) at the time of origination and at every reporting date. It works on a forward-looking framework as compared to current rule-based provisioning norms prescribed by the RBI. The impairment criterion under ECL norms depends on the classification of the Loans into Stage 1, Stage 2 or Stage 3 and such norms are likely to result in increased loan loss provisions. Under IGAAP regime, provisions were not allowed as a deduction from a tax perspective and as a consequent, reversal of provisions, if any in future years was excluded from profits. Bad debts write-off was claimed as a deduction under section 36(1)(vii) of the Income-tax Act, 1961 ('the Act'). Pursuant to Finance

Act, 2016, NBFC are also eligible to claim a deduction in respect of provision for bad and doubtful debts not exceeding 5% of total income under section 36(1)(viia) of the Act. The tax implications under erstwhile IGAAP regime in respect of NPA provisions are expected to be followed under Ind-AS regime for ECL provisions. Stage 3 loans can be considered equivalent to Non-performing advances depending on facts and circumstances and hence, it can be possibly inferred that NBFC shall be eligible for special deduction under section 36(1)(viia) of the Act in respect of Stage 3 ECL provisions.

- ***Investment valuation – fair valuation approach vis-à-vis Negative MTM approach***

  Under the erstwhile IGAAP principle read with prudential RBI norms, investments are broadly valued at Cost less permanent diminution for long-term investment and lower of cost or market value for short-term investments. In effect, IGAAP prescribes recognition of only negative MTM on investment and appreciation (i.e.; positive MTMs), if any, is to be ignored for accounting purposes. In case of investments classified as subsequently measured at fair value through profit or loss, no such restriction is placed by Ind-AS 109 for valuation of investments and therefore, both positive and negative MTMs needs to be recognised in the statement of profit and loss.

  From an income-tax perspective, any gains/ loss resulting from sale of investment held by NBFC will get characterised as business loss or capital loss depending upon the facts whether such investments are held as business asset or as capital asset. It is a contentious issue and is solely dependent upon the facts of each case. CBDT old instructions (Instruction no. 1827 dated August 31, 1989) read with Circular 4/2007 dated June 15, 2007 in respect of certain tests to distinguish between shares held as stock-in-trade and shares held as investment can be useful reference.

  Para 4 of ICDS 1 (Accounting policies) provides that mark to market loss or an expected loss shall not be recognised unless the loss is in accordance with the provisions of any other ICDS. As per ICDS 8 (Securities), MTM loss on investments held by NBFC are not allowed for tax deduction as ICDS 8 (Securities) Part B permits deduction of MTMs recognised as per extant RBI guidelines only for banks and public financial institutions.

  On positive MTMs, response to Q8 of CBDT Circular No 10/2017 dated 23rd March 2017 provides that same principle as contained in ICDS-1 relating to MTM losses or an expected loss shall apply *mutatis mutandis* to MTMS gains or an expected profit.

- ***Amortisation of fees expenses and income on financial instruments viz. loans classified as subsequently measured at Amortised Cost or Fair Value through Other Comprehensive Income***

  Ind-AS requires that fee expenses and income in respect of financial liability (viz. borrowings) *loans classified as subsequently measured at Amortised Cost* or financial asset (loans) *classified as subsequently measured at Amortised Cost or Fair Value through Other Comprehensive Income to be* recognised based on the effective interest rate method over relevant period of such asset or liability. A classic example in case of NBFC is issue expenses for non-convertible debentures (NCD). As per the Companies Act, 2013, issue expenses incurred on issue of shares/debentures were charged-off against securities premium on an upfront basis. Such expenses were also claimed on an upfront basis in the tax returns under IGAAP. Claim of issue expenses on upfront basis is a contentious issue and the Supreme Court (SC) ruling in case of *Taparia Tools Limited (TS-134-SC-2015)* is helpful. The SC held that the taxpayer was entitled to full deduction of upfront interest in the year of payment and deduction should not be spread over the term of debentures in the absence of concept of deferred revenue expenditure.

  As the Ind-AS regime provides recognition of such expenses over the period of loan, taxpayer needs to decide the tax position on such issue expenses. It is suggested

The SC held that the taxpayer was entitled to full deduction of upfront interest in the year of payment and deduction should not be spread over the term of debentures in the absence of concept of deferred revenue expenditure.

that consistent position of claiming issue expenses on an upfront basis under IGAAP regime may continue under Ind-AS regime as there is no change in fact pattern of the particular loan product and its business use. Such position would depend on facts and circumstances of each case. Corporates are also advised to appropriately disclose such tax position in notes to return of income.

- ***Interest income accrual on Stage 3 Loans; taxability of real income***

  Ind-AS 109 provides that interest income on Stage 3 Loans shall be recognised on Amortised Cost balance i.e. Gross amount of loans less existing ECL provisions. Under prudential RBI guidelines, interest income on non-performing advances, are not recognised as *income.* The issue of taxability of real income especially for NBFC world in the context of Interest on Non-performing advances (NPA) is a vexed issue and time and again tested in litigation across courts. The Bombay High Court (HC) in recent case of *Bajaj Finance Limited (ITA 237 of 2017 with ITA 485 of 2017)* have held that interest income on non-performing advances should be taxed on receipt basis even though special provisions of Section 43D does not apply to NBFC. The Bombay HC also relies upon the Delhi HC ruling in the case of *CIT vs. Vasisth Chay Vyapar Limited* which held that interest income on NPA cannot be taxed on accrual basis. The Delhi HC decision was also approved by the Supreme Court in the judgement reported in (2018) 253 Taxman 401(SC).

  This issue is debatable and possibility of litigation cannot be ruled out. A suitable amendment in Section 43D that interest income recognised on Stage 3 Loans by NBFC shall be taxable on receipt basis will provide much needed clarity for NBFC industry as a whole.

5. **Review of Tax audit (Form 3CD) and ITR 6 clauses with respect to Ind-AS**: A timely preparation always helps and it is advisable that all the clauses of tax audit report and return of income with respect to Ind-AS are reviewed and data indent be initiated for such items. An early kick-off discussion with auditor on such requirement will also help and smoothen the audit process. However, the presentation of such items in tax audit and return of income and its impact in tax computation is a careful consideration which should be kept in mind. Experience suggests that practical issues arise only once such format are filled/updated, and hence, timely preparation will help to tackle with such practical issues. Such preparation will also provide a timely visibility on assessment of income tax liability and its pay-out, if any.

6. **Minimum alternative tax**: Central Board of Tax (CBDT) have issued necessary guidance and FAQ (Amendment in Section 115JB vide Finance Act, 2017 and CBDT Circular 24/2017 dated July 25, 2017) in respect of computation of MAT for 1st year of Ind-AS adoption. It is extremely important that corporates should start feed in relevant Section of Form 29B with respect to transition amount (viz. Serial 21 to 33). This will facilitate corporates to review whether MAT liability will trigger due to such transition adjustment. It is also suggested that the rationale for each Ind-AS adjustment and its treatment in MAT computation be documented in accordance with CBDT guidance. This will support the position adopted by corporates during tax assessment process.

> It is also suggested that the rationale for each Ind-AS adjustment and its treatment in MAT computation be documented in accordance with CBDT guidance.

7. **Tax disclosures**: Transparency is a best policy and hence, notes to return of income are furnished by corporates along with return of income. Such notes include various tax consideration/positions in the tax return as appropriate. The corporates may consider to disclose tax positions of Ind-AS adjustments in notes to return of income. This will facilitate such claim as bona-fide and help to defend such claim during assessment proceedings.

To summarise, Ind-AS is an evolving subject and tax consideration are equally evolving especially in absence of precedence. I hope the article will help NBFC sector in tax filing of 1st Ind-AS financial statement. ■

Life is really simple, but we insist on making it complicated. *- Confucius*

Artificial Intelligence (AI) and its Impact on Accounting and Audit Profession: An Overview

Artificial Intelligence (AI) is revolutionising the accounting and auditing profession with its disruptive technologies including natural speech recognition, image recognition, language processing, data mining, machine learning, deep learning, neural networks, sentiment analysis, and predictive analytics. Robotic process automation (RPA) is transforming audit profession with enhanced capabilities to perform as futuristic visionaries with deeper insight, foresight, effective risk management and assurance services to help the entities to realise the organisational objectives. Many traditional bookkeeping tasks such as Accounts payable and receivable, initiating payments and matching purchase orders, data entry and data categorisation, data analysis, payroll, auditing and tax remittance are now being performed by AI globally. Currently AI is automating book keeping, reconciliations and many other related financial reporting functions. Read on…

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What is Artificial Intelligence (AI)?

Before discussing how Artificial Intelligence (AI) impacts accounting and audit profession, let us understand what is meant by AI. AI is different from normal intelligence of a living being. It is the intelligence artificially imparted to a computer or a robot by programmers by wiring computer programmes using algorithms. Techopedia defines AI as "a branch of computer science that aims to create intelligent machines".

Machine Learning, Deep Learning, neural networks, Big Data, Cognitive Computing Application enabled to make thinking machines. There are various types of AI available now: Type 1 AI computer is like IBM chess program Deep Blue which beat Chess champion Garry Kasparov in the 1990s by learning the rules of chess game and understanding the possible moves, using permutations and combinations and making predictions and excel in taking right decisions. Type 1 AI does not use past experiences to correct and excel future actions. Type 2 AI uses limited memory with past experiences to inform future decisions as in the case of self-driving cars. Type 3 AI machines are able to use theory of mind. It will understand others' beliefs, desires, and intentions and analyse responses that can impact the decisions. Type 4 AI is the most advance type of robots which has self-awareness and a sense of self-consciousness built into it. These machines will be programmed to understand the current state of what is happening around, infer what others are feeling and take the best decisions and actions. Type 3 and Type 4 robots are in the research stage and yet to be perfected.

AI Applications in Accounting and Auditing

AI tools enhance quality of products and services, including accounts and audit profession. AI can be used for handling volumes of structured and unstructured data, analyse big data mines of transactions and create meaningful images, patterns and point out where unusual patterns emerge highlighting suspicious transactions.

Currently robotic process automation is being applied to highly repetitive tasks. Machine learning algorithms are being integrated into data analytics and CRM platforms to offer better customer relations management. AI finance applications are widely used. For example, IBM Watson is able to perform all tasks relating to buying a home or intelligent trading decisions on Wall Street. AI can be used in law and taxation. AI tools can be used in mastering intricacies of legal issues or taxation rules and help the professionals in taking right decisions intelligently and expeditiously. From personal digital assistants like Siri in IPhones, Alexa from Amazon, and Google Assistant to report writing AI robots, CAPTCHA Stored Program Concept to Machine Learning, computers do wonderful things, like accounting and ERP processes. Big data containing structured and unstructured all types of data from audio, video, internet and social media is mined to extract patterns and trends making meaningful financial analysis of transactions.

AI Accounting and Audit Solutions

AI is transforming all sectors of the economy including finance, accounts, audit, communications, energy, healthcare, mobility or manufacturing handling volumes of big data mines, image processing and creating a new paradigm for accountants and auditors. All data including video, audio, and textual information forming Big Data can be analysed by AI for improving managerial accounting, financial accounting, and financial reporting and audit practices. In financial reporting, Big Data can provide useful information in real-time.

Currently AI is automating book keeping, reconciliations and many other related financial reporting functions. Quality of audit outcome improves by AI applications like big data analytics and image recognition to analyse the entire transactions instead of limiting to samples. Auditors can harness the power of data mining and AI to detect high-profile frauds, noncompliance and misuse of resources. Automation takes away the time, energy and pain of spending time on repetitive tasks and help auditors to focus on areas where professional judgement is needed. The Mindbridge AI Auditor is an analytics tool used to uncover material irregularities in data. AI analyses entire populace of transactions applying a hybrid of artificial intelligence, Machine Learning, statistical models and rule-based tests offering higher level of audit assurance. Web robots or bots perform simple and repetitive tasks at breakneck speed enabling continuous audit by learning, systematising and picking out the abnormal patterns. Good Bots gather useful information and Bad Bots can be used for malicious attacks.

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AI enhances audit quality by automating the processes and transforming all the steps and processes in audit. Auditors can find time to focus on higher value added services, areas, and provide deeper insights and deliver value beyond compliance. Many organisations are using AI solutions like Ethics and Compliance Software such as CONVERCENT, PREDICT360, iSight Case Management Software, Navex Global GRC (Governance, Risk, Compliance) software.

Blockchain is a disruptive innovation which is going to be the next step in accounting as it can be used to write distributed ledger that can be cryptographically sealed, and falsification, or concealment is impossible.

AI Applications for Internal Audit

The Chartered Accountants who practise internal audit may ask: What is the impact of AI on internal audit? AI will revolutionise the audit profession with its disruptive technologies including natural speech recognition, image recognition, language processing, data mining, machine learning, deep learning, neural networks, sentiment analysis, and predictive analytics. Robotic process automation (RPA) is transforming audit profession disruptively with enhanced capabilities to perform as futuristic visionaries with deeper insight, foresight, effective risk management and assurance services to help the entities to realise the organisational objectives. Many traditional bookkeeping tasks such as Accounts payable and receivable AI, initiating payments and matching purchase orders, data entry and data categorisation, data analysis, payroll, auditing and tax remittance are now being performed by AI globally.

AI empowers auditors in analysis of a full population of data instead of going for sampling to identify outliers or exceptions. A machine learning model is used to automatically code accounting entries. AI helps in contract review by analysing a larger number of contracts, such as leases within the shortest time span and accurately extracts information from lease contracts based on pre-defined criteria with a highest level of precision. AI makes auditors work smarter with more time for risk assessment, risk based strategic internal audit planning and less time on data extraction, data analytics and analysis helping to optimise time, money and resources. AI equips auditors to ask right questions, interact effectively with CFOs, audit committees and company boards, adding more value for money insights and advice. AI enables to do quality audits. AI can enhance complex decision-making processes, which is why it is a catalyst for transformation in every industry. It allows onerous and time-consuming tasks to be completed more efficiently and effectively, and can give management teams a depth of insight that was never available before.

AI can enhance complex decision-making processes, which is why it is a catalyst for transformation in every industry. It allows onerous and time-consuming tasks to be completed more efficiently and effectively, and can give management teams a depth of insight that was never available before.

Machine learning – a form of AI where computer algorithms improve over time through their experience of using data – plays an increasingly prominent role in enterprise risk management.

How can ERM Framework help IA?

Enterprise Risk Management (ERM) is complementary and supplementary to COSO IA frame work. ERM integrates with the entity's strategy and performance. COSO designed ERM in 2004 and upgraded in 2017 to provide thought leadership on internal control, enterprise risk management, and fraud deterrence. ERM helps to improve organisational performance, oversight functions to reduce fraud. COSO is a private sector initiative, jointly sponsored and funded by American Accounting Association, American Institute of Certified Public Accountants, Financial Executives International, Institute of Management Accountants, and The Institute of Internal Auditors. ERM focuses on risk in both the strategy-setting process and in driving performance and provides greater insight into the value of enterprise risk management.

The framework helps in defining and addressing risk oversight responsibilities, governance, strategy and objective-setting, performance, flow of information, communication, reporting, review and revision of practices to enhance entity performance. Alignment of strategy and business objectives with the entity's stated mission, vision, and core values is ensured. Significant business decisions including mergers, acquisitions, capital allocations, funding, and dividend-related decisions, management incentives and remuneration, investor and stakeholder relations and the ability to anticipate and respond to change are important activities to be effectively managed by an enterprise. ERM helps entities to protect and enhance stakeholder value with the underlying philosophy: "value is maximized when management sets strategy and objectives to strike an optimal balance between growth and return goals and related risks, and efficiently and effectively deploys resources in pursuit of the entity's objectives."

ERM caters to all organisations of different operations, size, type, or sector in a business environment with unprecedented volatility, complexity, uncertainty and ambiguity. It helps in informed agile decision-making, prompt response and building trust among stakeholders. ERM is designed to dealing with big data tsunami form internal and external sources in the digital audit landscape. The data will be structured and advanced analytics and data visualization tools will enable auditors in understanding risk and its impact.

ERM can leverage AI, AMS and automation and future technologies. Analysis of trends and patterns are critical to managing risk. Risk management, compliance processes, and control activities and governance can be efficaciously coordinated and managed to provide maximum benefit to the organisation.

How CAATs, AMS and AI tools Facilitate Audit?

As companies' digitisation generates more and more data, audit professions face more challenges. Big data analysis helps auditors to deliver high-quality audits and put greater emphasis on risk identification and business insight. The technology platform can connect large audit teams working in different locations to one another with centralisation, standardisation and automation. Big Data analytics becomes integral to the audit. AI enables auditors to derive value through innovation and performing audits through web enabled cloud based data-driven robust information communication technology systems and networks. Auditors can provide with more qualitative advisory with greater confidence. Company management, operational and finance teams can derive form audit more effective value addition, risk management with deeper insights and new perspectives. AI transforms digital audit landscape and affects audit profession with innovative methodology, techniques enabled by robust AI solutions to mitigate risks to help the organisations to achieve its objectives. AI can help to deliver high-quality audits, allowing auditors to focus more on risk identification and business insights. This transformation in audit profession will lead to greater connectivity, transparency, risk management, enhanced assurance services to the business houses. AI helps auditors to optimize their time with better judgement and deeper insights and foresights.

How can AI transform audit landscape and professional practices? AI platforms and cloud based Audit Management Systems (AMS) have essential audit modules to cover the entire audit life cycle enabled with robust CAATs and ICT software solutions. AI enabled auditing platform is powerful to analyse 100% transactions without sampling. Auditors are empowered to provide with greater assurance than ever before, minimising cost, time, resources and efforts.

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AI enabled AMS integrates CAATs for different audit cycle related work like audit universe mapping, preparation of strategic and annual risk based audit planning, validating internal controls, compliance deviancies to prevent fraud. Unlike standalone CAATs examining accounting entries in isolation, AI enabled software solution is capable to red-flag unusual transactions overviewing the entire accounts. AI supported auditor platform can provide deeper insights with transparency. It is intuitive to investigate anomalous transactions seamlessly, equips auditors to perform effectively the entire audit cycle related processes from planning to audit reporting. AI tools help auditors to undertake enhanced risk management by fixing control weaknesses to achieve the organisation's objectives.

AI Enabled Audit Life Cycle

AI enhances business operations. AI will be applied by cyber criminals as well. Machine learning will increase the hackers' efficiency in detecting networks' vulnerabilities by automated attacks and using new malware and phishing attacks. AI threats can only be effectively resisted by AI defence system. As part of IA functions, internal auditors have to audit of AI applications in the organisation besides conducting Internal Audit enabled by AI Platforms. AI may help in the entire audit cycle and processes:

- Conducting RBIA cycle form mapping audit the universe with risk score based on predefined risks assessment methodology and preparation of strategic and annual audit planning;
- Audit execution, scheduling, communication;
- Documentation, creation of working papers, linking records, uploading data for audit evidence;

- Audit processes and work flow activities like issue of audit observations, receiving responses from the entity for further scrutiny and taking an audit opinion on the issue;
- Drafting, finalising and issue of audit reports;
- Records management including creation, retrieval and monitoring the status and progress of action taking on outstanding audit observations and recommendations by the entity;
- Identifying exceptional transactions and control deficiencies by continuous monitoring of red-flags alerted by AI systems.

Algorithmic Bias and AI Tool Risk Mitigation

AI tools provide the following key capabilities:

- Automatic identification of risks, controls, and governance issues within all audit universe documentation.
- Map out a knowledge graph of entity relationships to accompany the risk summary.
- Map and relate risks and controls to documents within the audit universe
- Segment off the risk statements having high similarity, in an effort to identify areas of possible audit efficiencies, and;
- Reveal at a roll-up of the risks by program, revealing where there are no audit documents or risk statements within the audit universe, indicating a program that has been ignored by the audit function.

Like any other technological solutions, there are risks involved in use of AI. While using AI solutions in accounting and auditing, CAs must be aware of the inherent risks and bias that can be there in a specific AI tools. These risks are entered into the computer programme while the programmers write the logarithms. In fact the programmers' bias, knowledge deficiency or inaccuracy of understanding a specific transaction may lead to inherent algorithmic bias.

While AI is still developing, it can already be used to mitigate risk in some key areas. For example, machine learning can support more informed predictions about the likelihood of an individual or organisation defaulting on a loan or a payment, and it can be used to build variable revenue forecasting models. For many years, machine learning has successfully detected credit card fraud.

Auditors Be Aware of Risks Related to AI Adoption

Though AI empowers auditors with unprecedented capabilities it is also a source of significant new risks. Audit of AI becomes a necessity to identify the specific AI application related risks to each business unit that uses it and manage them. Risks of AI include:

- AI does what it is programmed. There can be algorithmic inaccuracies and bias. Machine-learning algorithms written to identify patterns in big data analysis and codifying them in predictions, rules and decisions may reflect existing bias in the algorithms.
- Never underestimate the role of auditor and overestimate AI capabilities: AI systems are software tools to be used by auditors and cannot take audit thought leadership from the auditor. AI is programmed to understand the tasks based on data given to train machine learning. AI is therefore not infallible and audit outcomes can be jeopardised if the input data is biased, unreliable, irrelevant and incomplete.

AI systems are software tools to be used by auditors and cannot take audit thought leadership from the auditor. AI is programmed to understand the tasks based on data given to train machine learning. AI is therefore not infallible and audit outcomes can be jeopardised if the input data is biased, unreliable, irrelevant and incomplete.

- Errors in programmes: When machine learns form inadequate training data, it gains less experience and makes mistakes. Similarly programmatic errors in algorithms may mislead auditors with serious consequences.

- Cyber security risks: Hackers and crackers may go for phishing attacks round the clock targeting digital business data sets and exploit sensitive data. The dangers of email phishing by temping to click on suspicious-looking links, hackers are upping the ante. Hacker are clever in using machine learning and quickly craft and distribute convincing fake messages while stealing user logins, business secrets, financial and technical information. They can access to private databases. Ransomware attacks are costing the business victims billions of dollars every year, while hackers celebrate victory deploying technologies to hijack organisation's databases and hold for ransom. Cryptocurrencies like Bitcoin fuel ransomware attacks by allowing ransom demands paid anonymously. Cryptojacking involves cyber criminals hijacking third-party home or work computers to "mine" for cryptocurrency and make money by secretly piggybacking on someone else's systems. Cyber-attacks can target the critical information communication technology systems, critical infrastructure like electrical grids, atomic power plants, power transmission, transportation systems, control rooms, water treatment facilities, etc.
- Cybercrime today is a major threat with increased attacks on AI enabled critical infrastructure. Cyber-warfare skills have been part of the toolkit, with offensive and defensive capabilities. The Internet of Things (IoT) and the Internet of Everything (IoE) connect people, process and systems, routers, webcams, household and industry appliances, smart watches, medical devices, manufacturing equipment, automobiles and even home security systems. More connected devices to internet pose greater risk, making networks more vulnerable to cyber invasions. Once controlled by hackers, IoT devices can be used to create havoc for financial gain. Cyber criminals are becoming increasingly sophisticated. The cyber-crime epidemic has escalated rapidly. The role of skilled cyber security professionals are essential to safeguard organisations assets from cyber-attacks. Confidentiality, integrity, availability of data, proper authentication, access only to the right individuals, authorisation and data privacy need to be enforced as AI systems are subjected to cyber-attacks.
- There can be legal risks and liabilities as there is inadequate regulation to govern AI. The EU's General Data Protection Regulation helps.
- Organisations need to safeguard against reputational risks. AI systems handle tsunami of big data including sensitive data to make informed critical decisions. Any system that is biased, error-prone, hacked or used for unethical purposes may threaten lead to reputational risks to the organization that owns it. How audit digitisation reflects a Transformative Age.

