



VOLUME 69 | NO. 9 | PAGES-148 | MARCH 2021 | ₹100

THE CHARTERED ACCOUNTANT

JOURNAL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

**UNION
BUDGET
2021-22**

**Fiscal
Prudence
and
Growth**

ALSO
IN THIS ISSUE
**BANK
AUDIT**

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Union Budget 2021-22 : Fiscal Prudence and Growth

The Union Budget, presented in trying times this year, followed a contraction in the economy that was a result of global pandemic. The macroeconomic policies implicit in the Budget were directed to reverse the aftermath of lockdown by focussing on six pillars; health and wellbeing; physical & financial capital and infrastructure; inclusive development for aspirational India; reinvigorating human capital; innovation and R&D and minimum government & maximum governance. In the emerging scenario, while the country needs extra resources, it is a challenge to have a tax system which is efficient, promote investments and employment and also puts minimum burden on tax payers. The budget ushered in several procedural reforms on the direct taxes front that are in line with the commitments spelt out in the Taxpayers' Charter.

The procedure for bringing to tax income escaping assessments (including search assessments) is proposed to be revamped completely so as to provide ease of doing business. The scope of faceless assessment has been extended to the proceedings before the Tribunal. The Constitution of Dispute Resolution Committee for small and medium taxpayers and the constitution of Board for Advance Ruling for reducing litigations and disputes are also welcome steps. On the personal taxation, relief is proposed for resident pensioners of the age of 75 years or more by way of exemption from filing of return, provided that they have, in addition to pension, only interest income from an account in the same bank from which they receive pension. Other proposals on the personal tax front include clarification relating to advance tax liability on dividend income and extension of outer time limit for sanction of loan for availing deduction under section 80EEA.

It is noteworthy that some of the suggestions of ICAI in this year's Pre-Budget Memorandum to the Government were duly considered in the Finance Bill, 2021. These include proposals relating to increase in the prescribed limit for exemption under section 10(23C), increase in safe harbour

limit for select home buyers and real estate developers selling such residential units subject to specified conditions, extension of outer limit for approval of affordable housing project and inclusion of dividend income in the specified list of exclusions u/s 234C of the Income-tax Act, 1961

As regards customs duty, we may see a revamped customs duty structure free of redundant exemptions from first of October this year. The proposal to limit the applicability of a custom duty exemption notification for two years will bring in certainty and give a clear timeline to the industry within which it needs to become competitive. As far as GST is concerned, the proposal to allow ITC only on the invoices reported in GSTR-1s of the supplier is a result of the recent spurt in ITC frauds involving fake invoices. Penalty would also be levied under customs law if fraudulently obtained ITC is used to discharge tax on goods entered for exportation under claim of refund of tax. Restricting the zero-rated supply on payment of IGST to only a notified class of taxpayers/suppliers of goods or services would create working capital issues for exporters as refund of unutilised input tax credit is a time taking and tedious task. With regards to GST Audit, representations have been made before the appropriate authorities to explain to them the need for retaining the provisions for GST audit by Chartered Accountant. GST Audit by a Chartered Accountant ensures maker checker concept thereby detecting inconsistencies, lapses or errors which helps the taxpayers in saving costs in terms of avoidable interest and penalties.

The budget is a clear attempt of the government to have inclusive growth that reaches far and wide. In the words of Hon'ble Finance Minister – *"I want to confidently state that our Government is fully prepared to support and facilitate the economy's reset. This Budget provides every opportunity for our economy to raise and capture the pace that it needs for sustainable growth."*

—Editorial Board ICAI: Partner in Nation Building

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Inland subscribers : ₹ 1,000 per annum
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CLASSIFIEDS:

Minimum ₹ 2,000/- for the first twenty five words or part thereof and
₹ 500/- for five words or part thereof over and above first twenty five words.
Please contact: The Journal Section at ICAI Bhawan, A-29, Sector-62, Noida
or call at +91(120) 3045955 or e-mail at ebboard@icai.in

EDITORIAL SUPPORT, DESIGN & ADVERTISEMENTS

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

ICAI RESERVES THE RIGHT TO REJECT ADVERTISEMENTS.

Printed and published by Mr. Rakesh Kumar Sehgal on behalf of
The Institute of Chartered Accountants of India (ICAI)

Editor - CA. Nihar N Jambusaria

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

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DISCLAIMER: The ICAI is not in any way responsible for the result of any action taken on the
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TOTAL CIRCULATION : 1,04,574

Total No. of Pages: 148 including Covers

Inside images and Graphics: www.shutterstock.com

E-Journal circulation (Soft copy): 3,13,845

From the President



CA. Nihar N. Jambusaria
President, ICAI

My dear professional colleagues,

It is a privilege for me to be the 69th President of The Institute of Chartered Accountants of India and I thank my Council colleagues for reposing confidence in me and electing me as President. I also thank the members for electing me to the Council for three times with good number of votes. ICAI holds to its name, years-long legacy of astounding supremacy, excellent superintendence and strong oversight mechanism accompanied by firm action; the blend of which has helped it overcome barriers, attain social prestige and take the profession to extraordinary heights. I pray to Almighty to give me enough abilities, strength and patience to take this profession to still superior pedestal and prove worthy of the confidence that my council colleagues and members at large have placed in me.

ICAI has had the privilege to grow under the leaders who stand strong in the face of adversity, possess the courage to make tough decisions and the compassion to empathise the challenges. It is the irreplaceable contributions of our former leaders that have built the unshakeable precedence for integrity and brilliance at ICAI and led to its phenomenal growth. As we unfold another chapter in the ICAI history with the beginning of new Council year, I express heartfelt gratitude to our immediate past president CA. Atul Kumar Gupta who with his astute leadership and pioneering guidance further strengthened the foundation of our institution.

After all, it is rightly remarked that one voice can change the room and one good leader can inspire the success of an entire organisation. Albeit the numerous obstacles presented by the year 2020, ICAI under fierce counsel of immediate past president with active support of the entire Council rose to every challenge, sought dynamic solutions and evolved and adapted its way to a successful year.

In the forthcoming Council Year, I wish to closely work with the new ICAI Vice President CA. (Dr.) Debashis Mitra and other colleagues and look forward to their insightful knowledge, long experience, and dedicated leadership to serve the profession. *"Alone we can do so little; together we can do so much"* said Helen Keller. ICAI council, consisting of 32 elected and 8 nominated representatives is the main thinktank that serves the needs of the various stakeholders of the accounting profession. I wish to harness their energies to serve the profession to the best of my abilities. In the words of first ICAI president CA. G.P. Kapadia – *"The Act gives the Profession the largest possible measure of autonomy and irrespective of the expression of individual opinions as to the whole Council being an elected one, I would certainly say that the presence of Government nominees and the representatives of commerce on a body like this, has been found to be extremely helpful. With a large number of elected representatives of the members of the profession itself, a small element of nomination gives a closer contact to the profession with Government as well as commercial interests."*

ICAI - A true Partner in Nation Building

ICAI, being a true Partner in Nation Building, has always collaborated with various initiatives of Governmental organisations and Regulatory bodies for facilitating the implementation of various policies and measures directed towards development of the economy. We feel that an educative drive in the country particularly for the MSMEs who sometimes falter out of ignorance or absence of professional advice will be a big service not just to business community but also to the nation and can be a great catalyst for change and make India Aatmanirbhar.

Literacy in the financial matters empowers us in the present complex commercial world. Education in financial matters including those related to accounting and taxation can empower individuals and businesses alike. Post pandemic, the expectations of the government, business and society from Chartered Accountants have grown manifold. As part of its agenda, the Institute would work on developing material in layman's language and also a website for

From the President

disseminating knowledge on financial and tax literacy and would conduct training programs for general public and society at large.

Public Advocacy: Assisting Government in Matters of Governance

In the direction of improved governance, out of many initiatives that have been planned this year, we look forward to setting up a group on public advocacy. When there are new laws to be introduced or when existing laws are sought to be amended, ICAI will provide its advice and support to the government. These inputs based on practical experience will be very helpful. We are envisaging that at the enactment stage itself, through these public advocacy groups, we can point out the hurdles and suggest possible solutions. It will help the government frame laws which are user and economy friendly.

Developing Profession for the Digital Era

The Institute has always been keen towards adapting and upgrading the skills of professionals in tune with changing requirements in terms of technological advancements and digital transformation. The manner in which artificial intelligence, robotics processes and data analytics are taking over, it is pertinent for our members to be on top of technology as without it, it would not be possible to serve the clients effectively and efficiently. In the recent past, through the formation of Digital Accounting and Assurance Board, development of the Digital Learning Hub, Digital Competency Maturity Model, and Self Service Portal we have progressed well and developed the necessary digital infrastructure to bring transformational change for the new age professionals. Continuing further we will ensure that the profession is suitably skilled for the new age societal requirements such as forensics, data mining and artificial intelligence.

Expanding Big, Going Global

Besides the above, One thing that will remain high on the agenda will be growth of the Indian Accountancy Firms. We are proposing to set up a task force within the ICAI to promote mergers and networking with the Indian and International accounting firms. With the new guidelines for the networking and Multi-Disciplinary Partnership (MDP) will be in place, soon, we are expecting enhanced activities within the Indian CA firms to become big and truly global, and I hope that Indian accountancy profession will provide Global Leadership like we are doing in other sectors of economy.

The World is our Village

Accounting and finance is one of the twelve champion services sector that the Indian Government is focusing

to boost India's growth to next level. Members of Indian accounting profession have significant technical competence that is of substantial use by the businesses in India as well as by businesses globally. Many of our members are working hard and excelling in foreign jurisdictions to achieve success and bring laurels to the country. ICAI is also facilitating their cause by creating suitable structures across the world.

Affiliate Member of Pan African Federation of Accountants

In its endeavor of expanding its global outreach and getting foothold in African regions, the Institute of Chartered Accountants of India (ICAI) has taken membership of Pan African Federation of Accountants (PAFA) which would enable ICAI to connect closely with the professional organisations based in African countries and also to promote such initiatives of ICAI which are of global relevance with PAOs in these jurisdictions.

Established in 2011, PAFA is a non-profit organisation currently with 55 Professional Accountancy Organisations (PAOs) from 44 African countries. Its mission is to accelerate and strengthen the voice and capacity of the Accountancy profession to work in the public interest, facilitate trade, and enhance benefits and quality services to Africa's citizens. This development will certainly help the further development of the accountancy profession in that part of the world and create more recognition and professional opportunities for the members.

MoU with Certified Practising Accountants PNG

ICAI and Certified Practising Accountants (CPA) PNG signed the technical co-operation agreement pursuant to the approval of the Union Cabinet of India. The objective of this MoU is to establish mutual co-operation between CPA PNG and ICAI for the advancement of accounting knowledge, professional and intellectual development, advancing the interests of their respective members and positively contributing to the development of the accounting profession in Papua New Guinea and India.

Virtual launch of Washington D.C. Chapter

The 39th Chapter of the Institute of Chartered Accountants of India, Washington D.C. Chapter of ICAI was inaugurated on February 6, 2021. The event witnessed the presence of H.E. Taranjit Singh Sandhu, Ambassador of India for Washington D.C., USA as the Chief Guest and Maryland State Senator, Mr. James C. Rosapepe as the Guest of Honour.

FROM THE PRESIDENT

Profile

Our New President



CA. Nihar N. Jambusaria
President, ICAI - 2021-22

A man of professional wisdom, vision and strong organisational skills with a firm belief in all round inclusive growth of Indian Chartered Accountancy profession, CA. Nihar N Jambusaria has been elected as the new President of the Institute of Chartered Accountants of India (ICAI) for the year 2021-22 wherein he is currently serving for third consecutive term, i.e. 2013-16, 2016-19 and 2019-22.

A blend of erudition, experience, foresight, technical expertise and professional excellence worth emulating and a Fellow Chartered Accountant from Mumbai, CA. Jambusaria, qualified as a Chartered Accountant in 1984 and was in practice for nearly 27 years. He has also served as Chairman of WIRC of ICAI in 2004-05.

CA. Jambusaria is now Chairman of all Standing Committees i.e. Executive, Finance and Examination Committees, besides being the ex-officio member of all Non-Standing Committees and Editor of ICAI Journal, *The Chartered Accountant*. CA. Jambusaria is Director of ICAI Registered Valuers Organisation (RVO) and also the representative from ICAI RVO on the "Committee to advise on Valuation matters" of MCA. CA. Jambusaria is Chairman of the ICAI Research wing, ICAI - Accounting Research Foundation and Extensible Business Reporting Language (XBRL) India.

CA. Jambusaria is the member of Professional Accountants in Business (PAIB) Advisory Group of International Federation of Accountants (IFAC). He, in his capacity as President, ICAI would also be representing ICAI on International Integrated Reporting Council (IIRC) and the Board of South Asian Federation of Accountants (SAFA). He has also served as Member of SAFA Committee on Professional Accountants in Business (PAIB).

CA. Jambusaria is member of very important committees constituted by the government and regulators relating to policy formation that include Government Accounting Standards Advisory Board (GASAB) and Audit Advisory Board- both constituted by the C&AG of India. He is also Board Member, Insurance Regulatory & Development Authority (IRDA), Insurance Advisory Committee and Apex Committee of IRDA, and Member of SEBI's Primary Market Advisory Committee. He has also been nominated on the Review Committee for the B.Com (Hons) and B.Com New Syllabus for all the Universities in the Country by the University Grants Commission(UGC). He was a Member of the e - Commerce Committee formed by the Ministry of Finance and Peer Review Committee of the Central Board of Direct Taxes.

An altruistic hard - worker bestowed with exceptional organisational, networking, administrative and leadership skills, CA. Jambusaria has made noteworthy contributions in whatever capacity he served the profession, particularly as the Chairman of - Ind AS Implementation Committee, International Tax Committee and various other important Committees/ Board of ICAI.

CA. Jambusaria has been a prolific speaker at national and international forum. As an academican and an orator par excellence, he has attended and contributed to numerous national and international seminars. He has addressed more than 900 seminars, conferences so far covering various subjects of professional interest like Direct Tax, Accounting Standards, International Tax and Professional Development and alike.

With focus on technological innovation, public advocacy, financial literacy and niche enablement, he intends to translate his passion for the inclusive growth of the profession through the transformational agenda that the current paradigm merits. ■

Profile

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Our New Vice President



CA. (Dr.) Debashis Mitra
Vice President, ICAI - 2021-22

CA. (Dr.) Debashis Mitra, with his unequivocal commitment has been elected as the Vice-President of the Institute of Chartered Accountants of India for the year 2021-22. After being part of the Central Council for the period 2016-19, Dr. Mitra is serving his second consecutive term in the Council for the period 2019-22. With great vigour and enthusiasm, he has been serving the accounting profession for last more than thirty-four years. Academically erudite Dr. Mitra, a senior practising member, is also a Cost Accountant, Company Secretary, holds a Master Degree in Commerce, Law graduate and a qualified Information Systems Auditor. With keen interest in academic research, he is doctorate in the complex and intrigue area of accounting standards and has been awarded Ph.D. on the topic 'A Critical Study of Select Indian GAAP, US GAAP & IAS / IFRS'.

A persuasive and intense trainer, he is renowned for his interactive deliberations in International Financial Reporting Standards (IFRS) and Corporate Laws. He has trained several officials

of many corporate and non-corporate entities as well as Central and State governmental organisations. An avid speaker, he passionately shares his deep and incisive knowledge in India & abroad at various events organised by the ICAI, trade organisations and other reputed Institutes.

As an accomplished professional having immense knowledge of trade and industry, he has served as an active member of several prestigious boards, forums and institutions in India, viz., Quality Review Board established by Govt. of India, Board of Extensible Business Reporting Language (XBRL) India and The Board of Governors of Assam Down Town University. He also represented ICAI in Uday Kotak Committee on Corporate Governance set up by SEBI as well as the Committee set up by Ministry of Corporate Affairs for revision in CARO.

On international front, he is the Chairman of Committee on Education, Training and CPD of South Asian Federation of Accountants (SAFA) and member of Audit Group of Confederation of Asian and Pacific Accountants (CAPA). He has also served as member of SAFA Committee on Auditing Standards and Quality Control.

Dr. Mitra has held several key positions in the ICAI, viz., Chairman, Board of Studies of ICAI (Academic), Director, Accounting Research Foundation, Vice Chair, Auditing & Assurance Board, member, Disciplinary Committee, Bench 4 of ICAI and as member of many other important committees. He has also held key positions as former Chairman of the Eastern Indian Regional Council of ICAI as well as Guwahati Branch of ICAI.

A seasoned strategist and leader to the core, he is the President of Rotary Club of Calcutta, the oldest running Rotary Club in Asia, as well as former National President of The Institute of Internal Auditors (India). ■

Photographs



ICAI President CA. Nihar N. Jambusaria and the then ICAI President CA. Atul Kumar Gupta along with their Central Council colleagues CA. Pramod Kumar Boob, CA. Satish K. Gupta, CA. Prakash Sharma during a residential certificate course on Working Paper Management in Jaipur (01.02.2021)

Photographs

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The then ICAI President CA. Atul Kumar Gupta with Hon'ble MoS for Finance & Corporate Affairs Shri Anurag Singh Thakur during the launch of the pilot project of ICAI ARF Accounts Assistant Scheme in the presence of their Central Council colleagues at ICAI Bhawan, New Delhi (10.02.2021)



ICAI President CA. Nihar N. Jambusaria and the then ICAI President CA. Atul Kumar Gupta along with their Central Council colleagues CA. Anuj Goyal, CA. Prakash Sharma, CA. Shriniwas Joshi, CA. M P Vijay Kumar, CA. Hans Raj Chugh during Statutory Central Auditor's Meet 2020-21 held in Gurgaon (03.02.2021)

The Institute of Chartered Accountants of India

Chartered Accountants and other subject experts, with academic passion and flair for writing, are invited to share their expertise through the ICAI Journal – *The Chartered Accountant*. The article may cover any topic relevant to the accounting world covering auditing, finance, laws, strategy, taxation, technology and so on. While submitting articles, please keep following aspects in mind:

- ❖ The length of articles should be about 2500 words.
- ❖ Articles should be original in nature
- ❖ An executive summary of about 100 words should accompany the article.
- ❖ Articles should not have been published or sent for publishing in any other print or electronic media.

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Action Plan Year 2021-2022



Aligning the Profession with the Digital Era

Embracing Technology, Empowering Profession, Catalysing Growth



Action Plan 2021-22



Framework and Ecosystem for facilitating Growth of Indian Firm

- To undertake comprehensive study for postulating framework and growth measures for facilitating growth of Firms especially in emerging era post Covid.
- To work with policy makers and regulators for creating new avenues for the profession.
- Form Group to frame guidelines for fostering networking for nurturing Indian Firms into Indian Multinational Firms/MDP.
- Setting up task force to promote mergers and networking with the Indian and international accounting firms in terms of new Networking Guidelines.
- Streamlining code of ethics to enable firms to have a global footprint.
- To study new segment and practices for knowledge and capacity enrichment of Firms in Niche Areas like Sustainability Reporting and Integrated reporting.
- Continuous professional development of Firms by exposing them to best practices and digital technologies through digital learning hub.
- Nurturing Firms to ride the opportunity of digital economy by evolving forensic accounting and investigation standards and up-skilling firms and members in technology.
- Developing Firms for Digital era by training them in emerging futuristic area like Forensic Accounting, Block Chain, Robotic Process Automation, etc.
- Measures to augment Audit Process of Firms for the emerging economic environment through Centre for Audit Quality, focussed training modules and knowledge enrichment from Case studies on Accounting and Assurance.
- Measures to encourage networking of domestic CA Firms and also with foreign firms.



Governance and Regulatory Mechanism - Adding Trust and Confidence

- Work in collaboration with regulators to improve assurance services

framework to enhance trust and confidence of stakeholders.

- Measures to enhance the investigations and adjudication mechanism of Disciplinary mechanism based on decisions of Appellate authority.
- Augmenting and enhancing competence and capacity of Peer Review and Financial Reporting Review Board for digital economy.
- Develop approach for meaningful realignment of ICAI's work program to enhance 'Audit quality' based on information from UDIN and Tender monitoring Group.
- Quality Improvement Program for firms, based on recommendations of Quality Review Board.
- Postulate framework augmenting Audit Quality by moving towards SQM from SQC.
- To work towards full implementation and awareness of Code of Ethics Adopt digital technologies to make Disciplinary Mechanism more robust and responsive.
- To bring publications on landmark cases of disciplinary mechanism to promote self-regulation.



Partnering in Nation Development - Enriching Society, Touching Lives

- To support Ministry and Government bodies in building an enabling ecosystem for Industry, MSMEs and Start-ups by collating inputs from MSMEs and industry for framing better policies.
- Engage with Regulators in promoting 'Ease of Doing', bring foreign investments in India and restructuring laws to make them user friendly.
- To work with various Government agencies and institutions in areas of mutual interest like policy making, research project, knowledge sharing etc, capitalizing on institutes' technical expertise and reach.
- Leveraging ICAI's Digital Learning Hub for customized competency and capacity building of Ministry and Government bodies in accounting and allied areas.
- To promote entrepreneurship and job creation



Action Plan 2021-22

through skill-oriented programs for students and members.

- To work towards raising MSME Finance avenues at effective rate of interest and reboot MSMEs which suffered during Covid-19 period.
- Supporting MSMEs growth with various initiatives to enhance its competitiveness like dedicated portal for guidance and establishing helpdesks.
- Interactive dialogue forum with regulators, institution, and multilateral bodies to understand the expectations from the profession.
- Contributing meaningfully in policy making by giving inputs on various Government initiatives for Citizen centric governance and inclusive growth.



Leadership and Positioning the Profession on International bodies

- Contribute actively through thought leadership and take leadership position on international fora of accountancy and related organizations.
- Take measures to promote global mobility by imbibing technical and soft skills in vogue for global markets.
- Launch initiatives to promote ICAI international curriculum to attract international students.
- Working towards developing competency and capacity in futuristic areas by entering into agreements with global institutions.
- Expanding global outreach by opening new Chapters/representative offices at newer overseas jurisdictions.
- Measures to promote International Placements and Industrial Training by engaging with International Bodies, Industry Chambers and Multinationals through our Overseas constituents.
- To work jointly with International fora for undertaking joint research/study program in areas of mutual interest.
- To associate with International bodies in emerging and specialised areas having interface with core accounting and allied areas.

- To raise and share India's and SMPs viewpoint in standards setting on International fora in education, accounting, auditing, ethics, digital environment and governance.
- Working with ICAI Overseas chapters and Representative Offices to support and promote India as destination for Investment.
- Working with Government under Champion sector to promote export of Chartered Accountant services globally.
- To develop guidelines and policy for making ICAI Overseas Chapters sustainable.



Transforming HR and Administration - Building Responsive and Vibrant Institution

- Review and revamp the organizational structure to enhance productivity across levels and prepare ICAI for next decade.
- Developing a leadership roadmap alongwith succession plan for key management roles.
- Review and Implement the best HR practices to attract and retain best talent.
- Bring in performance-oriented appraisal system and promotion policy for motivating employees.
- Holistic Learning and Development Policy for continuous training of the staff in emerging areas and soft skills for perpetual growth of the ICAI.
- Promoting Good Governance through Standard Operating Procedure (SOP) to meet the expectation gap of various stakeholders.
- Empower staff with requisite digital infrastructure to ensure increased productivity and efficiency.
- Adapt IT related processes and Promoting digital service delivery to stakeholders with attention to enhancing efficiency, economy and effectiveness.
- Revamping ICAI Mobile App with new age features for one stop service point.
- Propose institutional interventions for examination reforms to enhance efficiency.
- Work towards mobilizing CA Benevolent Fund to provide enhanced financial support per month to needy families. Enrolment of 50000 new Life Members during 2021-22.

Action Plan 2021-22

- To devise mechanism for efficiently implementing the "We Care" Alumni Program for Senior CA's.
- To enhance social/professional security for members and students entering into strategic alliances/partnerships with insurance and financial intermediaries.



Shaping the Future - Review of Education and Training of Students to produce globally competent accounting professionals

- Review and postulate a holistic learning approach to motivate students gain practical skills, acumen and exposure from environment for comprehensive personality development.
- To review and study National Education Policy and take measures to improve Chartered Accountancy Course accordingly.
- Take measures to nurture analytical and critical thinking by making curriculum more engaging.
- To establish state of the art Forensic and Analytics Labs for developing professionals in digital economy by upgrading ITT labs. Also to enhance its outreach on pan India basis.
- To take initiatives to attract best talent to CA course by working in association with educational boards.
- Exploring tie-ups to provide laptop/tablet, and other educational tools as part of an holistic ecosystem.



Building Brand Equity - Advocacy and Communication Strategy to enhance brand image and public perception

- Position CAs as business leaders and global solution providers through an extensive brand campaign.
- Positioning Indian CA Professionals and Firms as catalyst for both Inbound and Outbound Investment.
- Continue to play leadership role as an innovative and robust regulator for regulatory as well as emerging role within India and outside.
- Communication of scope of CA services to judiciary, banks, SFIO, EOW etc.

- Organising International Dialogue events to showcase knowledge prowess of Indian Chartered Accountants, exchange ideas and understand future trends.
- To conduct Masterclass for Media fraternity and investigating agencies about Auditors mandate under law.
- Leveraging WCOA 2022 for establishing CA brand globally.
- Form a group for public advocacy on Economic and Commercial laws to enhance ease of doing business objective at enactment stage of such laws.
- Encouraging foreign chapters to make their presence felt in the respective jurisdiction, in collaboration with other recognized institutions.