Conclusion

AI is transforming the accounting and audit landscape disruptively. CAs believe in acquiring new knowledge, skills, and competency to do their work efficaciously with value for money value additions, insights, foresights and oversight functions to facilitate the entities to realise their vision, mission, targets, organisational objectives, outputs and outcome. Converting emerging professional challenges into new opportunities is the game changing dictum CAs follow. While AI and its disruptive capabilities enable CAs to do better accounting and auditing tasks, they must be conscious of AI's inherent algorithmic risks and built in programme bias too. AI is currently a tool to be used to do perform better but cannot be a substitute for CAs ultimate professional judgement, skills competence, scepticism and professional opinion. ■

If you have people in your life to love, you are blessed. Slow down and enjoy the simple things. - Joel Osteen

Trademark—Unique Recognition to Your Business

Trademarks already existed even in the ancient world. Even at times when people either prepared what they needed themselves or, more usually, acquired it from local craftsmen, they used to engrave their signatures on their artistic creations before sending them to Iran. Manufacturers from China sold goods bearing their marks in the Mediterranean area over 2,000 years ago. With the flourishing trade of the Middle Ages, the use of signs to distinguish the goods of merchants and manufacturers likewise expanded several hundred years ago. Read on for an update on importance and process of securing a Trademark from industry perspective.

CA. Nikita Joshi

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What is Trademark in General Terms?

Trademark is essentially another word for brand or brand name. A trademark can be any name, word, symbol, slogan, or device that serves to both identify and distinguish a business or product from others in the market. The definition clause 2(m) of Trademarks Act defines that mark *"includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof."* After you have obtained trademark, if someone else makes an attempt to use something similar enough to confuse customers, you have the right to legally protect yourself and stop the other party. However, the law recognises the unregistered trademark as well. In spite of this, registration of Trademark provides statutory recognition and helps to determine ownership.

What are the Benefits of Trademark to an Enterprise?

- Statutory approval regarding ownership of Trademark
- Brand Image Building
- Trust & Goodwill
- Quality recognition
- Creation of

an intangible asset(Intellectual Property Right-IPR)

- Creates an advertisement in itself for the business.
- Easy to transfer / assign once the mark is registered

What is the requirement to register a legal Trademark?

- The selected mark should be capable of being represented graphically (that is in the paper form).
- It should be capable of distinguishing the goods or services of one undertaking from those of others.

Who can apply for trademark?

- Any person, claiming to be the proprietor of a trademark used or proposed to be used by him, may apply online in prescribed manner for registration.

  How to make application for trademark registration?

- Trademark application has to be made online on the site: https://ipindiaonline.gov.in/trademarkefiling/user/frmLoginNew.aspxApplication can be made either through Attorney or individual/owner of trademark.

Process of trademark application:

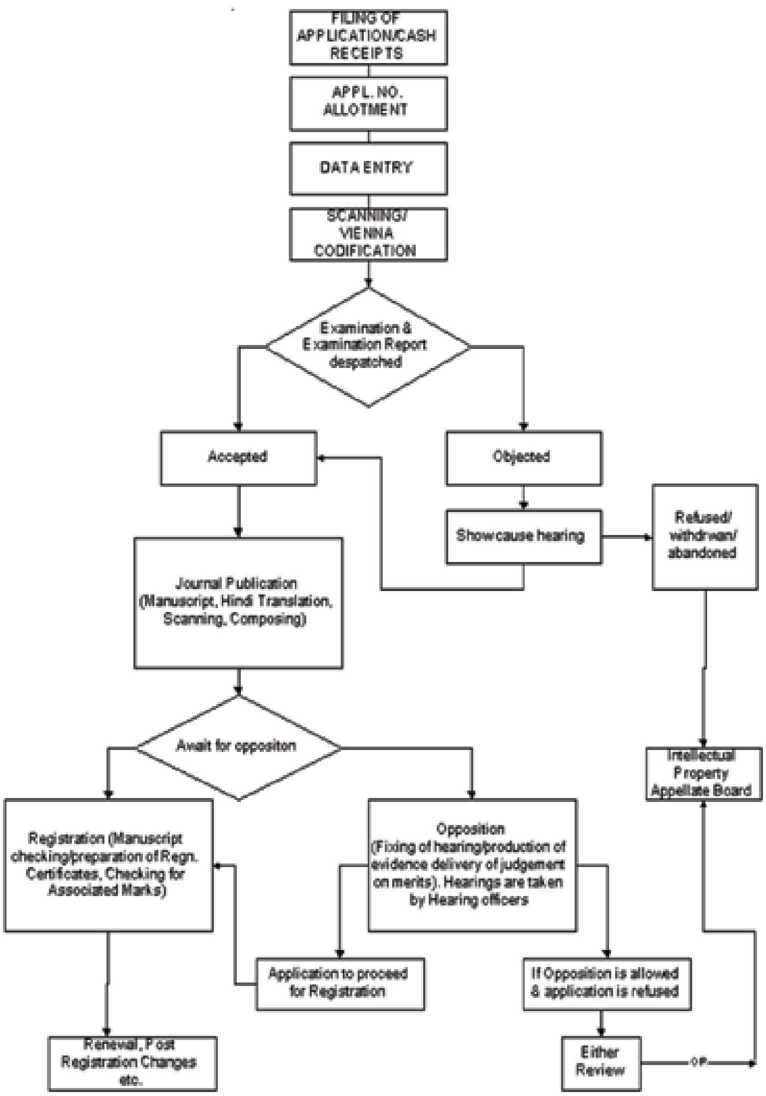
1. Search of class: It is mandatory to apply trademark under proper class(es) as related to the product or service
   - There are 45 classes to get registration under trademark
   - Class 1- 34 deals with goods while class 35-45 deals with services.
   - Site TM Class helps to search for & classify the exact class for products or services needed to apply for trademark protection.
2. Trademark search: In order to check whether the name or device or logo is unique, Trademark search is conducted under the "Public Search" Section available freely in the Trademark Registry Website. The logo or name should be searched in the respective class of product or service to check its availability.
3. Registration as user in www.ipindiaonline.gov.in with Digital Signature or consult an authorised Attorney holder to proceed with the trademark application process.
4. Application for trademark under form TM-A: After search process is conducted and the name/device or logo is considered unique, an application for registration is to be made in Form TM-A with prescribed fees.
5. Both the trademark which are already used and trademarks proposed to be used can be applied for registration. For trademark already put to use, documentary proof which could substantiate the user claim has to be submitted at the time of filing. The documents have to be accompanied by an Affidavit.
6. After the application is submitted, an allotment number is provided for future reference.
7. Electronic data processing & Vienna Codification process will be undertaken by the Registry.
8. If there is any objection relating to the registrability of the Trademark, the Registry will issue examination report and the same will be sent to the applicant / attorney through mail. If there is no objection, the Trademark is directly published upon formal acceptance.
9. If accepted, the trademark will be published in the Trademark journal & if it is objected then show cause notice is issued to applicant.
10. After the show cause notice if the applicant provides the details & documents within 1 month, it may be accepted and published in the Trademark journal. Sometimes, the Trademark Registry may not be satisfied with the reply offered by the Applicant. In such cases, the Trademark Registry issues further notice for show cause hearing. Upon hearing,

the trademark may be accepted or refused. On failure to send reply within one month from the date of issuance of examination report or failure to attend show cause hearing, the trademark application will be refused by way of an order.

11. The publication of trademark provides an opportunity to public to raise an opposition against the mark, if any. For this, there is an overall time limit of 120 days from the date of publication. If time lapses and no opposition occurs for the mark, then the trademark will be issued certificate of Registration.

   ➢ After the registration and acceptance of trademark, the symbol “®” will be used with the name or logo.

Flow chart for trademark registration process:



What are the different types of Trademark that may be registered in India?

1. Any name (including personal or surname of the applicant or predecessor in business or the signature of the person), which is not unusual for trade to adopt as a mark.
2. An invented word or any arbitrary dictionary word or words, not being directly descriptive of the character or quality of the goods/service.
3. Letters or numerals or any combination thereof.
4. The right to proprietorship of a trademark may be acquired by either registration under the Act or by use in relation to particular goods or service.
5. Devices, including fancy devices or symbols
6. Monograms
7. Combination of colours or even a single colour in combination with a word or device
8. Shape of goods or their packaging
9. Marks constituting a 3-dimensional sign.
10. Sound marks when represented in conventional notation or described in words by being graphically represented.

What are the formalities and fees structure for major trademark transaction?

Entry No.	On what payable	Amount in INR.		Corresponding Form Number
		For Physical filing	For E-filing	
(1)	(2)	(3)	(4)	(5)
1	Application for registration of a trademark / collective Marks / Certification Mark / Series of trademark for specification of goods or services included in one or more than one classes.			TM-A
	Where the applicant is an Individual / Startup / Small Enterprise	5,000	4,500	
	In all other cases	10,000	9,000	
	(Note: Fee is for each class and for each mark)			
2	On a notice of opposition under section 21(1), 64, 66 or 73 or application for rectification of register under section 47 to 57, 68, 77 or application under rule 99, 103, 135,140 or On application under section 25 of Geographical Indication of Goods (Regulations and Protection) Act, 1999 to invalidate a trademark or counter statement related thereto. ***(Note: Fee is for each class opposed or counterstatement filed***)	3,000	2,700	TM-O
3	For renewal of registration of a trademark under section 25 for each class	10,000	9,000	TM-R
4	Application for renewal with surcharge of registration of a Trademarks under section 25 (3) for each class	5,000 Plus renewal fee applicable under entry 3	4,500 Plus renewal fee applicable under entry 3	
5	Application for renewal with surcharge/ restoration and renewal of a Trademarks under section 25 (3), 25 (4) for each class	10,000 Plus renewal fee applicable under entry 3	9,000 Plus renewal fee applicable under entry 3	
6	On application under section 45 to register a subsequent proprietor in case of assignment or transfer for each trademark	10,000	9,000	TM-P
7	On application for: Certificate of the Registrar under section 40 (2), or For approval of the Registrar under section 41, or Direction of the Registrar for advertisement of Assignment without goodwill under section 42, or Add or alter a registered trademark under section 59 (1) for each trademark, or Conversion of specification under Section 60 for each trademark.	3,000	2,700	

Entry No.	On what payable	Amount in INR.		Corresponding Form Number
8	On application for: Extension of time for applying for direction under section 42 for advertisement of assignment without goodwill, or Extension of time for registering a company as subsequent proprietor of trademarks under section 46(4), or Consent of Registrar to the assignment or transmission of a certification trademark under section 43, or Change a name and / or description of a registered proprietor or a registered user of a trademark under section 58 for each trademark.	2,000	1,800	
9	On application for: Dissolution of association between trademarks under section 16(5), or Change in address or address for service in India of Registered Proprietors under section 58 for each trademark, or Request for cancellation of an entry in the register or part thereof under section 58 for each trademark.	1,000	900	
10	Application under section 49 to a registered user of a registered trademark in respect of goods or services Or On application under clause (a) of sub-section (1) of section 50 to vary the entry of a registered user of one trademark where the trademarks are covered by the same registered user in respect of each of them Or On application under clause (b), (c) or (d) of sub-section (1) of section 50 for cancellation of entry of a registered user of one trademark Or On notice under rule 95 (2) of intention to intervene in one proceeding for the variation or cancellation of entries of a registered user of a trademark ***(Note: applicable fee is for each mark)***	5,000	4,500	TM-U
11	Request for search and issue of certificate under rule 22(1)	10,000	9,000	TM-C
12	Request for an expedited search and issuance of certificate under rule 22 (3)	Not allowed	30,000	

Entry No.	On what payable	Amount in INR.		Corresponding Form Number
13	On application for: Extension of time, or Certified copy, or Duplicate Registration Certificate, or inspection of document, or Particulars of advertisement to registrar, or seeking grounds of decision of Registrar, or Enter in the register and advertise a note of certificate of validity under rule 127, Amendment in trademark application, or Particulars of advertisement of a trademark to Registrar under rule 41.	1000	900	TM-M
14	On application for: Deposition of regulation of collective trademark under section 66 or alteration of regulation of certification trademark under section 74 (2), or Seeking Registrar preliminary advice, or For division of an application.	2,000	1,800	
15	On application for: Review of Registrar's decision, or Petition (not otherwise charged) for obtaining Registrar's order for any interlocutory matter in a contesting proceeding, or Any other matters not covered in other TM forms.	3,000	2,700	
16	On request for an expedited certificate of the Registrar (other than a certificate under section 23(2) of the Act) or certified copies of the documents under proviso to rule 122 ***(Note: for entry in respect of each registered trademark or for each document)***	5,000	4,500	
17	On application under rule 34 for expedited process of an application for the registration of a trademark			
	Where the applicant is an Individual / Startup / Small Enterprise	Not allowed	20,000	
	In all other cases	Not allowed	40,000	
	(Note: fee is for each class and for each mark)			
18	Request to include a trademark in the list of well- known trademark ***(Note: applicable fee is for one mark only.)***	Not allowed	1,00,000	

Entry No.	On what payable	Amount in INR.		Corresponding Form Number
19	On application for registration of a person as a trademark agent under rule 147 & 149.	5,000	4,500	TM-G
20	For continuance of the name of a person in the Register of a trademark Agents under rule 150 for every Five year to be paid on or before 1st day of succeeding financial year.	10,000	9,000	
21	On application for restoration of the name of a person to the Register of trademarks agents under rule 153 within 3 years from the date of removal of registration.	5,000 Plus continuation fee as mentioned in entry number 20	4,500 Plus continuation fee as mentioned in entry number 20	
22	On application for an alteration of any entry in the Register of trademarks Agent under rule 154	1,000	900	
23	Handling fee for certification and transmission of international application to International Bureau with MM2(E)	Not allowed	5,000	--

What are the Sources of Trademark Law?

- ➢ The national statues i.e., the Trade Marks Act, 1999 and rules made there under.
- ➢ International multilateral convention.
- ➢ National bilateral treaty.
- ➢ Regional treaty.
- ➢ Decision of the courts.
- ➢ Office practice reduced in Manuals and guidelines and rulings of the Courts
- ➢ Decision of Intellectual Property Appellate Board.
- ➢ Text books written by academician and professional experts.

Can any correction be made in the application or register?

- ➢ But the basic principle is that the trademark applied for should not be substantially altered affecting its identity. However, change of ownership, change in address of communication, etc. can be amended by the applications/ forms with prescribed fees.

Can a registered trademark be removed from the register?

- ➢ It can be removed on application to the Registrar on prescribed form on the ground that the mark is wrongly remaining on the register by way of invoking rectification process as prescribed under law
- ➢ The Registrar also can suo moto issue Notice for removal of a registered trademark.

Conclusion

A trademark can be any name, word, symbol, slogan, or device that serves to both identify and distinguish a business or product from others in the market. It is a brand & IPR (Intellectual Property Right) asset for the business. It can be applied online through www.ipindia.nic.in. Total duration for registration may range from 6- 12 months. Trademark application can be submitted either by individual owner / company/ firm or through Attorney holder. It holds a competitive advantage for any business to possess a trademark. After application, the mark “TM” can be used with the business name, and after registration ® will be used. ■

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We make a living by what we get. We make a life by what we give. - *Winston Churchill*

Unregulated Deposits Schemes Ordinance 2019: An Analysis

Banning of the Unregulated Deposits Schemes Ordinance, 2019 ('UDS') is a bold ordinance introduced to comprehensively ban the illicit deposit-taking schemes. In this article, the author has elaborately taken up the issue through various demarcated sections, such as Background, Important Sections, Understanding the Ordinance and FAQs. The author is of the view that due to leaving out the enumeration of Unregulated Scheme for residual interpretation or extrapolation by default, there is open-ended scope for subjective or arbitrary decisions by the authorities. The author says that this law is the need of the hour especially for the regions where investment quantum is enormous in such Ponzi schemes, since this may help create a fear psychosis against the illegal transactions. Read on to get to the author's other concerns in this regard…

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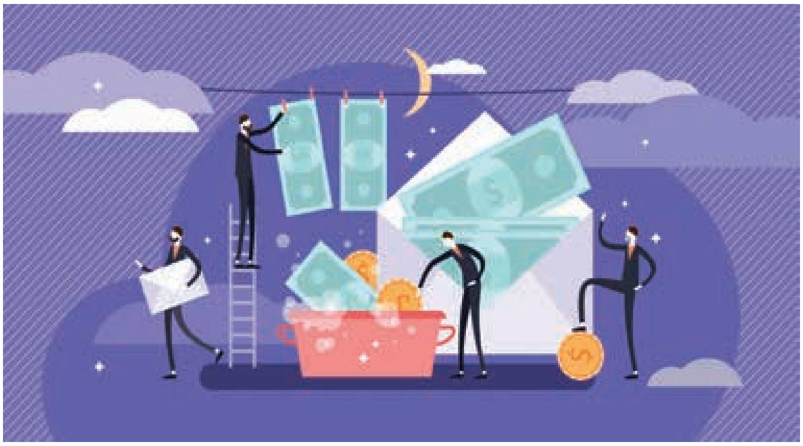

I. Background

1. **Need of UDS:** On the social media platforms, UDS (*Unregulated Deposits Schemes Ordinance, 2019*) is being viewed as a law to restrict raising of unsecured loans by individuals and businesses. This is incorrect interpretation. The real reason of bringing up this law is rising instances of people being defrauded by illicit deposit taking schemes in the various parts of the country. Did it require enactment of such bold legislation? Well, let us have a look at some data[1] of the last 4 years:

Regulator	Cases related to illicit deposits
Central Bureau of Investigation	146
Directorate of Enforcement	56
Ministry of Corporate Affairs and Serious Fraud Investigation Office	32 (involving 223 companies)
Securities and Exchange Board of India	64
Cases referred to various investigation agencies by the State Coordination Committees	978
Total cases investigated	**1276**

[1] *As per the details provided by Secretary, Department of Financial Services to the members of the Standing Committee on 26th September 2018*

This is the kind of the menace which unregulated deposit taking companies or entities pose. We are aware of the Saradha Chit Fund Scam which has wiped out savings of so many small and marginal investors.

2. **Present Regulatory Structure:** The Indian non-banking financial sector is large, diverse and complex. Non-banking entities are allowed to raise deposits from the public under the provisions of various statutes enacted by the Central Government and the State Governments. For instance -

Type of Companies	Regulator
NBFCs	RBI
Housing Finance Companies	National Housing Bank
Collective Investment Schemes	SEBI
Companies accepting deposits other than NBFC	Ministry of Corporate Affairs
Chit Funds and Money Circulation Schemes	State Governments

Despite such diverse regulatory framework, schemes and arrangements leading to unauthorised collection of money and deposits fraudulently are still operating in the society. This is done by inducing public to invest in uncertain schemes promising high returns or other benefits. Hence, it is apparent that the regulatory framework for deposit taking activity at present is not adequate, effective and seamless.

3. **Why Ordinance route?**

The Twenty-First Report of the Parliamentary Related Standing Committee on Finance (Sixteenth Lok Sabha) titled as **Efficacy of Regulation of Collective Investment Schemes, Chit Funds, etc.** highlighted the regulatory gap. The said Committee in its Report has recommended the above-referred requirement of **appropriate legislative provisions, coupled with effective administrative and enforcement measures in order to protect the hard-earned savings and investments made by millions of people**. In line with these recommendations, our Hon'ble Finance Minister in his Budget Speech 2017 mentioned that bill to curtail the menace of illicit deposits will be introduced. He also acknowledged the urgent need to protect the poor and gullible investors from set of dubious schemes, operated by unscrupulous entities who exploit the regulatory gaps. Post this; the UDS Bill was introduced in Lok Sabha on 18th July 2018. It was referred to the Standing Committee of Finance on 10th August 2018 and was finally passed in Lok Sabha on 13th February 2019. It could not be passed in the Rajya Sabha as the house was not in session; it has been introduced as an Ordinance.

II. Important Sections

Important sections which are elementary to the law have been analyzed:

1. **Section 2(4) – Definition of Deposit:** Deposit is defined in such a manner that deposit takers are restricted from camouflaging public deposits as receipts, and at the same time not to curb or hinder acceptance of money by an establishment in the ordinary course of its business. It means money received and not commodity. Thereby meaning that deposits of Gold or Silver are not governed by this ordinance. However, deposit taker with a promise to return the money either in cash or kind or in the form of a specified service is covered.

   From the definition of deposit some of the transactions with relatives and others are excluded.

   Relatives is defined to mean any one who is related to another if they are members of an HUF, or is husband, wife, father, mother, son, son's wife, daughter, daughter's husband, brother or sister of the individual.

2. **Section 2(6) - Definition of Deposit Taker:** Deposit Taker means all

possible entities (including individuals) receiving or soliciting deposits, except specific entities such as those incorporated by legislation and banking companies.

3. **Section 2(14) - Definition of Regulated Deposit Scheme read with First Schedule:** Regulated Deposit Schemes ('RDS') are the ones specified in the First Schedule to the Ordinance. The First Schedule has specified the following schemes as Regulated Deposit Schemes:

Regulator	**Schemes**
Securities and Exchange Board of India (SEBI)	**i.** Collective Investment Scheme; **ii.** Alternative Investment Funds; **iii.** Mutual Funds; **iv.** Schemes managed under SEBI (Portfolio Managers) Regulations, 1993; **v.** Schemes managed under SEBI (Share Based Employee Benefits) Regulations, 1993 or as permitted under the Companies Act, 2013; **vi.** Any other scheme or arrangement registered under the SEBI Act or under its regulations.
Reserve Bank of India (RBI)	**i.** Deposits accepted by NBFCs; **ii.** Scheme or arrangement under which funds accepted by individuals, business correspondents or facilitators subject to RBI Circulars and Guidelines; **iii.** Funds received by authorized system provider operating under Payment and Settlement Systems Act, 2007; **iv.** Any other scheme or arrangement regulated by RBI.
Insurance Regulatory and Development Authority (IRDA)	Contract of Insurance
State Governments	**i.** Any scheme or an arrangement made or offered by Co-operative Society registered under the Co-operative Societies Act, 1912 or a society registered or deemed to be so under any other law at the time in force; **ii.** Any chit business with the previous sanction of the State Government in accordance with the Chit Funds Act, 1982; **iii.** Any scheme or an arrangement related to money lending regulated by State Government or Union Territory; **iv.** Any prize chit or money circulation scheme covered under section 11 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.
National Housing Bank (NHB)	Any scheme or an arrangement for acceptance of deposits under the NHB Act, 1987.
Pension Fund Regulatory and Development Authority (PFRDA)	Any scheme or an arrangement under the PFRDA Act, 2013.

Regulator	Schemes
Employees' Provident Fund Organization (EPFO)	Any scheme, Pension Scheme or Insurance Scheme framed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.
Central Registrar, Multi-State Co-operative Societies	Any scheme or an arrangement for acceptance of deposits from voting members by a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002.
Ministry of Corporate Affairs (MCA)	i. Deposits accepted or permitted under the provisions of Chapter V of the Companies Act, 2013; ii. Deposits accepted by a company declared as a Nidhi or a Mutual Benefit Society under section 406 of the Companies Act, 2013.

4. **Section 2(17) - Definition of Unregulated Deposit Scheme:** This definition is the backbone of the Ordinance. Accordingly, let us first read the entire definition, then break it down and analyse it –

   (17) "Unregulated Deposit Scheme" means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme.

   i. **UDS means a Scheme or an Arrangement:** To qualify as UDS, it should first be a Scheme or an Arrangement. Now what is a Scheme or an Arrangement? Since these are not defined in the Ordinance, let us have a look at its definition in the Oxford Dictionary.

      Scheme : Large-scale systematic plan or arrangement for attaining some particular object or putting a particular idea into effect.

      Arrangement : A plan or preparation for a future event.

      So can a one-off transaction be considered as UDS? No.

   ii. **Under which deposits are accepted or solicited by any deposit taker by way of business:** Deposit taker should accept the deposit by way of business. This is a critical phase which mandates acceptance of deposits by way of business. Definitions of 'by way of' and 'business' as per Oxford Dictionary are reproduced below –

      By Way Of So as to pass through or across; Constituting; By means of

      Business : A person's regular occupation, profession, or trade; Commercial Activity

      Therefore, it should be the business of deposit taker of accepting deposits. This means that it should be the regular occupation of deposit taker of accepting-repaying deposits and providing something in return for the same (like an unregistered financial or banking entity). *Accepting money for conducting say trading business is not considered as a business of accepting deposits and is hence not considered as UDS. Accepting loans by individuals, firms, etc. for conducting their normal business activities (except financial or banking) are not considered as Unregulated Deposits.*

   iii. **And which is not a RDS:** If the scheme is covered under the RDS, it will not be considered as UDS.

5. **Section 3** imposes a blanket ban on UDS. It also bans deposit taker to promote, operate or solicit directly or indirectly any participation or enrolment in unregulated deposit scheme.

6. **Section 4** prohibits committing fraudulent defaults in repayment of deposit or rendering specified services promised while accepting deposits.

7. **Section 5** prohibits any

person other than deposit taker to induce someone to participate in an UDS. Deposit taker is already prohibited for soliciting under section 3.

8. **Section 7(3)** authorises Competent Authority to provisionally attach the deposits obtained by deposit taker *vide* UDS. It also allows attaching property, if any acquired out of the deposits accepted.

9. **Section 9** enables the Central Government to designate authority for creating, maintaining and operating an online database for information on deposit takers operating across the country. The present regulators and officers empowered under this law may also be required to share information on deposit takers with the database maintaining authority.

10. **Section 10** of the ordinance provides that every deposit taker who commences or carries on its business as such on or after 21st February, 2019 shall intimate the authority appointed by the Central government under section 9(1) of the ordinance about its business in the prescribed form.

11. **Section 16** authorises the Court to attach the properties in case the Court is of the view that the deposit taker has transferred the property with a fraudulent intention. Laws of natural justice will be followed while attaching the properties transferred to such *malafide* transferees.

III. Understanding the Ordinance

1. **Applicability:** This is a **prospective law** made applicable from **21st February 2019**. It would apply to the whole of India except the State of Jammu and Kashmir. For all the deposits before 21st February 2019, the regulatory framework at that point of time would continue to apply.

2. **Targeting Unregulated Deposit Schemes:** UDS contains a substantive banning clause which bans Deposit Takers from promoting, operating, issuing advertisements or accepting deposits in any Deposit Taking Scheme which is not regulated. The principle is crystal clear that this Ordinance bans unregulated deposit taking activities altogether, **by making them an offence *ex-ante***, rather than the existing legislative-cum-regulatory framework which only comes into effect ex-post with considerable time lags.

   People of the western regions of the country may not understand and appreciate the importance of this law. But when we see the investment patterns of the households of the southern region of the country and even some eastern parts, the amount of

investment in such deposit schemes like chit funds are huge. And these marginal and gullible investors are the real victims of the illicit deposit schemes.

3. **Prescribed Offences:** The Ordinance broadly prescribes three different types of offences and prescribes severe punishment and heavy pecuniary fines for the same. The offences are –
   - **i.** Running of Unregulated Deposit Schemes;
   - **ii.** Wrongful inducement in relation to Unregulated Deposit Schemes; and
   - **iii.** Fraudulent default in Regulated Deposit Schemes.

4. **Administrative Segment:** The Central Government will establish an online database for maintaining records of deposit takers. All the deposit takers pan-India have to provide the information on the database portal regularly. Time and form of reporting has not been prescribed yet. This online portal once made accessible to all, people can verify the genuineness of the deposit takers and substantially reduce the

flow of money to illicit deposit schemes. Further, any violation of provisions related to reporting on online database by deposit takers would invite penalty of up to INR 10L.

Deposit takers covered under Regulated Deposit Schemes are allowed to accept deposits. However, any fraudulent default in repayment or servicing of deposits would invite fine of higher of INR 5L; INR 25 cr.; or thrice the amount of profits made on such default. This will be in addition to imprisonment which may extend to 7 years.

Operating an Unregulated Deposit Scheme has been declared as an offence *ex-ante*. In case where unregulated deposits *vide* any schemes are still raised, the law provides for attachment of assets and subsequent realization of assets for repayment to depositors. Clear-cut time lines have been provided for attachment of property and restitution to depositors. Fines and punishment prescribed for offences related to unregulated schemes are as follows:

Type of Offence	Fine (in INR)	Imprisonment (in years)
Soliciting for UDS	2L to 10L	1 to 5
Accepting deposits under UDS	3L to 10L	2 to 7
Accepting deposits under UDS and fraudulently defaulting in repayment or servicing	5L to Twice the aggregate funds collected	3 to 10
Failure to furnish information u/s 10	0L to 5L	-

5. Major Beneficiaries

i. Poor and gullible people who are being duped by illicit deposit schemes launched by rapacious operators. This law will protect them by altogether banning unregulated deposit taking schemes.

ii. Due to UDS Ordinance, public faith in deposit raising entities which are regulated by and accountable directly to the Government or to Regulators will increase.

6. Myths: A lot of misinformation has been spread using the social media platforms related to this Ordinance which has resulted in panic among people. It is being circulated that one cannot obtain personal loans; loans for business can be obtained only from relatives, etc. These claims are result of incomplete reading coupled with pre-conceived notions. The author has tried to clarify the same in the next section of FAQs.

IV. FAQs: Myth Breakers

Q1. Mr. X has a function in his house. He borrows INR 1L from his friend Mr. Y. Will this be considered as illegal under this law?

A. Mr. X being an individual is covered under the definition of deposit taker. Accepting loan from friend is squarely covered in the definition of deposit. However, accepting deposits is not the business activity of Mr. X and hence, not considered as Unregulated Deposit Scheme. It is not illegal under this law.

Q2. Mr. A had individually started an unregistered chit fund on 1st January 2019. He gathered 1000 participants to contribute INR 5k every month. He had received instalments on 5th January 2019 and 5th February 2019. Will the instalments already collected be considered as illegal under this law? Can he collect the instalment due on 5th March 2019?

A. It is crystal clear that this is a prospective law applicable from 21st February 2019. Hence, deposits accepted prior to this law will be governed by the respective legislations in force at that point of time.

Mr. A being an individual falls under the definition of deposit taker. Accepting money from non-relatives falls under the definition of deposit. Also, this is an entire arrangement of chit fund which is not registered. Therefore, it is UDS and Mr. A's scheme is illegal from 21st February 2019. He cannot collect the instalment due on 5th March 2019, if he does, he would invite severe punishment coupled with heavy pecuniary fines. Further, he will have to report this scheme to the Competent Authority from the date of coming into existence of this Ordinance.

Q3. Mr. X, a software engineer wishes to invent business software based on block chain technology. Mr. Y, his friend agrees to give him a loan of INR 15L. Now, Mr. Y is of the view that Mr. X cannot accept the loan according the provisions of UDS Ordinance? Is the view of Mr. Y correct?

A. Obtaining loans for the purpose of business bearing a genuine connection therewith is exempted from being considered as deposits. Further, accepting deposits is not the business activity of Mr. X and hence, not considered as Unregulated Deposit Scheme. The view of Mr. Y is incorrect.

Q4. ABC Pvt. Ltd. advanced INR 5L for supply of polymers to XYZ Pvt. Ltd. The time period for supply of goods was one month. It has been 2 months since the amount was advanced, but XYZ has neither supplied the goods nor it has refunded the amount due. What are the implications under UDS?

A. Advancing money for supply of goods in the normal course of business is not considered as deposits. However, when such advance becomes refundable, it will be considered as deposits if not repaid within 15 days of it becoming refundable. INR 5L has qualified as deposits in the hands of XYZ Pvt. Ltd. but since it is not its business activity of accepting deposits, this transaction will not be considered as Unregulated Deposit Scheme.

Q5. M/s Hari Bros., a partnership firm is DCA-cum-Super Stockist of HUL. HUL delivers the goods to the customers of Hari Bros. as per their instructions. The customers of Hari Bros. receive bill from HUL and Hari Bros. receive commission from HUL. HUL provides credit period of one week. Not all the customers of Hari Bros. are able to pay up in the credit period provided. Hari Bros. pays on their customers' behalf and charges them interest. Is the credit provided by Hari Bros. prohibited under UDS?

A. The amount paid by Hari Bros. to HUL on behalf of its customers is advance in the normal course of business. Hence, it is exempted from being considered as deposits and accordingly, not banned under UDS Ordinance.

Q6. Mr. A wants to individually start a chit fund (without getting it registered). He has decided to get 1000 participants in his scheme. The monthly contribution decided is 5 grams of silver per participant. He will accordingly fix the monthly prize too. Is this Scheme prohibited under UDS?

A. Mr. A being an individual is covered under the definition of deposit taker. Starting a chit fund is a Scheme. However, the definition of deposit covers only receipt of money and not any commodity. Accordingly, since the receipt of silver is not covered under the definition of deposit, this scheme will not be prohibited under UDS.

This is space where the Government should verify as to whether it wanted to allow such Schemes or it is lacunae in the law which needs to be amended.

V. Conclusion

An exhaustive list of Regulated Deposit Scheme is provided. Therefore, the enumeration of Unregulated Scheme is left for residual interpretation or extrapolation by default. It, thus, leaves wide, unfettered and rather open-ended scope for subjective or arbitrary decisions by the authorities.

Although there would be an online database but execution on ground will be in the hand of the officers. There are heavy pecuniary fines prescribed with punishment. Manual handling supported with harsh legal provisions certainly leads to increasing corruption on ground. A law drafted for protecting the money of small, marginal and gullible investors may to a certain extent end up filling the pockets of the so called law enforcers.

With these few challenges we may face practically, this law is the need of the hour especially in the regions where the investment quantum is enormous in such Ponzi schemes. Government may come up with further clarifications on the law because of the misinformation spread across social media. One should wait for it.

It is the style of this government to bring in laws, which impose blanket bans with huge penalties. One such example is the Black Money Law. This may help create a fear in the minds of the people and hence discourage the illegal transactions. However, at the end of the day, it should not end up hampering the lives of small people, unintentionally. ■

If you light a lamp for someone else it will also brighten your path. - Buddha

Registered Valuers and Valuation under Companies Act, 2013

Section 247 is a new section introduced under the Companies Act, 2013. It seeks to provide valuation in respect of any property, shares, debentures, securities, good will or any other assets or net worth of a company or its assets or its liabilities. Such valuation shall be carried out only by the registered valuer. The Insolvency and Bankruptcy Board of India (IBBI) has been assigned the role of granting registration of valuers. Under the Valuation Rules, the provisions relating to registration procedure have also been prescribed and the person desirous for registration may have to pass certain examination conducted or arranged by the IBBI. The Valuation Rules also expects from the registered valuers to follow the code of ethics and standards. Read on to know more about the issues in registered valuers and valuation…

Dr. Rajeev Babel

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1. Introduction

Black's Law Dictionary defines Valuation and Valuer as the act of ascertaining/ estimating the worth of a thing and as a person, whose business is, to appraise or set a value upon property, respectively. Thus, valuation is an exercise to assess the worth of an enterprise or a property. In a merger or amalgamation or demerger or acquisition, valuation is certainly needed. It is essential to fix the value of the shares to be exchanged in a merger or the consideration payable for an acquisition.

2. Section 247 of Companies Act, 2013

Chapter XVII of the Companies Act, 2013 deals with the provisions of Registered Valuers. This Chapter contains only one section, which is Section247[1]. Its sub-section (1) provides that where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience, registered as a valuer and being a member of an organisation recognised, in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by

[1] *Enforced with effect from 18-10-2017.*

the Board of Directors of that company.

The concept of Registered Valuers has first time been included under the provisions of Companies Act, 2013. There is no such corresponding section under the old Companies Act, 1956.

2.1. Ethical & Professional Standards: Section 247(2) provides that the valuer appointed under sub-section (1) shall,—

a. make an impartial, true and fair valuation of any assets which may be required to be valued;

b. exercise due diligence while performing the functions as valuer;

c. make the valuation in accordance with such rules as may be prescribed; and

d. not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.

2.2. Offences and Punishment:

- **Matters other than fraud:** In terms of Section 247(3) if a valuer contravenes the provisions of this section or the rules made there under, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees:
- **Matters involving fraud**: Where the valuer has contravened such provisions with the *intention to defraud the company or its members*, he shall be *punishable with imprisonment* for a term which may extend to *one year and with fine* which shall *not be less than one lakh rupees but which may extend to five lakh rupees.*

2.3. Return of Professional fee and damages: Where a valuer has been convicted under section 247(3), he shall be liable to—

i. *refund the remuneration* received by him to the company; and

ii. *pay for damages* to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

3. Requirement of Valuation Report

3.1. Under the Companies Act, 2013:

S.No.	Section	Particulars
1.	62(1)(c)	**Further issue of share capital:** **62.** (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered— (c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (*a*) or clause (*b*), either for cash or for a consideration other than cash, if the price of such shares is determined by the *valuation report of a registered valuer*, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.
2.	192(2)	**Restriction on non-cash transactions involving directors:** 192 (2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement *duly calculated by a registered valuer*.
3.	230(2)(c) (v)	**Power to compromise or make arrangements with creditors and member: 230(2)** (2) The company or any other person, by whom an application is made under sub-section (1), shall disclose to the Tribunal by affidavit— (c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent of the secured creditors in value, including— (v) *a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.*

4.	230(3)	**Power to compromise or make arrangements with creditors and member:** **230(3)** Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a *copy of the valuation report*, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed.
5.	232(2)(d)	**Merger and amalgamation of companies;** **232(2)** Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely: **(d)** the *report of the expert with regard to valuation*, if any;
6.	232(3)(h)(B)	**Merger and amalgamation of companies:** **232 (3)** The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely: **(h)** where the transferor company is a listed company and the transferee company is an unlisted company,— **(B)** if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a **valuation** is made, and the arrangements under this provision may be made by the Tribunal:
7.	236(2)	**Merger and amalgamation of companies:** **236(2)**: The acquirer, person or group of persons under sub-section (1) shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a price determined on the basis of *valuation by a registered valuer* in accordance with such rules as may be prescribed.
8.	281(1)(a)	**Submission of report by Company Liquidator:** **281.** (1) Where the Tribunal has made a winding up order or appointed a Company Liquidator, such liquidator shall, within sixty days from the order, submit to the Tribunal, a report containing the following particulars, namely:— **(a)** the nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company: Provided that the valuation of the assets shall be obtained *from registered valuers* for this purpose;

3.2. Under the Insolvency and Bankruptcy Code, 2016:

S.No.	Section	Particulars
1.	59(3)(b)(ii)	**VOLUNTARY LIQUIDATION OF CORPORATE PERSONS** **59(*3*)** Without prejudice to sub-section (*2*), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:— **(*b*)** the declaration under sub-clause (*a*) shall be accompanied with the following documents, namely:— *(ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;*

3.3. Regulatory aspects under SEBI Regulations:

S.No.	Regulation	Particular	Regulation Name
1.	28	Pricing in Public issue	SEBI (Issue of Capital and disclosure Requirements) Regulations, 2018.
2.	15	Offer Price	SEBI (Delisting of Equity Shares) Regulations, 2009.
3.	7	Pricing of Sweat Equity Shares	SEBI (Issue of Sweat Equity) Regulations, 2002.
4.	8	Offer Price	SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

4. Valuation Rules

The Central Government vide its Notification No. NO.GSR 1316(E) [F.NO.1/27/2013-CL-V], Dated 18-10-2017 has notified the Companies (Registered Valuers and Valuation) Rules, 2017 (The Valuation Rules).

4.1. Registration of Valuer: In terms of the said Rules, a valuer is required to obtain registration from the Insolvency and Bankruptcy Board of India (IBBI) established under the Insolvency and Bankruptcy Code, 2016 (IB Code). Thus, IBBI shall be the Registration Authority for the purpose of granting recognition to the valuer for undertaking the valuation assignments and no person shall practice as a registered valuer without obtaining a certificate of registration. Any person who, without obtaining the license from the IBBI, practices of valuer or holds himself/ itself out as a registered valuer, shall be punishable as per the provisions of the Section 247(3) of the Companies Act, 2013.

4.2. Qualifications and Experience: In terms of the Rule 4 of the Valuation Rules, an individual shall have the following qualifications to be eligible for registration under:

- **Post-graduate degree, in the specified discipline**, from a University established, recognised or incorporated by law in India **and at least three years** of experience in the discipline thereafter; **or**
- **A Bachelor's degree, in the specified discipline**, from a university established, recognised or incorporated by law in India and at least five years of experience in the discipline thereafter; **or**
- **Membership of a professional institute** set up under an Act of Parliament enacted for the purpose of regulation of a profession with at least three years' experience after such membership.

Explanation-I- For the purposes of this clause the 'specified discipline' shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

Explanation-II.- Qualifying education and experience for various asset classes, is given in an indicative manner in **Annexure-IV** of these rules.

Educational Qualification and Experience for Registration as Valuer.

Asset Class	Eligibility Qualification	Experience in Specified discipline
Plant and Machinery	(i) Graduate in Mechanical, Electrical, Electronic and Communication, Electronic and Instrumentation, Production, Chemical, Textiles, Leather, Metallurgy, or Aeronautical Engineering, or Graduate in Valuation of Plant and Machinery or equivalent; (ii) Post Graduate on above courses.	i. Five Years ii. Three years

Land and Building	(i) Graduate in Civil Engineering, Architecture, or Town Planning or equivalent; (ii) Post Graduate on above courses and also in valuation of land and building or Real Estate Valuation (a two-year full time post-graduation course).	i. Five Years ii. Three years
Securities or Financial Assets	(i) Member of Institute of Chartered Accountants of India, Member of Institute of Company Secretaries of India, Member of the Institute of Cost Accountants of India, Master of Business Administration or Post Graduate Diploma in Business Management (specialisation in finance). (ii) Post Graduate in Finance.	Three Years
Any other asset class along with corresponding qualifications and experience in accordance with rule 4 as may be specified by the Central Government.		
Note.- The eligibility qualification means qualification obtained from a recognised Indian University or equivalent Institute whether in India or abroad.		

Explanation III.—For the purposes of this rule and Annexure IV, 'equivalent' shall mean professional and technical qualifications which are recognised by the Ministry of Human Resources and Development as equivalent to professional and technical degree.

4.3. Eligibility criteria for being a Registered Valuer:

4.3.1. Individual: In terms of Rule 3(1) of the Valuation Rules, a person shall be eligible to be a registered valuer if he -

a. is a valuer member of a registered valuers organisation;

   Explanation.- For the purposes of this clause, "a valuer member" is a member of a registered valuers organisation who possesses the requisite educational qualifications and experience for being registered as a valuer;

b. is recommended by the registered valuers organisation of which he is a valuer member for registration as a valuer;

c. has passed the valuation examination under rule 5 within three years preceding the date of making an application for registration under rule 6;

d. possesses the qualifications and experience as specified in rule 4;

e. is not a minor;

f. has not been declared to be of unsound mind;

g. is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;

h. is a person resident in India;

   Explanation.- For the purposes of these rules 'person resident in India' shall have the same meaning as defined in clause (*v*) of Section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) as far as it is applicable to an individual;

i. has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

   Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

j. has not been levied a penalty under section 271J of Income-tax Act, 1961 (43 of 1961) and time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have not elapsed after levy of such penalty; and

k. is a fit and proper person:

Explanation - For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria -

i. integrity, reputation and character,

ii. absence of convictions and restraint orders, and

iii. competence and financial solvency

4.3.2. Partnership Entity/ Limited Liability Partnership (LLP)/ Company: Rule 3(2) provides that, no partnership entity or company shall be eligible to be a registered valuer if -

a. it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is a subsidiary, joint venture or associate of another company or body corporate;

b. it is undergoing an insolvency resolution or is an undischarged bankrupt;

c. all the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), *(f)* (g), (h), (i), (j) and (k) of sub-rule (1);

d. three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or

e. none of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

Case Law: In the case of *Cushman and Wakefield India (P.) Ltd. V. Union of India***,** W.P. (C) Nos. 9883, 9889, 9890, 9927 of 2018 CM Nos. 38508, 38522, 38524, 38673 of 2018, January 31, 2019, the High Court of Delhi interpreted Section 247 read with Rule 3 of the Valuation Rules and opined that a company, other than a subsidiary company, joint venture or associate of other company can form a separate class for purpose of eligibility for registration as a valuer under Companies (Registered Valuers & Valuation) Rules, 2017. In other words the exclusion of a subsidiary company, joint venture or associate of other company, for the purpose of eligibility for registration as valuer is reasonable.

The aforesaid classification is founded on intelligible differentia and is reasonable and rule 3(2) is not unconstitutional for violating article 14, article 19(1)(g) and article 301 of Constitution of India. Thus only companies other than subsidiary companies, associate companies and joint ventures are eligible for purpose of registration as valuer.

5. Valuation Standards

Rule 19 provides that the Central Government may constitute a Committee to be known as "Committee to advise on valuation matters" to make recommendations on formulation and laying down of valuation standards and policies for compliance by companies and registered valuers.

The Central Government shall notify and may modify (from time to time) the valuation standards on the recommendations of the aforesaid Committee.

The Valuation Standard board of the Institute of Chartered Accountants of India has released the 'ICAI Valuation Standards, 2018'. These are effective till Valuation Standards are notified by the Central Government under Rule 18 of the Companies (Registered Valuers and Valuation) Rules, 2017.

A registered valuer shall make valuations as per the Valuation Standards notified from time to time by the Central Government. Until such time as the Valuation Standards are notified by the Central Government, a valuer shall make valuations as per:

- an internationally accepted valuation methodology;

- valuation standards adopted by any valuation professional organisation; **or**
- valuation standards specified by Reserve Bank of India, Securities and Exchange Board of India or any other statutory regulatory body.

6. Valuation Report

The valuation report shall cover:

- background information of the asset being valued;
- purpose of valuation and appointing authority;
- identity of the valuer and any other experts involved in the valuation;
- disclosure of valuer interest/conflict, if any;
- date of appointment, valuation date and date of report;
- sources of information;
- procedures adopted in carrying out the valuation;
- valuation methodology;
- major factors that influenced the valuation;
- conclusion; and
- caveats, limitations and disclaimers

Code of Conduct for Registered Valuers

Annexure-I of Valuation Report provides the Model Code of conduct for the registered valuers:

A. Integrity and Fairness

- A valuer should in the conduct of his/its business follow high standards of integrity and fairness in all his/its dealings with his/its clients and other valuers.
- A valuer should maintain integrity by being honest, straightforward, and forthright in all professional relationships.
- A valuer should endeavour to ensure that he/it provides true and adequate information and shall not misrepresent any facts or situations.
- A valuer should refrain from being involved in any action that would bring disrepute to the profession.
- A valuer shall keep public interest foremost while delivering his services.

B. Professional Competence and Due Care

- A valuer should render at all times high standards of service, exercise, due diligence, ensure proper care and exercise independent professional judgment.
- A valuer should carry out professional services in accordance with the relevant technical and professional standards that may be specified from time to time
- A valuer should continuously maintain professional knowledge and skill to provide competent professional service based on up-to-date developments in practice, prevailing regulations/guidelines and techniques.
- In the preparation of a valuation report, the valuer should not disclaim liability for his/its expertise or deny his/its duty of care, except to the extent that the assumptions are statements of fact provided by the company and not generated by the valuer.
- A valuer shall not carry out any instruction of the client in so far as they are incompatible with the requirements of integrity, objectivity and independence.
- A valuer should have a duty to carry out with care and skill, the instructions of the client insofar as they are compatible with the requirements of integrity, objectivity and independence.