Future Ready Profession - Developing Profession for Digital Era

- To improve transparency and promote inclusive distribution for assignments from Banks and PSUs implementing technology driven allotment system.
- Building an ecosystem for developing and providing office management software, IT tools, Softwares and audit tools to small and medium practitioners to facilitate quality audit documentation.
- Take measures for introducing Joint Audit of Public interest entities and FDI based projects.
- Collaborate with the Government of India in various socially driven programmes and providing their interface with the membership at large.
- Launch Mentor's training program to develop next generation leaders.
- To instituting mechanism for monitoring fair remuneration for assurance services and other assignments.
- Aligning and reskilling the profession for faceless assessment regime.
- Introduce new certificate courses to equip our members to venture into new and emerging areas of practice.
- To take up recognition of CA course by UGC.



Action Plan 2021-22



Fostering Research and Innovation-Catalyzing Growth

- Bring out sector and industry specific reports to provide better insights into the complex issues faced by the regulators and businesses today.
- Encourage research and innovation in association with prominent educational institutions by sponsoring PhD in the field of taxation, finance and other allied areas of policy making, business management and governance.
- Research on issues arising from the regulatory landscape, including globalization, technology advances and impact on the profession and on business.
- Contribute to the knowledge mandate of the ICAI by contribution to law and regulation making relating to Accounting, Finance and Governance.
- To undertake studies highlighting contribution of Accountancy profession on emerging segments like sustainability reporting, enhancing tax base, ease of doing business etc.
- Conduct study of contemporary and relevant issues pertinent to assurance services.
- Guidance notes for new sectors and upgrade the existing guidance notes based on recent developments.
- Promoting ICAI 'International Research Awards' for recognising research endeavours.
- Measures to make 'The Chartered Accountant' journal into a research- oriented magazine.



Promotion of Financial and Tax Literacy- Enabling Inclusive Growth

- Develop website for disseminating knowledge amongst students, MSMEs and public at large to enhance their literacy in finance and tax.
- Develop material on financial and tax literacy and circulate the same in educational system.
- Conduct training program for general public and society at large.



CSR and Sustainability Initiatives - Pathway towards SDGs

- To form group for developing Curriculum and Course in CSR audit.
- To work with Government and related Government bodies to emphasize upon the CSR Audit and compliance.
- Bringing publication and material on amended CSR Laws.
- Emphasizing on individual social responsibility (ISR).
- Instituting CSR awards to recognize industry and stakeholders.
- Make efforts to convert ICAI buildings into green buildings.
- Develop Sustainability Reporting Maturity Model.
- Partnering with Government for implementation of Sustainability Development Goals (SDGs).
- To constitute group for developing Sustainability reporting standards and toolkit in Indian Context.
- Initiatives to create awareness amongst Industry and members for adoption of SDGs.



Members in Industry Initiatives - Nurturing Tomorrow's Leaders

- Conceptualizing Framework to align profession in the digital era by understanding expectations of members from ICAI and for evolving framework to involve and connect members with ICAI's activities.
- To establish process to capture markets insights, emerging economic trends, expectations of industry for devising strategy to remain market relevant.
- To conduct research sector wise and bring publications by institutionalizing interface with members-in-Industry.
- Measures to enhance mobility of members across sectors by exploring tie-ups with reputed institutions for executive development programs to develop managerial skills for leadership positions.
- Organize training programs for members in industry in emerging digital technologies like fintech, blockchain and analytics etc.

WORLD CONGRESS OF ACCOUNTANTS 2022

18-21 NOVEMBER MUMBAI INDIA

18-21
NOV 2022



WORLD CONGRESS OF ACCOUNTANTS 2022

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International Federation of Accountants



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

Networking, undoubtedly plays a pivotal role in business, WCOA 2022 is just that – an excellent opportunity to network with business influencers, eminent speakers, peers, vendors, etc. who can introduce professionals to new ways of improving business, increase the reach and collaborate to achieve exponential growth.

Networking at the WCOA 2022 opens up enormous opportunities for professionals & businesses:

Connecting with people: WCOA 2022 will unite experts from across the world, promoting interaction among a variety of professionals, sharing valuable insight on contemporary and emerging areas.

Augment business growth: Networking at WCOA 2022 will be a great opportunity to generate future business leads and new collaborations. It will enable professionals to understand the USPs of their global counterparts, providing inputs to augment growth.

Create awareness about businesses: Professionals can educate each other on their business and interests. Industry experts tend to outline new tools, resources and trends in the industry, bringing up opportunities to collaborate.

Build strong working relationships: Interaction at WCOA 2022 will aid in forming a relationship which often leads to invitations to other prominent industry events or results in introduction to another person having potential to be a valuable contact.

Sharing of Experiences: WCOA 2022 will be a common venue for professionals to share their success stories. Such experiences tend to provide the inspiration, motivation and at times provide the final push needed for a business concept, idea or a product to get off the ground.

Have fun and challenge yourself: Conferences are not just listening to speakers or passing through an array of exhibits. At WCOA 2022 we hope to create a unique convergence of networking, learning, and fun into a single package that will force the professionals to challenge themselves and grow.



CONTACT US :- 022 33671487/491 | E-MAIL:- WCOA@ICAI.IN

Report - Annual Function

Innovation & ICAI are Synonymous to Each Other says Member of Parliament

The Institute of Chartered Accountants of India (ICAI) standing tall for more than seven decades celebrated its 71st Annual Function on February 9, 2021 in Gurugram with great vigour and enthusiasm. The event was graced by Shri (CA.) Arun Singh, Hon'ble Member of Parliament (Rajya Sabha), CA. Atul Kumar Gupta, then President, CA. Nihar N Jambusaria, then Vice President (online), Past Presidents, Central and Regional Council Members of ICAI, office bearers of several branches. The event also recognized achievements by the meritorious CA students, outstanding Regional Councils, Branches and overseas Chapters who were conferred awards for their extraordinary accomplishments.



Amidst social distancing a good number of members, students and other stakeholders came together to celebrate consistent contributions of ICAI to the advancement and enhancement of the Accountancy profession over a span of more than seven decades, making it globally renowned and distinguished. The presence of large numbers of Accounting Professionals physically and online is reflective of their enthusiastic commitment to render top-notch quality services in all dimensions of the profession; thereby forming the foundation of a prosperous business industry and strong Indian economy. ICAI has emerged as the world's premier accounting body by setting precedence for academic excellence and grooming world-class accounting professionals.

The momentous event started with lighting of auspicious lamp and hymn of ICAI motto.

A Warm Welcome to the Celebrations



Shri Rakesh Sehgal ICAI Acting Secretary, presented a warm welcome to the Chief Guest, Shri (CA.) Arun Singh, Hon'ble Member of Parliament (Rajya Sabha), the then ICAI President CA. Atul Kumar Gupta, the then ICAI Vice President CA. Nihar N. Jambusaria, other dignitaries and audience present on the occasion. Shri Sehgal expressed that it is a moment of pride that the Institute has always been a trend setter among the professional bodies in India in all matters that are aimed at knowledge enrichment, skill sharpening, professional upgradation of its members and students. He also stated that "by following seven decades of responsible intervention, the ICAI is now recognized for high technical and ethical standards on one hand and stringent

Report - Annual Function

educational standards on the other side." Setting tone for the Annual Day function, "he said that occasions like these allow us not only to keep our head high for pristine past but also to introspect and lay a vision and path for the future."

Professional Accountants can help Business to Build Early Warning Structures

CA. Atul Kumar Gupta, the then President welcomed the gathering at the Annual Function and stated that it is not merely a time to celebrate the achievements and contributions made but is also an opportunity to introspect and analyse how far the ICAI is able to reach in the direction of accomplishing vision. Highlighting the importance of ICAI motto - *Ya esa suptesu jagarti* - for the accounting profession he said that the Chartered Accountants are conscious keepers of the society. He said "I believe that in the last 72 years, the colleagues, the professionals, the chartered accountants acted as the financial army of the country as they not only benchmarked to the global standards of the disclosure to pave the way and protect the interest of the common man but they also act as a catalyst, as a growth trajectory for the companies." He further stated that "the chartered accountants are always known for their foresightedness. They are awake when everybody is sleeping meaning thereby they understand the future, they visualise the future that what will be the challenges."

He also highlighted different dimensions relevant the profession in the years to come. Referring to pandemic he said - "the new normal is a delimitation of the jurisdictions as today we can witness that the business, the organization, the trade goes beyond the geographical boundaries." He explained that the laws such as indirect tax laws have moved from being at local level to national level and there are laws that are acquiring uniformity across different global jurisdictions as they are based on same preamble and these include Ind AS (synonymous of IFRS), insolvency, valuations, risk management, international taxation. Considering the technological developments, he explained "when we have the technology as the enabler and the global jurisdictions are being disregarded, it is not only a challenge but also an opportunity for the professionals as well." He considered that the world



of audit will change on account of technological factors that leading to automation on account of developments such as artificial Intelligence, block chain and robotic process automation. He explained that the accounting professionals needs to adapt themselves to remain relevant in the times to come.

Addressing the gathering, the then ICAI President also said "The year 2020 was an unprecedented and unpredictable year strewn with numerous ebbs and flows, yet the lessons we learnt from it are far greater in degree of significance and magnitude than the curveballs it threw. ICAI taking note of the situation, undertook all the required measures so that the future CAs are well equipped to serve the industry & society with their intellectual acumen. The learning should not stop whatsoever the situation may be."

He briefly highlighted the achievements of the Institute during the year which included association with various Government initiatives like Atmanirbhar Bharat, boosting MSMEs, establishment of Centre for Audit Quality, scholarship and reduced fees, free classes, for students, etc. He further added "As the economies emerge from hibernation, the accounting community should strive to find innovative solutions to combat the aftermath of the things that have taken place this year. Professional Accountants, with their deeper understanding of the processes, procedures and systems, can help business to build early warning structures within the organisations to forewarn about the threats and mitigate the risk."

Concluding his address he thanked his Council Colleagues and other stakeholders. Conveying thanks to the then Vice-president he hoped that the profession will get the new laurels and new benchmarks will be set that everybody will cherish.

Presenting a Book on Accomplishments



CA. Prafulla P Chhajed, Past President presented a Coffee Book consisting of significant memoirs and accomplishments of the year to the then President on behalf of the Council. He briefly summarized some of the key achievements of the year and complimented CA. Atul Kumar Gupta for effectively steering the profession. He also said the book with limited

Report - Annual Function

pages cover cannot exhaustively cover all the accomplishments. He conveyed best wishes to CA. Gupta for all his future endeavours and referred him as a man of the distinction.

ICAI is setting Standards for Globe to Emulate

Shri (CA.) Arun Singh, Hon'ble Member of Parliament addressing the participants referred to recent challenges facing the mankind. Talking about pandemic he said that its implication was unprecedented across the globe with complete lockdown and crippling effect on all walks of life. He said that initially people were worried as to how they will be able save their lives. There were also apprehensions about the availability of requisite medical infrastructure in the country. At that time the public of the nation stood committed to various initiatives. He said that *"In any country, the first priority is always public welfare."* He complimented ICAI for arranging a contribution of 21 crores to the Prime Minister Cares Fund for the Pandemic and said that it is testimony of the proactive role played by the Chartered Accountants and the ICAI.

He also said *"CA profession has played a true role of Partner in Nation building and has always been at the forefront promoting various initiatives of the Government. In the time of COVID-19 pandemic, the CA profession remain at forefront and supported Government & society and contributed in COVID fund, distributed kits for the needy etc. throughout the country."*

He also updated the gathering about some of visionary initiatives of the Government and complimented the accounting fraternity on their role in the accomplishments. He explained the initiative of opening of bank accounts to financial inclusion of all members of society, and how it has helped the nation. He also explained the importance of upliftment of lower strata and meeting their basic needs by providing gas connections and other facilities. He explained how these initiatives are going to help in growth of GDP. He said *"for reaching the dream of becoming dollar five trillion economy, we need to have good health of individuals and of society."* Hon'ble Member of Parliament further added *"Innovation & ICAI are synonymous to each other, as ICAI always keep innovating in*

every field, i.e., curriculum, implementing new global practices, technological reforms, issuing new guidelines etc. to be at the forefront of economic development."

He also stated that he can visualize from all directions that India has bright future and for transforming into a new India a major role has to be played by accounting profession. He also complimented the students for their hard work and toil to learn during training and theoretical education. Mentioning his own experiences, he added *"This noble profession has taught me time management and sharpened by Managerial skills. I am proud to be a part of this profession."* Explaining the pervasive nature of the Accounting profession he said that the profession has reach in all parts of society, in every city and town and is well respected by all in a pervasive manner.

The Chief Guest also distributed awards under various categories to meritorious students, Branches/Regional Councils & Overseas Chapters of ICAI. He concluded by conveying thanks to the ICAI and complimented various awardees.

The Triumph of Our Profession Must Continue

CA. Nihar N. Jambusaria, the then ICAI Vice-President, presented Vote of Thanks through video conferencing to Hon'ble Member of Parliament Shri (CA.) Arun Singh and all others present in the gathering for participating in the award function and making Annual function a grand success. He conveyed special thanks to the Chief Guest for his acceptance to grace the occasion in spite of several constraints. He also appreciated the exemplary work of the then President CA. Atul Kumar Gupta and stated that he has put his heart and soul into the profession. He thanked Past Presidents, the council members and other office bearers from regions and branches. He also congratulated the awardees for their accomplishments and wished them best in their future endeavours.

The then ICAI Vice-President, also said *"Bound by integrity and transparency, the profession of Chartered Accountancy has been establishing new benchmarks in terms of providing excellent services to the stakeholders and contributing towards the cause of economic growth of the nation."* He further



Report - Annual Function

added "The triumph of our profession must continue even in the times of transition and turbulence. We need to think differently and strive to conquer the emerging challenges, simultaneously exploring and capitalising on the potential opportunities."

Launches and Releases

Name of Publication/Course/Portal

- Compendium of Forensic Accounting and Investigation Standards (As on February 1, 2021)
- Self-Paced 'Course on Public Finance and Government Accounting' on DLH Platform of ICAI
- Guidance Note on Accrual Basis of Accounting
- Guidance Note on Accounting by E-commerce Entities
- Valuation Professionals' Insight- Series- 5
- Educational Material ICAI Valuation Standard 103- Valuation Approaches and Methods
- Educational Material ICAI Valuation Standard 301- Business Valuation
- Technical Guide on Valuation- (Revised Edition 2021)
- UDIN- A Report 2020- 21
- FAQs on Unique Document Identification Number (UDIN) (Revised 2021)
- Coffee Table Book of ICAI
- Frequently Asked Questions on SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015
- Handbook on Role of Women Directors
- Study on Compliance of Financial Reporting Requirements (Ind AS Framework)
- Case Study Digest (Final New)
- MCQS & Case Scenarios (Final New)
- MCQS & Case Scenarios (Final Old)
- Introduction of Forensic Audit Technique in AICITSS- Advanced Information Technology Training Curriculum
- Compendium of Opinions Volume 38
- Compendium of Opinions Volume 39
- Compendium of Opinions Volume 40
- Standard on Assurance Engagements (SAE) 3410 "Assurance Engagements on Greenhouse Gas Statements"
- Background Material on "Business Responsibility and Sustainability Reporting (BRSR)"
- Sustainable Development Goals - Accountants Creating Sustainable World- Part 1
- Search Engine Portal
- FAQs on Ethical Issues
- Booklet on Independent Directors vis- à-vis members in practice
- E-Code
- Video on revised Code of Ethics
- Educational Material on Ind AS 105, Non-current Assets Held for Sale and Discontinued Operations
- Technical Guide on Accounting of CSR Funds by Third Parties
- Handbook on Certification of Form CSR-1
- ICAI Overseas Directory

Awards to Best Regions and Branches

Category of Awards 2020	First Prize - Gold Shield and Certificate	Second Prize - Silver Shield and Certificate	Third Prize - Bronze Shield and Certificate
Best Regional Council	1. Western India Regional Council (WIRC) of ICAI jointly with Southern India Regional Council (SIRC) of ICAI 2. Southern India Regional Council (SIRC) of ICAI jointly with Western India Regional Council (WIRC) of ICAI	Eastern India Regional Council (EIRC) of ICAI	

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Best Branch of Regional Council- (Mega category) (2501 and above members)	1. Indore Branch of CIRC of ICAI jointly with Bengaluru Branch of SIRC of ICAI 2. Bengaluru Branch of SIRC of ICAI jointly with Indore Branch of CIRC of ICAI	Pune Branch of WIRC of ICAI	1. Ahmedabad Branch of WIRC of ICAI jointly with Hyderabad Branch of SIRC of ICAI 2. Hyderabad Branch of SIRC of ICAI jointly with Ahmedabad Branch of WIRC of ICAI
Best Branch of Regional Council - (Large category) (1001-2500 members)	1. Ernakulam Branch of SIRC of ICAI jointly with Vijayawada Branch of SIRC of ICAI 2. Vijayawada Branch of SIRC of ICAI jointly with Ernakulam Branch of SIRC of ICAI	Pimpri Chinchwad Branch of WIRC of ICAI	1. Kota Branch of CIRC of ICAI jointly with Ludhiana Branch of NIRC of ICAI 2. Ludhiana Branch of NIRC of ICAI jointly with Kota Branch of CIRC of ICAI
Best Branch of Regional Council- (Medium Category) (501-1000 members)	Siliguri Branch of EIRC of ICAI	Jammu & Kashmir Branch of NIRC of ICAI	Bhilai Branch of CIRC of ICAI
Best Branch of Regional council- (Small category) (201-500 members)	Salem Branch of EIRC of ICAI	Belagavi Branch of SIRC of ICAI	Tirupur Branch of SIRC of ICAI
Best Branch of Regional Council- (Micro category) (upto 200 members)	Sivakasi Branch of SIRC of ICAI		
Best Students' Association of Regional Council	WICASA of WIRC of ICAI	SICASA of SIRC of ICAI	NICASA of NIRC of ICAI
Best Branch of Students' Association- (Mega category) (10001 and above Students*)	Ahmedabad Branch of WICASA of WIRC of ICAI	Pune Branch of WICASA of WIRC of ICAI	Jaipur Branch of CICASA of CIRC of ICAI
Best Branch of Students' Association- (Large category) (5001 to 10000 Students*)	Indore Branch of CICASA of CIRC of ICAI	Ernakulam Branch of SICASA of SIRC of ICAI	

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Best Branch of Students' Association – (Medium category) (3001 to 5000 Students*)	Rajkot Branch of WICASA of WIRC of ICAI	Jodhpur Branch of CICASA of CIRC of ICAI	
Best Branch of Students' Association – (Small category) (1001 to 3000 Students*)	Salem Branch of SICASA of SIRC of ICAI	Kota Branch of CICASA of CIRC of ICAI	1. Siliguri Branch of EICASA of EIRC of ICAI jointly with Jalgaon Branch of WICASA of WIRC of ICAI 2. Jalgaon Branch of WICASA of WIRC of ICAI with Siliguri Branch of EICASA of EIRC of ICAI
Best Branch of Students' Association – (Micro category) (Upto 1000 Students*) *Students include all stages i.e CPT/ Foundation + IPCC/ Intermediate + Final.	Sivakasi Branch of SICASA of SIRC of ICAI	Bilaspur Branch of CICASA of CIRC of ICAI	1. Pimpri Chinchwad Branch of WICASA of WIRC of ICAI jointly with Nanded Branch of WICASA of WIRC of ICAI 2. Nanded Branch of WICASA of WIRC of ICAI jointly with Pimpri Chinchwad Branch of WICASA of WIRC of ICAI

Overseas Chapter Awards

S.No	Name of the Chapter of ICAI	Position
Category I (More than 500 Members)		
	UAE (Dubai) Chapter of ICAI	Joint 1 st
	UAE (Abu Dhabi) Chapter of ICAI	
	Kuwait Chapter of ICAI	2 nd
Category II (101 to 500 Members)		
	Bahrain Chapter of ICAI	1 st
	Singapore Chapter of ICAI	2 nd
	Oman (Muscat) Chapter of ICAI	3 rd
Category III (Upto 100 Members)		
	The Netherlands(Amsterdam) Chapter of ICAI	1 st
	Canada (British Columbia, Vancouver) Chapter of ICAI	2 nd
	USA (San Francisco) Chapter of ICAI	3 rd

Opinion

Classification of Advances for Infrastructure Projects to be leased

A. Facts of the Case

1. A Public Sector Undertaking (PSU) (herein after referred to as 'the Company') is an infrastructural leasing non-banking financial company, wholly owned by the Government of India (GoI). It leases infrastructural assets to one of the Ministries of Government of India in the transportation sector.
2. The Company was hitherto required to adopt Companies (Accounting Standards) Rules, 2006 (AS). It is now required to adopt Companies (Indian Accounting Standards) Rules, 2015 (Ind AS) with the date of transition to Ind AS being 1st April 2017. All its leases, as a Lessor, in the past have been classified as finance leases in accordance with AS 19, 'Leases'.
3. The Company has entered into a Memorandum of Understanding (MoU) with the administrative Ministry (hereinafter referred to as 'the Ministry') of the Government of India for financing of certain infrastructure projects. It may be noted that the infrastructure projects have a long gestation period of 5 years or more.
4. Prior to entering into the aforesaid MoU, the Ministry had entered into a Memorandum of Understanding in March 2015 with a leading insurance company in the public sector to draw funds for its infrastructure projects. In accordance with the said Memorandum of Understanding, the Ministry authorised the Company to draw funds from the insurance company and invest those funds in the identified projects of the Ministry, to be subsequently leased by the Company to the Ministry.
5. The querist has mentioned that the preamble to MoU states as follows:

"The terms and conditions of the financial assistance agreed between the Ministry and insurance company provide for a tenor of 30 years for each instalment, with capitalization of interest accruing in the first 5 years and repayment of principal in equal semi-annual

instalments in 20 years commencing after a moratorium of 10 years. In accordance with the provisions of the above MoU and understanding between the Ministry & insurance company, the Ministry has vide its letter of July 2015, authorized the Company to draw the funds from insurance company against issue of bonds. It has also been agreed upon between the Ministry, insurance company & the Company that the Company will invest the funds in identified Ministry's project to create infrastructure assets which would be leased by the Company to the Ministry and the terms and conditions of the lease will substantially reflect the terms and conditions of funding by insurance company under the MoU with the Ministry.

This MoU is being entered into by the Parties to incorporate and record the main terms of understanding between the two Parties in relation to the Transaction defined below, pending the execution of formal agreement between the two Parties. As and when formal agreements between the Parties are executed, this Memorandum of Understanding will be deemed to have been subsumed in such formal agreements. Until then, the terms and conditions incorporated herein shall continue to bind the Parties.

This MoU shall be deemed effective from date of first Pre-lease Disbursement"

6. The querist has further mentioned that as per the said MoU:
 - Lessor is the Company;
 - Lessee is Ministry.

The methodology that is adopted as per MoU is as under:

 - MoU coming into effect;
 - Fund mobilisation by Lessor;
 - Pre – lease disbursement to Lessee;
 - Execution of Lease Agreement, License Agreement and Development Agency

Agreement. The effective date of each of these agreements shall be the date of execution of the MoU;

- Lessee, as Development Agent of Lessor under Development Agency Agreement continues to carry out asset installation;
- Production of Utilisation Reports(s) / Completion / Commissioning certificate by Lessee;
- Commencement of lease;
- Payment of periodic lease payments.

The Licensing Agreement grants the Lessor permission to acquire, construct, hold, enjoy and where necessary, transfer to Lessee the infrastructure assets on Lessee's land.

The Development Agency Agreement provides that all activities pertaining to development of infrastructure assets shall be carried out by Lessee as agent of Lessor.

The Ministry shall appoint the contractors for implementation of projects. The disbursement made by the Company to the Ministry shall be used by the Ministry for making payments to contractors. The Ministry is the agent and the Company is the undisclosed principal.

The Lease Agreement shall contain the terms and conditions of the lease with the Company as Lessor and the Ministry as Lessee.

7. The querist has informed that it is agreed between Lessor and Lessee that the lease payments shall be priced so as to provide an agreed mark-up over the Lessor's cost of funding. The Lessor's cost of funding is agreed as under:

"Cost of funding, in respect of any source of Funding, shall include the aggregate cost of borrowing in respect of such source of Funding, including:

- a. Coupons or interest, and in case of funding with any variable rate, inclusive of such variation;
- b. All upfront costs or cost incurred at any time for mobilisation of such Funding, including cost of issue, listing, servicing, registration costs, security interest creation;

- c. Cost of hedging Funding, if any either against interest rate risk or foreign exchange risk or both, or whether any such risk is not wholly or partly hedged, the cost or losses incurred due to any variation of interest rates or foreign exchange rates, both on account of principal and interest;
- d. Cost of any equity or equity component inherent in a source of Funding, not being less than the prevailing cost of borrowing for the Lessor in domestic market, disregarding any tax benefits;
- e. All taxes/tax deduction including withholding tax on the servicing of any Funding, to the extent the same is borne by the Lessor.

Cost of funding shall be determined with respect to any source of Funding at the time of raising of the relevant Funding.

In case, in respect of any Infrastructure Asset, different Funding sources are used, or different Funding sources are used at different points of time, then a weighted average Cost of Funding shall be determined with respect to such Infrastructure Assets based on the time when the Pre-lease Disbursement for the same were made."