C. Independence and Disclosure of Interest

- A valuer should act with objectivity in his/its professional dealings by ensuring that his/its decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the valuation assignment or not.
- A valuer should not take up an assignment under the Act/Rules if he/it or

any of his/its relatives or associates is not independent in relation to the company and assets being valued.

- A valuer should maintain complete independence in his/its professional relationships and shall conduct the valuation independent of external influences.
- A valuer should wherever necessary disclose to the clients, possible sources of conflicts of duties and interests, while providing unbiased services.
- A valuer should not deal in securities of any subject company after any time when he/it first becomes aware of the possibility of his/ its association with the valuation, and in accordance with the SEBI (Prohibition of Insider Trading) Regulations, 2015.
- A valuer should not indulge in "mandate snatching" or "convenience valuations" in order to cater to the company's needs or client needs. A valuer should communicate in writing with a prior valuer if there is knowledge of any prior valuer having been appointed before accepting the assignment.
- As an independent valuer, the valuer should not charge success fee.
- In any fairness opinion or independent expert opinion submitted by a valuer, if there has been a prior engagement in an unconnected transaction, the valuer should declare the past association with the company.

D. Confidentiality

- A valuer should not use or divulge to other clients or any other party any confidential information about the subject company, which has come to his/its knowledge.

E. Information Management

- A valuer should ensure that he/ it maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This should be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his/its decisions and actions.
- A valuer should appear, co-operate and be available for inspections and investigations carried out by the Registration Authority, any person authorised by the Registration Authority, the Valuation Professional Organisation with which he/it is registered or any other statutory regulatory body.
- A valuer should provide all information and records as may be required by the Registration Authority, the Tribunal, Appellate Tribunal, the Valuation Professional Organisation with which he/it is registered, or any other statutory regulatory body.
- A valuer while respecting the confidentiality of information acquired during the course of performing professional services, should maintain proper working papers for a period of three years, for production before a regulatory authority or for a peer review. In the event of a pending case before the Tribunal or Appellate Tribunal, the record should be maintained till the disposal of the case.

F. Gifts and hospitality.

- A valuer, or his/its relative should not accept gifts or hospitality which undermines or affects his independence as a valuer.
- A valuer should not offer gifts or hospitality or a financial or any other advantage to a public servant or any other person, intending to obtain or retain work for himself/ itself, or to obtain or retain an advantage in the conduct of profession for himself/ itself.

G. Remuneration and Costs.

- A valuer should provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable rules.

- A valuer should not accept any fees or charges other than those which are disclosed to and approved by the persons fixing his/ its remuneration.

H. Occupation, employability and restrictions.

- A valuer should refrain from accepting too many assignments, if he/it is unlikely to be able to devote adequate time to each of his/ its assignments.
- A valuer should not conduct business which in the opinion of the Registration Authority is inconsistent with the reputation of the profession.

7. Valuation Approach

The value of a company varies depending on which valuation approach has been applied and how input variables have been estimated. Whatever the valuation methodology is adopted by the valuer, it has to be disclosed. The valuer should mention in the report the rationale and appropriateness for the adoption of a particular method or a combination of methods and emphasis/reliance placed on the chosen method/ combination of methods in reaching the final conclusion.The valuation approaches, commonly used in practice, are as under:

7.1. Asset Based Approach: The purpose of this approach is to study and revaluate the company's assets and liabilities obtaining the substance value.

- **Book Value:** It means the value as appearing in the Balance Sheet. However, values on the Balance Sheet cannot be used because the book value seldom is the same as the real value except for the case of liabilities that is often accounted in real value.
- **Adjusted Book Value**: The book values are adjusted as per the real value. Real Value is equivalent to the fair market value that is the value of the asset on a free market or present value of the future earnings from the asset or a group of assets.
- **Liquidation Value:** It is the sum as estimated sale values of the assets owned by a company.

7.2. Income Based Approach: It is commonly called as Discounted Cash Flow (DCF). This approach constitutes estimation of the business value by calculating the present value of all the future benefit flows which the company are expected to generate.

> It can be expressed as $PV=\Sigma FV/(1+i)^{n,}$ Where,
>
> PV= Present Value of FV
>
> FV= Future Value
>
> I = Discount rate reflecting the risks of the estimated future value
>
> n = raised to the n^{th} power, where n is the number of compounding period source.

7.3. Market Based Approach: The market based approach determines company's value by comparing one or more aspects of the subject company to the similar aspects of other companies which have an established market value.

- **Discounted cash flow valuation:** It relates to the value of an asset to the present value of expected future cash flows from that asset or group of assets.
- **Relative valuation:** It estimates the value of an asset by looking at the pricing of 'comparable' assets relative to a common variable such as earnings, cash flows, book value or sales. The profit multiples used are (a) Earnings before interest, tax, depreciation and amortisation (EBITDA), (b) Earning before interest and tax (EBIT), (c) Profits before tax (PBT) and (d) Profit after tax (PAT).
- **Contingent Claim valuation:** It uses option pricing models to measure the value of assets that have share option characteristics. Some of these assets are traded financial assets like warrants, and some of these options are not traded and are based on real assets. Projects, patents and oil reserves are examples. The latter are often called real options

7.4. Comparable Transaction Based Approach: Under this approach a comparison is made between the similar transactions. The transactions may be Comparable, International and Domestic Transactions.

8. Registered Valuer Organisations (RVOs)

Rule 12 of the Valuation Rules specifies the criteria for eligibility for registered valuers organisations (RVOs). The organisation shall be registered under the Companies Law (under section 25 of CA 1956) or (under section 8 of CA 2013) with the sole object of dealing with matters relating to regulation of valuers of an asset class or asset classes and it is a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession.

Provided that, subject to sub-rule (3), the following organisations may also be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes, namely:

a. an organisation registered as a society under the Societies Registration Act, 1860 (21 of 1860) or any relevant state law, or;
b. an organisation set up as a trust governed by the Indian Trust Act, 1882 (2 of 1882).

The following organisations have so far been registered by the IBBI as RVOs:

Name of RVO	Asset Class
1. Institution of Estate Managers and Appraisers	Land and Building, Plant and Machinery and Securities or Financial Assets
2. IOV Registered Valuers Foundation	Land and Building, Plant and Machinery and Securities or Financial Assets
3. ICSI Registered Valuers Organisation	Land and Building, Plant and Machinery and Securities or Financial Assets
4. The Indian Institution of Valuers	Land and Building, Plant and Machinery and Securities or Financial Assets
5. ICMAI Registered Valuers Organisation	Land and Building, Plant and Machinery and Securities or Financial Assets
6. ICAI Registered Valuers Organisation	Securities or Financial Assets
7. PVAI Valuation Professional Organisation	Land and Building, Plant and Machinery and Securities or Financial Assets
8. CVSRTA Registered Valuers Association	Land and Building and Plant and Machinery
9. Association of Certified Valuators and Analysts	Securities or Financial Assets
10. CEV Integral Appraisers Foundation	Land and Building, Plant and Machinery and Securities or Financial Assets
11. Divya Jyoti Foundation	Land and Building, Plant and Machinery and Securities or Financial Assets

9. Summary

Section 247 is a new section introduced under the Companies Act, 2013. It seeks to provide valuation in respect of any property, shares, debentures, securities, good will or any other assets or net worth of a company or its assets or its liabilities. Such valuation shall be carried out only by the registered valuer. The IBBI has been assigned the role of granting registration of valuer. Under the Valuation Rules, the provisions relating to registration procedure have also been prescribed and the person desirous for registration may have to pass certain examination conducted or arranged by the IBBI. The Valuation Rules also expects from the registered valuers to follow the code of ethics and standards. ■

The only real mistake is the one from which we learn nothing. - *John Powell*

ACCOUNTANT'S BROWSER

PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE

Index of some useful articles taken from Periodicals received during June-July 2019 for the reference of Faculty/Students & Members of the Institute.

1. Accountancy

Ind AS/IGAAP - interpretation and practical application : Accounting of e-waste obligation by Dolphy D'souza. *Bombay Chartered Accountant Journal*, Vol.51-A/3, June 2019, pp.63-64

2. Auditing

Cost Accounting and Audit - The future by B.B. Goyal. *The Management Accountant*, Vol.54/06, June 2019, pp.57-60.

Setting up the internal audit function by Nandita Parekh. *Bombay Chartered Accountant Journal*, Vol.51-A/3, June 2019, pp.9-12.

3. Economics

Creating a Reliable financing mechanism for economic development by Yang Li. *China Political Economy*, 2019, Emerald Publishing.

Economic Nationalism in the US and India comparing strategies and impact by Ann Kingsolver and Annapurna Devi Pandey. *Economic and Political Weekly*, Vol.54/23, 8 June, 2019, pp.14-16.

Recapitulation of the relationship between economic thoughts and realities by Hua Liang. *China Political Economy*, 2019, Emerald Publishing.

4. Investment

Are mergers and acquisitions a quick way for companies to grow : A case study from the acquisition of Fem pharmaceuticals by Dabur Ltd by Deepashree Chatterjee. *The Management Accountant*, Vol.54/06, June 2019, pp.67-70.

5. Law

Exclusion of good promotors under section 29A of the insolvency and bankruptcy code, 2016 by Samidha Sanjay Mathur, *Company Law Journal*, Vol.2/3, June 2019, pp.97-102.

6. Management

Art of business by Galerie du Monde. A Plus, Vol.15/3, 2019, pp.27-31. Corporate entrepreneurship as a strategic approach for internal innovation performance by Cheng Tseng and Chien-Chi Tseng. *Asia Pacific Journal of Innovation And Entrepreneurship*, Vol.13/1, 2019, pp.108-120.

Impact of ethical leadership on service innovation behaviour : The mediating role of psychological capital by Fahri Ozsunger. *Asia Pacific Journal of Innovation And Entrepreneurship*, Vol.13/01, 2019, pp.73-88.

Introduction to the special issue : Changing nature of work and organizations in India by Devi Vijay. *Decision*, Vol.46/2, June 2019, pp.93-97.

Stock return and financial performance as moderation variable in influence of good corporate governance towards corporate value by Suhadak and kurniaty. *Asian Journal of Accounting Research*, 2019.

7. Taxation and Finance

TDS under section 194A on payment of interest under motor accident claim by Pradip Kapasi and Gautam Nayak. *Bombay Chartered Accountant Journal*, Vol.51-A/3, June 2019, pp.51-58.

Value added tax efficiency across Indian states : Panel stochastic frontier analysis by Sacchidananda Mukherjee. *Economic and Political Weekly*, Vol.54/22, 1 June, 2019, pp.40 50. ■

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; kmray@icai.in.

IFRS 9: Financial Instruments - A Study: Transition Impact on Banks Across the Globe

Any change, even a change for the better, is always accompanied by drawbacks and discomforts. -Arnold Bennett

The IFRS Standards is a dynamic framework and undergoes reforms periodically to keep pace with the evolving business and commerce. Current decade marks the monumental change in three areas of financial reporting i.e. the standards relating to Financial Instruments, Revenue from Contacts with Customers and Leases have been comprehensively overhauled and existing standards are replaced by new robust standards, IFRS 9, IFRS 15 and IFRS 16 respectively.

IFRS 9 brings in path breaking reform in the area of IFRS Standards globally. This is expected to have a complete overhaul of IFRS on financial instruments and significantly impact the entities in financial services sector. The Accounting Standards Board (ASB) of ICAI undertook a project to evaluate the impact of worldwide implementation of IFRS 9, so that this impact would provide valuable insights of these financial reporting reforms. The ASB came out with Study Report on IFRS 9 *Transition Impact on Banks across the Globe* which will act as a guiding factor for banks and jurisdictions that will be transitioning to IFRS 9 or equivalent standard viz. Ind AS 109 in the near future. The study is comprehensive one covering 75 banks from 26 global jurisdictions. The study reflects that Prudential Regulators of various jurisdictions were proactive and highly supportive of embracing this change. While the study is focussed on quantitative impact on Equity, Regulatory Capital etc., it also analyses the role played by the banking sectors' prudential regulators in those 26 jurisdictions.

Contributed by Accounting Standards Board of the ICAI. Comments can be sent to asb@icai.in. Refer https://www.icai.org/post.html?post_id=14058 for Ind AS –IFRS Standards Convergence Status

The Study Report has been released on July 1, 2019, on CA Day. For the benefits of the Indian stakeholders at large, the Study Report has been hosted on the ICAI website at https://www.icai.org/post.html?post_id=15773

Compendium of Indian Accounting Standards (Ind AS)

2nd edition (print version) of Compendium of Indian Accounting Standards (Ind AS) has been released on July 1, 2019. This updated compendium includes all standards/amendments effective for accounting period beginning on or after April 01, 2019.

Developments at IFRS Foundation & IASB

(1) Comments on Exposure Draft issued by IASB

(i) **Amendments to IFRS 17** - The International Accounting Standards Board (IASB) issued the targeted amendments to IFRS 17, *Insurance Contracts*, in May 2017 for comments to respond to concerns and challenges raised by stakeholders as IFRS 17 is being implemented. Last date of submitting the comments to IASB is September 25, 2019. A total of 12 amendments are proposed.

IFRS 17 is needed to address many inadequacies in the wide range of insurance accounting practices used applying IFRS 4 *Insurance Contracts* and significant implementation activities are already underway. The IASB has considered the concerns and challenges raised by stakeholders and concluded that the potential costs of proposing targeted amendments to IFRS 17 could be justified if those amendments would provide meaningful support to entities implementing the Standard and if those amendments:

(a) would not change the fundamental principles of the Standard because that would result in a significant loss of useful information for users of financial statements relative to that which would otherwise result from applying IFRS 17; and

(b) would avoid unduly disrupting implementation already under way or risking undue delays in the effective date of IFRS 17.

(ii) Reference to the Conceptual Framework Proposed amendments to IFRS 3 - The IASB has issued the Exposure Draft of narrow-scope amendments to IFRS 3 Business Combinations for comments. Last date of submitting the comments to IASB is September 25, 2019.

The amendments would update a reference to the Conceptual Framework for Financial Reporting without changing the accounting requirements for business combinations. Updating the reference without making any other changes to IFRS 3 could change the accounting requirements for business combinations because the liability definition in the 2018 Conceptual Framework is broader than that in previous versions.

The Accounting Standards Board (ASB) with the aim to provide an opportunity to the various stakeholders in India to raise their concerns at the Exposure Draft stage itself so that these concerns are appropriately addressed, hosted the aforesaid Exposure Drafts issued by the IASB on the ICAI website with the last date of comments being August 16, 2019. The same can be accessed online at: https://www.icai.org/

(iii) Annual Improvements to IFRS Standards 2018–2020: The Exposure Draft issued by IASB proposes amendments in the Standards on (1) IFRS 1, *First-time Adoption of International Financial Reporting Standards - Subsidiary as a first-time adopter of IFRS Standards,* (2) IFRS 9, *Financial Instruments-* Fees included in the '10 per cent' test for derecognition of financial liabilities, (3) Illustrative Examples accompanying IFRS 16, Leases - Lease incentives, (4) IAS 41 *Agriculture* - Taxation in fair value measurements.

(2) Comments on Exposure Draft issued by IFRS Interpretations Committee - IFRS Interpretations Committee at its June meeting included new Agenda Items for its consideration on Compensation for Delays or Cancellations (IFRS 15), Disclosure of Changes in Liabilities Arising from Financing Activities (IAS 7), Fair Value Hedge of Foreign Currency Risk on Non-Financial Assets (IFRS 9), Lease Term and Useful Life of Leasehold Improvements (IFRS 16 and IAS 16), Lessee's Incremental Borrowing Rate (IFRS 16), Presentation of Liabilities or Assets Related to Uncertain Tax Treatments (IAS 1) and Subsequent Expenditure on Biological Assets (IAS 41). These items are now open for comments from public, last date being August 20, 2019. The same can be accessed online at: https://www.ifrs.org/news-and-events/updates/ifric-updates/june-2019/

Initiatives of Ind AS Implementation Committee

Release of Educational Material on Indian Accounting Standard (Ind AS) 8, ***Accounting Policies, Changes in Accounting Estimates and Errors*** which addresses all relevant aspects envisaged in the Standard by way of brief summary of the Standard and Frequently Asked Questions (FAQs) which are being/expected to be encountered while implementing the Standard.

Release of Indian Accounting Standards (Ind AS): An Overview (Revised 2019) which is the fourth edition of earlier issued publication which contains an overview of various aspects related to Indian Accounting Standards (Ind AS) such as roadmap for the applicability of Ind AS, carve-outs from IFRS/IAS, changes in financial reporting under Ind AS compared to financial reporting under accounting standards, summary of all the Ind AS etc.

Issuance of Ind AS Technical Facilitation Group (ITFG) Clarification Bulletin 20

As the implementation of Ind AS began in the country, a number of issues were being raised by the members, preparers and other stakeholders with regard to applicability/implementation of Ind AS. For addressing transition related queries in a timely and speedy manner, an Ind AS Technical Facilitation Group (ITFG) (formerly known as Ind AS Transition Facilitation Group) was constituted in the year 2016 which issues clarification bulletins addressing implementation issues from time to time.

The Group comprises of experts from accountancy firms, industry representatives and other eminent professionals. Recently, the Group has brought out ITFG Clarification Bulletin 20 comprising 5 issues. All the clarification bulletins can be accessed at the website of ICAI at the following link: https://www.icai.org/post.html?post_id=12745 ■

Common Errors Found by FRRB in Implementation of AS 22 *Accounting for Taxes on Income*

Financial Statements are the paramount source in hands of the stakeholders to understand the financial well-being of an enterprise. The users are highly reliant on the information depicted in the financial statements and, therefore, the preparers ought to ensure that the information presented in the financial statement is correct, complete, relevant and in adherence to the regulatory requirements. Financial Reporting Review Board (hereinafter referred as FRRB or Board) reviews the General Purpose Financial Statements (GPFS) of enterprises with the view to identify the non-compliances with Accounting and Auditing Standards, CARO, Companies Act, and other statutory requirements applicable in preparation and presentation of the financial statements. The non-compliances observed by the Board are compiled from time to time and published under the name of "Study on Compliance with Financial Reporting Requirement", till date three volumes of the aforesaid publication has been released by the Board. In addition, the Board publishes articles in the 'Journal' of the Institute and also conduct webinar on the non-compliances with various reporting requirements to disseminate the awareness amongst the members as well as general masses. This article deals with the non-compliances, observed by the Board, with disclosure requirements prescribed under Accounting Standard – 22.

Contributed by Financial Reporting Review Board (FRRB) of the ICAI. Comments can be sent to frrb@icai.in

1. Offsetting of DTA and DTL in Consolidated Financial Statement

Case

A company having several subsidiaries, disclosed ***Net Deferred Tax Asset*** in the Consolidated Balance Sheet.

Principle

It may be noted that paragraph 29 of AS 22, Accounting for Taxes on Income, notified under the Companies (Accounting Standard) Rules, 2006 provides that;

"29. An enterprise should offset deferred tax assets and deferred tax liabilities if:

(a) *the enterprise has a legally enforceable right to set off assets against liabilities representing current tax; and*

(b) *the deferred tax assets and the deferred tax liabilities relate to taxes on income levied by the same governing taxation laws."*

Observation

It was noted that as per aforesaid requirement deferred tax liabilities and deferred tax assets can be set off against each other, only when the enterprise has legal enforceable right to set them off against each other. It was noted that in the given case, Net Deferred Tax Assets (DTA) reported in the Consolidated Balance Sheet has been determined by adjusting Deferred Tax Asset (DTA) of one enterprise against Deferred Tax Liabilities (DTL) of another enterprises. It was viewed that **there is no legal enforceable right to set off DTA of one enterprise against DTL of another enterprise.**

Accordingly, it was viewed that reporting such balances on net basis is not in accordance with the requirement of paragraph 29 of AS 22.

2. Presentation of Deferred Tax Liability(DTL) and Deferred Tax Asset (DTA) on the face of Balance Sheet

Case

From the Annual Report of certain companies it was noted that Deferred Tax Liability and Deferred Tax Asset had been presented in the following manner on the face of Balance Sheet:

- DTL as part of Loan Fund
- DTL as part of Note on Provision
- DTA as part of Current Assets
- DTL after Shareholders Fund
- DTL after the head 'Net Current Asset' as a deduction from 'Application of Funds'
- Deferred Tax (net) after the head 'Net Current Asset'

Principle

It may be noted that explanation to paragraph 30 of AS 22, Accounting for Taxes on Income, requires that;

"30. …

Explanation:

Deferred tax assets (net of the deferred tax liabilities, if any, in accordance with paragraph 29) is disclosed on the face of the balance sheet separately after the head 'Investments' and deferred tax liabilities (net of deferred tax assets, if any, in accordance with paragraph 29) is disclosed on the face of the balance sheet separately after the head 'Unsecured Loans'."

Observation

It was noted from the stated requirement that **DTL should be disclosed separately after the head 'unsecured loans' and DTA should be disclosed separately after the head 'Investments'** on the face of Balance Sheet.

Accordingly, it was viewed that the presentation of DTA and DTL in all these cases is not in line with the requirement of paragraph 30 of AS 22.

3. Non-disclosure of major components of DTA and DTL

Case

Certain companies have disclosed the break-up only for deferred tax assets and deferred tax liabilities that have been recognized in Statement of Profit and Loss.

Principle:

It may be noted that Paragraph 31 of AS 22, Accounting for Taxes on Income provides as follows:

"31. The break-up of deferred tax assets and deferred tax liabilities into major components of the respective balances should be disclosed in the notes to accounts."

Observation:

It was noted from the aforesaid requirement that it requires the break-up of deferred tax assets and deferred tax liabilities ***balances.*** Accordingly, it was viewed that the term **'balances' signify that paragraph 31 requires break up of DTA and DTL as shown in the Balance Sheet** rather than the amount expensed in the Statement of Profit and Loss. However, the companies have disclosed the breakup of only the deferred tax liability/ assets that has been created during the year rather than providing the break-up of entire balance being carried forward in the Balance Sheet from one period to another period.

Accordingly, it was viewed that the requirement of paragraph 31 of AS 22 has not been complied with.

4. Non-recognition of DTA and DTL in case of losses

Case

In the Annual Report of a company, the note relating to provision for taxation read as follows:

'In the absence of book/ tax profits or losses and consequent impact of the timing differences on the same, provision for deferred taxes and current income tax has not been made.'

It was further noted from the note on fixed assets that the depreciation has been provided during the year.

Principle

It may be noted that paragraph 13 of AS 22, Accounting for Taxes on Income, provides as follows:

"13. Deferred tax should be recognised for all the timing differences, subject to the consideration of prudence in respect of deferred tax assets as set out in paragraphs 15-18."

It may further be noted that as per the clarification given in response to Question 9(ii) of Background Material for Seminars on Accounting Standard (AS) 22, Accounting for Taxes on Income, issued by the Institute, states as follows:

"(ii) ... It may, however, be added that the deferred tax liability recognised at the balance sheet date will give rise to future taxable income at the time of reversal thereof. Accordingly, in the present case, in respect of tax losses of the company, which can be carried forward at the balance sheet date, deferred tax asset can be recognised to the extent that the reversal of the deferred tax liability will give rise to sufficient future taxable income against which such deferred tax asset can be realised."

Observation

From the aforesaid requirement, it was viewed that deferred tax should be recognised for all the timing differences. The fact that there are no tax profits or book profits does not exempt the company from recognition of deferred taxes. As regards recognition of deferred tax asset, it should be recognised based on principles of prudence stated therein. However, as per the clarification in response to Question 9 (ii), it was viewed that **deferred tax liability recognised at the balance sheet date gives rise to future taxable income at the time of reversal. Hence, deferred tax assets to the extent of deferred tax liability should be recognised.** In the given case, it was viewed that depreciation is giving rise to deferred tax liability. Hence, **the company should have recognised DTL on timing difference related to depreciation, and thereafter, DTA to the extent of DTL,** should have been recognised as per the requirements of AS 22.