8. The querist has also mentioned some other important definitions / terms and conditions of the MoU as follows:

"Acquisition Cost: The total cost to Lessor of acquisition of an Infrastructure Asset more particularly described in agreements to be executed between the Parties, including all development costs, and where the Lessor has made Pre-lease Disbursement, the capitalised value of Pre-lease Payments, to the extent the same are not paid by the Lessee.

Internal Rate of Return (IRR): In respect of any Infrastructure Asset, the rate at which the present value of Lease Payments, discounted on yearly basis, equals, at the Lease Commencement Date, to the aggregate of:

- a. All costs incurred by Lessor towards Development of Infrastructure Asset;
- b. Any Applicable Taxes on acquisition of

Opinion

Infrastructure Asset, unless separately reimbursed by Lessee;

- c. Capitalized interest during the period from Pre-lease Disbursement Date till Lease Commencement Date, unless the Lessee has paid matching Pre-lease Payments.

Lease Commencement Date: The date on which the lease, in respect of an Infrastructure Asset shall have commenced, which shall be the date of completion of the Infrastructure Asset or such further date as notified by the Lessee and shall be specified by the Parties by execution of a Lease schedule.

Lease Payment: The payments in respect of the lease of an Infrastructure Asset, from the Lease Commencement Date, during the Lease Tenure.

Pre-lease Disbursement: Any disbursement of money that Lessor may be called upon by Lessee to make to Lessee, for the purpose of lessee to acquire or bring into existence Infrastructure Assets, to be leased in terms of this Agreement.

Pre-lease Payments: The payment, in respect of any Infrastructure Asset, during the period commencing from the Pre-lease Disbursement date to the Lease Commencement Date, with reference to the Pre-lease Disbursement Amount towards reimbursement of the funding costs of Lessor.

In order to ensure that the Lessor does not have any cash flow shortfall on account of servicing of any Funding source prior to the Lease Commencement Date, Lessee shall pay to the Lessor Pre-lease Payments, based on the amount of Pre-lease Disbursement done, at Cost of Funding.

The Pre-lease Payments shall stop to accrue at Lease Commencement Date.

IRR: It is agreed that Lease Payments shall be priced so as to provide an agreed mark up over the Lessor's Cost of Funding.

Structuring of Lease Rental- The Lease rental shall be structured in a manner to match with servicing of bonds issued to the insurance company.

Primary Lease Period- 30 years matching the tenor of bonds issued to the insurance company.

Secondary Lease Period- Shall commence on the date immediately following the expiry of the primary lease period as mutually decided between the parties, for a period as mutually decided between the parties."

9. Due to certain regulatory restrictions, the insurance company is unable to provide the agreed financial assistance in full. Thus, to meet the remaining funding requirements of the Ministry as per MoU, the Company raises funds from alternate sources in addition to the deployment of its own funds. The Company has been making pre-lease disbursements from the financial year 2015 -16 till date. The Company, since financial year 2015 - 16 has been charging Ministry, the cost of funding, computed as per MoU, that includes the following:

- Interest charged by the insurance company;
- Interest charged by other lenders;
- Interest on own funds deployed;
- Margin;
- Other upfront costs.

The Company, till the accounting period ended 31st March 2018, had adopted Accounting Standards (ASs). With respect to the aforesaid transaction, it had made the following presentation:

- In the Statement of Profit & Loss:
 - o Revenue from Operations:
 - Interest on lease advance (this includes borrowing costs and cost of own funds deployed and margin)
 - o Finance cost includes borrowing cost on funding of the infrastructure assets
- In Balance Sheet:
 - o Long Term Loans and Advances
 - Advance against lease of Ministry infrastructure assets
 - o Other Non-current Assets
 - Interest against construction of Ministry Infrastructure assets accrued but not due

10. The financial statements for the year ended 31st March 2019 have been prepared in accordance with Ind ASs. As per the querist, Ind AS 17, 'Leases' applies to the aforesaid transaction, of which the following definitions merit attention:

"The inception of the lease is the earlier of the date of the lease agreement and the date of commitment by the parties to the principal provisions of the lease. As on this date:

- (a) A lease is classified as either an operating or a finance lease; and
- (b) In the case of a finance lease, the amounts to be recognised at the commencement of the lease term are determined."

"The commencement of the lease term is the date from which the lessee is entitled to exercise its right to use the leased asset. It is the date of initial recognition of the lease (ie the recognition of the assets, liabilities, income or expenses resulting from the lease, as appropriate)."

As per the Company, there has already been 'inception of lease' on the date the MoU has been executed as it lists in detail the principal provisions of the lease. The lease is classified as a finance lease. The methodology for determination of the amounts to be recognised at the commencement of the lease (i.e. entitlement to exercise its right to use the leased assets) is agreed between the Lessor and the Lessee.

11. In nutshell, Ind AS 17 applies to the transaction. Considering the applicability of Ind AS 17 and other relevant Ind ASs, the Company applied the following judgement relating to presentation of financial statements prepared as per Division III of Schedule III to the Companies Act, 2013 as applicable to a non-banking financial company whose financial statements are drawn up in compliance with Ind ASs:

- In Statement of Profit & Loss:

- o Finance cost continues to include borrowing cost on funding of the infrastructure assets. However, these borrowing costs are then deducted from the gross finance costs;

- o Interest accrued on deployment of own funds and Margin are presented under the head 'Pre-commencement lease – interest income' under the head 'Interest Income';

- In Balance Sheet:

- o The pre-lease disbursements including borrowing costs are presented under 'Other financial assets' as 'Advance against the Ministry Infrastructure Assets to be leased'.
- o Interest accrued on deployment of own funds that is presented under the head 'Pre-commencement lease – interest income' under the head 'Interest Income' in the Statement of Profit & Loss is also presented under 'Other financial assets' as 'Interest accrued but not due on advance for the Ministry project to be leased'.

A view has been expressed that 'the pre-lease disbursements including borrowing costs presented under 'Other financial assets' as 'Advance against the Ministry Infrastructure Assets to be leased' should be presented, pending completion, under the head 'Non-financial assets – capital advances' since the above advances were given to the Ministry for creation of infrastructure assets which are under construction and the lease will commence after the completion of the construction and development of infrastructure assets.

12. The Company has presented the aforesaid item as financial asset since Ind AS 17 already applies to the aforesaid transaction as already concluded above and also based on the following judgements and application of other relevant Ind ASs:

As per paragraph 11 of Ind AS 32, 'Financial Instruments: Presentation', **"A financial asset is any asset that is:**

- (a) cash;
- (b) an equity instrument of another entity;
- (c) a contractual right:
 - (i) to receive cash or another financial asset from another entity; or
 - (ii) to exchange financial assets or

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financial liabilities with another entity under conditions that are potentially favourable to the entity; or

- (d) a contract that will or may be settled in the entity's own equity instruments and is:

- (i) a non-derivative for which the entity is or may be obliged to receive a variable number of the entity's own equity instruments; or
- (ii) a derivative that will or may be settled other than by the exchange of a fixed amount of cash or another financial asset for a fixed number of the entity's own equity instruments. For this purpose the entity's own equity instruments do not include puttable financial instruments classified as equity instruments in accordance with paragraphs 16A and 16B, instruments that impose on the entity an obligation to deliver to another party a pro rata share of the net assets of the entity only on liquidation and are classified as equity instruments in accordance with paragraphs 16C and 16D, or instruments that are contracts for the future receipt or delivery of the entity's own equity instruments."

With reference to observation, the attention is drawn to paragraph c(i) of the aforesaid definition that reads as, "a financial asset is any asset that is a contractual right to receive cash or another financial asset from another entity".

13. The financing of the Ministry Project commenced from the year 2015-16. As per terms of the arrangement with the Ministry, moratorium period of above funding will be 5 years and thereafter the repayment will commence. *The repayment is not linked with the date of completion of construction of projects.* The repayment schedule is in line with the terms

and conditions of bonds issued to the insurance company. The right to receive the above amount vests with the Company irrespective of completion of projects and creation of assets by the Ministry. The date of receipt of lease rentals crystallises from the day one when the amount is transferred which confers the contractual right to receive the amount from a specific date. The entire pre-lease disbursement is receivable by the Company from the Ministry as per MoU. There is an underlying confirmed irrevocable contract (MoU) for the Company to receive back from the Ministry, the pre-lease disbursements either in the form of direct fund transfers in cash through normal banking channels (financial asset) from the Ministry or in the form of lease receivables (financial asset). (Emphasis supplied by the querist.)

14. Further, paragraph 35 of 'Framework for the Preparation and Presentation of Financial Statements in accordance with Indian Accounting Standards', issued by the Institute of Chartered Accountants of India, under the heading, 'Substance over Form' states that "If information is to represent faithfully the transactions and other events that it purports to represent, it is necessary that they are accounted for and presented in accordance with their substance and economic reality and not merely their legal form. The substance of transactions or other events is not always consistent with that which is apparent from their legal or contrived form."

Furthermore, paragraph 10(b) (ii) of Ind AS 8, 'Accounting Policies, Changes in Accounting Estimates and Errors' requires that the financial statements, in order to be reliable should reflect the economic substance of transactions, other events and conditions, and not merely the legal form.

15. The querist has stated that the Company has made the following disclosures in its notes to the financial statements:

"The Ministry vide letter dated dd/mm/2015 had authorized the PSU Company to draw funds from the insurance company in consultation with the Ministry for funding of the Ministry Projects in line with leasing methodology adopted by the PSU Company for



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funding the Ministry Projects in past. Pending execution of the Lease Documents, the PSU Company has entered into a Memorandum of Understanding with the Ministry on dd/mm/ 2017 containing principal terms of the lease transactions. The total sum of Rs. x.xx lakhs disbursed to the Ministry till the end of 31st March 2019 (31st March 2018: Rs. x.xx lakhs) has been shown as 'Advance against the Ministry Infrastructure Assets to be leased'. A sum of Rs. x.xx lakhs (31st March 2018 : Rs. x.xx lakhs) incurred by the PSU Company on account of interest cost on the funds borrowed for the purpose of making aforesaid advances has been capitalised and added to the Advance paid against Infrastructure assets to be leased out to Ministry. Under the erstwhile Indian GAAP, the said amount was accounted for as Interest Income which under the Ind AS has now been reduced from interest expense. The same would be recovered through lease rentals in future over the life of the leases."

Thus, in the judgement of the Company, the advance has been correctly classified as financial asset. This classification also meets the criteria of 'substance over form'.

16. The querist has further briefed the issue vide a Supplementary Note which provides as follows:

The Company was incorporated in 1986 as a dedicated borrowing arm of one of the Ministries of GoI, to meet their extra budgetary resource (EBR) requirements. The Company is registered with RBI as Non Deposit Taking-Systemically Important- Non Banking Financial Company. The Company is also notified as a Public Financial Institution under section 4A of Companies Act, 1956, (Now, section 2 (72) of Companies Act, 2013).

Since the beginning, the Company is playing a strategic role in meeting the EBR requirements of the Ministry and has been consistently funding about 25%-30% of the plan outlay of the Ministry on year to year basis.

The Company has adopted the financial leasing model for funding of infrastructure projects. As per allocation of business rules of GoI, no ministry other than Ministry of Finance can make direct borrowings from the market.

In terms of these rules, the Ministry can't borrow directly from the market, therefore, in order to meet its EBR requirements, the Company borrows from the market and transfers the borrowed funds to the Ministry which in turn utilises these funds for payment to contractors for construction of its Projects. For construction of Projects, Ministry acts an agent to the Company and the Company is the principal and legal owner of these projects. However, the Company is not involved in the process of selection of contractors, supervision of construction and payment to contractors, etc. Further, the projects are being constructed on the Ministry's land. The projects have a moratorium of 5 years and the Company is also financing the interest during construction period. The projects are being financed by the Company from the borrowed funds and internal accruals. On completion of projects, these projects would be leased out by the Company to the Ministry. The projects will be maintained by the Ministry. Ministry will pay the semi-annual lease rentals to the Company, which will be used by the Company for servicing its debt obligations towards the insurance company / other lenders. The Company prices the leases at cost plus basis, i.e., in addition to actual cost of borrowing, it charges a margin of 25bps-35bps to calculate the IRR of leases. On completion of lease, the assets will be transferred back to the Ministry at a token amount. To sum up, the entire control of the projects from the beginning till the end rest with the Ministry, the Company is only a financier.

In the instant case, the Ministry entered into a MoU with a public sector life insurance company in March, 2015 for funding of Railway infrastructure projects by the insurance company. Since the Ministry can't directly borrow from the insurance company, it authorised the Company to borrow the funds from the insurance company and transfer the same to them for construction of its projects. Hence, the Company is a channelising agency between the insurance company and the Ministry.

As per agreed terms and conditions with the Ministry, the leases have to be structured on back to back basis with the terms and conditions

settled with the insurance company to service its debt. Thus, interest payment / repayment from the Ministry is to commence irrespective of the fact whether projects get completed or not during the moratorium period.

The querist has also separately mentioned that till date, no pre-lease payments have been made by Lessee to Lessor since the date of pre-lease disbursement. Further, no lease income or lease receipts have started. The same would start from October 2020 and would be received during April 2021. Furthermore, lease agreement with the Ministry is yet to be drafted and executed as lease will commence from F.Y. 2020-21. However, principal terms and conditions of lease are mentioned in the MoU with the Ministry. It is also stated by the querist that the query is with reference to accounts relating to F.Y. 2018-19 and at that point of time Ind AS 17 is applicable. However, w.e.f. 1st April, 2019, a new Standard, Ind AS 116, 'Leases' has become applicable; so opinion may be given on the accounting treatment under both the Standards (Ind AS 17 and Ind AS 116).

B. Query

17. Considering the above background, the querist has sought the opinion of the Expert Advisory Committee on the following issues:

- (i) The pre-lease disbursements including interest accrued on it, as made by the PSU to the Ministry has been accounted for as a financial asset and classified under 'Other financial assets' as 'Advance against Ministry Infrastructure Assets to be leased'. Is the classification and presentation correct?
- (ii) In case the answer to (i) above is not affirmative, what should be the correct classification and presentation for pre-lease disbursement including interest accrued on it?

C. Points considered by the Committee

18. The Committee notes that the basic issue raised in the query relates to classification and presentation of the pre-lease disbursements including interest accrued, as made by lessor

(viz., the Company or PSU) to Lessee (viz., Ministry) for development of Infrastructure assets by Lessee (who is acting as development agent for Lessor). The Committee has, therefore, considered only this issue and has not considered any other issue that may arise from the Facts of the Case, such as, examining whether the Company is acting as an agent or principal under the said arrangement; accounting for leases including determination of classification of lease, recognition and measurement of lease asset/receivable, etc.; recognition and measurement of interest earned on pre-lease disbursements; accounting for borrowing costs on funds borrowed, cost of own funds deployed and margin earned by the Company, etc.; accounting for borrowing cost on funding of the infrastructure assets; accounting treatment under Accounting Standards notified under the Companies (Accounting Standards) Rules, 2006; adjustments on transition to Ind ASs; nomenclature used for describing the pre-lease disbursements in the financial statements as 'Advance against the Ministry Infrastructure Assets to be leased' etc. The Committee further wishes to mention that Indian Accounting Standards cited hereinafter refer to Standards notified under the Companies (Indian Accounting Standards) Rules, 2015.

Further, since the query refers to the presentation in the financial statements for the financial year 2018-19, the Committee has expressed its opinion in the context of position as on 31st March, 2019. However, although in respect of financial year 2018-19, Ind AS 17 is applicable and not Ind AS 116 (which is applicable from financial year 2019-20 onwards), since the querist has sought the opinion in the context of both Ind AS 17 and Ind AS 116, the Committee has examined the issue from the perspective of both the Standards, but in respect of the financial position as on 31st March 2019 (without considering the developments thereafter).

19. Analysis under Ind AS 116, Leases:

The Committee notes that as per paragraph 9 of Ind AS 116, **"At inception of a contract, an entity shall assess whether the contract is, or contains, a lease. A contract is, or contains,**

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a lease if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration. ..."

Inception date of the lease has been defined as "the earlier of the date of a lease agreement and the date of commitment by the parties to the principal terms and conditions of the lease."

Further, Ind AS 116 defines the Commencement date of the lease as "The date on which a lessor makes an underlying asset available for use by a lessee."

Underlying asset has been defined under Ind AS 116 as "An asset that is subject of a lease, for which the right to use that asset has been provided by a lessor to a lessee."

From the above, the Committee notes that commencement date is the date on which a lessor makes an underlying asset available for use by a Lessee. The timing when the lease payments start does not affect the determination of commencement date of the lease. The Committee is of the view that under Ind AS 116, the term, 'available for use' can generally be interpreted as, if a Lessee takes possession of, or is given control of, the use of the underlying asset which may be even before it begins operations or starts making lease payments under the terms of the lease. Thus, the lease term can commence even if the Lessee is not required to pay rent or the lease arrangement states the lease commencement date to be a later date. The timing of when the lease payments begin under the contract does not affect the commencement date of the lease.

Analysis under Ind AS 17:

The Committee notes the following requirements of Ind AS 17:

"The inception of the lease is the earlier of date of a lease agreement and the date of commitment by the parties to the principal provisions of the lease. ..."

"The commencement of the lease term is the date from which the lessee is entitled to exercise its right to use the leased asset. It is the date of initial recognition of the lease (ie the recognition of the assets, liabilities,

income or expenses resulting from the lease, as appropriate)."

Thus, the lease commences when the Lessee can exercise its right to use the leased asset, which can generally be construed as the date when the Lessee takes possession of the asset or when it is available for use and the Lessee can control the use of the asset; and the same may be even before when the entity begins operations or starts making lease payments under the terms of the lease. Thus, under Ind AS 17 also, the timing of when the lease payments begin under the contract does not affect the commencement date of the lease.

From the above analysis, the Committee is of the view that for the purposes of Ind AS 17/116, in the extant case, lease shall commence only when the underlying/leased asset (Infrastructure assets) is available for use to the Lessee. The infrastructure assets shall be available for use to the Ministry (the Lessee) when the Company/ PSU (the lessor) gives the possession or right to use the asset, which in this case shall happen only once the asset has been developed and passed by the developer (the Ministry) to the PSU (the Lessor) for further lease to the Ministry (the Lessee).

Ind AS 17/ 116, however, makes a distinction between inception of the lease and the commencement of the lease term. Inception of the lease is defined as the earlier of date of a lease agreement and the date of commitment by the parties to the principal provisions of the lease.

Based on the facts of the case, the Committee observes that there has been inception of lease as on the date the MoU was entered, as the MoU clearly sets the intention of the Ministry taking infrastructure assets on lease from the PSU. However, the Committee notes that as on 31st March 2019, no lease income or lease receipts have started. Further, since the pre-lease disbursements including interest accrued on it, as made by the PSU to the Ministry has been presented as 'Advance against Ministry Infrastructure Assets to be leased', it is apparent that the infrastructure asset, which is to be leased to the Ministry is not yet complete and the leasing thereof has not yet commenced as

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per the MoU as on March 31, 2019 (which is also stated by the querist to commence from F.Y. 2020-21). In this context, the Committee also notes that as per the requirements of Ind AS 17/116, it is at the commencement of the lease term, the Lessor recognises the finance lease as a lease receivable and not before that. Thus, the Committee is of the view that in the extant case, though there has already been an inception of the lease as on March 31, 2019, since the lease has not commenced, receivable under Ind AS 17/116 cannot be recognised. It is only after the commencement of lease, the pre-lease disbursement shall be considered for valuation of 'Finance Lease Receivable', considering it as advance paid to the developer for construction of the asset. Accordingly, in the extant case, since lease has not commenced as on 31st March, 2019, Ind AS 17/116 are not relevant for determining the presentation of pre-lease disbursement.

20. The Committee now notes the series of transactions in the extant case as follows:

- The Company/PSU ('the Lessor') shall lease infrastructure assets to the Ministry ('the Lessee').
- The PSU has got funding arranged from a leading insurance company and other sources.
- The PSU then advances the funding (pre-lease disbursement) on 'as and when required basis' to the developer of the Infrastructure assets for development, creation and construction of those infrastructure assets. Herein, the developer is the Ministry itself, which is acting as development agent for the PSU.
- Once the infrastructure assets are ready for use as confirmed by the developer, the PSU shall lease the infrastructure assets to the Ministry for lease rentals (which comprise of cost of funding to the Lessor plus margin).

The Committee is of the view that if these transactions are viewed independently, the pre-lease disbursement seems like an advance to vendor for asset development, which is termed as a 'Capital Advance'. However, the Committee

notes that there is a clause of 'Pre-lease payment' in the MoU, which requires the Developer ('the Ministry') to pay to the PSU payments based on the amount of pre-lease disbursements done, at the cost of funding. The MoU clearly specifies that *"In order to ensure that the Lessor does not have any cash flow shortfall on account of servicing of any Funding source prior to the Lease Commencement Date, Lessee shall pay to the Lessor Pre-lease Payments, based on the amount of Pre-lease Disbursement done, at Cost of Funding. The Pre-lease Payments shall stop to accrue at Lease Commencement Date"*. Further, as per the understanding between the PSU and the Ministry, moratorium period of 'Pre-Lease Disbursement' made by the PSU to the Ministry, will be 5 years and thereafter the repayment will commence. *The repayment is not linked with the date of completion of construction of projects.* The repayment schedule is in line with the terms and conditions of the bonds issued to the insurance company by the PSU. The right to receive the above amount (pre-lease disbursements along with cost of funding of the Company) vests with the PSU from the day one when the amount is transferred which confers the contractual right to receive the amount from a specific date irrespective of completion of projects and creation of assets by the Ministry. (Emphasis supplied by the Committee.)

The Committee also notes that the querist has specifically mentioned in the Facts of the Case that there is an underlying confirmed irrevocable contract (MoU) for the Company to receive back from the Ministry, the pre-lease disbursements either in the form of direct fund transfers in cash through normal banking channels (financial asset) from the Ministry or in the form of lease receivables (financial asset). In this context, the Committee notes the following requirements of Ind AS 32, 'Financial Instruments: Presentation':

"A financial asset is any asset that is:

- (a) cash;
- (b) an equity instrument of another entity;
- (c) a contractual right:
 - (i) to receive cash or another financial asset from another entity; or



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- (ii) to exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the entity; or
- (d) a contract that will or may be settled in the entity's own equity instruments and is:
 - (i) a non-derivative for which the entity is or may be obliged to receive a variable number of the entity's own equity instruments; or
 - (ii) a derivative that will or may be settled other than by the exchange of a fixed amount of cash or another financial asset for a fixed number of the entity's own equity instruments. For this purpose the entity's own equity instruments do not include puttable financial instruments classified as equity instruments in accordance with paragraphs 16A and 16B, instruments that impose on the entity an obligation to deliver to another party a pro rata share of the net assets of the entity only on liquidation and are classified as equity instruments in accordance with paragraphs 16C and 16D, or instruments that are contracts for the future receipt or delivery of the entity's own equity instruments."

From the above, the Committee notes that a financial asset is a contractual right to receive cash or another financial asset. The Committee is of the view that pre-lease payment in the extant case has been defined in a manner to ensure that the Company shall be paid against the pre-lease disbursement made along with interest accrued on it as per the MoU so as to ensure that the Company is never short of cash. Thus, there is a contractual right to receive cash against such disbursement and interest accrued thereon as per MoU. Also, considering the facts of the case, it is apparent that both

the PSU and the Ministry have an intent to make repayment against the disbursement made, after the moratorium period of 5 years from the date of disbursement irrespective of the fact whether asset is ready for use or not. Therefore, the Committee is of the view that pre-lease disbursement in the extant case meets the definition of 'financial asset' as per Ind AS 32 and should be presented as 'other financial asset'.

D. Opinion

21. On the basis of the above, the Committee is of the following opinion on the issues raised by the querist in paragraph 17 above:
- (i) The classification of pre-lease disbursement along with interest accrued thereon as a 'financial asset' and its presentation in the balance sheet of the PSU under 'other financial assets' is appropriate.
 - (ii) See (i) above.

1.	The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
2.	The Opinion is based on the facts supplied and in the specific circumstances of the querist. The Committee finalised the Opinion on August 4-5, 2020. 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 seven volumes. This is available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur.
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Union Budget 2021-22

Union Budget 2021-22: A Milestone in Nation Building

Budget for 2021-22 has come under tremendous financial constraints and heightened expectations of stakeholders and public at large. The economy has witnessed an unanticipated economic crisis precipitated by the COVID-19 pandemic and an unavoidable nationwide lockdown. GDP is expected to shrink by more than 7 per cent in the year 2020-21 and employment has decreased, drastically. Economy is passing through a contractionary slow-down in economic activities. Consequently, tax revenue of the government is set to fall substantially. Therefore, the budget for the year 2021-22 has been brought out to reinvigorate the economy. Read more...



Dr. Rajeev Kumar

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Among other things, it envisages to accelerated the pace of structural reforms under the Aatmanirbhar Bharat (May 2020) ANB 2.0 and ANB 3.0. The notable reforms included commercialisation of mineral sector, Labour and Agricultural Reforms, Privatisation of PSUs, One Nation one Ration Card, financial inclusion and production linked incentive scheme. Budget has set the pace for India to become self-reliant or Aatmanirbhar.

Review of Literature

The Constitution of India mandates upon the Union government to lay down 'annual financial statement' (which is referred to as budget) before the Parliament. The budget is a statement of the financial statistics of the government for three years, the last year, the current year and the ensuing year. Traditionally, Union budget is classified in revenue and capital budget categories



Union Budget 2021-22

and it comes with proposals for various sectors of the economy and various sections of the society along with tax related proposals in the Finance Bill. The budget is considered as an important policy document because it reflects the financial position and fiscal policy stance of the government along with the direction in which the government intends to steer the economy.