Accordingly, it was viewed that in the given case, requirement of AS 22 has not been complied with.

5. Incomplete Accounting Policy for Taxes on Income

Case

From the Annual Report of a company, it has been noted that the company having history of unabsorbed depreciation and carry forward business losses had recognised the deferred tax asset. The accounting policy disclosed by the company with regard to accounting for taxes on income is as under:

"Deferred Tax Asset is recognised, subject to consideration of prudence, on timing differences, being difference between taxable and accounting income/ expenditure that originate in one period and are capable of reversal in one or more subsequent period(s). The management is of the opinion that sufficient future taxable income will be available against which, such deferred tax assets will be realised."

Principle

It may be noted that paragraph 17 of AS 22, Accounting for Taxes on Income, provides as follows:

> *"17. Where an enterprise has unabsorbed depreciation or carry forward of losses under tax laws, deferred tax assets should be recognised only to the extent that there is virtual certainty supported by convincing evidence that sufficient future taxable income will be available against which such deferred tax assets can be realised."*

Observation

It was viewed that as per the stated requirement, if an enterprise has unabsorbed depreciation or carry forward losses, deferred tax assets should be recognised to the extent it is virtually certain supported by convincing evidence that sufficient future taxable income would be available to realise it. It was noted from the stated accounting policy that deferred tax asset was recognised subject to the consideration of prudence. However, **it is not clear whether there exists virtual certainty supported by convincing evidence that future taxable income would be available against which such deferred tax can be realised.**

Accordingly, it was viewed that the accounting policy for the recognition of deferred tax asset is not complete considering the requirements of paragraph 17 of AS 22.

6. Virtual certainty is not supported by convincing evidence

Case

A company has unabsorbed depreciation and carry forward tax losses. The accounting policy given in the Annual Report states that the "Deferred tax assets are recognised only if there is virtual certainty supported by convincing evidence that such deferred tax assets can be realised against future taxable profits." However, under the Notes to the Accounts, it is stated that "based on the future profitability projections, the Company is virtually certain that there would be sufficient taxable income in future, to claim the above tax credit."

Principle

It may be noted that Explanation to paragraph 17 of AS 22, Accounting for Taxes on Income, provides as follows:

"17…

Explanation:

1. *Determination of virtual certainty that sufficient future taxable income will be available is a matter of judgement based on convincing evidence and will have to be evaluated on a case to case basis. Virtual certainty refers to the extent of certainty, which, for all practical purposes, can be considered certain. Virtual certainty cannot be based merely on forecasts of performance such as business plans. Virtual certainty is not a matter of perception and is to be supported by convincing evidence. Evidence is a matter of fact. To be convincing, the evidence should be available at the reporting date in a concrete form, for example, a profitable binding export order, cancellation of which will result in payment of heavy damages by the defaulting party. On the other hand, a projection of the future profits made by an enterprise based on the future capital expenditures or future restructuring etc., submitted even to an outside agency, e.g., to a credit agency for obtaining loans and accepted by that agency cannot, in isolation, be considered as convincing evidence."*

Observation

It was noted that the deferred tax asset was recognised based on virtual certainty ***evident from future profitability projections***. It may be noted that as per the explanation to paragraph 17 of AS 22, a **projection of the future profits made by an enterprise cannot, in isolation, be considered as convincing evidence**. Further, that evidence should be available at the reporting date in a concrete form, for example, a profitable binding export order.

Accordingly, it was viewed that the given policy as adopted for the recognition of deferred tax asset is not in line with the requirements of explanation to paragraph 17 of AS 22. ■

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Committee for Capacity Building of Members in Practice (CCBMP), ICAI

Delhi Tax Tribunal Rules on Applicability of Indirect Transfer Tax Provisions

After the Apex Court, in case of Vodafone, refused to read the provisions of Section 9 of Income-tax Act, 1961 to cover indirect transfer of shares of foreign company having underlying assets in India, the Indian government moved retrospective amendment by Finance Act, 2012 to bring such cases to tax. Basis these amendments, the Indian Revenue Authorities had raised a demand of INR 10,000 crores on Cairn UK. The issue had gathered much spotlight amidst growing concerns among foreign investors about the retrospective nature of amendments. The Delhi Tribunal, in a detailed decision, has decided the matter in favour of Indian Revenue Authorities and confirmed the demand raise. Meanwhile, Cairn has also initiated arbitration under the India-UK bilateral investment treaty, the outcome of which is expected by end of 2019. Read on to know more…

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Introduction and background

The indirect transfer tax provisions were introduced in (Indian) Income-tax Act, 1961 ("ITA") by Finance Act, 2012. This was one of the fallout of the Supreme Court decision in case of *Vodafone International Holdings BV vs UOI and others*[1]. In that case, the Apex Court held that transfer of shares of a foreign company between two non-resident taxpayers is not liable to tax in India. Following important principles were also laid down by the Supreme Court:

- Shares of a foreign company cannot be deemed to be situated in India merely because all the assets of the foreign company are situated in India;
- A controlling interest is not an identifiable or distinct capital asset independent of the holding of shares. Hence, a transaction of sale of shares simpliciter cannot be 'look through' and dissected. Rather, a 'look-at' approach needs to be adopted; and
- Under section 9(1)(i) of ITA, word 'indirect' is used in relation to the word 'income' and not 'transfer'. Hence, while indirect income from a transfer may become liable to tax in India; indirect transfer *per se* is not liable to tax in India.

[1] (2012) 6 SCC 613

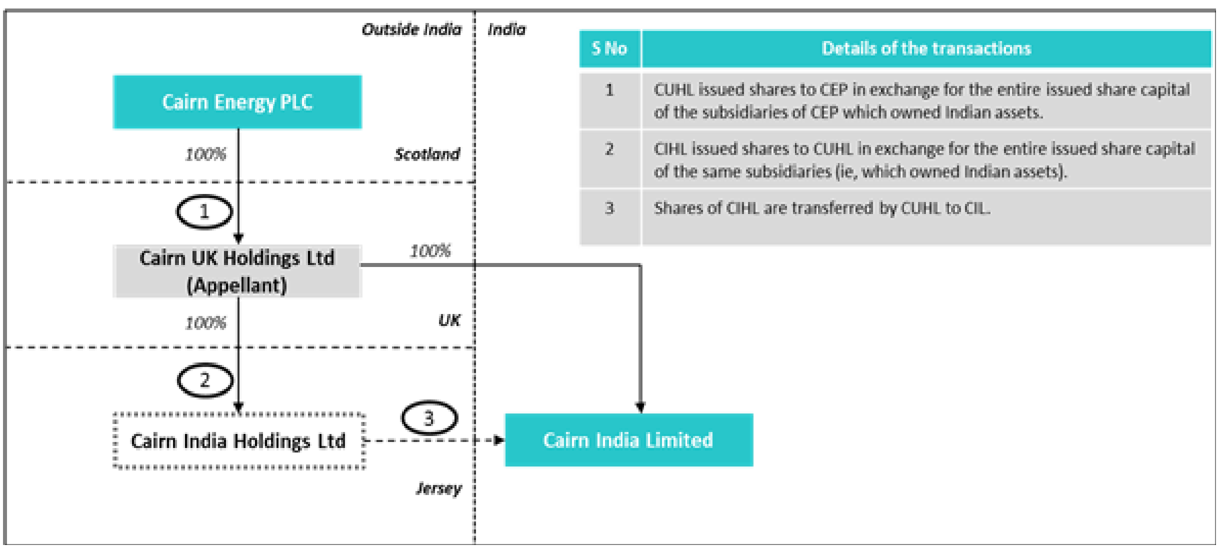
The Finance Act, 2012 inserted Explanation 4 and 5 to Section 9(1)(i) of ITA and also amended the definition of 'capital asset' under section 2(14) of the ITA. All these amendments were inserted as clarifications and made applicable with retrospective effect from April 1, 1961. In summary, these amendments sought to tax transfer of 'share' or 'interest' in a foreign company deriving substantial value from assets located in India. There was a lot of ambiguity around application of these provisions. For instance, the manner of computation of capital gains was not provided, the meaning of terms like 'share', 'interest' and 'substantial' was not defined. In 2014, the Delhi High Court in case of *DIT vs Copal Research Limited* [2] held that 'substantial' would necessarily have to be read as synonymous to 'principally', 'mainly' or at least 'majority'. Thus, this should represent more than 50% threshold. Hence, transfer of shares of a foreign company can be brought to tax in India only in case such shares derive more than 50% of their value from assets located in India. Subsequently, Finance Act, 2015 inserted Explanation 6 and 7 to Section 9(1)(i) of ITA clarifying the indirect transfer provisions and provided power to government to notify Rules for determining fair market value ("FMV") for application of indirect transfer tax provisions. Pursuant to this, Central Board of Direct Taxes ("CBDT") has notified detailed rules for computing FMV of shares of foreign company and Indian company in cases of indirect transfer of shares of a foreign company deriving substantial (i.e.; 50% or more) value from Indian assets.

While the Delhi High Court decision (in case of Copal Research Limited) was the first judicial pronouncement after introduction of indirect transfer tax provisions under the ITA, the analysis therein was limited to interpretation of the term 'substantially'. Now the Delhi bench of Income Tax Appellate Tribunal ("Tribunal") in case of *Cairn UK Holdings Limited vs. DCIT* [3] has analysed these provisions in detail and ruled in favour of Indian Revenue Authorities ("IRA"). This has been discussed in detail below.

Facts of the case

A survey was conducted under section 133A of ITA on premises of Cairn India Limited ("CIL"), an Indian company. From the premises of CIL, certain documents pertaining to Cairn UK Holdings Ltd ("CUHL"), the Appellant, were obtained by the IRA. Basis the information/documents gathered from the premises of CIL, reassessment proceedings were initiated on CUHL, the holding company of CIL.

Cairn Energy PLC ("CEP"), a company incorporated in Scotland was holding various oil and gas assets in India through its direct/indirect foreign subsidiaries. In the year 1995, CEP acquired participating interest in the underlying Indian assets. The shares of these companies were transferred initially to UK and then Jersey and finally to India. A sequence of date and events and diagrammatic presentation of the structure is depicted below.



S No	Details of the transactions
1	CUHL issued shares to CEP in exchange for the entire issued share capital of the subsidiaries of CEP which owned Indian assets.
2	CIHL issued shares to CUHL in exchange for the entire issued share capital of the same subsidiaries (ie, which owned Indian assets).
3	Shares of CIHL are transferred by CUHL to CIL.

[2] *[2014] 49 taxmann.com 125 (Delhi)*
[3] *ITA No 1669/Del/2016*

Date	Description of event
June 26, 2006	CUHL was incorporated in the United Kingdom as a 100% subsidiary of CEP.
June 30, 2006	CUHL issued 22,14,44,034 ordinary shares of face value of £1 each to CEP in exchange for the entire issued share capital of the subsidiaries of CEP which owned Indian assets in the form of Oil and Gas blocks.
August 2, 2006	CUHL incorporated another 100% subsidiary Cairn India Holdings Ltd ("CIHL") which was registered in Jersey, Channel Islands.
August 7, 2006	CUHL transferred its entire shareholding in the above-mentioned 26 companies to CIHL. In return, CIHL issued 22,14,44,034 ordinary shares of £1 each to CUHL.
CUHL increased its authorised share capital to 25,15,00,000 £1 ordinary shares and further issued 2,97,80,710 1£ ordinary shares at par to CEP pursuant to a debt conversion agreement between CEP, CUHL, CIHL and Cairn Energy Hydrocarbons Limited (a subsidiary of Cairn India Holdings at this time). In summary, this agreement provided that £2,97,80,710 due to CEP from Cairn Energy Hydrocarbons Limited was assigned to CUHL in exchange for an issue of shares. CUHL subsequently assigned the debt to CIHL in exchange for 2,97,80,710 £1 ordinary shares in CIHL. The debt amount of £2,97,80,710 became due to CIHL from Cairn Energy Hydrocarbons Ltd. Thus as on September 1, 2006 CUHL was holding 22,14,44,034 + 2,97,80,710 = 25,12,24,744 ordinary shares of £1 each of CIHL.	
September 15, 2006	CUHL entered into a subscription and share purchase agreement with CIHL and CIL with CEP as the Guarantor. The Subscription and Share Purchase Agreement provided for CIL to acquire approximately 21.85% of share capital of CIHL in two tranches.
October 12, 2006	Another Share Purchase Deed was signed and the entire remaining shareholding of CIHL (ie, 78.15%) was acquired by CIL, from CUHL. Out of this, 53.84% was acquired through a share for share exchange and 24.31% was acquired for cash. Total cash proceeds were approximately GBP 677 M.
CIL divested 30.5% of the stake to general public and institutional investors. Part of the purchase price of the share of INR 6,101 crores were paid out of the proceeds of the public issue by CIL to the Appellant.	

Basis the retrospective amendment made by Finance Act, 2012, the assessing officer passed a draft assessment order and held that transfer of shares of CIHL by Appellant to CIL is liable to tax in India. This is because the shares of CIHL derive their value substantially from assets located in India. The draft assessment order was confirmed by the Dispute Resolution Panel. Aggrieved, CUHL preferred an appeal before the Tribunal.

Decision of the Tribunal[4]

Contention of the Appellant: Amendments made to Section 9(1)(i) of ITA by Finance Act, 2012 are bad in law and ultra vires the Constitution of India.

Decision of Tribunal: An authority constituted under a statute cannot adjudicate on the constitutional validity of provisions of that statute. For this purpose, reliance was placed on the decision of Supreme Court in case of *L Chandra Kumar vs UOI* [5].

Contention of the Appellant: The series of transactions through which shares of Indian subsidiaries were transferred to

[4] *The Appellant also challenged reopening of assessment proceedings before the Tribunal, which was rejected by the Tribunal after elaborate discussion in the order. For the sake of brevity, that aspect has not been discussed in this article.*
[5] *2002-TIOL-159-SC-CB*

CIL involved only Cairn group entities. There was no change in controlling interest as a result of these internal reorganisations and there is no increase in the wealth of the group. Hence, no capital gains tax can be levied.

Decision of the Tribunal: As per amendment made to the definition of 'capital asset' by the Finance Act, 2012, 'property' includes (with retrospective effect) 'any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever'.

In the instant case, shareholders of 9 companies situated in India which controls the oil and gas sector in India are having the 'property' of the right to manage and control that business by virtue of shareholding and further such rights are 'rights in or in relation to an Indian company'. CIHL is the holding company of those subsidiary companies and Appellant is holding company of CIHL. Therefore, it is apparent that the Appellant is holding rights in control and management of the shares of the 9 Indian subsidiary companies engaged in the business of oil and gas sector through holding subsidiary structure. Further, CUHL has divested 30% of its shareholding in CIL to general public in the IPO and therefore, value is definitely derived by Cairn group and the Appellant through these series of transactions.

Contention of the Appellant: While computing the capital gains, the cost of acquisition should be stepped up to the fair value of the shares of CIHL on the date of acquisition.

Decision of Tribunal: On conjoint reading of provisions of Section 48, 49 and 55 of ITA, it is apparently clear that property held by Appellant and its mode of acquisition do not fall in any of the clauses which provides for taking the cost of acquisition in its hands in these transaction being cost to the previous owner. There is no merit in the contention of the Appellant that as there is no timing difference between the acquisition and disposal of shares, the full value of consideration and the cost of acquisition is the same. Provision of Section 48, 49 and 55(2) of ITA do not allow such treatment. Therefore, the computation of capital gain in the hands of Appellant is required to be made by deducting from the full value of consideration, cost of acquisition incurred for acquisition of the shares of CIHL.

Contention of the Appellant: Article 14 of Double Taxation Avoidance Agreement ("tax treaty") between India and UK provides that each contracting state may tax capital gain in accordance with the provision of its domestic tax law. Further, the India-UK tax treaty was notified on February 11, 1994. For the purpose of taxability of capital gains, the domestic law should be seen as it was in existence on the date on which India-UK tax treaty was notified. In other words, on the date of notification of India-UK tax treaty, the retrospective amendment to Section 9 made by Finance Act, 2012 was not in existence and therefore, as the Appellant is eligible for benefit of tax treaty, the domestic tax law is required to be read ignoring such retrospective amendment.

For this purpose, the Appellant also relied on the recent decision of Delhi High Court in case of *DIT vs New Skies Satellite BV*[6].

Decision of Tribunal: The provisions in a tax treaty cannot make the domestic tax law static with respect to taxability of a particular income when unequivocally both states have left it to the domestic laws of the countries. For instance, in case there is an exemption provided with retrospective effect under the domestic tax law, then a non-resident taxpayer cannot be denied the benefit as it was also not the law at the time of notification of tax treaty.

The Tribunal also distinguished the reliance placed by taxpayer on the decision of Delhi High Court in the case of *DIT vs New Skies Satellite BV*. The Tribunal held that the decision of Delhi High Court is not relevant in the instant case as the issue before the High Court was whether in view of Article 3(2) of tax treaty, the meaning of royalty can be ascertained from the domestic tax law where such term is already defined in the tax treaty.

Contention of the Appellant: Interest under section 234A and 234B of the ITA (on failure to pay advance tax) should not be levied due to tax demand being based on retrospective amendment.

Decision of Tribunal: The Appellant could not have visualised its liability for payment of advance in the year of transaction. Therefore, there cannot be any interest payable by the Appellant under section 234A and 234B of the Act. Further, the Supreme Court in case of *Ian Peter Morris vs ACIT*[7] held that when the salary income payable to a non-resident is subject to tax withholding under section 192 of ITA, question of

[6] *[2016] 68 taxmann.com 8 (Delhi)*

[7] *(2016) 389 ITR 501 (SC)*

payment of advance tax do not arise and consequently, provisions of Section 234B and 234C also have no obligation. Similar has been held by the Delhi High Court in the case of *DIT vs GE Packaged Power Incorporation*[8]. Hence, interest under section 234A and 234B of ITA cannot be levied in the instant case.

Conclusion

While the decision is well written and the various contentions of the taxpayer and the reason for rebuttal have been elaborately discussed, it is interesting to note that the Appellant did not challenge the retrospective applicability of the amendments made by the Finance Act, 2012 to Section 9(1)(i) of ITA. Albeit these amendments have always been portrayed by the government as a mere clarification and applicable from April 1, 1961, the Shome committee after analysing various provisions of the ITA, had concluded that it was never the intention of ITA to bring to tax transfer of shares of a foreign company having no presence but only underlying assets in India. It would be interesting to see whether this argument is taken by Cairn before the Delhi High Court, in case of a further appeal.

Although the Tribunal has adjudicated the matter in favour of IRA; the final word on the issue is yet to come. With tax demand of INR 10,000 crores, the Cairn group is likely to approach Delhi High Court and the matter would, in all likelihood, reach the Apex Court before attaining finality.

Meanwhile, Cairn also initiated arbitration under article 9 of the agreement between government of the United Kingdom of Great Britain and Northern Ireland and the government of India for the promotion and protection of the investment and the proceedings are currently in progress. According to news reports, an international arbitration tribunal had in August, 2018 concluded main court hearings in Cairn Energy's challenge to the Indian government using retrospective legislation to seek INR 10,247 crore in taxes. The tribunal was supposed to give an award by February 2019 but the same is now expected not before the end of the year. Outcome in this regard would be keenly watched by international investor community. ■

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[8] *373 ITR 65*

In three words I can sum up everything I've learned about life: it goes on. - Robert Frost

Legal Decisions[1]

Income Tax

LD/68/18, [ITA Nos.1062 to 1068/PUN/2017] Sava Healthcare Ltd. vs. Assistant Commissioner of Income Tax, 27/06/2019

TPO lacked jurisdiction under section 92CA to decide the place of effective management of assessee's business affairs.

Pune ITAT quashed TPO's action of determining control and management of affairs of assessee business entities. TPO had also rejected TNMM based benchmarking done by the assessee and instead used Profit Split Method vide which 70% of the world profits were added in the hands of the assessee. TPO had held that all the brain and functions of the group are situated in India and that AEs in Dubai and Mauritius were not doing any functions. Assessee argued that the issue of deciding the control and management of affairs of assessee is a 'status of residence' to be decided in the hands of assessee and such decision of 'status of residence' is not in the realm of determining ALP of international transactions. ITAT held that no powers under section 92CA have been bestowed on TPO to decide the situs of control and management of affairs of assessee's business and that it is the Assessing Officer who has to come to a finding in this regard. Since the assessee had raised a jurisdictional issue on whether concerned transaction was an international transaction, which was not answered by any of the authorities, ITAT held that the entire TP proceedings were in violation of Section 92CA(1) and thus illegal.

LD/68/19 , [ITA No.1493/Kol/2015] Appejay Surendra Corporate Services Pvt. Ltd. vs. Deputy Commissioner of Income Tax, 26/06/2019

'Break up' value approach used by Assessing Officer for determining Fair market value of group company's shares sold, rejected by ITAT

Long term capital loss from sale of unquoted shares of assessee's group-company, allowed to be set-off against long term capital gains. Assessee had sold certain shares of group-company to another group concern at the same price at which it was purchased and long term capital loss arose due to indexation of cost. The AO calculated break-up value of shares at ₹ 1170/- which was more than 100 times of its book value and held that share transfer was a colourable device and the long term capital loss claim was thus disallowed. ITAT held that Revenue ought not have applied the break-up value method for determining the fair market value (FMV) of shares in the year of sale. ITAT also observed that purchase transaction was accepted to be genuine by Revenue four years back even though the break up value that time was much higher. ITAT noted that pursuant to restructuring in the whole group, the shares were transferred to Apeejay Family Trust and noted that the break-up value could be resorted to in exceptional circumstances.

LD/68/20, [ITA No.2316/Ahd/2014], Deputy Commissionerof Income Tax vs. Vishal Engineering and Galvanizers Services, 25/06/2019

Conversion of firm into a company is not a case of 'distribution' of property under section 45(4).

Assets were revalued upon conversion of assessee-firm into a company and capital gains addition under section 45(4) was made by the Assessing Officer. The revalued amount was distributed to the partners' capital accounts in their profit sharing ratio (PSR) after which the assessee got converted into a private limited company and shares were allotted to the partners of the erstwhile firm in their PSR. Distinction between 'vesting of the property' and 'distribution of the property' drawn by ITAT. Upon conversion of firm into Company the properties vest in the company as they exist, whereas, distribution on dissolution presupposes division, realisation, encashment of assets and appropriation of the realised amount. Condition under section 45(4) about transfer by way of distribution of capital assets is not satisfied, as held by ITAT.

LD/68/21, [Writ Petition No. 1230 OF 2019 (Bombay)] Swastic Safe Deposit and Investments Ltd. vs. Assistant Commissioner of Income Tax, 25.06.2019

Non-disclosure of receipts doesn't necessarily imply 'income escapement'

Re-assessment notice quashed holding that mere non-disclosure of receipt would not automatically imply escapement of income. Certain shares of

[1] *Contributed by CA. Sahil Garud, CA. Mandar Telang, GST & Indirect Taxes Committee, Disciplinary Directorate and ICAI's Editorial Board Secretariat. For details please visit Editorial Board webpage at https://resource.cdn.icai.org/55564eboard44941.pdf*
Readers are invited to send their comments on the selection of cases and their utility at eboard@icai.in. For full judgement write to eboard@icai.in.

Piramal Healthcare were sold by one company which had amalgamated with assessee. AO had issued re-assessment notice holding that non-disclosure of sale consideration receipt by assessee in its return amounted to 'escapement of income'. High Court noted that the shares were held by the amalgamating co. for a period of 12 months and so stated that though there was non-disclosure, if the documents on record establish that the receipt did not give rise to any taxable income, it would not be open for the AO to reopen the assessment. High Court also observed that assessee had accounted for the profit arising on the sale of shares in his calculation of MAT (Minimum Alternate Tax).