Article 112 and 202 of the constitution of India mentions about the presentation of annual financial statements by the Union and State Governments respectively (Basu, 2009). Under article 112(2), the estimates are shown separately for votable expenditure charged upon the Consolidated Fund of India and the sums required to meet other non-votable expenditures proposed to be made from the Consolidated Fund (Sury, 2002). Further, tax proposals are shown in the Annual Finance Bill. As mentioned earlier, Government presents the budget in the form of 'revenue budget' and 'capital budget'. Revenue budget shows revenue receipts and revenue expenditures. While capital budget shows capital receipts and capital expenditures of the Government, revenue receipts are all those receipts which neither reduces the asset position nor increases liability position of the Government. Capital receipts, on the other hand, are all

those receipts which either reduces the asset position or increases liability position of the Government. Similarly, the revenue expenditure and capital expenditure can also be defined on the basis of asset and liability. Any expenditure which increases assets or decreases liability is classified as capital expenditure while any expenditure which neither increases assets nor decreases liability of the government is classified as revenue expenditure (CBGA, 2021).

The classification of budget in revenue and capital component brings out the spending behaviour of the government in a meaningful manner. Revenue account deficit and capital account deficit, as two components of overall budget deficit; highlight the fiscal policy stance of the government whether it is contractionary or expansionary in nature. Expansionary fiscal policy, incurring high fiscal deficit, is an unavoidable choice for India in the present circumstances. However, we must be mindful that high fiscal deficit relative to GDP tends not only to cause a sharp increase in debt-GDP ratio, but also affect saving and investment and consequently economic growth (Rangarajan & Srivastava, 2005). Hence, a countercyclical fiscal expansion in the budget has been adopted cautiously to crowd in rather than crowd out private investment.

Budget 2021-22: Provisions and Prospects

Budget 2021 intends to achieve a real GDP growth rate of 11 percent in the coming financial year 2021-22 while the revised estimate of economic growth is -7.7 percent in the current year, 2020-21. Given the shrunk base and 4.2 percent growth rate in 2019-20, a target of 11 percent is quite reasonable but yet will need a lot of efforts to achieve under the prevailing circumstances.

Estimated total expenditure in the budget of 2021-22 is ₹ 34,83,236 crores which is ₹ 32,931 crores higher than the revised estimates of total expenditure in 2020-21. Revenue expenditure is budgeted at ₹ 29,92,000 crores with a reduction of ₹ 19,142 Crore compared to ₹ 30,11,142 crores in RE 2020-21. Capital expenditure on the other hand is estimated at ₹ 5,54,236 crores in BE 2021-22 which is 34.5 percent more than the budgeted figure for 2020-21. Thus, revenue expenditure and capital expenditure are about 84 percent and 16 percent respectively of the total budget.

Table-1 shows allocation of funds to ministries, departments and others¹. The table shows the significance of various major ministries in the overall allocations of funds. There are fifty-three central ministries and about 93 percent of the allocations

¹ Apart from 53 ministries and two departments (Department of Atomic Energy and Department of Space) allocations are shown for the President, the Vice President, the Parliament and the Union Public Service Commission in the Expenditure Budget of the Union Government.

Union Budget 2021-22

are concentrated in the 14 ministries only.

Such a low significance of the large number of ministries reflects the quest of the Government to achieve 'minimum government and maximum governance' where the State is keen to direct and regulate the private sector rather than involve itself directly in the provisioning of goods and services.

Table-1: Allocation for Ministries & Departments

Ministry	Allocation (₹ Cr)	% of Budget
Ministry of Finance	1386273.3	39.8
Ministry of Defence	478195.62	13.7
Ministry of Consumer Affairs, Food and Public Distribution	256948.4	7.4
Ministry of Home Affairs	166546.94	4.8
Ministry of Rural Development	133689.5	3.8
Ministry of Agriculture & Farmer's Welfare	131531.19	3.8
Ministry of Road Transport and Highways	118101	3.4
Ministry of Railways	110054.64	3.2
Ministry of Education	93224.31	2.7
Ministry of Chemical and Fertiliser	80714.94	2.3
Ministry of Communication	75265.22	2.2
Ministry of Health & Family Welfare	73931.77	2.1
Ministry of Jal Shakti	69053.02	2.0
Ministry of Housing & Urban Affairs	54581	1.6
Other Ministries and Departments	255124.78	7.3
Total	3483235.63	100.0

Source: Union Budget Documents, 2021

Farmers' Welfare & Rural Development

Assistance to farmers is rendered in various forms like crop insurance, short term credit, marketing, minimum support price and income security, etc. In this direction there are ten central sector schemes and nineteen centrally sponsored schemes through which funds are made available for direct and indirect benefits of the farmers. Apart from that farmers get benefits from the minimum support price system and other schemes of the government for rural development.

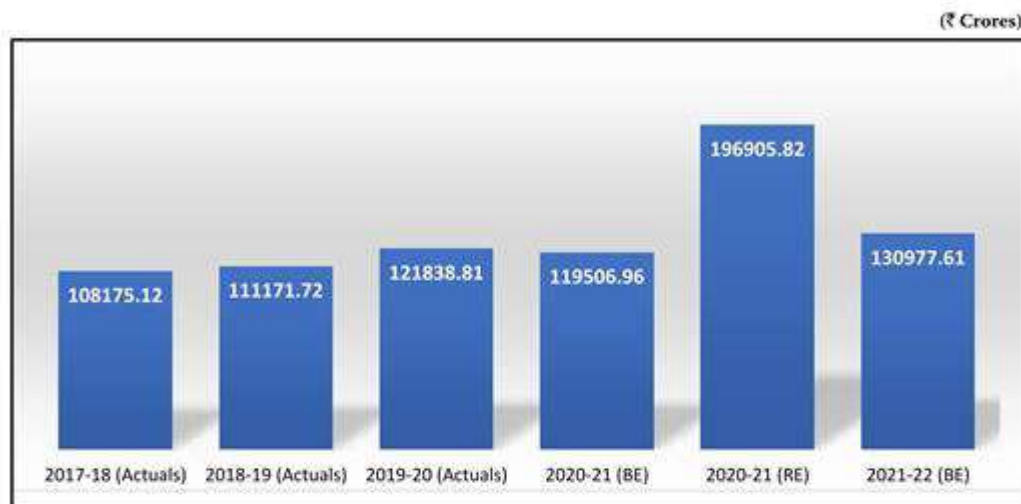
Table-2: Allocation under MoAFW for Various Central Schemes

Scheme under the Ministry of Agriculture	Allocations (₹ Cr)	
	2020-21 (BE)	2021-22 (BE)
Pradhan Mantri Fasal Bima Yojana	15695	16000
Interest Subsidy for Short Term Credit to Farmers	21175	19468
Pradhan Mantri Annadata Aay Sanrakshan Yojna (PM-AASHA)	500	400
Pradhan Mantri Kisan Samman Nidhi (PM-Kisan)	75000	65000
Pradhan Mantri Kisan Man Dhan Yojana	220	50
Agriculture Infrastructure Fund (AIF)	NA*	900
Central Sector Schemes MoA Total (10 Schemes)	116490	105018
Centrally Sponsored Schemes MoA (19 Schemes)	134399	123017
* Launched on 18.09.2020		

Source: Union Budget Documents, 2021

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Figure- 1: Centrally Sponsored Schemes under the Department of Rural Development



The budget allocations for the year 2021-22 have been reduced for the central sector schemes and centrally sponsored schemes in comparison to the budgeted figures for the year 2020-21 (Table-2). This is an unanticipated cut which may affect farmers and agriculture sector adversely. However, contractionary effects of this reduction on rural economy may be more than offset by a substantial hike in the allocations under various schemes of the Ministry of Rural Development as shown in the Figure-1.

Health and Wellbeing

Health and wellbeing of 1.36 billion people of the country, in the hindsight of the pandemic, has become immensely challenging for which capacity enhancement is greatly required in the healthcare sector. Apart from medical

facilities, health and wellbeing include nutrition, water and sanitation also. Health sector in India requires infrastructural upgradation along with increase in the human resource. In this direction, the budget substantially expands the investment expenditure on health infrastructure. The budget has a proposal for a centrally Sponsored Scheme, to be named as PM Aatmanirbhar Swasth Bharat Yojna (PMASBY), which aims to develop capacity of health care system by strengthening existing institutions and creating new institutions.

As far as financial provisioning is concerned the health and wellbeing allocations have been proposed to be about ₹ 2.23 lakh crores which is 137 percentage higher than the allocations made in the year 2020-21 which is a steep hike

even though the allocations for the Ministry of Health and AYUSH as a percentage of the Budget have been reduced (Figure-2). ₹ 64180 crores have been proposed for the PMASBY over next six years for capacity enhancement at primary, secondary and tertiary health care. Within the overall allocations for health and wellbeing, an allocation of ₹ 35000 has been earmarked for COVID-19 vaccination. Looking at the year wise allocations to the Ministry of Health and Family Welfare and Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy the trend in allocation is upward excluding the exceptional year 2020-21 where the allocations to the ministry spiked suddenly above the uptrend due to sudden rise in public expenditure due to COVID-19 pandemic.

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Figure-2: Allocation for Health & AYUSH (Percentage of Budget)



Source: CBGA, 2021

However, if we have a closer look at these allocations as a percentage of GDP have gone up only by a minuscule 0.3 percent of GDP relative to the allocations made in a 2019-20 that too when the country is facing the stiffest challenge in the health sector. It is needless to say that the COVID-19 pandemic reminded us of the importance of public sector health care infrastructure. The country requires free health care to ensure healthy human resource. Hence the sector requires a greater hike in public expenditure on health and wellbeing.



Asset monetisation will provide necessary finance to the government. National Monetisation Pipeline along with Asset Monetisation Dashboard are proposed to be launched to facilitate the monetisation process.

Physical Capital, Financial Capital and Infrastructure

Capital and infrastructure are considered as the fundamental requirements of economic growth. Future growth prospects of a country depend upon its stock of capital and infrastructure base. So, a growing economy needs to ensure adequate spending on these areas for rapid economic growth. The budget proposals show due recognition to the capital and infrastructural requirements of the country. As an indication, the budget proposes a sharp enhancement of 34.5 per cent in the Capital expenditure. Such an increase in the proportion of capital expenditure is much desirable and likely to boost up the economy from demand as well as supply side. Capital expenditure along with developmental expenditure are two important indicators of the quality of public expenditure. However, raising capital expenditure by raising resources from disinvestment of PSUs and their assets may partly offset the

positive effects on demand and supply sides.

As a novel initiative, infrastructural projects will be developed under the National Infrastructure Pipeline (NIP) through institutional set up, monetisation of assets and by enhancing the share of capital expenditure in the budgets of the Centre and the States. Proposed Development Financial Institution (DFI) is one such institution which will facilitate in procurement of long-term debt finances for the infrastructural projects. It will prove to be a catalyst for infrastructure financing and development. The budget recognises the need to provide to consumers a choice in choosing service provider in the power distribution sector and to create competition with a focus on the viability of the distribution companies.

A key area which has been highlighted in the budget is monetisation of public sector assets for building new infrastructure. Existing idle assets and surplus land with government, ministries, department, public sector enterprises such will be monetised. Asset monetisation will provide necessary finance to the government. National Monetisation Pipeline along with Asset Monetisation Dashboard are proposed to be launched to facilitate the monetisation process.

The budget envisages to reduce the logistic costs of the industry further. It is one of the key

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essentialities for the 'Make in India' campaign. Government has persistently shown its commitment towards this end. Construction of highways has been one of the key achievements of the government in recent years. The budget further adds to the construction of highways through ambitious *Bharatmala Pariyojna* Project which is a centrally sponsored scheme of the Government of India. The budget proposes financial allocations for the construction of economic corridors under the *Bharatmala Pariyojna* Project in Tamil Nadu, Kerala, West Bengal and Assam. The budget also allocates funds to further the objectives under the National Rail Plan for India-2030 for achieving 'future ready' Railway System by 2030. The proposals include construction of Eastern and Western dedicated freight corridors and electrification of railway tracks with a target of 100 per cent broad gauge electrification by December, 2023. Apart from expansion and upgradation, safety measures have also been well recognised under the National Rail Plan through indigenously developed automatic train protection system that eliminates the possibility of train collision due to human error on high density and high utilised networks. It is a much-needed requirement of the railway operations to prevent enormous loss of life and property.

Budget recognised the significance of the Production Linked Incentive Scheme (PLI)

which has been introduced by the government in the year 2020 for pharmaceuticals, automobiles and auto components, telecom and networking products, textile, solar modules, food products, white goods, and speciality steel and extended it to thirteen sectors. These incentives are expected to boost up R&D in newer areas and will attract investment in cutting edge technology. This will help in creating a viable environment for Indian companies to be competitive in the global markets and will help the country to move toward a five trillion-dollar economy. It will help our manufacturing sector to become an integral part of the global supply chains. We need Indian global companies for an Aatmanirbhar Bharat in different sectors of the economy. PLI scheme will increase the size and scale of companies in key sectors wherein job opportunities will arise in the near future. The proposed Mega investment Textile Parks (MITRA) will further be an add-on to PLI scheme to enable the Indian textile industry to become globally competitive and attract large investment which will boost employment opportunities.

Banking and Financial Sector Reforms

In the banking sector the budget proposes recapitalisation of public sector banks of ₹ 20000 crores along with disinvestment in two public sector banks in the financial year 2021-22. Government has infused



Proposed amendments in Deposit Insurance and Credit Guarantee Corporation (DICGC) Act, 1961 will ensure that bank depositors get easy and timely access to their insured deposits in the event of a bank facing temporary difficulty in meeting its obligations.

capital in banks in each of the successive recent years. Further, proposed amendments in Deposit Insurance and Credit Guarantee Corporation (DICGC) Act, 1961 will ensure that bank depositors get easy and timely access to their insured deposits in the event of a bank facing temporary difficulty in meeting its obligations. This is an important step toward increasing confidence of depositors in the banks and lessening the fragility of the banking system. Indian capital market suffers from a number of problems like fair disclosure of financial information, prevalence of insider trading, front running, manipulation of security prices, unofficial trading in securities, lack of adequate control over brokers, high cost of transactions due to the lack of well-defined norms for institutional investment. The budget proposes to take us a step ahead in the direction of capital market reforms. Two

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much needed capital market reforms introduced in the budget are:

- i. Rationalised Single Securities Market Code by subsuming the SEBI Act, 1992, Depositories Act, 1996, Securities Contracts (Regulation) Act, 1996 and Government Securities Act, 2007.
- ii. Development of bond market by creating a permanent institutional framework.

The reform will ease the process of raising finance capital for corporate sector and will boost up confidence of foreign institutional investors in Indian bond and security markets.

Inclusive Development

In the direction of inclusive development, budget proposals aim at agriculture, farmers, migrant workers, rural development and financial inclusion among other things.

The budget of 2021-22 manifests the commitment of the Government for the welfare of farmers through enhanced MSP for all agricultural commodities, enhanced agricultural credit and substantial hike in allocations to the Rural Infrastructure Development Fund (RIDF) from ₹ 30,000 crores to ₹ 40,000 crores. It also proposes to expand the cover of the SWAMITVA scheme to all the States/UTs and enlarge the Operation Green Scheme to include 22 perishable agricultural goods. Apart from that, the proposal of integration of mandies with

Electronic National Agriculture Market (e-NAM) will further boost up transparency and competitiveness in agricultural markets.

The plight of Indian migrant workers during mass exodus after the announcement of the lockdown of the country damaged the sentiments of the society. This happened primarily due to the lack of social security, food security and loss of livelihood of these migrant workers engaged in the unorganised sector. Lack of information on migrant workers with the government agencies proved to be a major hurdle in rendering timely assistance to these people. Government recognised the plight of migrant workers and marginalised people and began a series of initiatives which have been further synergised with the proposals in the budget. Migrant workers usually remain deprived of public sector goods and services in their place of destination due to necessary documentation. In this direction, 'One Nation One Card (ONOP)' is a novel initiative through which beneficiaries can claim ration from anywhere in the country. Migrant members of a family will get the benefit of ONOP at the place of destination while the family members staying at home will continue to get their food ration at the native place. The budget proposes to enlarge the ONOP scheme to cover remaining four states and UTs. Another important proposed initiative is

launching a portal for migrant workers to collect relevant information about them which will help the government in formulating health, housing, insurance, skills, credit and food scheme for them. Apart from that implementation of four labour codes and extension of social security cover and minimum wages are other important initiatives. Safety concerns for working women have also been explicitly recognised in the budget document. While the series of initiatives are welcome, there is need to provide respectable employment avenues to the inter-state migrant workers by revamping and reinforcing the Inter State Migrant Workers Act (Regulation of Employment and Conditions of Service) Act, 1979 which is the only regulation which explicitly recognises the rights of the inter-state migrant workers.

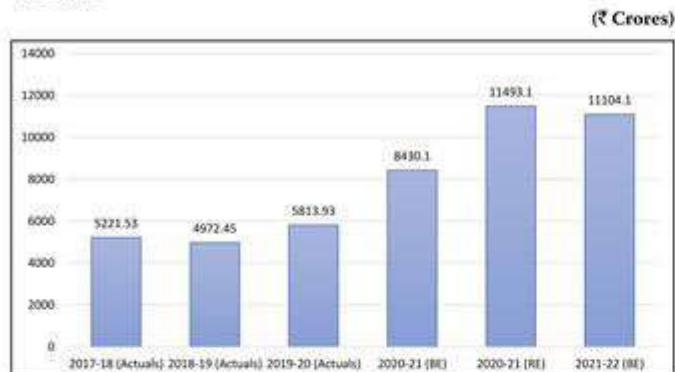
Social Security, Poverty Alleviation and Employment Generation

"Social security is the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner" (ILO). Figure-3 shows an upward trend and an unanticipated rise in 2020-21 in the total expenditure on social security schemes for workers. In the hindsight of the pandemic and ensuing difficulties of workers the budget of 2021-22

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shows a greater commitment and emphasis on providing better social security cover to the workers.

Figure-3: Total Expenditure on Social Security Schemes for Workers



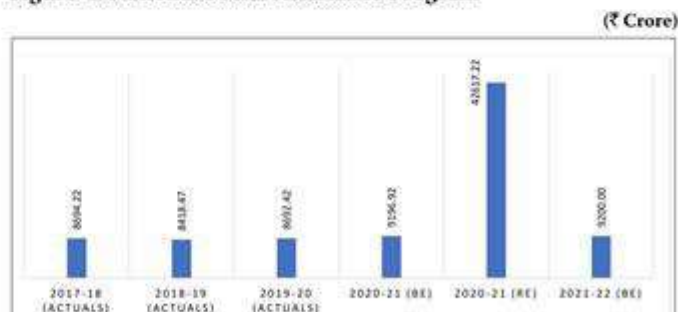
Source: Union Budget Documents, 2021

On poverty alleviation front, the budget does not appear to be very impressive. Concerted efforts and commitments are not visible in the budget proposal. Budget proposals are mostly built around the *Pradhan Mantri Garib Kalyan Yojna* to help the most vulnerable sections of society the poorest of the poor, Tribals, Dalits, migrant workers, elderly and children. Apart from the availability of food and social security people also need access to safe water, sanitation and pollution free environment.

After the remarkable success of Jal Jeevan Mission (Rural) under the Ministry of Jal Shakti, Jal Jeevan Mission (Urban) will be launched for Universal water supply in all 4378 urban local bodies and liquid waste management in 500 Atal Mission for Rejuvenation and Urban Transformation (AMRUT) cities. Urban Swachh Bharat Mission 2.0 aims at

faecal sludge management, waste water treatment, source segregation of garbage, reduction in single use plastic, reduction in air pollution by effectively managing waste from construction and demolition activities. Urban pollution has emerged as a big challenge in recent year. The budget has recognised 42 urban centres and allocations have been made to combat urban air pollution.

Figure-4: National Social Assistance Program



Source: Union Budget Documents, 2021

In the direction of poverty alleviation and in pursuance of the provisions of Article 41

under the Directive Principles of State Policy in the Constitution of India, which mandates upon the State to provide public assistance to its citizens in case of unemployment, old age, sickness and disablement and in other cases of undeserved want within the limit of its economic capacity and development, National Social Assistance Program has played significant role. It intends to secure for the citizens adequate means of livelihood, raise the standard of living, improve public health, provide free and compulsory education for children in rural as well as urban areas. Budgetary allocations for five consecutive years under the NSAP are shown in the Figure-4. The revised figures for the year 2020-21 show a steep hike in the expenditure under NSAP. The expenditure allocations have been moreover restored for the year 2021-22 to pre-COVID-19 level. The allocation under the MNREGA programme has been increased substantially in the budget

of 2020-21 (Figure-5), which shows a serious concern for employment generation. It will

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greatly supplement the job availability and will help many people who became jobless in the pandemic.

Figure-5: Mahatma Gandhi National Rural Employment Guarantee Program



Source: Union Budget Documents, 2021

Education, Skill, Innovation and Research

The budget proposes to expand educational infrastructure under the New Education Policy and proposes to establish a Higher Education Commission for India, Central University of Leh and Eklavya model residential schools in tribal areas. In order to add to the Skill India initiatives collaborative skill programs with Japan, U.A.E. and other countries will be launched to benchmark skill qualifications, assessment, certification and transfer of skills. A National Research Foundation will be instituted for innovation and research and development (R&D) and to upgrade overall research ecosystem in the country. Figure-6 shows the dwindling share of education in the budgets of the successive years. The share education in

the budget is even lower than many developing countries.

Figure-6: Allocation for Education (Percentage of Budget)



Source: CBGA, 2021

Fiscal Reforms

Fiscal discipline had been institutionalised since the enactment of the Fiscal Responsibility and Budget Management Act, 2003 wherein the Union Government and State Governments are required to eliminate revenue deficit, prune fiscal deficit and adopt fiscal prudence in the public

spending. Sincere, concerted and coordinated efforts have been observed at the central and state government but the central government could not yet achieve the target fiscal deficit of 3% of GDP stipulated under the FRBM rules due to unforeseen and unprecedented circumstances which required huge increase in public expenditure. Pandemic resulted in weak revenue flow along with high expenditure requirements to provide relief to poor, marginalised and vulnerable people. So, the revised fiscal deficit has been estimated to have increased to 9.5 percent of GDP in the year 2020-21 (Table-3). The

focus of the budget for the year 2021-22 has now changed to boosting up of aggregate domestic demand. Revised expenditure increased to 34.5 lakh crore from budgeted expenditure of 30.42 lakh crore in the year 2020-21. However, higher quality of expenditure has been maintained with 34.5 percent higher share of capital expenditure than projected.



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Table-3: Fiscal Indicators

S. No.	Measure	2020-21 (Revised Estimates)	2021-22 (Budget Estimates)
1.	Fiscal Deficit	9.5	6.8
2.	Revenue Deficit	7.5	5.1
3.	Primary Deficit	5.9	3.1
4.	Gross Tax Revenue	9.8	9.9
5.	Non-tax Revenue	1.1	1.1

Source: Union Budget Documents, 2021

In spite of tremendous financial pressure, the budgeted fiscal deficit has been proposed to be kept at 6.8 % for the ensuing financial year with gross market borrowings of ₹ 12 lakh crores. Path of fiscal consolidation is being followed with a serious intention to reach the fiscal deficit to 4.5% of GDP by the year 2025-26 by raising buoyancy of tax revenue through increased compliance and by increased receipts from monetisation of PSUs and public assets.

Table-3 shows that the budgeted fiscal deficit for 2021-22 is estimated to be 6.8 percent of GDP which is sharp reduction from the year 2020-21. This sharp decline in fiscal deficit reflects

Government's commitment towards the fiscal health of the economy. The Gross Tax Revenue (GTR) is estimated to grow by 16.7 percent wherein direct tax revenue, indirect tax revenue and non-tax revenue are estimated to grow by 22.4 percent, 11.4 percent and 15.4 percent over the revised estimates of 2020-21. Non-debt capital receipts are estimated to be ₹ 1,88,000 crores which indicates huge increase of ₹ 1,41,503 crores over 2020-21. Targeted disinvestment of ₹1,75,000 crores are the main reason behind this estimate. Total net borrowings in BE 2021-22 are projected at ₹ 9,67,708 crores compared to ₹ 12,73,788 crores in RE 2020-21 which shows a substantial decline of 25 percent.



PLI scheme will increase the size and scale of companies in key sectors wherein job opportunities will arise in the near future.

Concluding Remarks

The budget is remarkable in its resolve for Nation First, good governance, inclusive development, doubling farmer's income, strong infrastructure, healthy India, education for all, opportunities for youth, and Women Empowerment etc. The focus of the budget is two dimensional. First is to supplement the functioning of the private sector through infrastructural development, easing financing norms, easing laws and regulations and disinvestment of public sector. Second is to achieve inclusive development by providing social security, food security, and expanding the access to education and basic facilities for all. In totality the budget tries to address the provision of public goods and services, improve the functioning of markets along with appropriate safety net for poor while speeding up growth to achieve double digit growth in near future through enhanced global competitiveness of Indian companies, structural reforms and self-reliance. The budget also envisages achieving another milestone in achieving 'minimum government and maximum governance'. ■■■

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Key Provisions of Personal and Corporate taxation in Finance Bill, 2021

The Finance Bill, 2021 proposes a number of changes that are directed to revive the growth momentum that India enjoyed for many years, one of the best amongst the emerging economies. The country faced several challenges on account of unprecedented lockdown that continued for a long period last fiscal. The budget this year focuses on disinvestment, giving fillip to IFSC, streamlining of assessment processes and long term infrastructure development. This article highlights important changes proposed in the Finance Bill, 2021 relating to Personal and Corporate taxation. Read on...