LD/68/22, [(ITA No.807 to 810/KOL/2018)], West Bengal Housing Infrastructure Development Corporation Ltd. vs. Deputy Commissioner of Income Tax, 17/06/2019

Deduction under section 80IA(4) denied on income from sale of flats and lands to assessee a State Corporation

Assessee's claim of deduction under section 80IA(4)(i) on income from sale of flats and land with respect to its New Town project; Assessee held to be not engaged in developing 'infrastructure facility'. ITAT held that assessee's New Town project was not an integral part of highway project in terms of Explanation (b) to Section 80IA(4)(i). Definition of 'housing or other activities' should not be read isolated from an integral part of the highway project. Assessee's claim held to be against the spirit of Section 80IA since the intent behind Section 80IA was to encourage private investment in infrastructure projects.

LD/68/23, [WP(MD)No.12595 of 2018 (Madras High Court)], Karur Vysya Bank Ltd. vs. Principal Commissioner of Income Tax, 12/06/2019

Tax though wrongly paid can't be retained by the Revenue.

High Court held that Revenue was unjustified in retaining the tax paid by the assessee towards the FBT for a year when the matter was ruled in favour of the assesse by ITAT for the immediately preceding year. Assessee filed an application under section 264 for AY 2007-08 which was rejected by Pr. CIT on the grounds of delay and absence of a 'revisable order'. High Court held that application must have been treated as one for refund and processed under section 119 while agreeing that order under section 264 was unsustainable in absence of a revisable order. When the assessee was not liable to pay the tax in question, the Revenue had no business to retain it even if it was wrongly paid. High Court directed Revenue to pass the refund order.

LD/68/24, [Tax Case Appeal No.211 of 2019 (Madras High Court)], Bhagavathy Velan vs. Deputy Commissioner of Income Tax, 02/06/2019

Unpaid price of flat sold by company to director-shareholder, taxable as 'deemed dividend'

Flat was sold by a company to its director (assessee) and the portion of unpaid price of such flat was considered to be a deemed dividend by the Revenue under section 2(22)(e). High Court upheld ITAT's order holding that the transaction was to be treated like an advance to the Director falling within the ambit of Section 2(22)(e). Assessee's argument about maintainability of appeal before the ITAT owing to its low tax effect as per CBDT instruction was rejected by High Court. High Court remarked that once the Tribunal had pronounced upon the merits, the contention raised by the assessee on non-maintainability of appeal became infructuous. High Court further held that the instructions of CBDT are neither binding on the Court nor the Tribunal, nor the Board could direct the concerned Court or Tribunal to compel the litigant to withdraw such appeal.

Transfer Pricing

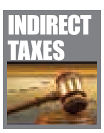
LD/68/25, [Income Tax Appeal No.30 of 2017 (Bombay High Court)], Principal Commissioner of Income Tax vs. Goldman Sachs (India) Securities Pvt. Ltd., 10/06/2019

Revenue's challenge to exclusion of comparables by ITAT, dismissed by the High Court

Assessee was engaged in investment advisory services for investment in Indian equities and strategic investments. ITAT order excluded 6 comparables in benchmarking process in case of assessee on the ground of significant related party transactions and functional differences, considering that these companies were engaged in activities like advisory to mergers and acquisition, merchant banking, agency, etc. Revenue raised additional questions before the High Court challenging exclusion of 6 comparables. High Court rejected Revenue's challenge and noted that there was no error in ITAT's reasoning of the companies from final list of comparables.

LD/68/26, [Tax Case No.118 of 2018 (Madras High Court)], India Trimmings Pvt. Ltd. vs. Deputy Commissioner of Income Tax Pvt. Ltd., 10/06/2019

ITAT held that Dispute Resolution Panel (DRP) had no power to either to direct TPO to decide the percentage of risk adjustment to be calculated or to direct him to make further enquiries and decide the matter. Revenue was in appeal against the final assessment order passed under section 144C(13) r.w.s 143(3) and did not question DRP's jurisdiction. DRP reduced the variation proposed in draft assessment order, which translated into a final assessment order. This final order was questioned by the Revenue on merits. High Court held that ITAT was incurred in holding that DRP had exceeded its jurisdiction. As per the High Court, the ITAT ought to have adjudged the final assessment order on merits. Order of ITAT was thus set-aside by the High Court.



Service Tax

LD/68/27, [Service Tax Appeal No. 86619 of 2018 (CESTAT Mumbai)], Popular Caterers vs. Commissioner of CGST, 08.05.2019

Demand on 40% non-taxable component in 'catering service' quashed.

Demand was raised on 40% non-taxable component of 'outdoor catering' service. As per CESTAT, a pure sale, unassociated with delivery of goods and services together, is not to be considered as service and delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of Constitution is not a 'service'. CESTAT stated that definition of service as contained in 65B(44) and exempted service in 66D were to be read conjointly and not in exclusion of each other. As per CESTAT, catering service includes both sale of food and service for consumption of food and therefore the other component of 40% of gross value received from catering services cannot be definitely considered as exempted services to make Rule 6(3) of CENVAT Credit Rules, 2004 applicable and to maintain separate records for availment of CENVAT credit on it including on processed food purchased as raw material. CESTAT also dismissed revenue's plea on maintainability of petition stating that only because the audit party had found some credit availed has inadmissible, suppression of fact is made out.

LD/68/ 28, (2019-TIOL-1976-CESTAT-DEL), M/s Khanna Contructions Vs. Commissioner of Customs, CGST and Central Excise, 23/05/2019

When the taxable service is exempted with retrospective effect, Tribunal held that the service tax paid earlier would be regarded as merely a deposit in excess and is not duty as such and thus, the provisions of section 11B(2) of CEA, 1944 i.e. unjust enrichment are inapplicable to claims filed for refund of such excess deposit.

LD/68/ 29, (2019-TIOL-1768-CESTAT-AHM), CCE&ST Vs. M/s Reliance Industries Ltd, 13/03/2019

As regards common credit pertaining to DTA unit and SEZ unit and distributed by DTA-ISD to SEZ unit, the refund claim filed by the SEZ unit cannot be rejected, if such invoice is filed within one year from the date of ISD invoice issued to SEZ unit by DTA unit.

LD/68/30, (2019-TIOL-1757-CESTAT-ALL), M/s Kush Construction Vs. GST NACIN, 20/02/2019

Tribunal set aside service tax demand raised by the department on difference between amounts reported in Form ST-3 and amounts shown in Form 26AS filed under Income Tax Act, 1961, without further examining the reasons for such differential or applicability of any exemption/ abatement notification.

LD/68/31, (2019-TIOL-1768-CESTAT-MAD), M/s Pricol Ltd. Vs. Commissioner of GST and Central Excise, 29/01/2019

The transfer/return of excess Input Service Distributor (ISD), credit by a unit to the ISD and redistribution of such credit by ISD to other units is not prohibited either under Rule 7 of CCR, 2004 or under any other provisions of service tax law.

LD/68/32, (2019-TIOL-1853-CESTAT-DEL), Ranjeet Sharma Vs. CCE&ST, 26/12/2018

For the purpose of determining threshold limit prescribed under small scale exemption, value of services shall be arrived at after allowing abatement. While computing the threshold limit of small scale exemption, the appellant considered the value of services after abatement, whereas department did not accept the same and raised impugned demand. The short question for consideration in present appeal was whether for determining eligibility to small scale exemption provided under service tax law, the full value of services or abated value of services shall be taken into consideration.

Tribunal noted that the issue is no more *res integra* in the light of decisions in *Shri Ashok Kumar Mishra vs. CCE &ST, Allahabad [Final Order No. 71841/2017-Cu(DB) dt. 01/12/2017], M/s. Aryavrat Housing Construction (P) Ltd. vs. CCE & ST, Bhopal [Final Order No. 50672-50673/2018 dt. 15.01.2018]* and *Alok Pratap Singh & others vs. CCE, Allahabad [Final Order No. 72407-72411/2018 dt. 5.10.2018],* wherein it has been held that the value of the services required to be computed for the purpose of small scale exemption benefit is the value arrived at after allowing the abatement.

Excise

LD/68/33, [Central Excise Appeal No. 81 of 2019 (Bombay High Court), Commissioner of Central Goods and Service Tax & Central Excise vs. Alfa Packaging, 18.06.2019

Though matter was pending before Supreme Court, Revenue must pay interest on refund sanctioned to assessee pursuant to High Court order.

Pursuant to the High Court ruling in the assessee's favour, CESTAT had held that the assessee was entitled to interest under section 11BB of the Central Excise Act, 1944 (Act) from expiry of 3 months from date of receipt of application for refund till the time of receipt of principal amount to the assessee. Revenue had denied this interest on refund on the ground that order of High Court was pending in further appeal before the Supreme Court. CESTAT ruled that a mere pendency of the appeal before the Supreme Court does not justify ignoring the statutory provisions of Section 11BB. High Court upheld this order of CESTAT.

Disciplinary Case

Conducting of tax audit of certain societies by Respondent in the name of Complainant's firm on the basis of forged documents – Denial by Complainant as to ever applying or having done audit of said societies - Non-submission of any reply/rebuttal of the allegations at any stage of the proceedings by the Respondent

Held:

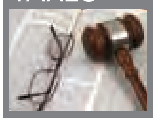
The Committee, at the outset, condemned the conduct of the Respondent as despite having been given numerous opportunities he failed to give any reply/rebuttal of the allegations at any stage of the proceedings. As regards the allegation of obtaining 13 tax audits of the Societies in a Financial Year, in the name of the Complainant without his knowledge, it was noted that the Form 3CA bears the name of the Complainant firm as well as the stamp of the Respondent firm along with the signatures of one of the partner of the Complainant firm. The Committee was unable to comprehend as to how the audit report could bear the name and seal of two different Chartered Accountants firms whereas the audit was carried out by only one firm. Further, the Income tax returns of the said Societies also bore the seal of the Respondent firm. On perusal of the signature card available on record, it is evident that the signature of the partner of the Complainant firm was forged.

The Committee noted that the firm's seal used by the Respondent firm on the audit of Societies which were allotted to him for the F.Y. was actually the same which has been used in the alleged 13 Societies allotted to the Complainant firm, meaning thereby that the Respondent used the seal of the firm deliberately so that the money could be released in the name of his firm. Moreover, the non-submissions of reply by the Respondent at any stage imply that he is in agreement with the allegations and he has nothing further to add in this matter. The said conduct of the Respondent has brought disrepute to the profession of the Chartered Accountancy and is unbecoming of a Chartered Accountant. Thus, on overall consideration, the committee is of the view that, although, the Respondent was of initially enquired for the professional and other misconduct under both First and Second Schedule but after conducting the enquiry, the Committee was of the opinion that the Respondent was guilty of other misconduct under the First Schedule only. Accordingly, the Committee ordered that the name of the Respondent be removed from the Register of Members for a period of three months.

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC and FEMA besides those related to GST, issued since the publication of the last issue of the journal, for information and use of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/notification. Feedback and suggestions on this column can be submitted at eboard@icai.in

DIRECT TAXES



(Matter on Direct Taxes has been contributed by the Direct Taxes Committee of the ICAI)

I. CIRCULARS

1. Clarification regarding non-allowability of set-off of losses against the deemed income under section 115BBE prior to AY 2017-18 - Circular No. 11/2019, dated 19-06-2019

With effect from 01.04.2017, Section 115BBE(2) provides that where total income of an assessee includes any income referred to in Section(s) 68/69/69A/69B/69C/69D, no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any provisions of the Act in computing the income referred to in Section 115BBE(1).

In this regard, CBDT noticed that in assessments prior to AY 2017-18, while some of the AOs have allowed set-off of losses against the additions made by them under section(s) 68/69/69A/69B/69C/69D, in some cases, set-off of losses against the additions made under section 115BBE(1) have not been allowed. As the amendment inserting the words 'or set-off of any loss' is applicable w.e.f. 01.04.2017 and applies from AY 2017-18 onwards, conflicting views have been taken by AOs in assessments for years prior to AY 2017-18. The matter was referred to the CBDT so that a consistent approach is adopted by the AOs while applying provision of Section 115BBE in assessments for period prior to the AY 2017-18.

The CBDT examined the matter. The Circular No. 3/2017 dated 20.01.2017 which contains Explanatory notes to the provisions of the Finance Act, 2016, at para 46.2, regarding amendment made in Section 115BBE(2) mentions that currently there is uncertainty on the issue of set-off of losses against income referred to in Section 115BBE. It also further mentions that the pre-amended provision of Section 115BBE did not convey the intention that losses shall not be allowed to be set-off against income referred to in Section 115BBE and hence, the amendment was made vide the Finance Act, 2016.

Thus keeping the legislative intent behind amendment in Section 115BBE(2) vide the Finance Act, 2016 to remove any ambiguity of interpretation, the CBDT is of the view that since the term 'or set-off of any loss' was specifically inserted only vide the Finance Act 2016, w.e.f. 01.04.2017, an assessee is entitled to claim set-off of loss against income determined under section 115BBE till the AY 2016-17.

The detailed Circular can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/circular/circular_11_2019.pdf

2. 'Assessment of Firms' - some of the important issues to be kept under consideration by AOs while framing assessment - Circular No. 12/2019, dated 19-06-2019

C&AG had carried out a Performance Audit regarding 'Assessment of Firms' under the Income-tax Act, 1961 ('Act') and in its Report No. 7/2014, has made certain suggestions so that in future, assessments in these cases are handled in a more effective manner by the Assessing Officers (AOs). Various recommendations made by the C&AG in its Report have been duly considered by the CBDT. In order to improve the quality of assessments being framed in these cases and also to reduce the scope for committing errors, the CBDT desired that AOs should duly take into consideration the issues specified in this Circular while making assessments in case of firms:

(i) Expenses in the hands of the firm such as interest on capital paid to the partners, remuneration payable to the working partners etc. are taxable in the hands of respective partners. Therefore, while framing assessment in case of firms, a cross-verification of such amounts with income-tax return of firm's partner will be desirable and any discrepancy between the tax return of a firm and its partners should be dealt with as per provisions of the Act. Further, AOs should invariably call for a copy of the partnership deed during the course of assessment proceedings and examine it carefully so that instances of payment of remuneration to any non-working partner or remuneration payment for period prior to the date of partnership deed but claimed as deductible are identified and cognizance of these are duly taken in assessment.

(ii) Section 40(b)(iv) stipulates following three conditions for allowability of interest to the partners of a firm:

a) the payment should be in accordance with the terms of the partnership deed; and

b) it should relate to any period falling after the date of such partnership deed; and

c) it should not exceed the amount calculated at the rate of twelve percent simple interest per annum.

Instances have been noticed where the interest in the partnership deed was stated to be below twelve percent, yet, the same was allowed at the rate of twelve percent by the AO. Such mistakes should be avoided. Further, in case the rate prescribed in the partnership deed is in excess of twelve percent, the excess should be disallowed in assessment. The AO is also required to ascertain whether payment of interest is duly authorised by the partnership deed or not. Further, while calculating interest payable to the partners for purposes of Section 40(b)(iv), AOs are taking different yardsticks for calculating interest viz. opening balance of capital, closing balance of capital, fixed capital or current capital etc. In this regard, Section 40(b)(iv) prescribes that payment of interest to partners should be authorised by and be in accordance with the partnership deed. Therefore, while framing assessment, AOs should refer to the terms of the partnership deed for purpose of computation of interest on capital payable to a partner.

(iii) Clause (ii) and (v) of Section 40(b) lays down that payment of remuneration to a working partner should be authorised by the partnership deed, be in accordance with the terms of the partnership deed, should relate to a period after the partnership deed and should also not exceed the maximum amounts prescribed therein. However, it has been noticed that in some assessments, AOs had allowed expenditure on remuneration to the working partners though the same was either not authorised by the partnership deed or was in excess of the amount specified therein. In order to prevent recurrence of mistakes and allowing the expenditure strictly as per provisions of the Act, the AOs should ensure that claim under section 40(b)(v) is allowed only after a thorough verification of the partnership deed. Further, while computing remuneration which is allowable to a working partner under section 40(b)(v), the term 'in accordance with the terms of the partnership deed' in clauses (ii) and (v) of Section 40(b) implies that remuneration should not be undetermined or undecided. Hence, in all situations, partnership deed should form the basis for determination of remuneration payable to the working partners. Furthermore, in situations where the remuneration either so specified in the partnership deed or computed as per the method indicated therein falls short of the amount allowable under section 40(b)(v), it would be restricted to the figure computed on the basis of the partnership deed.

(iv) While computing remuneration payable to the working partners under section 40(b)(v), the remuneration should not exceed a particular aggregate amount which is based upon the figure of 'book profit'. The Explanation 3 to Section 40(b) contains definition of 'book profit' for the purposes of determination of remuneration of the partners and provides that 'book profit' shall mean the net profit, as shown in the profit & loss account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been deducted while calculating the net profit. Therefore, while computing 'book profit' for purposes of Section 40(b)(v), all incomes such as capital gain, interest, rental income, income from other sources etc. which do not fall under the head 'profit or gain of business or profession', should be excluded.

(v) AOs are advised to apply the provisions of Chapter XVI of the Act in assessment of firms whenever required. It should be taken into consideration that under section 185, any non-compliance by the firm or its partners with provisions of Section 184 may result in denial of expenses such as remuneration, interest etc. payable to the partners which are otherwise allowable under the provisions of the Act.

(vi) It has also come to notice that some firms try to inflate the profits eligible for deduction under section 80-IA by not claiming expenditure towards remuneration, salary, interest etc. which are payable to the partners. In such situations, AOs may examine these transactions in light of provisions of Section 80-IA(10) which empower AO to re-compute profit of the eligible business after excluding the profits of the related activity/business which produced the excessive profit.

(vii) While framing assessments in case of firms claiming carry forward and set off of losses, AOs are requested to verify such claims taking into consideration provisions of Section 78 which disallow such a carry forward and set off in case of change in constitution of the firm or on succession.

(viii) Regarding the issue concerning possible action against the tax auditor for furnishing incomplete information in the Tax Audit Report (TAR) and effective utilisation of information in the TAR by the AOs, it is reiterated that directions given earlier viz. Instruction No. 09/2008 dated 31.07.2008 should be followed scrupulously by the field authorities.

It has been clarified that this circular would also be applicable to limited scrutiny cases if the assessee is a registered firm.

The detailed Circular can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/circular/circular_12_2019.pdf

3. Exemption of service element and disability element of disability pension granted to disabled personnel of armed forces who have been invalided on account of disability attributable to or aggravated by such service - Circular No. 13/2019, dated 24-06-2019

Under the existing provisions of Section 297(2)(l), any notification issued under section 60(1) or Section 60A of the Indian Income-Tax Act, 1922 (now repealed) and in force immediately before the commencement of the Act shall continue to be in force to the extent to which no provision has been made under the Act. Previously, in exercise of powers conferred under section 60 of the Indian Income -Tax Act, 1922, vide Notification no. 878-F dated 21.03.1922, it was ordered at para 19 that *"pensions granted to members of His Majesty's naval, military or air forces who have been invalided for naval, military or air force service on account of bodily disability attributable to or aggravated by such service would be exempt from tax under the Indian Income -Tax Act, 1922".*

In furtherance to the above, instruction no. 136/1970 dated 14.01.1970 in F.No. 34/3/68-IT(AI) and instruction no. 2/2001 dated 02.07.2001 in F.No. 200/51/99-ITA-I have been issued to clarify that the entire disability pension, i.e. "disability clement" and "service clement" of a disabled officer of the Indian Armed Forces continues to be exempt from income tax under the Income-tax Act, 1961.

Representations were received by the CBDT, requesting to clarify whether the exemption is applicable only to the disabled officers of Armed Forces or all disabled Armed Forces Personnel (i.e. including officers and Jawans). Representations were also received to clarify as to whether the Income Tax exemption would be limited to only such disabled Armed Forces Personnel who are invalided out of service due to disability attributable to or aggravated by military service condition or to even those who retire after full service with some disability.

The matter has been examined by the CBDT. The notification no. 878-F dated 21.03.1922, provides income tax exemption to all members of Armed Forces who have been invalided for naval, military or air force service on account of bodily disability attributable to or aggravated by such service. Thus, income- tax exemption under above clause would be available to all armed forces personnel (irrespective of rank) who have been invalided for such service

on account of bodily disability attributable to or aggravated by such service.

Further, such tax exemption will be available only to armed forces personnel who have been invalided from service on account of bodily disability attributable to or aggravated by such service and not to personnel who have been retired on superannuation or otherwise.

The detailed Circular can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/circular/circular_13_2019.pdf

4. Clarification regarding taxability of income earned by a non-resident investor from off-shore investments routed through an Alternate Investment Fund - Circular No. 14/2019, dated 03-07-2019

In the context of Alternate Investment Funds (AIFs), references have been made to the CBDT seeking clarity regarding taxability of income from investments made by the non-resident investor through these AIFs, outside India (off-shore investment).

The incidence of tax arising from off-shore investment made by a non-resident investor through the AIFs would depend on determination of status of income of non-resident investor as per provisions of Section 5(2). As per Section 5(2), the income of a person who is non-resident, is liable to be taxed in India if it is received or is deemed to be received in India in such year by or on behalf of such person; or accrues or arises or is deemed to accrue or arise to him in India.

Chapter XII-FB contains special provisions relating to tax on income of investment funds and income received from such funds. Under Chapter XII-FB, Section 115UB (Tax on income of investment fund and its unit holders) is the applicable provision to determine the income and tax-liability of investment funds and their investors. In this context, 'Investment fund" is defined in Explanation 1 of Chapter XII-FB to mean any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992. Thus, provisions of Section 115UB apply only to Category I or Category II AIFs, as defined in SEBIs regulations.

By an overriding effect over other provisions of the Act, Section 115UB(1) provides that any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund, shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person had the investments made by the investment fund been made directly by him and not through the AIF.

This matter has been considered by the CBDT. As Section 115UB(1) provides that the investments made by Category I or Category II AIFs are deemed to have been made by the investor directly, it is hereby clarified that any income in the hands of the non-resident investor from off-shore investments routed through the Category I or Category II AIF, being a deemed direct investment outside India by the non-resident investor is not taxable in India under section 5(2).

It has been further clarified that loss arising from the off-shore investment relating to non-resident investor, being an exempt loss, shall not be allowed to be set-off or carried-forward and set off against the income of the Category I or Category II AIF.

The detailed Circular can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/circular/circular_no_14_2019.pdf

5. Issues in respect of payment of third installment under the Income Declaration Scheme, 2016 - Clarification on certain procedural issues under section 195 of the Income Disclosure Scheme, 2016 read with Section 119 of the Income-tax Act, 1961 - Circular No. 15/2019, dated 12-07-2019

Under the Income Declaration Scheme, 2016 (IDS), declarants were required to pay their determined liability towards tax, surcharge and penalty pertaining to the third installment as per the Form-2 issued by the Pr. CIT/CIT, by 30.09.2017. In this regard, several references have been filed by the stakeholders with the CBDT regarding difficulties faced by the declarants while effecting payment of third installment of IDS around 30.09.2017 due to closure of banks on account of holidays due to which they couldn't effect payment of third installment within the stipulated time. Hence, a request has been made to the CBDT under section 119 of the Income-tax Act, 1961 (Act) read with Section 195 of the IDS to grant appropriate relief in such cases.

Bank Holidays towards the due-date for the third installment: A clarification has been sought by the stakeholders regarding the third instalment stating that since 30.09.2017 was a closed national holiday, whether the payments effected or completed on next working day of the banks would be treated as an on-time payment of the statutory liability towards the third installment. It is seen that 01.10.2017 and 02.10.2017 were also closed bank holidays, therefore, regular banking transactions could take place only on 03.10.2017 after 30.09.2017. Therefore, in accordance with provisions of Section 10 of the General Clauses Act, 1897, the CBDT has directed that all payments made/effected by the declarants on 03.10.2017 shall also be deemed to have been paid by the due date for the third installment i.e. 30.09.2017.

Delayed credit by the Bank while payment was tendered by the declarant in a timely manner: In some of the references, it is stated that payment through cheque, RTGS, electronic transfer etc. towards payment of liability was tendered in the bank on or before 30.09.2017. However, on bank's endorsement, the date is mentioned after 30.09.2017, which could render these declarations void. The genuine hardship of the declarants on account of procedural/technical issues with the banks has been considered by the CBDT. It has been decided that payments effected through cheque/RTGS/ electronic transfer by the declarant by 03.10.2017 (the deemed extended date for the third installment as per para above) which were credited by the banks till 05.10.2017 shall be deemed to have been paid by 30.09.2017. In this regard, the concerned Pr. CIT/CIT shall furnish a report to the Pr. DGIT (Systems) after necessary verification; to treat such payments to have been paid by the due date for the third installment i.e. 30.09.2017.

All actions which are to be completed as a consequence of this order either by the declarants or the departmental authorities are to be completed, by 31.08.2019.

The detailed Circular can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/circular/circular_no_15_2019.pdf

II. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM/ORDER

1. Task Force for drafting a New Direct Tax Legislation – Expansion of terms of reference- Office Order, dated 24-06-2019

In order to review the existing Income-tax Act, 1961 and to draft a new direct tax law in consonance with economic needs of the country, the Government had constituted a Task Force vide Office Order in F No 370149/230/2017 dated 22.11.2017, the Terms of Reference (ToR) being drafting an appropriate direct tax legislation keeping in view:

(i) the direct tax system prevalent in various countries,

(ii) the international best practices,

(iii) the economic needs of the country, and

(iv) any other matter connected there to.

The Task Force was reconstituted under the convenorship of Shri Akhilesh Ranjan, Member (Legislation), CBDT vide Office Order in F No 370149/230/2017 dated 26.11.2018, and the convenor was authorised to co-opt any person as Member. Accordingly, Ms Pragya S Saksena, IRS 87004 has been co-opted as Member on 21.12.2018.

Shri Arvind Subramanian, Chief Economic Advisor (CEA) was a permanent special invitee to the Task Force as per Order dated 22.11.2017. He has since demitted the office and Shri Krishnamurthy Subramanian has taken over as the CEA. It has been decided to nominate Shri Subramanian as member of the task force.

It has been further decided that the ToR shall be broadened to include:

(i) The Faceless and anonymous verification/scrutiny/ assessment

(ii) The mechanism for system based cross verification of the financial transactions

(iii) Reduction in litigation and expeditious disposal of appeals before the CIT(Appeals), ITAT, High Courts and Supreme Court

(iv) Reduction of compliance burden by simplification of procedures

(v) Sharing of information between GST, Customs, CBDT and FIU

In view of the expanded ToR which includes sharing of data between agencies, it has been decided to nominate Shri Ritvik Pandey, Joint Secretary (Revenue) as member of the task force as well. Other terms and conditions of the orders issued till now shall remain same.

The complete text of the above Order can be downloaded from the link below:

https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/324/task-force-office-order-dated-24-06-2019.pdf

2. Ratification by India of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting – Press Release, dated 02-07-2019

India has ratified the Multilateral Convention to implement Tax Treaty related measures to prevent Base Erosion and Profit Shifting (MLI), which was signed by the Hon'ble Finance Minister at Paris on 07.06.2017 on behalf of India, alongwith representatives of more than 65 countries. On 25.06.2019, India has deposited the Instrument of Ratification to OECD, Paris alongwith its Final Position in terms of Covered Tax Agreements (CTAs), Reservations, Options and Notifications under the MLI, as a result of which MLI will enter into force for India on 01.10.2019 and its provisions will have effect on India's DTAAs from FY 2020-21 onwards.

The Multilateral Convention/MLI is an outcome of the OECD / G20 Project to tackle Base Erosion and Profit Shifting (the "BEPS Project") i.e. tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. India was part of the Ad Hoc Group of more than 100 countries and jurisdictions from G20, OECD, BEPS associates and other interested countries, which worked on an equal footing on the finalisation of the text of the Multilateral Convention.

The MLI will modify India's tax treaties to curb revenue loss through treaty abuse and base erosion and profit shifting strategies by ensuring that profits are taxed where substantive economic activities generating the profits are carried out.

The MLI will be applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures. Out of 93 CTAs notified by India, 22 countries have already ratified the MLI as on date and the Double Taxation Avoidance Agreement (DTAA) with these countries will be modified by MLI. For the remaining CTAs, effect of MLI will take place as and when these countries ratify the MLI. Depending on the position taken under MLI by a country, India's DTAA with it shall get modified in the following prominent ways:-

a) The minimum standard under BEPS Action 6 to tackle treaty abuse, i.e., insertion of new Preamble and the Principal Purposes Test (PPT) in the DTAAs shall be achieved.

b) The minimum standard under BEPS Action 14 relating to the mutual agreement procedure shall get implemented.

c) Artificial avoidance of Permanent Establishment (PE) status through commissionaire arrangements and similar strategies would be prevented. Avoidance of PE formation through specific activity exemptions and splitting up of contracts would also be prevented.

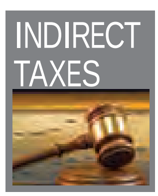
d) Avenues leading to avoidance of capital gains from alienation of shares/ interests value principally from immovable property would be plugged.

e) Certain dividend transfer transactions that are intended to lower withholding taxes payable on dividends artificially would be prevented.

The date of entry into force of the MLI for India is 01.10.2019. In respect of the 22 treaty partners of India who have deposited the Instrument of Ratification on or before 30.06.2019, entry into effect for India under MLI with respect to the DTAA shall be from financial year 2020-21 onwards.

The complete text of the above Order can be downloaded from the link below:

https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/770/PressRelease-Ratification_India_Multilateral_Convention_3_7_19.pdf



(Matter on Indirect Taxes has been contributed by the Indirect Taxes Committee of the ICAI)

1. GST

GST Council decision relating to changes in law and procedure

In the 35th GST Council Meeting held on 22nd June, 2019, The GST Council has recommended the following changes related to law and procedure:

Changes related to GST Return filing

In order to give ample opportunity to taxpayers as well as the system to adapt, the new return filing system to be introduced in a phased manner, as described below:

i) Between July, 2019 to September, 2019, the new return system (**FORM GST ANX-1&FORM GST ANX-2** only) to be available for trial for taxpayers. Taxpayers to continue to file **FORM GSTR-1&FORM GSTR-3B** as at present;

ii) From October, 2019 onwards, **FORM GST ANX-1** to be made compulsory. Large taxpayers (having aggregate turnover of more than ₹ 5 crores in previous year) to file **FORM GST ANX-1** on monthly basis whereas small taxpayers to file first **FORM GST ANX-1** for the quarter October, 2019 to December, 2019 in January, 2020;

iii) For October and November, 2019, large taxpayers to continue to file **FORM GSTR-3B** on monthly basis and will file first **FORM GST RET-01** for December, 2019 in January, 2020. It may be noted that invoices etc. can be uploaded in **FORM GST ANX-1** on a continuous basis both by large and small taxpayers from October, 2019 onwards. **FORM GST ANX-2** may be viewed simultaneously during this period but no action shall be allowed on such **FORM GST ANX-2**;

iv) From October, 2019, small taxpayers to stop filing **FORM GSTR-3B** and to start filing **FORM GST PMT-08**. They will file their first **FORM GST-RET-01** for the quarter October, 2019 to December, 2019 in January, 2020;

v) From January, 2020 onwards, **FORM GSTR-3B** to be completely phased out.

Extension in Due Dates

On account of difficulties being faced by taxpayers in furnishing the annual returns in **FORM GSTR-9**, **FORM GSTR-9A** and reconciliation statement in **FORM GSTR-9C**, the due date for furnishing these returns/reconciliation statements to be extended till 31.08.2019.

Last date for filing of intimation, in **FORM GST CMP-02**, for availing the option of payment of tax under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, to be extended from 30.04.2019 to 31.07.2019.

E-way Bill

Rule 138E of the CGST rules, pertaining to blocking of e-way bills on non-filing of returns for two consecutive tax periods, to be brought into effect from 21.08.2019, instead of the earlier notified date of 21.06.2019.

GST Tribunal

The Council took a decision regarding location of the State and the Area Benches for the Goods and Services Tax Appellate Tribunal (GSTAT) for various

SEEKING DIRECTORS – DIRECT AND INDIRECT TAXATION

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States and Union Territories with legislature. It has been decided to have a common State Bench for the States of Sikkim, Nagaland, Manipur and Arunachal Pradesh.

National Anti-Profiteering Authority

The tenure of National Anti-Profiteering Authority has been extended by 2 years.

GST Council decisions on rate changes on supply of good and services

The Council has recommended following GST rate related changes on supply of goods and services.

Electric Vehicles

On issues relating to GST concessions on electric vehicle, charger and hiring of electric vehicle, the Council recommended that the issue be examined in detail by the Fitment Committee and brought before the Council in the next meeting.

Solar Power Generating Systems and Wind Turbines

In terms of order of the Hon'ble High Court of Delhi, GST Council directed that the issue related to valuation of goods and services in a solar power generating system and wind turbine be placed before next Fitment Committee. The recommendations of the Fitment Committee would be placed before the next GST Council meeting.

Lottery

Group of Ministers (GoM) on Lottery submitted report to the Council. After deliberations on the various issues on rate of lottery, the Council recommended that certain issues relating to taxation (rates and destination principle) would require legal opinion of Learned Attorney General.

[PIB Update]

Extension of due dates

The Central Government vide *Notification No. 26/2019 – CT dated 28th June, 2019*; *Notification No. 27/2019 – CT dated 28th June, 2019*; *Notification No. 28/2019 – CT dated 28th June, 2019* ; *Notification No. 29/2019 – CT dated 28th June, 2019*; *Notification No. 32/2019- Central tax dated 28th June, 2019* has provided/extended the due dates of the following Forms.

S No.	Form	For the period	Due date
1.	**FORM GST ITC-04** (Form for furnishing details in respect of goods dispatched to a job worker or received from a job worker)	July, 2017 to June, 2019	31st day of August, 2019.
2.	**FORM GSTR-3B** (Form to furnish monthly summary of data)	July, 2019; August, 2019 and September, 2019	20th day of the month succeeding such month
3.	**FORM GSTR-1** (Form for furnishing the details of outward supply of goods or services or both.)	**July –September, 2019** (For registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year)	31st October, 2019
		For each of the months from July, 2019 to September, 2019 (For registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year)	11th day of the month succeeding such month.
4.	**FORM GSTR-7** (Form for furnishing the return by a registered person required to deduct tax at source under the provisions of Section 51)	For the months of October, 2018 to July, 2019	31st day of August, 2019

[Notification No. 26/2019 – CT dated 28th June, 2019; Notification No. 27/2019 – CT dated 28th June, 2019; Notification No. 28/2019 – CT dated 28th June, 2019; Notification No. 29/2019 – CT dated 28th June, 2019; Notification No. 32/2019- Central tax dated 28th June, 2019]

Exemption from furnishing of Annual Return / Reconciliation Statement for suppliers of OIDAR services

The Central Government vide *Notification No. 30/2019- Central tax dated 28th June, 2019* prescribed the special procedure in respect of persons supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person which is as follows:-

a. He shall not be required to furnish an annual return in FORM GSTR-9 under section 44(1) of the CGST Act read with sub-rule 80(1).

b. He shall not be required to furnish reconciliation statement in FORM GSTR-9C under section 44(2) of the CGST Act read with sub-rule 80(3).

[Notification No. 30/2019- Central tax dated 28th June, 2019]

Amendment in Central Goods and Services Tax Rules,2017

The Central Government vide *N No. 31/2019- CT dated 28th June, 2019* has amended Central Goods and Services Tax Rules, 2017. Amendments made are explained in the table on the next page:

Rule	Revised Provision
Rule 10A: (Furnishing of Bank Account Details)	**Insertion of Explanation:-** After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under Rule 12 or, as the case may be Rule 16, shall as soon as may be, but not later than 45 days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision. i.e Now, bank account details can be furnished even after obtaining the registration (Rule 10A)
Insertion in Rule 21: (Registration to be cancelled in certain cases)	**Insertion of clause (d):** The registration granted to a person is liable to be cancelled, if the said person,- (d) Violates the provision of Rule 10A.
Insertion of Rule 32A: (Value of supply in cases where Kerala Flood Cess is applicable)	The value of supply of goods or services or both on which Kerala Flood Cess is levied under clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of Section 15 of the Act, but shall not include the said cess. (Amendment effective w.e.f 1st July,2019)
Insertion of proviso to Rule 46	Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the tax invoice shall have Quick Response (QR) code.
Insertion of proviso to Rule 49	Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the bill of supply shall have Quick Response (QR) code.
Substitution in Rule 66 : (Form and manner of submission of return by a person required to deduct tax at source)	In order to align with the GST portal, substitution is made to provide that the details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the **deductees** on the common portal after filing of FORM GSTR-7 **for claiming the amount of tax deducted in his electronic cash ledger after validation.** *Earlier such information was made available in Part C of FORM GSTR-2A and FORM-GSTR-4A after the due date of filing.*

Rule	Revised Provision
Substitution in Rule 67 : (Form and manner of submission of statement of supplies through an ecommerce operator)	In order to align with the GST portal, substitution is made to provide that the details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers on the common portal after the due date of filing of FORM GSTR-8 **for claiming the amount of tax collected in his electronic cash ledger after validation.** *Earlier such information was made available in Part C of FORM GSTR-2A after the due date of filing.*
Rule 87: (Electronic Cash Ledger)	Transfer of money between different cash ledger's (e.g. IGST to CGST, etc.) will be permitted from the date notified.
Insertion in Rule 92: (Order sanctioning refund)	W.e.f date to be notified later, disbursement of refunds will be made on consolidated payment advice.
Insertion of new Rule 95A: (Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist.)	W.e.f 1st July, 2019, refund procedure has been provided for the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist. According to the procedure, application for such refund can be filed in **Form GST RFD -10B** on monthly or quarterly basis through the common portal.
Insertion in Rule 128, 132 & 133	Procedural changes in Anti-profiteering proceedings.
Insertion in Rule 138: (Information to be furnished prior to commencement of movement of goods and generation of e-way bill.)	• Extended validity for E-way bill for multimodal shipment in which at least one leg involves transport by ship. • Validity of the e-way bill can be extended within eight hours from the time of its expiry (Rule 138). Restriction on generation of E-way bill on failure to file returns for two consecutive periods extended to persons paying tax under composition as per NN 02/2019 (service providers) (Rule 138 e).
Changes in Form	Following forms have been notified/amended: • GSTR - 4 (to also cover service providers), • CMP - 08 (to discharge tax on monthly basis for quarterly filers • GSTR - 9 (Part - V to carry figures reported in 18-19 related to 17-18), • PMT - 09 (for transfer within cash ledger), • RFD - 10B (refund by duty free shops), • DRC - 03 (cause of payment to be stated).

[N No. 31/2019- CT dated 28th June, 2019]

Refund of Tax on inward supply of goods

The Central Government vide *N No. 11/2019- CT dated 29th June, 2019* has specified retail outlets (established in the departure area of an international airport, beyond the immigration counters, making tax free supply of goods to an outgoing international tourist) as class of persons who shall be entitled to claim refund of applicable central tax paid on inward supply of such goods.

[N No. 11/2019- CT dated 29th June, 2019]

Clarification regarding applicability of GST on additional / penal interest

The Central Government *vide Circular no.102/21/2019-GST dated 28th June, 2019* has clarified regarding applicability of GST on additional /penal interest on the overdue loan. Clarification provided is as follows:

S No.	Case	Treatment
1.	If such additional /penal interest is charged by the supplier of goods in respect of which such delayed payment is received.	Additional/penal interest on delayed payment of EMI would be included in the value.
2.	If such additional /penal interest is charged by a third party providing the finance.	Additional/penal interest on delayed payment of EMI would be exempt.

[Circular no. 20/16/04/2018 – GST dated 28th June, 2018]

Clarification regarding determination of place of supply in certain cases

The Central Government vide *Circular no. 103/22/2019-GST – GST dated 28th June,2019* has clarified certain issues in respect of determination of place of supply of following services:

S. No	Service	Clarification
1.	Various services being provided by the port authorities to its clients in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons etc.	Such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in sub-section (2) of Section 12 or sub-section (2) of Section 13 of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.
2.	Services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India.	In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the provisions contained in sub-section (2) of Section 13 of the IGST Act.

[Circular no. 103/22/2019-GST – GST dated 28th June,2019]

Clarification regarding application for Refund in Form GST RFD-01A

The Central Government vide Circular No. 104/23/2019-GST dated 28th June, 2019 has clarified that since the reassignment of refund applications to the correct jurisdictional tax authority is not yet available on the common portal, the processing of the refund claim should not be held up and it should be processed by the tax authority to whom the refund application has been electronically transferred by the common portal. After the processing of the refund application is complete, the refund processing authority may inform the common portal about the incorrect mapping with a request to update it suitably on the common portal so that all subsequent refund applications are transferred to the correct jurisdictional tax authority.

[Circular No. 104/23/2019-GST dated 28th June, 2019]

Clarification on treatment of secondary or post-sales discounts under GST

The Central Government vide *Circular no. 105/24/2019 dated 28th June,2019* has clarified various issues regarding treatment of secondary or post-sales discount which are as follows:

1. It is clarified that if the post-sale discount is given by the supplier of goods to the dealer without any further obligation or action required at the dealer's end, then the post sales discount given by the said supplier will be related to the original supply of goods and it would not be included in the value of supply.
2. I f the additional discount given by the supplier of goods to the dealer is the post-sale incentive requiring the dealer to do some act like undertaking special sales drive, advertisement campaign, exhibition etc., then such transaction would be a separate transaction and the additional discount will be the consideration for undertaking such activity and the dealer being supplier of services, would be required to charge applicable GST on the value of such additional discount and the supplier of goods, being recipient of services, will be eligible to claim input tax credit of the GST so charged by the dealer.
3. If the additional discount is given by the supplier of goods to the dealer to offer a special reduced

price by the dealer to the customer to augment the sales volume, then such additional discount would represent the consideration flowing from the supplier of goods to the dealer for the supply made by dealer to the customer and this additional discount as consideration, payable by any person (supplier of goods in this case) would be liable to be added to the consideration payable by the customer, for the purpose of arriving value of supply, in the hands of the dealer. The customer, if registered, would be eligible to claim ITC of the tax charged by the dealer only to the extent of the tax paid by the said customer to the dealer.

[Circular no. 105/24/2019 dated 28th June,2019]

(Matter on FEMA has been contributed by CA. Manoj Shah, Mumbai and CA. Hinesh Doshi, Mumbai)

Annual Return on Foreign Liabilities and Assets Reporting by India companies - FLAIR

A.P. (DIR Series) Circular No. 37 dated June 28, 2019

Indian Companies which have received FDI and / or made FDI abroad in current year including previous years are required to file Annual Return on Foreign Liabilities and Assets (FLA) with RBI by 15th July every year.

With objective to enhance the security level in data submission and further improve the data quality, the present email-based reporting system for submission of the FLA return will be replaced by the web-based system online reporting portal. It would facilitate data submission by eligible entities {including the alternative investment funds (AIF) registered with the Securities and Exchange Board of India (SEBI) as also the reporting of foreign investment in the form of capital/profit share contribution received/ transferred in case of LLPs and investment by persons resident outside India in an investment vehicle and as defined in Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations 2017, dated November 7, 2017}.

Important features of FLAIR are as under:

a. Reporting to be done on new web based portal to be provided by RBI on https://flair.rbi.org.in. Every entity will be required to create user registration on the portal.

b. Form will seek investor wise direct investment and other financial details on fiscal year basis as hitherto.

c. Entities will get direct system generated acknowledgement receipt upon successful submission of form.

d. Data can be revised later.

e. Entities can submit FLA information for earlier years after receiving RBI confirmation.

Gist of some Compounding Orders passed by Reserve Bank of India

Sr. No.	Subject Matter	Party Name	Contraventions Compounded	
1.	Acquisition of Immovable Property in India – FEMA Notification No. 21	Sha Mathew	Regulation 8 of Notification No. FEMA 21/2000-RB dated May 03, 2000 states that save as otherwise provided in the Act or regulations, no person resident outside India shall transfer any immovable property in India.	In terms of Regulation 8 of FEMA 21, no person resident outside India shall transfer any immovable property in India. NRIs are not allowed to acquire agricultural land in India. In the instant case, Mr. Mathew being NRI had purchased two agricultural lands without prior RBI approval. Since NRIs are not allowed to own agricultural land, Mr. Mathew was asked to sale the agricultural land

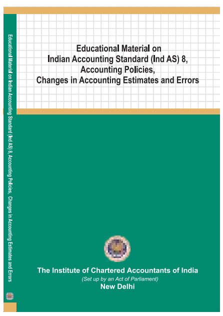
				by RBI and after sale of land RBI compounded the contravention. The undue gain earned by Mr. Mathew was recovered by RBI as compounding fees.
2.	Overseas Direct Investment – FEMA Notification No. 120	Aricent Technologies (Holdings)	The resultant structure of ODI in an entity with pre-existing FDI lead to contravention of Regulation 5(1) of Notification No. FEMA 120/2004-RB. Such investment is not allowed without prior RBI approval.	In terms of Regulation 5(1) of FEMA 120, save as otherwise provided in the Act, rules or regulations made or directions issued or without prior approval of RBI, no person resident in India shall make any direct investment outside India. The transaction of making ODI in an entity with pre-existing FDI without prior approval of RBI is contravention of Regulation 5(1). ODI – FDI structure is regularised by either unwinding FDI leg or unwinding ODI leg of the transaction. RBI considers ODI-FDI structure as round tripping and hence does not consider the same as bonafide business activity for the purposes of overseas investment even though overseas entity may be an operating entity with permitted businesses. The act of investing back to India is considered as 'non bonafide' business activity.

New Publications Release-Ind AS Implementation Committee

Ind AS Implementation Committee of the ICAI has been making relentless efforts in making smooth and effective transition to Ind AS in the country. In this regard, the Committee has recently brought out the following two publications:

1. Educational Material on Indian Accounting Standard (Ind AS) 8, *Accounting Policies, Changes in Accounting Estimates and Errors*
2. Indian Accounting Standards (Ind AS): An Overview (Revised 2019)

Educational Material on Indian Accounting Standard (Ind AS) 8, *Accounting Policies, Changes in Accounting Estimates and Errors*

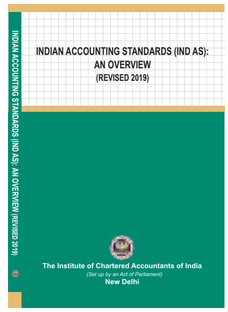


This Educational Material on Ind AS 8, *Accounting Policies, Changes in Accounting Estimates and Errors* will provide guidance to the stakeholders in understanding the criteria for selecting and changing accounting policies, together with the accounting treatment and disclosure of changes in accounting policies, changes in accounting estimates and corrections of errors. Ind AS 8 is intended to enhance the relevance and reliability of an entity's financial statements and the comparability of those financial statements over time and with the financial statements of other entities.

This Educational Material on Ind AS 8 addresses all relevant aspects envisaged in the Standard by way of brief summary of the Standard and Frequently Asked Questions (FAQs) which are being/ expected to be encountered while implementing the Standard.