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Tax payers can take a sigh of relief as no changes / increase has been proposed in the tax rates in spite of the need to have more funds in the challenging times.

Relief to certain category of senior citizens from return filing requirement

In order to provide relief to resident senior citizens (aged of 75 year or above) having only pension and interest income accruing to them, an exemption has been proposed from filing the return of income. However, a declaration will have to be filed with specified bank in this regard and bank would be

required to compute the income after giving effect to applicable deductions/ rebates and deduct income tax at rates in force.

Liable to tax defined - Section 2(29A)

It is proposed to insert a new clause (29A) to section 2 so as to define the expression "liable to tax", in relation to a person, which means that there is a liability of tax on such person under any law for the time being in force in any country, and shall include a case where subsequent to imposition of tax liability, an exemption has been provided.

The amendment is in line with judicial pronouncements



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wherein it has been held that liable to tax does not necessarily imply that taxes are paid in the other contracting state, it is sufficient that contracting state has right to levy taxes. The concept is also relevant to determine if an individual is deemed to be resident under section 6.

Section 10(5)

Considering outbreak of Covid, 19 and travelling possibilities being hindered, Section 10(5) is proposed to be amended to provide tax exemption of cash allowance in the hands of individuals, if any value or assistance is received by or due to such individual in lieu of any travel concession subject to fulfilment of conditions as may be prescribed.

Proposed amendment to be made effective from AY 2021-22

Section 10(11) and 10(12)

Payment from provident fund is exempt under Section 10(11) and receipt of accumulated balances from employee recognised provident fund is exempt under section 10(12). It is proposed to provide that such exemption shall not apply to interest income accrued to the extent it relates to the amount or aggregate of the amounts of contribution to such funds made on or after 01st April 2021 in excess of ₹ 2.5 lakhs in the previous year. This amendment would affect taxpayers contributing huge sum to these funds as exemption would be denied to the extent of interest income on the excess sum contributed.

Relief with respect to income from overseas retirement funds

New section 89A is proposed to be inserted to address mismatch in taxation of income from specified overseas retirement accounts maintained by specified person in a notified country. Specified person is a person resident in India who has opened a retirement benefit account in a notified country while being a non-resident in India and a resident in that country. Said income shall be taxed in such manner and in such year as may be prescribed.

It is proposed to shift the taxation of such retirement benefit from accrual basis to receipt basis in India. The aforesaid relief will mainly benefit the NRIs returning to India.

Proceeds from Unit Linked Insurance Plan (ULIP) Section 10(10D)

Any proceeds received under ULIP issued on or after 01st February 2021 shall not be eligible for exemption if annual premium exceeds ₹ 2.5 Lakhs

Such ULIP shall be treated as capital asset (equity oriented unit) and proceeds shall be taxable as capital gains. Rules for computation of capital gains shall be prescribed.

This amendment intends to put a cap on the total premium paid under ULIPs majority affecting High Net Worth Individuals.

Amendment to section 36(1)(va) and 43B

There have been numerous



The long-drawn dispute of whether depreciation can be claimed on goodwill for the purpose of business and profession has been put to rest by the amendments proposed, by specifically carving out goodwill on business and profession as a depreciable asset for income tax purposes.

judicial pronouncements in favour and against taxpayer, on the issue whether contribution toward employee's provident fund made by an employer after the due date prescribed under labour welfare laws but before the due date of the filing return of income shall be allowed as deduction or not?

To address this, it is proposed to insert explanation in section 36(1)(va) and section 43B to clarify that provisions of 43B shall not apply to employees contribution to welfare funds accordingly, deduction shall be allowed under section 36 only if the deposit is made within the due dates prescribed under the relevant labour laws. This will now ensure stricter compliance adherence in the hands of taxpayers.

Depreciation on Goodwill

- i. The long-drawn dispute of whether depreciation can be claimed on goodwill for the purpose of business and

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profession has been put to rest by the amendments proposed, by specifically carving out goodwill on business and profession as a depreciable asset for income tax purposes.

- ii. It is further proposed to prescribe a specific computation mechanism to determine the written down value and short-term capital gains in case where depreciation on goodwill has already been claimed by the assessee.

This amendment clamps down on depreciation on goodwill which was being claimed by the corporate taxpayers all along relying on the Apex court judgement. It would impact depreciation even on concluded transactions.

Increase in the safe harbour limit under section 43CA and 56

It is proposed to increase the safe harbour limit under section 43CA from 10% to 20% in case of transfer of residential unit subject to following conditions :

- i. Transfer takes place between 12th November 2020 to 30th June 2021
- ii. Transfer is by way of first time allotment to any person
- iii. Consideration does not exceed ₹ 2 crore

Consequential relief is proposed to be provided under section 56(2)(x) for buyer of the property by increasing the safe harbour from 10 % to 20%.

These amendments would benefit real estate developers and give fillip to real estate sector.

Increase in the threshold for tax audit under section 44AB

It is proposed to increase the threshold limit for tax audit to 10 crores from existing 5 crores to incentivise digital transaction and reduce compliance burden, provided that (i) aggregate amount received for sales/turnover in cash and (ii) aggregate payment (expenditure) in cash does not exceed 5% of said respective amounts. Amendment is effective from AY 2021-22.

Section 44ADA – Presumptive taxation for professionals –

Provisions of presumptive

Section	Type of asset	Consideration	Cost of acquisition
45(4)	Capital asset	Fair market value of the capital asset on the date of receipt of asset by Specified persons (Partner of Firm, Member of AOP or BOI)	Cost of the capital asset
45(4A)	Money or other asset	Value of money / Fair market value of other asset on date of receipt by specified person)	Balance in the capital account of the specified person in the books of accounts of the entity

taxation is not applicable to LLP since LLPs are required to maintain books of accounts under LLP Act and benefit of non maintenance of books of accounts under 44ADA cannot



Income from any specified service on which equalisation levy is applicable shall be exempt

be availed. It is proposed to explicitly mention non applicability of section 44ADA to LLPs.

Computation of capital gains on reconstitution or dissolution of firms

It is proposed to substitute section 45(4) and insert 45(4A) to compute tax in the hands of firms on capital gains arising from dissolution or reconstitution of firms as follows:

For the purpose of both the Sections, balance in capital account is to be calculated without taking into account increase in capital due to revaluation of any asset or due

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to self-generated goodwill or any other self-generated asset. Self-generated goodwill and self-generated asset are defined to mean goodwill or asset that has been acquired without incurring any cost for purchase or which has been generated during the course of business or profession.

It is pertinent to note that, it is explicitly provided that applicability of this section is not just restricted at the time of dissolution but also covers cases of reconstitution, thereby encompassing even cases of admission or retirement of partners, conversion of firm etc. Further, this amendment seeks to reverse various judicial pronouncements which had advocated that what the partner receives at the time of retirement is his own share of interest in the firm, and thus not taxable.

Expanding the scope of slump sale

It is proposed to expand the scope of 'slump sale' to include transfer of "undertaking, by any means," thereby including all types of transfers within the ambit of 'slump sale'. It is pertinent to note that this amendment would overturn the Bombay High Court judgement in the case of Bharat Bijlee wherein taxability of slump exchange was denied in absence of monetary consideration (in this case consideration was in nature of shares). In substance, transfer in the form of exchange shall also be covered under slump sale (provided other conditions are satisfied).

Extension of time limits for expiry of deduction/ tax benefit

In order to provide an added advantage to the tax payers, it is proposed to extend the due date of claiming deductions under the aforesaid sections

Section	Original due date	Extension proposed
80EEA (interest on loan taken for residential house property)	31 st March 2021	31 st March 2022
80-IAC (Deduction by eligible startup)	31 st March 2021	31 st March 2022
54GB (Deduction for subscription in equity shares of eligible company)	31 st March 2021	31 st March 2022
80-IBA (Deduction in relation to profit and gain from business of developing and building housing projects)	31 st March 2021	31 st March 2022

Provisions relating to administration and assessment

In the wake of digitisation, the time involved in completion of various processes has reduced, accordingly, to ease out compliance process it is proposed to reduced time lines as follows:

Particulars	Proposed amendment
Filing of the belated and revised return u/s. 139(4) and 139(5)	3 months before the end of the relevant AY (i.e., 31 st December) or before the completion of the assessment whichever, is earlier.
Due date for the filing of original return of income in case of spouse of a partner of a firm whose accounts are required to be audited if the provisions of section 5A applies to them.	31 st October of the Assessment Year
Issue of intimation u/s. 143(1)	9 months from end of the financial year in which return is made. It is also proposed to provide for adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income.

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Particulars	Proposed amendment
Issue of notice initiating assessment u/s. 143(2)	3 months from end of the financial year in which return is furnished
Completion of assessment u/s. 143(3)	9 months from end of the relevant assessment year
Issue of notice for reopening assessment	3 years from the end of relevant assessment year, or 10 years from the end of relevant assessment year where the Assessing officer has possession of evidence that income escaping assessment is ₹ 50 Lakh or more

Section 142

It is proposed to empower prescribed income tax authority to issues notices under section 142 (1) besides assessing officer. This is in line with policy on faceless assessment to enable centralised issuance of notices.

Revamping of reassessment proceedings

Unlike the erstwhile reassessment provisions where emphasis was on "reasons to believe", substituted provisions focus on "information with the Assessing officer" i.e., information flagged in accordance with the risk management strategy formulated by the Board from time to time (or) any objection raised by C&AG. It may be noted that considering 'flagged information based on risk management strategy' as an 'information' so as to warrant assumption of jurisdiction under section 147/148 in all cases shall tantamount to giving unfettered powers to the assessing authorities for reopening assessment.

Section 148A has been inserted

to provide that before issuance of notice under Section 148, the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering reply, the Assessing Officer shall decide, by passing an order, whether it is a fit case for issue of notice under Section 148. Giving opportunity of being heard before initiating reassessment proceedings is a welcome step.

Further, it is proposed to subsume provisions of section 153A/153C of the block assessments in the newly substituted section 148.

Faceless ITAT

With an aim to reduce human interface and cost of compliance it is proposed to introduce faceless proceedings before the ITAT. While creating a faceless ITAT is pathbreaking being one more step towards digitisation, its implementation and practical challenges should be closely examined.

MAT provisions :

115JB is proposed to be

amended to provide that dividend income earned by foreign companies shall be reduced from the book profit and related expenditure added back where such income is taxed at lower than MAT rate due to DTAA

Further, where past year income is included in books of accounts, on account of Advance Pricing Agreement or secondary adjustment, Assessing Officer shall on application made to him recompute the book profits of past years.

Section 10(50)

Equalisation Levy was introduced by India in 2016, on the lines of the recommendations of the OECD BEPS Action Plan aiming to tax revenues generated by e-commerce supply or services made which would not fall under the tax net applying the conventional tax norms.

E-commerce supply or services is defined to mean "online sale of goods" and "online provision of services". Definition of term "online sale of goods" and "online provision of services" is now expended to include one or more of the following activities taking place online:

- Acceptance of offer for sale;
- Placing the purchase order;
- Acceptance of the Purchase order;
- Payment of consideration; or
- Supply of goods or provision of services, partly or wholly.

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Further, it is clarified that Equalisation levy is applicable on e-commerce supply or services irrespective of whether the e-commerce operator owns the goods or provides / facilitates the services.

Income from any specified service on which equalisation levy is applicable shall be exempt as per section 10(50). Explanation 1 is proposed to be inserted to clarify that the income referred to in this clause shall not include and shall be deemed to have never included income which is chargeable to tax as royalty or Fee for technical service in India under the Income tax Act or DTAA.

Miscellaneous

1. It is proposed to widen the ambit of provisional attachment u/s. 281B during pendency of any proceeding for imposition of penalty under section 271AAD (penalty for false entry or omission of entry in books of accounts) where the amount or aggregate amount of penalty likely to be imposed exceeds ₹ 2 Crores.



2. It is proposed to enable infrastructure debt fund to issue zero coupon bond under section 10(48). Further, TDS under section 194A shall not be applicable on paid or payable by infrastructure debt fund
3. To settle long pending disputes and to reduce litigation, dispute resolution is proposed for small taxpayers through constitution of a Dispute Resolution Committee. Taxpayers with taxable income up to ₹ 50 lakh and disputed income up to ₹ 10 lakh shall be eligible to approach the Committee.
4. Section 44DB is proposed to be amended to extend the benefit of various deductions to a case where a primary co-operative bank is converted to a banking company. Section 47 is also proposed to be amended to include transfer of capital asset by a primary co-operative bank to a banking company within its scope. Accordingly, such transaction shall not be treated as a transfer.
5. Section 72A is proposed to be amended with a view to facilitate strategic divestment by the Government to enable set off and carry forward of loss and allowance of depreciation of amalgamating company to amalgamated company in case of amalgamation of one or more public sector company/companies with another public sector company/companies.
6. No interest under section 234C is proposed to be charged on shortfall in payment of advance tax on dividend income (except deemed dividend) provided full tax thereon is paid in subsequent instalments
7. Section 115AD is proposed to be made applicable to investment division of an offshore banking unit to the extent income is attributable to investment division as Category III portfolio investor under SEBI (FPI) Regulations, 2019
8. Income tax Settlement Commission is abolished with effect from 1 February 2021.

Endnote

In this unprecedented time government is walking tightrope aiming to revive the economy with various benefits, tax incentives and measures as announced in this budget. The Finance Minister rightly remarked in her speech "Faith is the bird that feels the light and sings when the dawn is still dark". With these measures, the economy will certainly come out of present problems to reflect its true potential sooner than later.



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Significant Direct Tax Proposals in The Finance Bill, 2021 - Towards Greater Transparency, Efficiency and Tax Certainty

The Union Budget 2021-22 aims to provide strong impetus to an economy that is badly-hit by the novel coronavirus pandemic. The direct tax proposals in the Finance Bill, 2021 seeks to create an enabling framework for an all-inclusive economic growth. It aims to ensure greater efficiency, transparency and accountability in income-tax proceedings. Read on...

A New Faceless Regime encompassing Faceless Assessment Scheme, Faceless Appeal Scheme and Faceless Penalty Scheme was introduced in the Income-tax Act, 1961 (referred as 'Act') last year, in order to ensure greater efficiency, transparency and accountability in the proceedings under the Act. In this direction, the Union Budget 2021-22, proposes to also bring the proceedings before the Tribunal under the gamut of Faceless regime. The Finance Bill, 2021 contains the provisions for Constitution of Dispute Resolution Committee (DRC) for small and medium taxpayers and constitution of Board for Advance Ruling for reducing litigations and disputes, the workings of which would also be faceless. An entirely new procedure is being put in place for bringing to tax income escaping assessments (including search assessments), for reducing litigations and for providing ease of doing business to taxpayers. Time limits for completion of assessment u/s 143/144 are proposed to be reduced on account of technological advancement in the processes of assessment. These proposals as well as their impact are discussed at length in this article:



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I. Revamp of Procedure for Assessment of Escaped Income

In the current section 147 of the Act, dealing with income escaping assessment, it is provided, if the Assessing Officer (AO) has reason to believe that any income chargeable to tax has escaped assessment for any assessment year (A.Y.), he may assess or reassess or recompute the total income for such year by issuing a notice u/s 148. Notice u/s 148 can be issued for making assessment or reassessment subject to the time limits prescribed in section 149. Search assessment cases are currently dealt with under sections 153A, 153B, 153C and 153D, where search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A, in the case of the assessee, or any other person.

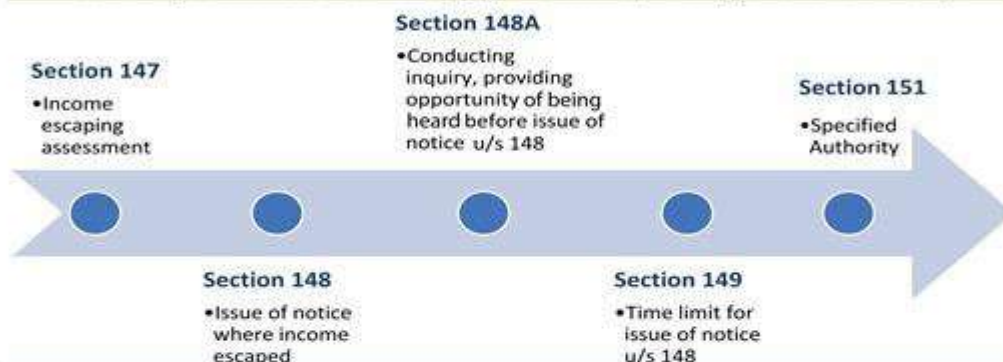


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The provisions pertaining to search assessment i.e., section 153A/153B/153C/153D, were earlier incorporated in the year 2003 to replace the block assessment. In spite of the same, a spate of litigations emerged over a period of time on these provisions related to search assessments and income escaping assessments. There are plethora of judicial rulings on the provisions contained under section 147, 153A, 153B, 153C and 153D.

Accordingly, in order to curtail litigations, the Finance Bill, 2021 has proposed an entirely new procedure of assessment of such cases. Accordingly, sections 147, 148, 149 and 151 are proposed to be substituted. Further, new section 148A is proposed to be inserted to provide for conducting inquiry and giving an opportunity of being heard before issue of notice in certain cases.

Relevant provisions for Income Escaping Assessment (including Search Assessment)



Income Escaping Assessment [New Section 147]

If any income chargeable to tax has escaped assessment for any A.Y., the AO may

- assess or reassess** such income or
- recompute** the loss or the depreciation allowance or any other allowance or deduction for such assessment year

A.Y. for which income has escaped assessment is known as Relevant Assessment Year (RAY)

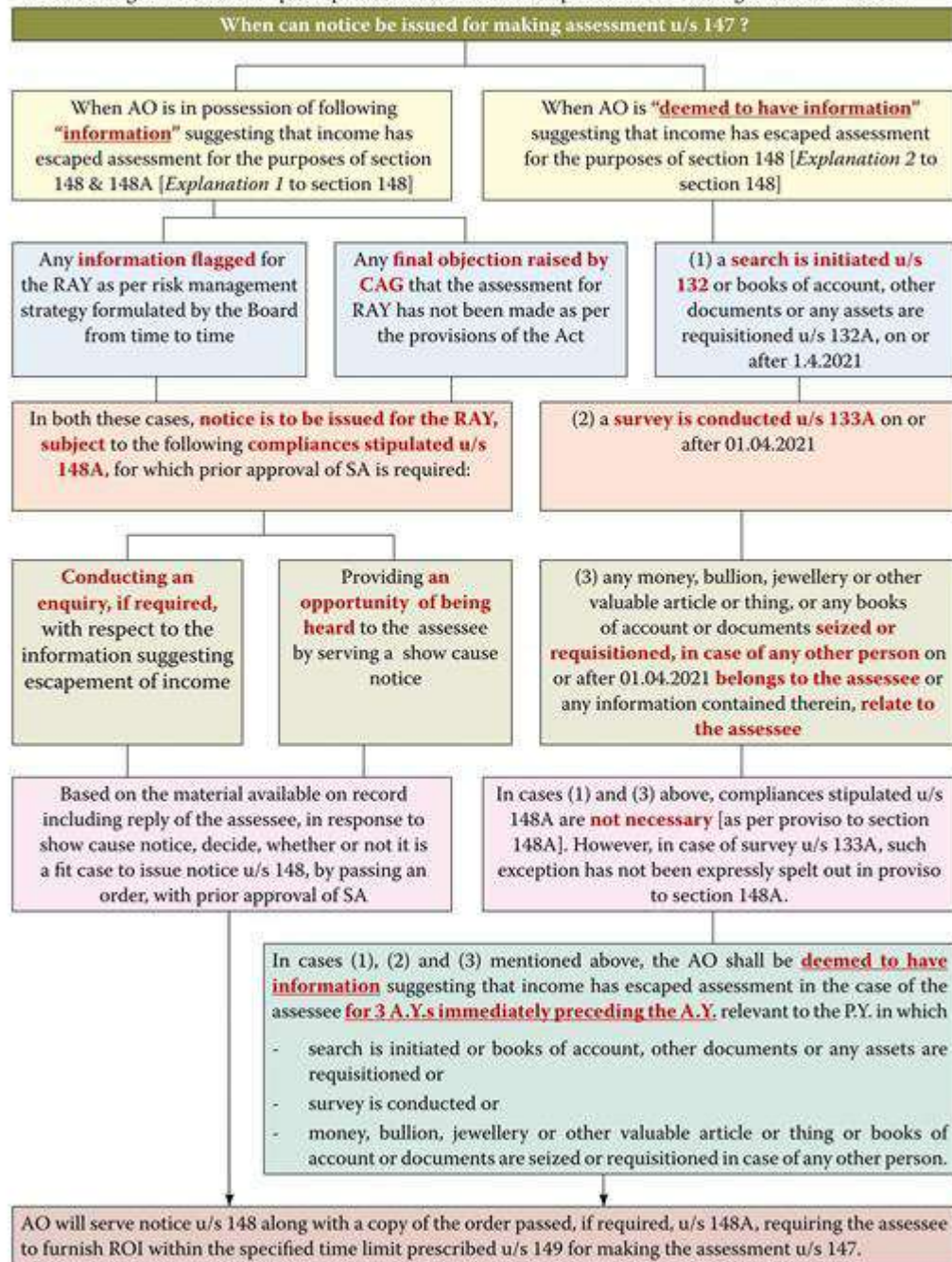
*The AO may **assess or reassess** the income in respect of any issue, which has escaped assessment, and such **issue comes to his notice subsequently in the course of the proceedings** under this section. In such a case, **compliance stipulated u/s 148A are not necessary.***

Issue of notice where income has escaped assessment [Section 148, 148A, 149 & 151]

New section 148 lays down the cases where a notice can be issued u/s 148 for making assessment u/s 147. New section 148A specifies the requisite compliances, (with respect to the information suggesting that income chargeable to tax has escaped assessment), to be satisfied, before issuing notice u/s 148. The notice u/s 148 can be issued, within the time limits specified under new section 149 and with the prior approval of the Specified Authority (SA) as referred to in new section 151.

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The following flow chart attempts to provide an overview of the procedure for making assessment u/s 147:



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Time limit for issue of notice u/s 148 for the RAY [Section 149]

upto 3 years from the end of the RAY [Section 149(1)(a)]

Beyond 3 years but not more than 10 years from the end of RAY [Section 149(1)(b)]

If the AO has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to Rs. 50 lakh or more for that year

What is the meaning of "Relevant Assessment Year (RAY)"?

Explanation 1 to Section 148	Explanation 2 to Section 148
I. Where the information with AO suggests that income has escaped assessment:	II. Where AO shall be deemed to have information suggesting that income has escaped assessment
In such a case, the RAY is the assessment year: - for which information is flagged in the system in accordance with risk management strategy formulated by the CBDT or - for which CAG has raised final objection	The RAYs means the 3 A.Y.s immediately preceding the A.Y. relevant to the P.Y. in which the search is initiated u/s 132 or survey is conducted u/s 133A or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Let us understand with the help of the following examples, the contextual meaning of RAY and the time limit upto which a notice u/s 148 can be issued in cases mentioned in *Explanation 1 & 2* below to section 148.

Example 1: In a case, where information is flagged in the system which suggests income has escaped assessment:

Information flagged in the system for	RAY	Date of expiry of the 3 year time limit	Can notice be issued on or after 1.4.2021?
A.Y. 2016-17	2016-17	31.03.2020	No, notice cannot be issued, since 3 years have elapsed from the end of the RAY.
A.Y. 2017-18	2017-18	31.03.2021	
A.Y. 2018-19	2018-19	31.03.2022	Yes, notice can be issued, since 3 years have not elapsed from the end of the RAY.
A.Y. 2019-20	2019-20	31.03.2023	
A.Y. 2020-21	2020-21	31.03.2024	

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Example 2: In a case, where search is initiated u/s 132 during the P.Y. 2021-22, AO is deemed to have information suggesting income has escaped assessment for the **3 A.Y.s immediately** preceding the A.Y. relevant to the P.Y. in which the search is initiated u/s 132. Accordingly, the RAY's would be A.Y. 2021-22, A.Y. 2020-21 and A.Y. 2019-20. Thus, notice can be issued for these A.Y.s, since 3 years have not elapsed from the end of the RAY.

Applicability of extended time limit of 10 years from the end of RAY:

As per section 149(1)(b), notice can be issued for the RAY,

- if **3 years but not more than 10 years have elapsed** from the end of RAY,
- where AO has in his **possession books of accounts or other documents or evidence** which reveal that the income chargeable to tax, represented **in the form of asset**, which has escaped assessment
- amounts to or is likely to amount to **₹ 50 lakh or more for that year.**

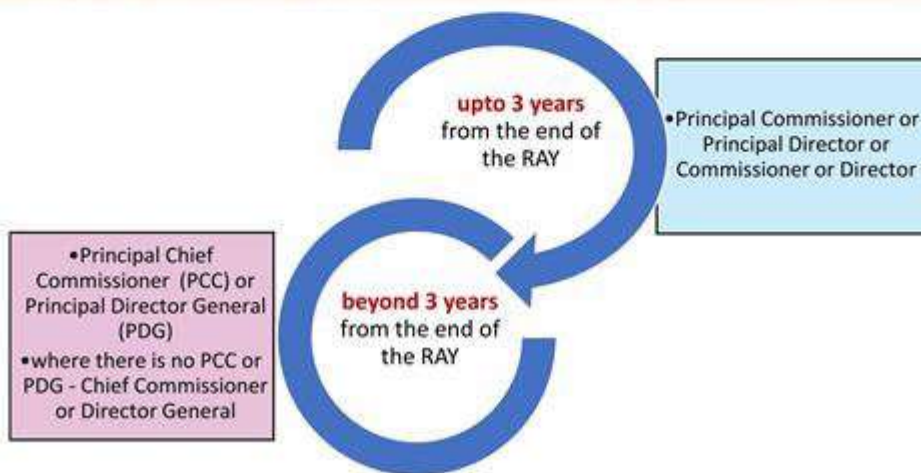
However, the term "asset" has not been defined for applicability of this extended time limit. This needs to be incorporated at the time of enactment of Bill in order to provide clarity.

As per Explanation 2 to section 148, AO is deemed to have information for **3 A.Y.s immediately preceding the A.Y.** relevant to the

P.Y. in which the search is initiated u/s 132 or survey is conducted u/s 133A or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person. Consequently, in these cases, notice can be issued only for these 3 A.Y.s.

The moot point is whether the extended period of 10 years mentioned in section 149(1)(b) for issue of notice u/s 148 would apply in respect of cases covered in *Explanation 2* to section 148 (i.e., search & seizure/survey/requisition of books, etc.) or is it intended only for cases covered in *Explanation 1* to section 148. The intent is not clear from the language of these sections, since the requirement in section 149(1)(b) that the A.O. should be in possession of books of accounts or other documents (revealing escapement of income, represented in the form of asset, exceeding ₹ 50 lakhs) seems to indicate that the extended period of 10 years is in respect of search, survey cases etc. referred to in *Explanation 2* to section 148; though the said explanation deems income escaping assessment only upto 3 AYs immediately preceding the A.Y. relevant to previous year of search/survey.

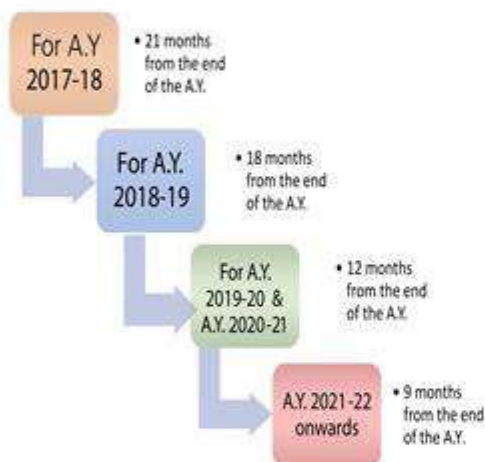
Specified Authority for the purpose of section 148 and section 148A [Section 151]



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II. Reduction in time limits for completion of assessments

Existing time limits prescribed u/s 153(1) for completion of assessment u/s 143/144 are proposed to be reduced by three months, keeping in mind the elimination of person-to-person interface between the Taxpayer and the Department and introduction of completely faceless and jurisdiction-less manner of passing assessments orders. Accordingly, the following are the time limits from A.Y. 2017-18 for completing assessment u/s 143/144 :-



This seems to be consequent to the proposed reduction in time limit for filing belated return u/s 139(4) and revised return u/s 139(5) by three months. In effect, the AOs would continue to have a period of 12 months for completing the assessment.

III. Constitution of Dispute Resolution Committee (DRC)

In order to prevent new disputes and settle issues at an initial stage, constitution of one or more Dispute Resolution Committee(s) (DRC) has been proposed in the Finance Bill, 2021. This is another welcome move towards providing tax certainty to the taxpayers.

At present, a dispute resolution mechanism exists in respect of transfer pricing cases and

foreign companies to facilitate expeditious resolution of disputes on fast track basis. Section 144C of the Act lays down the provisions of Dispute Resolution Panel (DRP) in cases where variations are proposed in the assessment order in consequence of the order of TPO, which is prejudicial to the interest of assessee. In such cases, the eligible assessee can file an objection before DRP against the draft assessment order within 30 days of receipt of such order.

However, the dispute resolution introduced vide new section 245MA through the Finance Bill, 2021 is intended to provide tax certainty to the small and medium taxpayers and to minimise the disputes at preliminary stage by providing faceless resolution. The provisions pertaining to constitution of DRC are as follows:

- One or more DRCs to be constituted by the Central Government (CG).
- DRCs would resolve disputes of **such persons or class of person** which shall be specified by the Board.
- An assessee who fulfils the **specified conditions** can choose to opt for the dispute resolution through the DRC in respect of **specified order**.

Specified Order (SO)

- An order or draft order, as specified by CBDT, and -
 - aggregate sum of variations proposed in SO **does not exceed ₹ 10 lakhs.**
 - total income as per the return filed by the assessee for the A.Y. relevant to such order **does not exceed ₹ 50 lakhs.**
 - Such order is **not based** on a search initiated u/s 132 or requisition made u/s 132A or a survey initiated u/s 133A or information received under DTAA

Specified conditions to be fulfilled in relation to a person

- No order of detention has been made against him under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

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- No prosecution for any offence punishable under the provisions of the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prohibition of Benami Transactions Act, 1988, the Prevention of Corruption Act, 1988 or the Prevention of Money Laundering Act, 2002 has been instituted and he is not convicted of any offence punishable under any of these Acts;
- No prosecution has been initiated by an Income-tax Authority for any offence punishable under the provisions of this Act or the Indian Penal Code or for the purpose of enforcement of any civil liability under any law for the time being in force, and he is not convicted of any such offence consequent upon the prosecution initiated by an Income-tax Authority;
- he is not a person who is notified u/s 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;

CBDT may prescribe other conditions in due course which would also need to be satisfied for being eligible to opt for dispute resolution under this provision of the Act.

Powers of DRC

to reduce or waive any penalty imposable under the Act

to grant immunity from prosecution for any offence under the Act.

The above powers can be exercised by DRC subject to conditions to be prescribed. The scheme for faceless working of the DRC will be notified by the CG to impart greater efficiency, transparency and accountability by eliminating interface to the extent technologically feasible, by optimising utilisation of resources and introducing a dispute resolution mechanism with dynamic jurisdiction.

IV. Discontinuation of Income Tax Settlement Commission (ITSC)

Consequent to the constitution of DRC, Income-tax Settlement Commission (ITSC) proposed to be discontinued, w.e.f. 1st February 2021.

Thus, no application can be made before ITSC on or after 1.2.2021.

For the disposal of such pending applications before ITSC, one or more Interim Boards of Settlement (IBS) would be constituted by the CG.

However, the application in respect of which no order was issued on or before 31.1.2021, **would be treated as pending applications**, irrespective of the fact that in respect of such applications an order was required to be passed to declare it as invalid.

Every Interim Board shall consist of three members, each being an officer of the rank of Chief Commissioner.

All the powers exercised by ITSC or functions performed by it, namely, provisional attachment, exclusive jurisdiction over the case, inspection of reports and power to grant immunity shall apply *mutatis mutandis* to the Interim Board for the disposal of pending applications.

V. Constitution of Board for Advance Ruling

Another step in the direction of providing certainty to the taxpayers is proposal for constitution of Board for Advance Ruling.

The working of AAR has been affected due to the posts of Chairman and Vice Chairman remaining vacant for a long period of time on account of non-availability of eligible persons. This has led to pendency of large number of applications over the years. There is, therefore, a need to look for an alternative method of providing advance ruling which can give rulings to the taxpayers in timely manner. Therefore, a workable constitution of one or more Boards for Advance Rulings (BAR) has been proposed in the Bill for pronouncing advance rulings under the Act. For this purpose, new section 245-OB is to be inserted providing for the constitution of BAR. As per new section 245W, an advance ruling pronounced by the BAR is appealable before the High Court. Other consequential amendments are also proposed in various sections relating to Advance Ruling in the Finance Bill.

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As per section 245-OB, BAR would consist of -



Significant differences between AAR and BAR

Authority for Advance Ruling	Board for Advance Ruling
I. Binding nature of advance ruling	
Advance ruling pronounced by the Authority is binding : - on the applicant - in respect of the transaction - on the PCIT or CIT and the income-tax authority subordinate to him, in respect of the applicant and the said transaction	Ruling or order passed by the Board for Advance Ruling neither binding on the applicant nor on the Department. Accordingly, section 245S is proposed to be amended to provide that advance ruling pronounced on or after the date as may be notified by the CG would not be binding .
II. Appellate/writ remedy	
Writ petition before the High Court can be filed against such ruling.	Appeal against the order or ruling can be filed before the High Court within 60 days from the date of communication of the ruling or order.

Authority for Advance Ruling shall cease to operate and BAR will be effective from the date notified by the CG. Consequently, application filed before the AAR on or before such date as may be notified by the CG would be transferred to the BAR along with all the relevant records, documents or material.

The working of BAR would be faceless, and the CG may notify a scheme for eliminating interface between the BAR and the applicant. Making the working of BAR faceless is expected to resolve the disputes in timely manner.

VI. Appellate Proceedings - Faceless Sans Jurisdiction

The Finance Bill, 2021 has also proposed to make ITAT proceedings faceless on the same lines as proceedings before the CIT (Appeals). It is clarified in the memorandum that the aim of introducing faceless working of the Tribunal will not only reduce cost of compliance for taxpayers, but it would also increase transparency in disposal of appeals. It will also help in achieving even work distribution amongst different benches resulting in best utilisation of resources.

Section 255 is proposed to be amended to empower the CG to notify a faceless scheme for the purpose of disposal of appeal by the ITAT. Accordingly, all the communication with the taxpayers would take place electronically. It is clarified in the annexures to the Budget Speech that wherever personal hearing is required, **the proceeding can take place through video conferencing**. It is expected that the faceless

scheme so formulated would incorporate provisions for providing opportunity of being heard through video conferencing. To implement the faceless scheme for Tribunals, National Faceless Income Tax Appellate Tribunal Centre would be established.

Endnote - Towards giving effect to Taxpayers' Charter

The Taxpayers' Charter released last year spells out the commitments on the part of the Income Tax Department as well as the expectations from taxpayers. As per the Charter, the Income Tax Department is committed to *inter alia* provide a mechanism for appeal and review, provide timely decisions and respect privacy of taxpayers. In line with these commitments, the Finance Bill, 2021 seeks to reduce the time limit for completing assessments u/s 143/144 and time limits for issue of notice for reassessment (including search assessments), make the appeal process before the Tribunal faceless, constitute Board for Advance Ruling to provide tax certainty and constitute DRC for resolution of disputes of small and medium taxpayers. While fulfilling its commitment as per the Charter, the Department expects the taxpayers to disclose their income honestly, pay taxes and file returns timely. The Finance Bill, 2021, reflecting the commitment of the Department, would go a long way in instilling the necessary element of confidence in the taxpayers and encouraging them to disclose full information and fulfil their compliance obligations. ■■■

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Amendments in TDS/TCS Provisions

Over the years it has been observed that the TDS is deducted and TCS collected but the corresponding return of income are not filed within the stipulated time. The Finance Bill, 2021 is set to change the scenario with a significant proposal that is expected to increase the number of return filers. From 1st April, 2021, the deductors will have to ensure that before making the payment to the suppliers and deducting TDS or collecting TCS, the provisions for filing the return of income by certain classes of people are properly complied. Almost all the payments made have been covered for TDS deduction till the last enacted Finance Act, 2020. However, in the proposed Finance Bill, 2021, the amendments proposed are only to the three existing provisions and introduction of two new provisions. Read on...



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The amendments and introduction of new provisions are significant and have potential for replacement of Income Tax Returns filings making it just a procedural submission of documentary evidence for record purposes. Some of the amendments in the proposed provisions are a welcome move as the same were required based on the genuine hardships faced by the business houses at large and are also in line with the globally accepted policies.

This Finance Bill, 2021 has also proposed to introduce certain provisions like Section 206AB and Section 206CCA to encourage deductees to file their Returns, pay their correct taxes and claim their refunds, if any due. Resultingly, the percentage of individual return filers which are presently less than 1% of the total population of the country are bound to increase with the implementation of new provisions.

The proposed amendments with effective dates have been tabulated as under:



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Section	TDS/ TCS	New/Scope Expanded/ Relief	Assessee covered	Brief	Basic Exemption Limit	Rate of TDS	Proposed Effective Date
194	TDS	Relief	Body Corporate	Business Trust notified or any other notified person by Government shall be exempted from deduction	₹ 5,000	10%	1 st April, 2020
194A	TDS	Relief	Infrastructure Debt Company (replaced)	Relief to Infrastructure Debt Company	NA	-	1 st April, 2021
194IB	TDS	Scope Expanded	Non-Filers of Income Tax Returns	TDS to be deducted at higher rate in case of certain category of non-filers of Returns	₹ 50,000 per month	5%	1 st April, 2021
194P	TDS	New	Specified Senior Citizens	Deductions under Chapter VIA and Rebate under Section 87A to be given	₹ 5,00,000	10%	1 st April, 2021
194Q	TDS	New	Purchase of Goods	Purchase of goods exceeding ₹ 50 Lakhs in a financial year to any person	₹ 50,00,000	0.1% (5% where no PAN/ Aadhar is furnished)	1 st July, 2021
196D	TDS	Relief	Non Resident Assesses	Benefit of Treaty or Income Tax Rate Lower Rate to be Applied	N.A.	-	1 st April, 2021

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Provisions relating to Deductions of Tax effective from 1st April, 2020

Section 194 – TDS on Dividends

Provision relating to deduction of TDS on Distribution of Dividend was introduced and made effective from 1st April, 2020 by withdrawing Dividend Distribution Tax in the Finance Act, 2020. The second proviso to Section 194 stated that this section shall not apply if the dividend is paid to insurance company or insurers. The Finance Bill 2021, now proposes to extend this benefit retrospectively also to business trust and states that if any dividend is paid or credited to a business trust established for special purpose vehicle or in whose hand dividend is exempt or also payments made to any other person as may be notified by Government then TDS will not be deducted.

Provisions relating to Deductions of Tax effective from 1st April, 2021

Section 194A – TDS on Interest Other than Interest on Securities

In section 194A of the Income-tax Act, in sub-section (3), in clause (x), after the words "infrastructure capital fund or", the words "infrastructure debt fund or" shall be inserted and accordingly the interest payable to infrastructure debt fund will not be liable for deduction of TDS.

Section 196D – TDS on Income of FII from Securities

The Section has been modified in order to rationalise the provision concerning withholding on payments made to Foreign Institutional Investors (FIIs). Accordingly, it is proposed to insert a proviso to subsection (1) of section 196D of the Act to provide that in case of a payee to whom an agreement referred to in section 90(1) or section 90A(1) applies and such payee has furnished the Tax Residency Certificate as required section 90(4) or section 90A(4) of the Act, then the tax shall be deducted at the rate of twenty per cent or rate or rates of income-tax provided in such agreement for such income, whichever is lower.

Section 194P – TDS on Interest to Specified Senior Citizens

Section 194P has been introduced to give specific relief to the Senior Citizens. It has been proposed in the Finance Bill that the Banks before deducting TDS will have to take into consideration the allowable deductions under Chapter VIA, rebate under Section 87A and then deduct TDS. The Banks will have to compute the Total Income of the specified Senior Citizens and deduct the TDS as certain category of income earners have been exempted from filing of Return of Income. The Banks will have to take appropriate care and precaution as they will be required to report all such details in the TDS returns while filing the returns. The



The percentage of individual return filers which are presently less than 1% of the total population of the country are bound to increase with the implementation of new provisions.

Banks will have to update their software accordingly should not be a challenging task in the era of digitisation.

For the purpose of this Section, the explanations given by the provisions in the Finance Bill are as under:

- (a) "specified bank" means a banking company as the Central Government may, by notification in Official Gazette, specify;
- (b) "specified senior citizen" means an individual, being a resident in India—
 - (i) who is of the age of seventy-five years or more at any time during the previous year;
 - (ii) who is having income of the nature of pension and no other income except the income of the nature of interest received or receivable from any account maintained by such individual in the same specified bank in which he is receiving his pension income; and

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- (iii) has furnished a declaration to the specified bank containing such particulars, in such form and verified in such manner, as may be prescribed.

Provisions relating to Deductions of Tax effective from 1st July, 2021

Section 194A – TDS on Interest other than Interest on Securities

In section 194A of the Income-tax Act, in sub-section (3), in clause (x), after the words "infrastructure capital fund or", the words "infrastructure debt fund or" shall be inserted and accordingly the interest payable to infrastructure debt fund will not be liable for deduction of TDS.

Section 194IB – Payment of rent by certain individuals or Hindu undivided family.



Section 194P has been introduced to give specific relief to the Senior Citizens. It has been proposed in the Finance Bill that the Banks before deducting TDS will have to take into consideration the allowable deductions under Chapter VIA, rebate under Section 87A and then deduct TDS.

The Finance Bill seeks to include the words, figures and letters in the said provision "section 206AA or section 206AB, such that the TDS is now proposed to be deducted at higher of applicable rate of any of such section, in case of default by including non-filing of Return of Income for a consecutive period of two years by a resident individual or HUF by a rent receiver.

Section 194Q- TDS on Purchase of goods over a limit

In the last Finance Bill, Section 206C(1H) was introduced a levy being TCS on sale of goods and this year, a new Section 194Q, being TDS on purchase of goods on the similar lines is proposed to be introduced. The proposed Section TDS on purchase of goods above specified limit, provided following conditions are satisfied:

1. Any person, being a buyer, who is responsible for paying any sum to resident (hereinafter referred to as the "seller") for purchase of any goods of the value or aggregate of such value exceeding in a previous year of ₹ 50 Lakhs deduct 0.1% (5% in No PAN/ Adhar cases) of such sum exceeding ₹ 50 Lakhs as income tax;
2. A buyer means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year;

3. If the amount is credited to any account by whatever name called, these provisions shall apply;

However, the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to conditions as prescribed in such notification shall be exempted from TDS.

It is also stated that if the transaction is covered for TDS/ TCS under any provision of the Act and has deducted such amount, they shall be exempted from this provision.

Other Provisions

Section 206CC is proposed to be introduced on the lines of Section 206AB wherein higher of the two rates provided in the section, in case of non-filers of Return of Income.

Compliance Provisions

Section 206AB and Section 206CCA have been proposed in the Finance Bill, which will require that the Deductor/ Payer will have to ensure that while making payment shall deduct TDS of a resident person under the provisions of Chapter XVIIIB other than Section 192, 192A, 194B, 194BB, 194LBC or 194N, the "specified person" has also filed the Return of Income for the last two financial years, immediately prior to the financial year in which payment is made. In case of non-filing of Return of Income, by such resident deductee, except in the cases, where the time limit under Section 139(1) has

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CPC/Government will provide Online verification mechanism on the website of ITD, in the due course, which will enable the Deductor/Payer to verify whether the Payee/Recipient has filed the Return of Income for the last two years or not.

expired and the aggregate TDS and TCS in case is ₹ 50,000 or more in each of these two previous years, then the TDS will have to be deducted at higher of the following rates as

applicable under that Section in which payment is made:

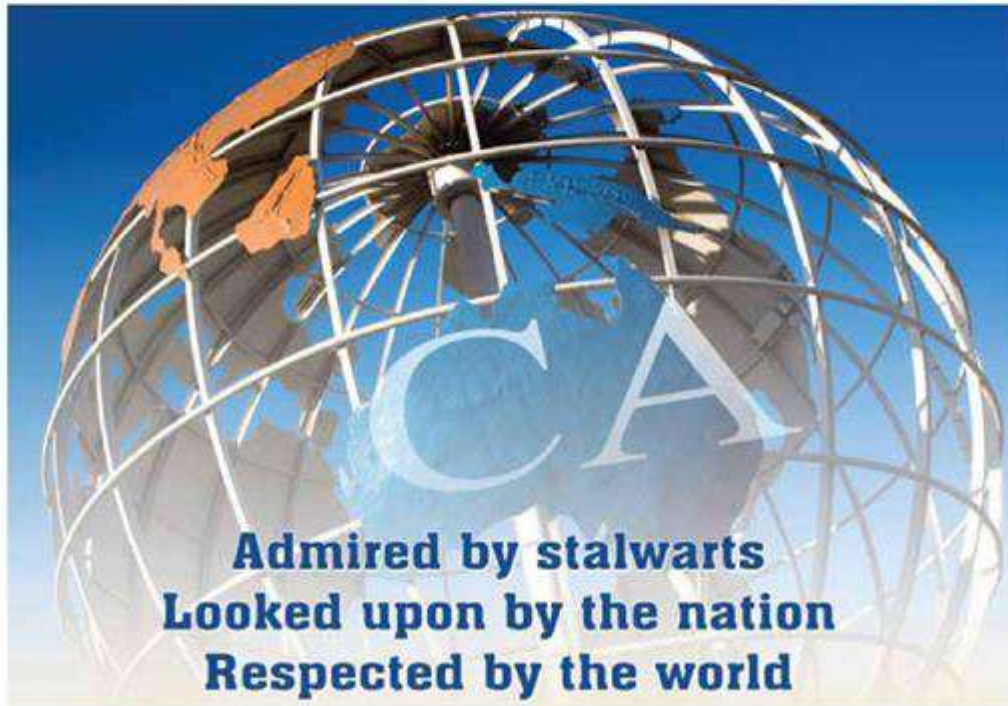
- (i) At twice the rate specified in the relevant provision of the Act; or
- (ii) At twice the rate or rates in force; or
- (iii) At the rate of five percent.

On the similar lines the Deductor will also have to ensure that while making complying with TCS provisions under Section XVIIIBB, the person to whom the payment is made has filed the Return of Income for the last two financial years, immediately prior to the financial year in which payment is made on the similar lines. In case of such

non-compliance, the TCS will have to be collected at higher of the following rates as applicable under that Section in which payment is required to be collected:

- (i) At twice the rate specified in the relevant provision of the Act; or
- (ii) At the rate of five percent.

CPC/Government will provide Online verification mechanism on the website of ITD, in the due course, which will enable the Deductor/Payer to verify whether the Payee/Recipient has filed the Return of Income for the last two years or not as it has now become very user friendly after the implementation of CPC2.0. ■■■■



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Equalisation Levy - Proposed Amendments in 2021

There has been massive upsurge in digital transactions in the last few years, particularly during COVID-19 pandemic when the whole world has taken up digitalisation in a big way. This may be owed to a number of reasons including wider reach and ease of business. The growing acceptability and spread of digital transactions can be judged from the fact that as per United Nations Conference on Trade and Development (UNCTAD) the total value of global e-commerce transactions, both domestic and cross-border stood at US \$25 trillion in 2015 an increase of around 56 percent compared to 2013, this might have grown substantially in the recent years. Read on...



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The biggest advantage of the digital business over traditional brick and mortar form of business is the ease with which companies can promote and sell their goods, and that too at a reduced cost. From a customer perspective it brings advantages in the form of ease in procurement as well as lesser cost in cases where a part of cost saved is passed on by the company to the consumer. Digital platforms are becoming the new market place due to spread of internet and increased mobile connectivity.

While digitalisation on the one hand is changing the business dynamics including the way business is done, it is also posing

some serious challenges for the tax authorities worldwide. The major challenge is that the existing international tax rules provides taxing rights to one jurisdiction only if nexus is established and one of the key characteristics of a digital business is ability to operate remotely without creating any physical presence. Thus, existing international tax principles have been rendered somewhat inadequate to tax digital transaction and this has created concern in tax jurisdictions across the globe, more so the ones with large consumer base, as they tend to lose a substantial share of tax revenue.

Recognising this, on the



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While the OCED through its task force is working aggressively to devise an appropriate methodology to tax digital transactions, various countries, including India, considering the magnitude of digital transactions and impact it has in terms of loss of tax revenue, have adopted one sided measure to tax digital revenues derived from their jurisdiction.

initiation of G20, under the Base Erosion and Profit Shifting (BEPS) project, OECD examined challenges to the existing tax system due to digitalisation of economy. This resulted in BEPS Action Plan 1, published in 2015. Since, then a lot of work has been done in this direction including proposals to allocate taxing rights to the user jurisdiction as well as mechanism for determination of taxable income.

However, considering the existing differences between member countries and conditions due to COVID pandemic, it would still require considerable time for OECD to come out with a globally accepted approach. While the OCED through its task force is working aggressively to devise an appropriate methodology to tax digital transactions, various countries, including India, considering the magnitude of digital transactions and impact

it has in terms of loss of tax revenue, have adopted one sided measure to tax digital revenues derived from their jurisdiction. India introduced Equalisation Levy to tax certain digital transactions.

Equalisation Levy in India

Equalisation Levy (EL) was introduced by the Finance Act, 2016 (effective from 1st April 2016) wherein digital services in the nature of advertisement, provision of space for digital advertisements or any other facility or services for the purpose of online advertisement were made subject to equalisation levy of 6%. Thus, any resident making payment to a non-resident for any of the above services is required to deduct equalisation levy and pay the amount to the credit of central government within 7 days from the end of month in which EL was deducted. The rationale for introducing this levy was explained in the Memorandum to the Finance Bill, 2016 as follows:

"Considering the potential of new digital economy and the rapidly evolving nature of business operations it is found essential to address the challenges in terms of taxation of such digital transactions as mentioned above. In order to address these challenges, it is proposed to insert a new Chapter titled 'Equalisation Levy' in the Finance Bill, to provide for an equalisation levy of 6 % of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-

resident having permanent establishment in India."