Price: ₹ 75/-

Indian Accounting Standards (Ind AS): An Overview (Revised 2019)



This is the fourth edition of our earlier issued publication which contains an overview of various aspects related to Indian Accounting Standards (Ind AS) such as roadmap for the applicability of Ind AS, carve-outs from IFRS/ IAS, changes in financial reporting under Ind AS compared to financial reporting under accounting standards, summary of all the Ind AS etc. It captures all the recent amendments to Ind AS notified by the MCA in March 2019 specifically issuance of new leases standard (Ind AS 116) and other consequential amendments thereto.

Price: ₹ 200/-

The soft copy of the publication is available at the website of ICAI.

Ordering Information:

Available at: Sale counters of the Institute of Chartered Accountants of India at New Delhi, Chennai, Mumbai, Kolkata and Kanpur. Copies can also be obtained by post. To order by post, request may be sent along with a demand draft for the amount of the price of the publication plus the shipping charges in favour of "The Secretary, The Institute of Chartered Accountants of India", payable at New Delhi, to the Postal Sales Department, The Institute of Chartered Accountants of India, ICAI Bhawan, A-29, Sector-62, Noida – 201309 (U.P) or alternatively at postalsales@icai.in

'Tax Cloud' software - A web based ITR and TDS Return Preparation: An arrangement of the Committee for Capacity Building of Members in Practice

The Committee for Capacity Building of Members in Practice (CCBMP) of the Institute of Chartered Accountants of India (ICAI) has arranged the 'Tax Cloud' software on Web based ITR and TDS Return Preparation for Practised Chartered Accountants and CA Firms of ICAI. The aforesaid software is free of cost for 2 financial years to the Practitioners and CA Firms. Please visit the website http://taxcloudindia.com, for web based IT return and e-TDS return.

The aforesaid software enables Income Tax Return and TDS Return preparation, provides all types of assesses support including Individuals, HUFs, Firms and Companies, calculates Income Tax under all heads such as Salary, House Property, Capital Gain, Business and Profession, Other and Exempt Income Heads, generates detailed computation of Income Tax Returns, PDF for paper filing and XML for e-Filing, automatic data backup every night for CAs for cloud servers Features

- Onboarding clients - You can onboard all your clients by uploading single XML file
- Updated according to Government schema - The platform has been updated with the option to provide full salary break up details according to the Government schema.
- Automatic import of Form 26AS - The software is built for efficiency. To lessen workload for you, it automatically imports all data from Form 26AS.
- Automatic capital gains calculation - You need not manually calculate capital gains for every client. Once you upload the software identifies under which ITR every client should be filed and automatically calculates capital gains.
- Multiple users under one login - More than one user can use the software simultaneously at any given point of time.
- TaxCloud software uses bank grade security - 128-bit SSL.

Please visit the website http://taxcloudindia.com Sign up on TaxCloud

For any technical help, write a mail to taxcloud@cleartax.in or call at 080-67458727.

For the query other than technical query, please contact @ ccbcaf.query@icai.in

COMMON PROFICIENCY TEST (CPT) JUNE - 2019

The result of the Common Proficiency Test held on **16th June 2019** was declared recently. The details of percentage of candidates passed in the above said test are given below :

GENDER	**No. of candidates appeared**	**No. of candidates passed**	**% of pass**	**No.of Exam Centres**
MALE	11586	3348	28.90	**250**
FEMALE	8717	2416	27.72	
TOTAL	20303	5764	28.39	

Classifieds

5745 We are 38 year old Mumbai based CA firm looking for CA firm in Mumbai, Ahmedabad, Pune, Delhi, Chennai, Kolkatta wants to merge with us. Contact at shahpathik123@gmail.com.

5746 Delhi based CA firm needs Chartered Accountants, Semi Qualified Assistants and Article Assistants. Contact ASRN & Associates; sunilbhatia.ca@gmail.com; Mobile: 9810214722, 011-415366539

5747 A Delhi based CA Firm invites CA on partnership basis, preferably DISA and Article assistant (stipend 7000 p.m.). Contact: 9810175773, cajbgupta@gmail.com.

5748 27 years old Kolkata based five partners firm invites proposal for partnership or merger of existing firms with ours for mutual benefit. Our aim is to make bigger firm. Person interested with long term view. Contact us with their details: - sbcmkt2022@gmail.com

5749 55 years old firm wants to open Branches in Karnataka, Tamil Nadu, Andhra Pradesh, Madhya Pradesh, Telangana, Assam. Sole proprietorship firms may respond for merger. Contact: kumar992015@gmail.com, Phone-9938520897

5750 Delhi Based 27 years old CA firm looking for partners. Contact: E-mail: sanabaqai@yahoo.co.in

Events

FORTHCOMING EVENTS[1]

S.No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
Ind AS Implementation Committee				
1.	Certificate Course on Ind AS*	03-Aug-2019	Bhubaneswar	25
2.	Certificate Course on Ind AS*	03-Aug-2019	Jaipur	25
3.	Certificate Course on Ind AS*	03-Aug-2019	Goa	25
4.	Certificate Course on Ind AS*	10-Aug-2019	Kolkata	25
5.	Certificate Course on Ind AS*	10-Aug-2019	Noida	25
6.	Certificate Course on Ind AS*	17-Aug-2019	Ludhiana	25
7.	Certificate Course on Ind AS*	17-Aug-2019	Mumbai	25
8.	Certificate Course on Ind AS*	24-Aug-2019	Hyderabad	25
Topics	The standard session plan of the course is at the following link: https://resource.cdn.icai.org/33535ifrs23151.pdf			
Fees	Member born before 1.1.1989 = ₹ 35,400 (including GST @ 18%) Member born on or after 1.1.1989 = ₹ 28,320 (including GST @ 18%)			
Contact Person	**Programme/Course Co-ordinator : Certificate Course on Ind AS Cell** **For Registration & Further Details :** https://icai.org/post.html?post_id=3562&c_id=266 Ph : 0120- 3045928			
*Subject to minimum 30 registrations.				
GST & Indirect Taxes Committee of ICAI Visit website of the Committee: www.idtc.icai.org				
9.	Two Days National Conference on GST & IBC Jointly with Committee on Insolvency & Bankruptcy Code	3rd and 4th August, 2019	Jainam Manas Samiti, Airport Road Raipur	12
Contact Person	Raipur Branch of CIRC of ICAI Ph-0771-4030937 & 2885299 e-mail - raipur@icai.org			
10.	Two Days National Conference on GST	23rd and 24th August, 2019	Kamarajar Arangam, Teynampet, Chennai	12
Contact Person	SIRC of ICAI, Ph- 044-30210381/323 e-mail - sirccpe@icai.in			
11.	Certificate Course on GST	3rd,4th,10th,11th,17th,18th,24th,25th, 31st August and 1st September 2019	ICAI Bhawan, 7 Russell Street, Kolkata-700071	25
Contact Person	EIRC of ICAI, Ph-033-30211261 e-mail: eircevents@icai.in Register at https://idtc.icai.org/cc/student/			
12.	Certificate Course on GST	3rd,4th,5th,6th,7th,8th,9th,10th,11th,12th August 2019	ICAI Bhawan, 7 Russell Street, Kolkata-700071	25
Contact Person	EIRC of ICAI, Ph-033-30211261 e-mail: eircevents@icai.in Register at: https://idtc.icai.org/cc/student/			
13.	Certificate Course on GST	3rd, 4th, 10th, 11th, 17th, 18th, 24th, 31st August 2019 and 1st September 2019	No. 24, SBI Officers Colony, Lawsons Road, Trichy - 620 001	25
Contact Person	Tiruchirappalli Branch of SIRC of ICAI, Ph- 431-2463166 e-mail- tiruchirapalli@icai.org Register at https://idtc.icai.org/cc/student/			
Capacity Building of Members in Practice (CCBMP), ICAI Chairman, CCBMP, ICAI				
14.	3 days National Residential Seminar	15th, 16th & 17th August 2019	Chandy's Windy Woods, Munnar	12
Topics	1. Accounting and Auditing Standards 2. How Artificial Intelligence, Block Chain and Robotic can change Profession and Practice 3. Tax Audit / E-Filing and Assessment 4. GST Updates and Disciplinary Proceedings /ICAI			
Fees	Members - ₹ 18,000/- Spouse - ₹ 15,000/- Children 12 to 15 yrs - ₹ 8,000/- Children up to 12 yrs - ₹ NIL			
Contact Person	**Programme/Course Co-ordinator*** **For Registration & Further Details:** Kottayam Branch of SIRC of ICAI, ICAI Bhawan, Kollad P.O, Kottayam- 686004 Phone: 0481-2343057 / 2341407, 9447726211 Email: kottayam@icai.org; Web: kottayam-icai.org Secretary, Committee for Capacity Building of Members in Practice (CCBMP), ICAI, Telephone: 0120-3045994, E-mail: sambit.mishra@icai.in			

15.	National Residential Refresher Course	8th & 9th August, 2019	Hotel St. Laurns, Shridi	12
Topics	1. Union Budget and Recent Amendments in Direct Taxes 2. Accounting: The New Age Way 3. GST: Real Estate and Works Contract 4. Relationship Management 5. GST Audit Process, Reconciliation and Checklists 6. Issues in GST Reconciliation: With Books and Financial Statements 7. Financial Technologies for Smart Business and Use of Artificial Intelligence in GST Environment 8. Brain Trust Session on GSTR 9 and 9C			
Fees	***Delegate Fees :*** Conference-₹ 3200/- plus GST 18% i.e. ₹ 3776/- Accommodation- ₹ 1500/-(Triple Sharing Basis)			
Contact Person	**For Registration & Further Details:** Ahmednagar Branch of WIRC of ICAI, Contact No. 0241-2324761, ahmednagar@icai.org Secretary, Committee for Capacity Building of Members in Practice (CCBMP), ICAI, Telephone: 0120-3045994, E-mail: sambit.mishra@icai.in			
16.	3 Days National Residential Refresher Course	9th , 10th & 11th August 2019	Raviz Hotels & Resorts, Kollam	12
Topics	1. Audit Report-Recent Change 2. UDIN-The Way Ahead 3. Penalties Under The Income Tax Act- Recent Amendments 4. Compliance Aspects for NPO's under the Income Tax Act, GST & FCRA-Audit Perspective 5. Latest Developments in GST 6. Companies Act-Loans & Related Party Transactions-An In Depth Analysis			
Fees	Delegate Fees : Residential: Members (twin sharing) ₹ 9500+GST@18% Spouse ₹ 8,500 + GST@18% Kollam ARS ₹ 9,000 + GST@18% Non Residential: Kollam ARS ₹ 3500+GST@18% CA's ₹ 4000+GST@18% Non CAs ₹ 5,500+GST@18% Children(Room Sharing with Extra Mattress) Children 6-12 years ₹ 4000+GST@18% Children 12-15 years ₹ 7500+GST@18% *Children below 6 years-Charges will be nil			
Contact Person	**For Registration & Further Details:** Kollam Branch of SIRC of ICAI, Contact No. 0474-2750583 and 9446916854, quilon@icai.org Secretary, Committee for Capacity Building of Members in Practice (CCBMP), ICAI, Telephone: 0120-3045994, E-mail: sambit.mishra@icai.in			
17.	National CA Conference	16th & 17th August 2019	Hotel Mayfair Convention, Bhubaneswar	12
Topics	1. Accounting Standard (Ind As) 2. Goods & Services Tax (GST) 3. Audit Assurance Services, Challenges & Opportunities 4. Corporate Law 5. New Avenue at Professional Practice 6. Panel Discustion 7. Direct Tax			
Fees	Delegate Fees : Member: ₹ 3500/-(Inclusive of Taxes) upto 10th August 2019, ₹ 4100/-(Inclusive of taxes) after 10th August 2019 Non Member: ₹ 4100/-/-(Inclusive of Taxes) upto 10th August 2019, ₹ 4700/-(Inclusive of taxes) after 10th August 2019			
Contact Person	**For Registration & Further Details:** Bhubaneswar Branch of EIRC of ICAI, Bira Lane, Nilakantha Nagar, Nayapalli, Bhubaneshwar, Odisha, Telephone: 0674-2390773, E-mail: bhubaneswar@icai.org Secretary, Committee for Capacity Building of Members in Practice (CCBMP), ICAI, Telephone: 0120-3045994, E-mail: sambit.mishra@icai.in			

[1] For more details about the forthcoming events please refer the detailed announcements hosted on the ICAI website www.icai.org

ICAI in Media

ICAI in Media : Glimpses of July 2019

OUTLOOK
THE WEEKLY NEWSMAGAZINE

July Issue

BE THE BRIGHTEST & BEST IN THE WORLD, BE A CHARTERED ACCOUNTANT

...A highly affordable course for all !

CA. Prafulla P. Chhajed
President, ICAI

The Institute of Chartered Accountants of India (ICAI) is a statutory body set up under an Act of Parliament to regulate the Profession of Chartered Accountants in India. ICAI, the only accounting body of its kind offers a self-sustaining course along with a curriculum whose scope & reach go well beyond the perceived "Accountancy" parameters.

To be in sync with the requisites of the dynamic global business environment, the ICAI formulated New Scheme of Education and Training benchmarked to Chartered Accountancy course offered around the globe and recognized world wide.

The affairs of the ICAI are managed by a Council in accordance with the provisions of the Chartered Accountants Act, 1949 and the Chartered Accountants Regulations, 1988. The Council constitutes of 40 members of whom 32 are elected by the Chartered Accountants and remaining 8 are nominated by the Central Government generally representing the Comptroller and Auditor General of India, Securities and Exchange Board of India, Ministry of Corporate Affairs, Ministry of Finance and other stakeholders.

Over a period of time the ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for maintaining highest standards in technical, ethical areas and for sustaining stringent examination and education standards. Since 1949, the profession has grown leaps and bounds in terms of members and student base.

* Regulate the profession of Accountancy
* Education and Examination of Chartered Accountancy Course
* Continuing Professional Education of Members
* Conducting Post Qualification Courses
* Formulation of Accounting Standards
* Prescription of Standard Auditing Procedures
* Laying down Ethical Standards
* Monitoring Quality through Peer Review
* Ensuring Standards of performance of Members
* Exercise Disciplinary Jurisdiction
* Financial Reporting Review
* Input on Policy matters to Government

THE HINDU BusinessLine

Auditor independence not under threat: ICAI President

New Delhi, July, 01, 2019

Auditor independence not under threat: ICAI President

Says enough internal mechanisms exist to monitor members and quality of their work

New Delhi, June 30

Asserting that auditor independence is not under threat in the current corporate milieu, CA Institute President Prafulla Chhajed has said that the profession continues to rest on the foundation of 'independence'.

Auditors resigning from listed companies in the recent past – where there were differences with the management – is good testimony that no compromises are being done in such situations, Chhajed told BusinessLine, ahead of the 70th Foundation Day of the CA Institute on July 1.

"Independence has been my hallmark and I can't compromise on it. The ICAI will ensure that no member compromises on independence, which is the prime pillar of the profession," he said. Of late, there have been several instances of audit firms, including the Big 4, resigning as statutory auditors when they felt that the management is not sharing complete information about the financial affairs of the enterprise.

Chhajed maintained that adequate mechanisms exist within the CA Institute for proper monitoring and review of the work of members.

There is peer review mechanism, financial reporting review board (for listed companies) and Quality Review Board which does the needful as regards monitoring and ensuring quality of work, he said.

Chhajed also did not see any merit in housing any of these mechanisms outside the ICAI, say within the confines of the newly set up National Financial

Prafulla Chhajed,
CA Institute President

Reporting Authority (NFRA).

"It (these mechanisms) has to be within ICAI as it will be difficult for an outsider to understand. Going outside will not serve the purpose. ICAI involvement in the entire monitoring and review process is zero. Even I as President can't influence the process in these independent mechanisms," Chhajed said.

He, however, declined to comment on NFRA and whether the CA Institute's regulatory powers now stand clipped with the setting up of the new Authority. "I don't want to comment as the NFRA matter is subjudice (before Delhi High Court)," he said.

Chhajed also declined to comment on the likely regulatory action on the auditors of IL&FS, stating that the matter too was sub-judice. It may be recalled the CA Institute had suo motu initiated disciplinary investigation on certain Indian affiliates of the Big 4 involved in the IL&FS Group audit.

Monitoring group

With several Government assignments now getting awarded through the tender route due to CVC guidelines, the CA Institute has now decided to set up a 'tender monitoring group'. The whole objective is to see if the audit firms are compromising on the quality of work and whether the price quoted by them are commensurate with the scope of work, he said.

mint

New Delhi, July, 02, 2019

CAs furthering culture of honesty, better corporate governance: PM

REUTERS

New Delhi: Prime Minister Narendra Modi Monday hailed the role of chartered accountants (CAs) in furthering the culture of honesty in society.

Greeting the members of the CA fraternity on chartered accountants' day, Modi tweeted that CAs play a key role in advancing economic prosperity of the country. PTI

FINANCIAL EXPRESS
Read to Lead

New Delhi, July, 02, 2019

Swift info sharing & extradition treaties will check financial frauds: Naidu

FE BUREAU
New Delhi, July 1

STRESSING ON THE need for a equitable and civilised world order, Vice President M Venkaiah Naidu on Monday said that countries should be more open to sharing information as well as inking extradition treaties swiftly to not just curb financial frauds but also to check the practice where fraudsters scam general public of their hard earned money and escape to other countries.

Giving the inaugural address at the 70th foundation day celebrations of chartered accountants' (CA) body Institute of Chartered Accountants of India (ICAI) in the national capital, Naidu said that CAs are the conscience keepers of the economy while emphasising on following the highest ethical standards. He stressed that CAs should help avoid recurrence of frauds.

"It takes very long to sign extradition treaties. Every civilisation must come forward for this. I know I am making a very strong statement. I call on the world community so that every civilisation must come forward for this (inking extradition treaty). We must all work to create such a situation that every civilisation is a happy civilisation," he said.

He added that there have been instances in the past, where fraudsters eloped to other countries fleeing with the hard earned money of the general public. Naidu strongly supported the drive to curb financial frauds, while raising questions on some countries who allow such people to take asylum in their jurisdictions.

Vice President M Venkaiah Naidu at a function organised to celebrate the Chartered Accountants Day, in New Delhi on Monday. PTI

Naidu said accounting and financial services sector has been identified as one of the growth drivers and the stakeholders here must adhere to the principles of "reform, perform and transform" to ensure that the sector grows exponentially as well as serves the general public well. "Ill gotten money which is collected by fleecing innocent people and is being parked in other countries is hindering world peace and this needs to be checked," he said.

Ministry of corporate affairs (MCA) secretary Injeti Srinivas too stressed on the need for having strict professional ethics. "For a country to become a financial powerhouse, it needs to have very strong foundation, skills and professional ethics. Good governance is important for the country and economy to be sustainable," he said.

Srinivas also pointed out that in today's world for a CA to perform their duty, they should have independence. "For CAs to perform their duty, they should be independent. This is and important issue and it should be debated," he added.

The secretary suggested that there can be a debate on creating a mechanism like the Comptroller and Auditor General's (CAG) office, which audits the government expenditure. There can be a similar panel for the CA industry. "It can be debated whether such a mechanism would be feasible," Srinivas said.

ICAI president Prafulla P Chhajed said, "Starting with a few hundred members in 1949, ICAI today has about 3 lakh members. With its 5 regional councils and 164 branches spread across the nation and 34 overseas chapters across the world, our members are strongly contributing to both national and global economy, and this indeed gives us a reason to celebrate."

THE TIMES OF INDIA

PM Modi hails the role of chartered accountants and doctors in the society

New Delhi, July, 02, 2019

Prime Minister Narendra Modi Monday hailed the role of chartered accountants in furthering the culture of honesty in society.

He also congratulated doctors for their round the clock efforts to make the society fit and healthy.

On the occasion of Chartered Accountants' Day, the Prime Minister tweeted, "The hardworking fraternity of Chartered Accountants has been furthering the culture of honesty and better corporate governance in our society."

He said the Chartered Accountant (CAs) also play a key role in advancing economic prosperity.

On Doctors' Day, Modi congratulated all the hardworking doctors for their round the clock efforts to make the society fit and healthy.

"No words can do justice to their monumental contribution to public welfare. I also pay tributes to Dr BC Roy, a distinguished doctor himself," he said.

The Indian EXPRESS

New Delhi, July 8th, 2019

ICAI Celebrates Platinum Jubilee & 70th Chartered Accountants Day

FOUNDATION DAY-ICAI

The 70th Chartered Accountants Day of ICAI was celebrated on July 1st all across the country with great enthusiasm and zeal. July 1st is a landmark day in the history of ICAI as on this day ICAI was set up to regulate the Profession of Chartered Accountancy in India in the year 1949. This CA Day was more special as the Institute has reached a significant milestone i.e. Platinum Jubilee of its glorious existence. The 70th Chartered Accountants Day in Delhi was inaugurated by M Venkaiah Naidu, Vice-President of India. The event was also graced by Shri Injeti Srinivas, IAS, Secretary, Ministry of Corporate Affairs & Dr. In-Ki Joo, President, International Federation of Accountants (IFAC). Present were CA. Prafulla P. Chhajed, President & CA. A K Gupta, Vice-President, ICAI and over 1200 CA Members and stakeholders. ICAI has achieved significant milestones in the field of accountancy and is poised to play a greater role in changing the global landscape and strengthening the foundation of resurgent India by taking the profession to the newer zeniths.

TaxGuru Complete tax solution

ICAI Highlights & Analysis of Union Budget: 2019-20

July 5th, 2019

INDIRECT TAXES

1. Benefiting Domestic Industries: Custom duty on imports of many products have been increased such as Automobile parts, Electronic & electrical equipment etc. This will give boost to the domestic industry.

2. Resolving litigation: Sabka Vishwas (Legacy Dispute Resolution) Scheme proposed for quick disposal of pending 3.65 Lacs Crore -central excise and service tax cases. In the scheme, relief ranging from 25% to 70% of amount of duty/tax involved have been provided.

3. Getting tough with offenders: Strict penal and prosecution provisions for customs frauds.

4. Towards reducing compliance: Proposal to introduce electronic invoicing and doing away with e-way bill from Jan 2020.

5. National Appellate Authority for Advance Ruling: National Appellate Authority for Advance Ruling has been constituted for hearing appeals against conflicting advance rulings pronounced on the same question by the Appellate Authorities of two or more States or Union territories in case of distinct persons.

DIRECT TAXES

1. Steep increase in surcharge for high income taxpayers.

2. Mandatory filing of returns based on expenditure/ other criteria.

3. Benefit of reduced rate of tax of 25% extended to companies having turnover less than Rs. 400 crores.

4. Budget gives fillip to Start ups: Resolving angel tax issues and relaxing provisions for carry forward and set off of loss and extending certain incentives.

5. Aadhar made ubiquitous : PAN & Aadhar interchangeable.

6. TDS on large Cash withdrawals by businesses : Noose on cash economy further tightened.

7. Strengthening RBI's regulatory authority over NBFCs & including HFCs within its framework.

8. Level playing field for NBFC's by according tax treatment like other banking and financial institutions.

9. Electronic application for certificate for lower or nil withholding taxes for payments to non- residents.

10. Exemption from tax – Interest payable by individual company for a business trust to a non-resident or foreign company on Rupee denominated Bonds w.e.f AY 20-21

11. Gifts made by resident to a person outside India will now be taxable in India.

Lokmat Times

Aurangabad, July 10

President of The Institute of Chartered Accountants of India CA Prafulla Chhajed speaking at the members' interaction session at ICAI Bhawan. Seen are CA Ganesh Bhalerao, CA Umesh Sharma, CA Priti Savla, CA Rohan Acharya and CA Rakesh Alhat.

CAs must explore multiple opportunities: Chhajed

ICAI national president addresses seminar for CAs and students