Amendment by Finance Act, 2020

The scope of EL has further been enhanced by Finance Act, 2020, to include e-commerce operators. E-commerce operator is defined as a non-resident that owns, operates, or manages a digital or electronic facility or platform for online sale of goods or the online provision of services. Thus, all e-commerce operators meeting the prescribed conditions will be required to pay a 2% equalisation levy on consideration received or receivable.

The EL provisions relating to e-commerce operators are contained in section 165A reads as below:

(1) On and from the 1st day of April, 2020, there shall be charged an equalisation levy at the rate of two per cent. of the amount of consideration received or receivable by an



Equalisation Levy (EL) was introduced by the Finance Act, 2016 wherein digital services in the nature of advertisement, provision of space for digital advertisements or any other facility or services for the purpose of online advertisement were made subject to equalisation levy of 6%.

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e-commerce operator means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both.

e-commerce operator from e-commerce supply or services made or provided or facilitated by it—

- (i) to a person resident in India; or
- (ii) to a non-resident in the specified circumstances as referred to in sub-section (3); or
- (iii) to a person who buys such goods or services or both using internet protocol address located in India.

Section 164 further contains definition of various terms used herein. Some of the important definitions captured therein are reproduced as below:

"e-commerce operator" means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both;

"e-commerce supply or services" means—

- (i) online sale of goods owned by the e-commerce operator; or
- (ii) online provision of services provided by the e-commerce operator; or
- (iii) online sale of goods or provision of services or both, facilitated by the

e-commerce operator; or

- (iv) any combination of activities listed in clause (i), (ii) or clause (iii);

"online" means a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network;

Some of the concerns relating to interpretation of various terms are:

- EL provisions were kept under a separate chapter implying that the credit for the same will not be available in the home country of the e-commerce operators. Thus, this will lead to double taxation and global MNE groups may be inclined to pass on this additional cost to consumers either wholly or partly;
- Definitions of certain terms were not very clear leading to various interpretation. For e.g., the definition of the term "e-commerce" operator was defined in a manner to even include some of the services such as IT support, database access, etc. provided by one non-resident group company to another group company in India. Similarly, the term "online" was given very wide connotation to include any facility or service or benefit or access obtained through internet or any other form of digital or telecommunications network.
- It was not specifically mentioned, that income earned by non-resident e-commerce operator in the nature of royalty/fee for technical services will

continue to be governed by existing provisions or will be subject to EL.

More clarity is required around the nature of transactions proposed to be covered by EL provisions.

Amendments Proposed by the Finance Bill 2021

Recognising the issues mentioned above the government on Feb 01, 2021 vide Finance Bill, 2021 has provided clarity on some of the aspects as mentioned above. Some of the major amendments proposed include:

Income taxable as royalty or fee for technical services not to be included within the ambit of EL

It is proposed to amend section 163, subsection (3) to include a proviso to clarify that considerations received or receivable for specified services and for e-commerce supply or services shall not include the consideration, which are taxable as royalty or fees for technical services in India under the Income-tax Act, read with the agreement notified by the Central Government under section 90 or section 90A of the said Act.

Clarification on online sale of goods and services

Further, an explanation has been added to the definition of "e-commerce supply or



EL is supposed to be a temporary measure until an approach which has global consensus is developed by OECD.

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It has been further clarified that irrespective of the fact whether an e-commerce operator owns the goods, provides online services or facilitates said online services, the consideration received or to be received shall include the consideration as per the mentioned clarification.

services", wherein, "online sale of goods" and "online provision of services" shall include one or more of the below mentioned parameters to be identified as an e-commerce supply or service:

- acceptance of offer for sale; or
- placing of purchase order; or
- acceptance of the purchase order; or
- payment of consideration; or
- supply of goods or provision of services, partly or wholly;

Other Clarifications

It has been further clarified that irrespective of the fact whether an e-commerce operator owns the goods, provides online services or facilitates said online services, the consideration received or to be received shall include the consideration as per the mentioned clarification.

Another anomaly sought to be removed by the government is through the

corresponding amendment in Section 10(50) to provide for exemption of income on which equalisation levy was levied with retrospective effect from April 01, 2020. Thus, all the transactions on which equalisation levy was introduced are exempt from any charge of Income tax.

Concerns to be addressed

It goes without saying that EL is an additional tax burden on the companies and this coupled with the fact that it is intended to be applied as a unilateral measure where corresponding relief/tax credit is not available in the home country may give rise to double taxation, unless a suitable clarification is provided in the Income-tax Act, 1961.

EL is supposed to be a temporary measure until an approach which has global consensus is developed by OECD. However, the concern amongst business remains as to what would happen in case where a globally accepted approach is not possible or there are considerable delays in formulating such an approach. While the clarification provided by government through Finance Bill 2021 will certainly help businesses in evaluating the applicability of these provisions on their businesses there are still a lot of factors surrounding the provisions which needs to be addressed, such as:

- a. The major issue with EL which has not been addressed so far is the double taxation caused by it. As mentioned earlier EL is outside the scope of Income Tax Act 1961 thus treaty benefits with respect to the same are not available.

- b. Further, EL provisions in its present shape seems to have a very wide applicability and cover almost all digital transactions.
- c. EL would impose additional compliance burden on non-resident e-commerce operators. The EL provisions relating to e-commerce operators cast liability on non-resident operators to pay the amount of EL to government within stipulated time. This also requires the e-commerce operator to obtain Permanent Account Number (PAN) in India as well as comply with other procedural requirements.
- d. From consumer perspective, there is no provision restraining large e-commerce operator to shift burden of EL on to the customers making the transactions costlier for the Indian taxpayers.

The concern of the tax department in protecting the tax base in respect of digital transactions is genuine and they are within their rights to look for the possible methodologies for taxing such transactions. India, similar to many other tax jurisdictions, has adopted unilateral measures to protect their tax base and this is supposed to continue till global community does not talk in one voice to find the concerns regarding taxation of digital economy. Given this scenario, Indian authorities may take into consideration the Achilles heel of business to find fruitful remedies to curb double taxation, increased burden of compliance and transaction costs. ■■■

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Board for Advance Rulings and Tax Certainty



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Taxation, in one or other form, has been consistent companion of business. More than two centuries back Benjamin Franklin said that, "in this world, nothing is certain except death and taxes". This being so, the quest has been to have a tax system under which, as said by Chanakya in the Arthashastra, government should collect taxes like a honeybee, which sucks just the right amount of honey from the flower so that both can survive. Now, the question is what the qualities of a good tax system should be. Adam Smith identified fairness, certainty, convenience and efficiency as the four canons of taxation. Undoubtedly, all four are important, but for businesses it is "certainty" of a tax system which is a necessity for making any long term business plan. With changes in the way business is conducted due to changes in technology, looking for certainty is not easy. In such a scenario, business wants clarity of the tax liability based on the tax law existing at the time of the planning the business. As tax provisions, majorly, are given to differing interpretations disputes arise

leading to uncertainty. These have given rise to demand for advance rulings by tax authorities. Several countries have adopted one or multiple ways of advance rulings. India introduced Authority for Advance Rulings (AAR) in 1993 which was received by all with a lot of expectations. It sought to provide certainty to non-residents interested in investing in India, and at the same time wanted to avoid any tax litigation. However, expectations are more. Finance Bill, 2021

proposes to amend the provisions with aim to pronounce timely rulings to taxpayers. The article discusses the proposed changes in light of international experiences and suggests measures that can make the new scheme more effective and efficient. Read on...

Types of Advance Rulings

Advance ruling is broadly defined as written opinion/ decision by an authority empowered to render it with regard to the tax consequences



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of a transaction or a proposed transaction or a legal position. The global best practice for advance ruling encompasses two types of rulings:

- **Public Ruling** – It represents the administration's interpretation of particular provisions of law that effect a large number of taxpayers and are issued in the form of interpretative ruling or clarifications. They bind the tax officers but not taxpayers who can resort to the remedies provided under law where they disagree with the ruling. The Central Board of Direct Taxes (CBDT) issues Circulars, Frequently Asked Questions (FAQs), etc. under this category.
- **Private Ruling** – These are specific to a taxpayer and specified transactions. These are issued on specific request by a taxpayer. The objective is to provide support and a greater level of certainty to the taxpayers. The system of advance rulings are examples of such rulings.
- **Oral Rulings** - An oral ruling is a form of legally binding advice give over the phone to taxpayers who are individuals. This is prevalent in Australia.¹ It gives opinion of the Australian Tax Office on how a provision of the law applies to an individual in relation to their specific circumstances. Generally, oral rulings are given on areas of the law such as personal income tax or the Medicare levy.

International Experience

Timeline

A common feature present in almost all systems of advance rulings is a defined timeline for issuing the rulings. Mostly, it is less than one year. The position in some of the countries are as follows:

Less than 3 months: United Kingdom (30 days); Austria (2 weeks to 1 year. However, under the Express Answering System time taken is not more than 3-4 week); Belgium (1-3 months);

Less than a year: Denmark (typically, 6-8 months); France (6-9 months)

Constitution of Authority

The constitution of authorities differs from country to country. In most of the countries the authority works under the tax department and manned by the officers. For example, in Japan Advance ruling authorities are part of the tax authorities and not a separate body. Similarly, the authority in South Africa and Malaysia is part of the tax department. The position in the Netherlands is interesting. Originally, the tax inspector was giving the ruling. The position changed in 1991 when the issuance of advance rulings in respect of certain international transactions has been centralised at a one-stop-shop within the tax authorities. This has further been modified after reforms in 2001 and 2004. The Netherlands has one of the most efficient, robust and open system of advance rulings.



Accordingly, a new chapter was inserted by the Finance Act, 1993, in the Income-tax Act, 1961 ("ITA" or "the Act"), creating the AAR scheme in order to provide certainty, avoid needless litigation in respect of transactions involving non-residents in India.

The most interesting set up is in Sweden, where the members and deputies are appointed by the government who are tax experts with experience from various business areas such as courts, authorities, universities, etc.

Binding Nature

The position regarding the binding nature varies from country to country². In most of the countries such as Portugal, Spain, Germany, Denmark, etc. it is binding on tax authorities, but not on taxpayers. In Austria it is binding neither on tax administration nor on taxpayers. In Italy, it is not binding on tax administration, while in Luxembourg it is not binding on tax administration only in case of change in law. If the rulings are not obtained in "good faith" or incorrect or incomplete information is

¹ [https://www.ato.gov.au/General/ATO-advice-and-guidance/ATO-advice-products-\(rulings\)/Oral-rulings](https://www.ato.gov.au/General/ATO-advice-and-guidance/ATO-advice-products-(rulings)/Oral-rulings) (accessed in February 2021)

² https://www.accountancyeurope.eu/wp-content/uploads/Advance_tax_rulings.pdf (accessed in February 2021)

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provided by taxpayer then in many jurisdictions the rulings are not binding.

Tax Disputes and Need for Authority for Advance Rulings (AAR) – Position in India

As of March 2018, there were approximately 1,39,221 direct taxes cases under consideration at the level of ITAT, High Courts and Supreme Court. Just 0.2% of these cases constituted nearly 56% of the total demand value; and 66% of pending cases, each less than ₹ 10 lakhs in claim amount, added up to a mere 1.8% of the total locked-up value of pending cases as can be seen from Table 1.

Table 1 - Amount (INR billion)

Financial Year	Commissioner of Income Tax (Appeals) CIT(A)		ITAT		High Court		Supreme Court	
	No of cases	Amount	No of cases	Amount	No of cases	Amount	No of cases	Amount
2014-15	232,126	3,839	37,506	1,455	34,281	377	5,661	46
2015-16	258,898	5,162	32,834	1,359	32,138	1,614	5,399	70
2016-17	290,227	6,112	37,968	1,438	38,481	2,878	6,357	80
2017-18	304,000	5,185	37,353	2,350	39,066	1,960	6,224	118
2018-19	339,000	5,628	92,205	NA	38,539	1,365	4,425	744

(Source: Report of the Comptroller and Auditor General of India, for the year ending March 2019 Pages 11 and 12)

The Economic Survey, 2017-18 highlighted poor success rate in appeals filed by the government. Table 2 shows that though tax department is the biggest litigator (more than 85% cases



Section 245R(6) provides that the AAR shall pronounce rulings within six months of the receipt of application.

are filed by the department) the success rate of the Department in Direct Tax cases at all three levels of appeal – ITAT, High Court and Supreme Court is low (under 30%).

Table 2

Courts	Success Rate	Petition Rate
Supreme Court	27%	87%
High Courts	13%	83%
ITAT	27%	88%

(Source: Economic Survey 2017-18, Ministry of Finance)

Tax litigation in India has not been a winning proposition, creating disincentive. This was appreciated by various Committees constituted by the government. Finally, while

Provincial Act or Government Companies for an issue related to computation of income pending before income tax authority and to other residents for determining tax liability for

a transaction with non-resident. In 2014, the scope was further expanded to include resident taxpayers where the tax liability in respect of a transaction exceeds 100 crore rupees.

delivering the Budget Speech for 1992, the then Finance Minister accepted need for the Authority for Advance Ruling. Accordingly, a new chapter was inserted by the Finance Act, 1993, in the Income-tax Act, 1961 ("ITA" or "the Act"), creating the AAR scheme in order to provide certainty, avoid needless litigation in respect of transactions involving non-residents in India. In 2000, the government extended the jurisdiction of the AAR to Public Sector Undertakings established under Central, State or

Further, with the introduction of provisions of General Anti Avoidance Rules (GAAR) in the Indian statute, the Government has yet again expanded the scope of AAR to include that all taxpayers (i.e., residents and non-residents) may seek advance ruling on whether an arrangement undertaken is an impermissible avoidance arrangement or not. These changes of widening the ambit of application eligible for AAR is a clear reflection of its serious intent and growing popularity.

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The Memorandum to the Finance Bill, 2021 mentions that AAR is proposed to be replaced by a Board of Advance Ruling (BAR).

Features of Existing AAR

The provisions regarding AAR are in Chapter XIX-B of the Act. It runs from section 245N to 245V. AAR has one Principal Bench in Delhi, one bench in NCR and one bench in Mumbai. AAR consists of a Chairman and various Vice-Chairmen, revenue member and law members. The principal bench consists of Chairman, one revenue member and one law member. The other benches consist of one Vice-Chairman, one revenue member and one law member, each. A bench cannot function, if the post of Chairman or Vice-Chairman is vacant. As per Section 245-O of the Act, persons eligible for appointment as Chairman of AAR are retired Judges of the Supreme Court, retired Chief Justice of a High Court or a retired Judge of a High Court who has served in that capacity for at least seven years. Similarly, the person eligible for appointment as Vice-Chairman are retired judges of a High Court.

Section 245R(6) provides that the AAR shall pronounce rulings within six months of the receipt of application. However, it has been observed that in several occasions rulings

were issued much beyond the time limit of six months. The disposal rate of AAR was 80% in FY 2006-07. From FY 2010-11 onwards the disposal rate came down abysmally low within the range of 6% to 23% during the period FY 2010-11 till FY 2017-18.

Section 245S of the Act makes the rulings binding on tax administration as well as on taxpayer who had sought it and

taxpayers. It is, also, proposed that an appeal to High Court against the ruling by the BAR can be filed by the taxpayer as well as tax administration. The appeal shall be filed within sixty days from the date of the communication of such ruling or order. On the date of notification of BAR provisions, all the pending applications before AAR will be transferred to BAR. Comparative provisions are summarized below:

Particulars	Authority of Advance Ruling (AAR)	Board of Advance Ruling (BAR)
Introduced	Finance Act, 1993	Finance Bill, 2021
Applicability of Ruling	Binding on both parties i.e., applicants and tax department	Neither binding on applicant, nor on tax department
Member	Chairman (Retired SC/HC judges) Vice chairman (Retired HC judges) One Law Member One Revenue Member	Two members each being officer of not below the rank of Chief Commissioner
Appeal against Ruling	No appeal is possible against the ruling of the AAR. Only remedy available is to file writ petition with the HC, which is a constitutional remedy.	Ruling of BAR will be appealable before the HC

is non-appealable. In reality, both tax administration and taxpayers take the matter to High Courts of law under the writ provisions of the Constitution of India.

AAR – Changes Proposed by the Finance Bill, 2021

The Memorandum to the Finance Bill, 2021 mentions that AAR is proposed to be replaced by a Board of Advance Ruling (BAR). It is proposed that the Central Government shall constitute one or more BAR for giving advance rulings. Each such Board shall consist of two members, each being an officer not below the rank of Chief Commissioner of Income Tax. The advance ruling will neither be binding on tax administration nor on

Concerns and Remedies

A perusal of the existing provisions regarding AAR shows that it has all the desirable features of a good



It is proposed that the Central Government shall constitute one or more BAR for giving advance rulings. Each such Board shall consist of two members, each being an officer not below the rank of Chief Commissioner of Income Tax.

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Timeline and certainty are the two areas of concerns to be taken care by the proposed amendments in order to increase the effectiveness of advance ruling facility.

system – it consists of members who are independent of the tax department, it makes the rulings binding on taxpayers as well as the tax administration and has prescribed a time limit of six months for the issue of rulings. It is to be seen how well the proposed changes are going to bring in a system providing

certainty to taxpayers.

Timeline and certainty are the two areas of concerns to be taken care by the proposed amendments in order to increase the effectiveness of advance ruling facility. As has been mentioned earlier, globally, within 3-6 months rulings are issued by the authorities. Similar timeline should be prescribed in India, too. If there is any delay on the part of taxpayer or there is any specific request by taxpayer for delaying the ruling that time may be excluded while computing the timeline.

So far as certainty is concerned the proposed changes may not meet the objective of reducing litigation and providing certainty to investors in India.

With right of appeal to the tax department as well as to taxpayer, the BAR would work as a normal litigation body and not a "Dispute Prevention" body. A shorter time frame for obtaining a final resolution under the normal litigation process, would facilitate foreign or domestic investors.

Government may consider borrowing the concepts of advance rulings from Advance Pricing Agreement (APA) scheme, which has been very successful in bringing down transfer pricing disputes in India. A conciliatory approach adopted by tax administration and taxpayers have inclination and capabilities to reach a mutually beneficial dispute resolution. ■■■



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Key Changes in Indirect Taxes Regime

The hon'ble Finance Minister has presented her paperless budget on first of February this year. For the first time in India's independent history, the Union Budget was delivered in paperless form. Though it was paperless it was not an issueless budget as it made several key changes to uplift the economy and bring growth. This articles intends to explain the various important amendments proposed by the Hon'ble FM with regard to indirect taxes. Read on...



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to insert, with retrospect effect from 01/07/2017, a sub clause (aa) in sub-section (1) of section 7, The amendment proposes to bring within the scope of supply the activities or transactions, by a person, **other than an individual**, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration.

Further an explanation has been added that, notwithstanding anything contained in any other law for the time being in force or any judgement, decree or

order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.

Further clause no.113 of Finance bill, proposes to omit paragraph 7 of Schedule II of CGST Act with retrospective from 1st July 2017. The paragraph 7 of the Schedule II of the CGST Act is reproduced below:

"The following shall be

A. Changes in Central Goods and Services Tax Act

A.1 Scope of supply - Amendment to Section 7 and Schedule II

The term supply is defined by section 7 of the CGST Act. The finance bill seeks



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treated as supply of goods, namely:

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration"

The proposed amendment nullifies the decision of the Supreme Court in Calcutta Club case wherein it was held that the transaction between Association and its members is not leviable to Sales tax or service tax. However whether this decision is equally applicable to GST Laws is a debatable issue. The above amendments intends to put at rest any controversy on this issue.

Another issue which may arise because of this amendment is whether the transaction between partnership firm and its partners represented by way of salary or share of profit will also constitute a supply. The usage of the words "activities or transaction by a person **other than individual**, to its members" is wide enough to cover the transactions between Firm and its partners. It shall be in the larger interest of the trade and industry, if, the CBIC comes out with a clarification/exemption notification in this regard.

A.2 Input Tax Credit – Amendment to section 16

The Finance Bill proposes

to insert clause (aa) after clause (a) in subsection (2) of section 16. Subsection (2) enumerates various conditions for claiming input tax credit. By the proposed amendment, one more condition is added for claiming Input Tax Credit that the details of the invoice or debit note has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37. Presently the supplier furnishes the information of his outward supply by furnishing Form GSTR 1 which is communicated to the recipient in form GSTR 2A and GSTR 2B. GSTR 2A and 2B has got different characteristics. In GSTR 2A the information is reflected in the month in which the invoice is raised by the supplier. But GSTR 2B will reflect only the invoices furnished by the supplier in GSTR 1 which is filed upto 11th of the following month. If there is a delay on the part of the supplier in filing GSTR 1 beyond 11th of the following month, the corresponding invoices shall be reflected in the GSTR 2B of the recipient pertaining to the month in which GSTR 1 is actually uploaded by the supplier.

Presently under rule 36(4) the tax payer can claim up

to 5% over and above the credit reflected in GSTR 2B. With the above proposed amendment, which restricts the ITC to the amount reflected in form 2B the benefit of 5% extra claim may be withdrawn by notification.

A.3 Audit and Annual Return – Section 35 and section 44

Subsection (5) of Section 35 requires every registered person, whose turnover exceeds the prescribed limit to get his account audited. The Finance bill proposes to omit sub section (5) of section 35. Hence audit requirement under CGST is dispensed with. This amendment is to be read in conjunction with the modification of Section 44. Section 44 which prescribes filing of annual return is proposed to be substituted. The proposed amendment provides for furnishing self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement.

A.4 Charging of Interest – Section 50

Section 50 (1) of the CGST Act provides for payment of interest for delayed payment of tax. There was an interpretational issue as to whether the interest is to be calculated on the gross tax before adjusting

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ITC or net tax paid by cash after adjusting ITC. The Finance Act, 2019 inserted a proviso in section 50(1) which clarified that the interest is to be paid only on the portion of the tax which is paid by debiting cash ledger subject to the following conditions:

- a) Supplies made during a tax period and declared in the return for the said period
- b) Such return is not furnished after commencement of any proceedings under section 73 or section 74

The above amendment was only prospective. Now the current Finance Bill proposes to make it retrospect from 01/07/2017. This is a welcome measure and large number of members of trade and industry shall stand benefitted.

A.5 Recovery of self assessed tax – Section 75(12)

Subsection (12) of section 75 provides for recovery u/s 79, of self-assessed tax as per return filed under section 39, if its remain unpaid or any amount of interest payable on such unpaid tax.

An explanation is proposed to be inserted in section 75(12) to define self assessment tax that it shall include tax payable on outward supply declared under in GSTR 1 but not

included in the return filed under section 39.

A.6 Extension of the power of the Commissioner to attach properties - Section 83

Section 83 gives power to the Commissioner, during the pendency of certain proceedings, to provisionally attach any property including bank account belonging to the taxable person. The amendment proposes to extend this power to the properties belonging to person specified in subsection (1A) of section 122. Such specified persons are: any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clauses (ix) of sub- Section (1) of section 122 and at whose instance such transactions is conducted.

A.7 Release of goods and conveyance detained or seized – Section 129

Section 129 provides for levy of tax and penalty for release of detained/seized goods and conveyances in transit, while they are in transit in contraventions of the provision of the CGST act and rules. The existing provision provides for levy of tax and penalty for release of such goods and conveyance, whereas the amended provision contemplates only levy of penalty. Both the existing provision and proposed

amendment contemplate two situations and the relevant provisions are explained below:

Situation 1: Where the owner of goods comes forward for payment of such tax and penalty:

The goods and conveyance shall be released on the payment of the applicable tax and penalty equal to 100% of the tax payable. However if the goods transported are exempted goods, the goods and conveyance shall be released on payment of an amount equal to 2% of the value of the goods or Rs.25,000 whichever is less.

The proposed amendment provides for release of goods and conveyance on payment of penalty only which shall be equal to 200% of the tax payable on such goods. In the case of exempted goods there is no change.

Situation 2: Where the owner of the goods doesn't come forward for the payment of tax and penalty:

As per the existing provision the goods and conveyance shall be released on payment of applicable tax and penalty equal to 50% of the value of the goods reduced by the tax amount paid there on. In the case of exempted goods, the goods and conveyance shall be released on payment of an amount equal to 5% of the

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value of the goods or 25,000 whichever is less.

The proposed amendment provides that the goods and conveyance shall be released on payment of only penalty equal to 50% of the value of the goods or 200% of the tax payable on such goods whichever is higher. In respect of exempted goods there will be no change.

Sub section (3) of section 129 lays down the procedure for issue of notices and passing of an order for payment of tax and penalty. But the existing provision does not have a time limit. The proposed amendment sets out a time limit for issue of notice and passing an order. Notice shall be issued within seven days of such detention or seizer. The notice shall specify the penalty payable and the order shall be passed within a period of 7 days from the date of service of notice.

The existing sub section (6) of section 129 provides that where there is a failure to pay the amount of tax and penalty within 14 days of detention or seizer, further proceeding shall be initiated in accordance with the provision of section 130. The proposed amendment delinks this provision with section 130 and provides as follows:

The time limit for payment of tax has been increased to fifteen days from the

date of receipt of the copy of the order. Where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer. In the case of default of payment within the specified time limit the goods or conveyance so detained or seized shall be liable to be sold or disposed of to recover the penalty. However the conveyance can be released on payment by the transporter the amount of penalty or one lakh rupees, whichever is less.

A.8 Appeal – Section 107

A proviso is proposed to be inserted in sub-section (6) of section 107 of the Central Goods and Services Tax Act to provide that that no appeal shall be filed against an order under sub-section (3) of section 129, (order levying penalty for release of detained/seized goods and conveyance) unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.

A.9 Levy of fine and penalty for confiscation of goods and conveyance – Section 130

As per the 2nd proviso of sub-section (2) of section 130, the fine and penalty leviable under section 130 was linked to sub section (1) of section 129. The

proposed amendment delinks the above provision from sub-section (1) of section 129 and independently provide that the fine and penalty leviable shall not be less than 100% of the tax payable on such goods.

B. Changes in Integrated Goods and Services Tax Act

Under the existing provision 16(1) (b) supply of goods or services or both to a special economic zone developer or a special economic zone unit is considered as zero rated supply. This section is proposed to be amended to make supplies for authorised operations only, as Zero rated supply.

Existing provision 16(3) is being completely overhauled. As per the existing provisions a registered person making zero rated supply has got two options to claim refund.

Option 1: Make supply of good or services or both without payment of IGST under bond or LOU and claim refund of unutilised ITC.

Option 2 : make supply of goods or services or both on payment of IGST after adjustment of ITC and claim refund of IGST paid

Under the proposed amendment the Option 1 is retained with an added condition that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received along with the

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The concession given to telecommunication network, mining and generation and distribution of electricity or any other form of power is proposed to be withdrawn.

applicable interest within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances.

Option 2 is withdrawn. Instead subsection (4) has been added which empower the Government, on the recommendations of the Council, to specify by notification

- (i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;
- (ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.

C. Changes in Central Sales Tax Act

As per the existing section 8(3) (b) of the C.S.T. Act a dealer can make interstate purchase of goods at concessional rate if the said goods are specified in his registration certificate and is used for the following purposes:

- a) Intended for resale
- b) Manufacturing g or

processing of goods for sale

- c) In the telecommunication network
- d) In mining
- e) In generation or distribution of electricity or any other form of power

The concession given to telecommunication network, mining and generation and distribution of electricity or any other form of power is proposed to be withdrawn.

In the present scenario, after the implementation of GST, only specified petroleum products are chargeable under CST. Before the proposed amendment these specified petroleum products could be purchased at concessional rate even if it is used for purposes mentioned c), d) and e) above. Hence after the amendment one cannot purchase the specified petroleum products at concessional rate for use for purposes mentioned in c), d) and e) above.

D. Changes in Customs Law

D.1 Prescription of Expiry date for conditional exemptions

Section 25 of the customs Act, 1962 gives powers to the Central Government to exempt generally either absolutely or subject to such conditions from the whole or any part of duty of Customs. The bill seeks to insert sub section(4A) in section 25 to provide that any conditional exemption granted, unless otherwise

specified, shall be valid only up to 31st day of March falling immediately after 2 years from the date of such exemption. The bill also seeks to provide that in respect of such conditional exemptions, which are in force as on the date on which the Finance Bill, 2021 receives the assent of the President, the prescribed period of two years shall be reckoned from the first day of February, 2021. It may be noted that this time limit for exemption is prescribed only in respect of conditional exemptions and not in respect of general or absolute exemptions.

D.2 Time limit for issue of notice where audit, search, seizure or summons are initiated

Section 28 of the Customs Act provides time limit for issue of notice for recovery of duties not levied etc., within a period of 2/5 years as the case may be from the relevant date. The law provides for different relevant dates under different circumstances in explanation (1). However, it doesn't provide for the relevant date for calculating the time limit for issue of notice under section 28 of the Customs Act in circumstances where audit, search, seizure or summons have been initiated. Now the bill provides that the time limit of two years shall be calculated from the date of initiation of

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audit, search, seizure or summons as the case may be. The amendment also gives power to the Principal commissioner/ commissioner of Customs to extend the said period for a further period of one year.

D.3 Time limit for presenting the Bill of Entry:

Presently the Law allows presenting the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station. Now the bill seeks to provide for presenting the bill of entry before the end of the day preceding the day on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station. Further the Board is being given the power to prescribe different time limits for presentation of the bill of entry. However the power to prescribe the time limit cannot go beyond the end of the arrival of such vessel, aircraft etc.,

D.4 Confiscation of goods

Section 113 of the Customs Act provides for confiscation of goods, attempted to be improperly exported. It specifies the various circumstances under which export of goods can be confiscated. The Bill adds one more situation by inserting sub-clause (ja) in section 113. As per this clause

any goods entered for exportation under wrong claim of remission or refund of any duty or tax or levy in contravention of the provisions of Customs Act or any other law for the time being in force can also be confiscated.

D.5 Penal provisions

A new section 114AC is proposed to be inserted in Customs Act to provide for penalty, where any person has obtained any invoice by fraud, collusion etc., in order to utilise input tax credit for discharging any duty or tax on goods that are entered for exportation under claim of refund of such duty or tax. Such person shall be liable for penalty not exceeding five times the refund claimed.

D.6 Amendment of the Documents submitted

Section 149 of the Customs Act provides that proper officer may, authorise any documents to be amended after it has been presented to the customs house. The proposed amendment provides for authorisation/ amendments can be done electronically also. Further it also provides that such amendments, as may be specified by the board, can be done by the importer or exporter on the common portal.

D.7 Countervailing and Antidumping Duty:

Countervailing Duty is



Bill seeks to provide for presenting the bill of entry before the end of the day preceding the day on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station. Further the Board is being given the power to prescribe different time limits for presentation of the bill of entry.

levied under Section 9 of the Customs Tariff Act to protect the interest of the domestic manufacturers. The following amendments are made with regard to levy of countervailing duty.

- a) In section 9, sub section (1B) is inserted to provide for modification of Countervailing Duty,
 - i) where such duty is found to be ineffective as indicated by a decrease in the export price of an article without any commensurate change in the resale price in India of such article imported.
 - ii) under such other circumstances as may be provided by rules;
- b) In section 9 after subsection (2) subsection (2A) is

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inserted to provide that Levy of countervailing duty is not applicable to the article imported by a hundred per cent. export-oriented undertaking or a unit in a special economic zone, unless, —

- (i) it is specifically made applicable in such notification or to such undertaking or unit; or
- (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area. The countervailing duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.
- c) In section 9A subsection (1B) is inserted and subsection 2A is substituted with new section to provide for modification of anti-dumping duty in similar circumstances and similar ways as provided in proposed section 9(1B) and 9(2) (2A) above in respect of countervailing duty.

E. Agriculture Infrastructure and Development Cess:

The above cess is proposed to be levied under two sections, clause 115 and clause 116 of Finance Bill 2021. The purpose

of the levy is to finance the agriculture Infrastructure and other development expenditure.

The details of the levy are as follows:

E.1 Cess levied under clause 115 of the Finance Bill, 2021:

This is a duty of Customs. It is levied on import of goods specified in the First Schedule to the Customs tariff Act, 1975 except on the goods exempted as per the Notification No. 11/2021 of Customs. The rate of cess not to exceed the rate of customs duty as specified in the First Schedule.

E.2 Cess levied under clause 116 of the Finance Bill, 2021

This is an additional Excise Duty. This is levied on the manufacture or production of goods specified in the Seventh Schedule to the Finance Bill, 2021. The rate of cess is as per the rate specified in column (3) of the Seventh Schedule to the Finance Act, 2021. However Basic Excise Duty and Special Additional Excise Duty on these goods is

being reduced in order to reduce the burden on the end consumer.

Conclusion

The above amendments aim to set right various controversies like taxability of transactions between clubs/ association and its members, charging of interest on net cash payment, etc., The levy of agriculture, infrastructure and development cess and corresponding adjustment in basic customs and duties will ensure availability of more funds to the agriculture sector without increasing the cost of imports. However, the deletion of audit provision, which was of immense help to the taxpayers in ensuring their proper and timely compliance with various provisions of the GST Acts, is a retrograde step. ■■■

FORM IV (SEE RULE 8)	
1. Place of Publication	New Delhi
2. Periodicity of its publication	Monthly
3. Printer's Name	Rakesh Kumar Sehgal
Nationality	Indian
Address	Journal Section Institute of Chartered Accountants of India, Indraprastha Marg, Post Box 7100, New Delhi-110002
4. Publisher's Name	Rakesh Kumar Sehgal
Nationality	Indian
Address	Journal Section Institute of Chartered Accountants of India, Indraprastha Marg, Post Box 7100, New Delhi-110002
5. Editor's Name	CA. Nihar N. Jambusaria
Nationality	Indian
Address	Journal Section Institute of Chartered Accountants of India, Indraprastha Marg, Post Box 7100, New Delhi-110002
6. Name and addresses of individuals who own the newspaper and partners or shareholders holding more than one per cent of the total capital	Council of the Institute of Chartered Accountants of India, constituted under the Chartered Accountants Act, 1949 (Act XXXVIII of 1949). There is no share capital.
I, Rakesh Kumar Sehgal hereby declare that the particulars given above are true to the best of my knowledge and belief.	
Date: February 22, 2021	sd/- Rakesh Kumar Sehgal Signature of publisher

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Reporting on Internal Financial Controls (over Financial Reporting) in Public Sector Banks

RBI has asked the Statutory Central Auditors (SCAs) of public sector banks (PSBs) to mandatorily report on the adequacy and operating effectiveness of internal financial controls with reference to financial statements with effect from the year ended March 31, 2021.

The requirement is similar to the auditor's reporting on internal financial controls over financial reporting prescribed under section 143(3)(i) of the Companies Act, 2013. The ICAI has issued a Guidance Note on Audit of Internal Financial Controls over Financial Reporting in September 2015 which is industry



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agnostic and can apply to such reporting under any legislation and therefore will apply even for such reporting in PSBs. Read on...

The ICAI is in the process of bringing out a "Technical Guide on Audit of Internal Financial Controls in Case of Public Sector Banks". The Technical Guide will provide additional guidance in relation to certain specific matters that may arise

in an audit of internal financial controls with reference to financial statements of PSBs. The Technical Guide should be used in conjunction with the aforesaid Guidance Note.

Reporting on internal financial controls (IFC) for the year ended March 31, 2021 may pose challenges to the SCAs based on the state of readiness of IFC preparation by the PSBs.

The RBI vide its letter no. DOS. ARG No.6270 /08.91.001/2019-20 dated 17th March 2020 has directed the Public Sector Banks ("PSB") to advise their Statutory Central Auditor's



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("SCAs") to report in their independent auditor's report, inter alia, whether the Bank has adequate internal financial controls system in place and the operating effectiveness of such controls. Subsequently, on May 19, 2020, the RBI clarified that the reporting on internal financial controls system is with reference to financial statements. Auditor's reporting on internal financial controls in a PSB will be mandatory from the year ending March 31, 2021.

Reporting on internal controls is not new to the auditors. This was introduced in the Manufacturing and Other Companies (Auditor's Report) Order, 1988 (MAOCARO 1988), wherein the auditors were required to report on the adequacy of internal control on certain aspects of purchases and sales in specified class of companies. The requirement was continued in CARO 2003. The Companies Act, 2013 introduced section 143(3)(i) which requires the auditors of companies (other than exempted class of companies) to report in their independent auditor's report, whether the company has adequate internal financial controls with reference to financial statements and the operating effectiveness of such controls. The ICAI issued a Guidance Note on Audit of Internal Financial Controls over Financial Reporting ("the Guidance Note") in September 2015 to assist auditors in meeting their reporting obligations under the Companies Act, 2013.

The Guidance Note is industry agnostic and can be applied to an audit of internal financial controls over financial reporting irrespective of the industry or the legislation under which such reporting is required as the Guidance Note clearly lays down the principles of an audit of internal financial controls.

In a PSB, the SCAs and the Statutory Branch Auditors ("SBAs") have been traditionally testing and relying on internal controls at the PSB when performing their audits. Such testing and reliance is essential as it is impracticable for SCAs and SBAs to test the account balances only through substantive procedures, considering the volume of transactions in PSBs. As such the requirement specified by the RBI for the SCAs to report on internal financial controls formalizes what the SCAs were traditionally doing in respect of testing the account balances with an expansion in the scope of testing internal controls from just account balances to include to cover the overall control environment at the PSB such as entity level controls and the financial closing and reporting process.

The SCAs have been asked to report on the internal financial controls with reference to financial statements of the PSB. As such, the reporting is for the PSB as a whole and therefore would cover even the branches that are audited by other auditors appointed as the SBAs, whose report is relied upon by the SCAs when



The ICAI issued a Guidance Note on Audit of Internal Financial Controls over Financial Reporting ("the Guidance Note") in September 2015 to assist auditors in meeting their reporting obligations under the Companies Act, 2013.

forming their audit opinion on the financial statements of the PSB. Accordingly, it becomes important for the SCAs to identify the transactions at the branches that are required to be tested for internal controls. To identify the transactions to be tested the SCA will need to consider the prevalence of common controls as described below.

When auditing internal financial controls over financial reporting in a PSB, SCAs will need to consider the following important features of PSB:

- Prevalence of common controls and scoping of branches
- Presence of entity level controls to operate the common controls
- Prevalence of centralized controls
- Extensive use of information technology
- The importance of information used in operating the control

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In a PSB, typically many controls are designed centrally, and the same control is operated across the branches of a PSB. The SCA should identify those controls in a PSB that are common controls to determine the extent of testing such controls.

- f. The importance of regulatory compliance in the financial reporting process

Let us understand each of the above.

a. Common controls and scoping of branches

As the name suggests, a common control is a control that is designed centrally but operated / implemented on the same basis across various locations of the entity. In a PSB, typically many controls are designed centrally, and the same control is operated across the branches of a PSB. The SCA should identify those controls in a PSB that are common controls to determine the extent of testing such controls.

In a PSB it is most likely that all controls are designed centrally and therefore the design (adequacy) of the controls is tested centrally by the SCAs. The SBAs will

be required to test only the operating effectiveness of the controls relying on the testing of design of the control by the SCAs.

If the population covered by such common control is considered homogenous, then the whole population covered by such control is viewed as a single population, irrespective of the branch where a transaction in such population has occurred. The number of samples should be selected at a minimum based on the sample sizes stated in the Guidance Note. In such situations, it is likely that not all branches may be selected for testing a control as the sample size required to be tested will be lesser than the number of branches. Such scoping would not impact the coverage and consequently the opinion on internal financial controls since the SCAs have assed the control to be a common control.

If it is not possible to determine whether the population is homogenous due to variants in the nature of transactions at the branches, the SCA should determine the branches to be covered for testing internal controls based on the guidance given in the Guidance Note and inform the SBAs of the branches so determined for coverage about the need for testing controls. It may be noted

that under this alternative only the branch is selected by the SCA and the SBA determines the sample size as per the Guidance Note and selects the sample. In this alternative, the overall sample size tested for controls will be significantly higher than the sample size stated in the Guidance Note but such higher sample size will be distributed across components or locations and will be tested by different SBAs.

The SCAs may select the branches for testing internal financial controls based on various factors such as:

- Branches classified as high risk in current year.
- Branches assigned need improvement/unsatisfactory rating in current year.
- High volume of account balances
- Branches where association of branch head is more than a certain period of time.
- New branches opened during the year (with significant account balances).
- Branches which have material decentralized operations.

b. Entity level controls to operate the common controls

It is common in PSBs to have promotions, transfers,

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including role changes for key employees. SCAs should understand and test the controls that are designed, implemented and operated by the PSB to familiarise such employees regarding the way in which the controls should be operated by such employees in their new roles such that the controls operate on the same basis as intended.

c. Centralized controls

Centralized controls are controls that are designed and operated centrally irrespective of the branch to which the transaction belongs. In a centralized control, the population covered by each such control is viewed as a single population and samples are selected across such single population. However, when controls in a centralized

environment are designed to operate differently for certain branches or nature of transactions, the auditor tests the controls for each branch or type of transaction as a separate population to address the difference in design of the control for such branch or type of transaction.

d. Information technology

Today, Banks use sophisticated accounting and core banking software for processing transactions and the Bank's IT environment is ever evolving. Information generated by IT systems are also used for decision making. Considering the significance of IT environment in the overall accounting and financial reporting process in a PSB, it will be an understatement to state that SCAs should test the design and operation of controls over the IT environment.

IT controls that maintain the integrity of information and security of data commonly include controls over the following:

- Data center and network operations.
- System change.
- Access security.

From an auditor's standpoint, it is important to identify applications and related IT elements that are relevant to financial reporting and then

evaluate the IT controls for such applications before placing reliance on the automated controls or system generated reports. The auditor should perform an understanding of the relevant flow of transaction or processes that identifies the relevant IT environment related to those flows or processes. This also helps in understanding the effect of IT and the information technology risks on the processes.

The auditor should inquire and obtain a register of all IT applications including the related infrastructure used in the bank, both at central/ corporate level and at a branch level. The auditor shall perform an assessment to identify the relevance of each such IT system for the purposes of internal financial controls over financial reporting. The auditor shall also understand, whether the maintenance of any application or infrastructure is outsourced to a third party.

Scoping is a continuous exercise and the auditor needs to factor any significant changes to the application landscape during the audit period until completion of the audit.

Evaluation of IT controls will also involve cyber security to the extent such cyber applications impact financial reporting



The auditor should inquire and obtain a register of all IT applications including the related infrastructure used in the bank, both at central/ corporate level and at a branch level. The auditor shall perform an assessment to identify the relevance of each such IT system for the purposes of internal financial controls over financial reporting.

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e. Information used in the control

Many of the internal controls in a PSB will operate based on the information analyzed by the PSB's IT system or based on data extracted from such IT system. To test the design of a control that operates based on such information, the auditor should (a) assess the source data to ensure the completeness of the source from which such information is obtained (b) the logic used in generating the report of such information to ensure the completeness and accuracy of such information report and (c) the parameters used in generating such information report to ensure the completeness of such information.

f. Ensuring regulatory compliance in the financial reporting process

PSBs financial reporting process is directly impacted by the directions and guidance given by the RBI. It is essential for the SCA

to understand the PSBs design of controls to ensure regulatory compliances. This involves understanding and testing the PSBs process for (a) identifying all relevant regulatory requirements applicable during the financial year, (b) the management understanding and disseminating information about such regulatory requirements, (c) laying down action plans by the management to meet the regulatory requirements, (d) monitoring and validating the actual compliance with the regulatory requirements.

Another important aspect is the timing of auditor performing the test of controls. The reporting on internal financial controls is for the year with an emphasis on controls at the year end operating for a reasonable period of time before the year end to determine operating effectiveness of such controls as at the balance sheet date. Some of the controls operate throughout the year, some only at period ends (like quarterly



Some of the controls operate throughout the year, some only at period ends (like quarterly interest calculation) and some after the year end (like controls in the financial closing and reporting process since the activity of financial closing itself happens only after the year / period end).

interest calculation) and some after the year end (like controls in the financial closing and reporting process since the activity of financial closing itself happens only after the year / period end). Considering the above, the auditor will need to appropriately plan the timing of testing controls. It may be important for the auditor to test IT controls and automated controls before the year end since those controls may be subject to change after the year-end and may not leave any trail of the operation during the year. Manual controls may be tested after the year end since the evidence of exercise of the control will be available even after the year end.

Needless to state, the auditor's work on testing internal financial controls should comply with the requirements of the standards on auditing. ■■■



Standards on Auditing for Bank Audit

A question sometimes raised by some people is that what are the auditing standards that are applicable in case of audit of banks. I feel the question is not appropriate as all the auditing standards are important and are applicable to the audit of banks. Standards on Auditing (SAs) provide guidance to the members in performing quality audits. If professionals adhere to the SAs, the audit can be conducted effectively and efficiently and achieve its objectives. Recently, quite a few times, audit profession has been put under a lense and accordingly, we should follow SAs. We should understand them, learn them and implement them in right spirit. Read on...



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1. Introduction

The Standards on Auditing (SAs) are formulated in the context of an audit of financial statements by an independent auditor. They are to be adapted to as necessary to the circumstances when applied to audit of other historical financial information. These SAs give guidance to the auditor in conduct of the audit which is consistent in the quality. Further, SAs demonstrate the responsibility which is casted on the independent auditors.

Statutory audit of the banks is an important aspect from the point of view of the banks as well as from the view of the auditors. In case of the bank audit, it becomes a typical exercise because of its stringent timeline, vast scope, repetitive transactions yet variety in transactions. The auditor should not only use one's professional expertise but also the professional skepticism while carrying out the audit of the bank.

2. Process Of Bank Audit

In case of the public sector banks the statutory audit is



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carried out in two stages. As all of us are aware the bank operates through branches and there are various controlling offices including the head office. Hence the branches are audited by the statutory branch auditors (SBA). The SBAs carry out the branch audit and report to the controlling office as well as the statutory central auditors (SCA). The observations made by the SBAs are considered. [Where the change/corrections to be made are made at the controlling offices which are verified by the SCAs]. In addition to this the SCAs carry out the audit of various functions at the Head Office level viz. treasury, secretarial, Risk management department, Recovery and restructure, accounts, etc. On the basis of the reports of the branch auditors and the observations in the audit of various functional departments at the head office, SCAs audit the financial statements and issue the audit report on those financial statements. The financial statements of the bank include various details and disclosures apart from the profit and loss account and Balance Sheet. Thus, audit of bank is a multilayer activity wherein many bank functionaries and number of audit professionals are involved. In order to have consistency in approach the guidance from SAs play an important role.

Sometimes people ask as to what the applicable auditing standards in bank audit are. I feel this may not be a correct question. In fact, all auditing standards are applicable to the audit of banks and the auditor should follow all the auditing standards.

3. Standards on Auditing

The Auditing and Assurance Standard Board (AASB) has issued number of auditing standards. They are classified into various broad areas. Even the numbering of the standards is given on the basis of this classification. This is as follows:

SAs 100-199 -Introductory Matters

SAs 200-299 – General Principles and Responsibilities

SAs 300-499 – Risk Assessment and Response to Assessed Risk

SAs 500-599 – Audit Evidence

SAs 600-699 – Using Work of Other

SAs 700-799 – Audit Conclusions and Reporting

When we consider the applicability of SAs for the bank audit we find that all the SAs will be applicable. However, it would be very difficult to explain each and every standard in this article. Hence the endeavour is to discuss the auditing standards on the basis of various functions involved in the bank audit which could be broadly as follows:

1. Initial Engagement (SAs 200, 210)
2. Risk assessment and audit planning (SAs 300,315,320, 330, 450, 530)
3. Conduct of the audit. (SAs 220, 240, 250, 500,501, 505, 510, 520, 540, 550, 560, 570, 580)
4. Audit documentation (SAs 230)
5. Using the work of other (SAs- 299, 600, 610, 620)
6. Audit conclusions and reporting (700, 701, 705, 706, 710, 720)

3.1 Initial Engagement

The auditor should study the appointment letter. When the terms and conditions are acceptable then the acceptance letter should be sent to the appointing authority after obtaining NOC from the previous auditor of the Branch/Bank. The auditor should draft an engagement letter and send it to the person in charge/ appointing authority for its signature and keep a copy of letter duly signed by the auditor and auditee on the record. The broad contents of the engagement letter are given in the standard. Similarly, the Guidance Note on Audit of Banks gives the standard format for the engagement letter for the bank.

3.2 Risk Assessment and Audit Planning

The auditor should prepare a plan for audit. While planning the auditor

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should form an audit team considering the qualification and experience of a person, availability of the person, size of the audit team, physical infrastructure available at the audit place, time schedule etc. Wherever required the training sessions to the audit teams should be conducted before going to the audit place.

The auditor should understand the over all business of a particular branch, composition of the business, major customers of the bank, etc, which will help to assess the risk. E. g. where the branch is situated at the industrial area, the customers will be from the manufacturing sectors as against the location of the bank at the marketplace will make the branch to entertain the customers from the trading business. This will have impact on the composition of the loan portfolio viz. term loans, cash credit, bill discounting, export finance, etc,

Even the economic recession in a particular industry will impact a branch business which is having majority of the customers from the same industry. Therefore, understanding the environment and the entity to be audited is must before we start the audit.

Having understood the environment and the audit entity, the auditor should assess the risk in the audit. On the basis

of the perception of the risk the auditor should plan the audit. The audit program could be designed accordingly and even the audit sampling could also be done considering the initial risk assessment.

Audit Sampling

As I mentioned initially, the transactions in the bank are multiple and repetitive. Hence audit sampling is a must. The sample selected should cover maximum business at the branch and shall cover all variety of transactions, period (in case of certain seasonal aspects), nature of products, etc,

Materiality

Considering the risk and overall volume at the entity level the auditor should fix the materiality of misstatement in the financial statements. As standard suggests, in case of deviation in accounting principles the auditor should report the matter irrespective of the materiality fixed. In other case the reporting of material misstatement will have to be done.

3.3 Conduct of the Audit

Having done the planning properly the auditor should concentrate on the conduct of the audit. While conducting the audit the auditor should ensure the quality in the audit (SA 220) In order to achieve the quality in audit the auditor should select proper

audit team considering the knowledge, experience, availability and the time schedule. The audit team should be headed by the engagement partner who will be guiding the audit team during the audit, reviewing the work its progress and resolve the unsolved issues or the issues of difference of opinion. The audit should have a competent Engagement Quality Reviewer (EQR) who will review the work of Engagement Partner. In case of any suggestions EQR will guide the engagement team including the partner. Thus, the quality in the assignment is maintained.

Initial Audit Engagement – Opening Balances

In case of Bank audit the auditor need not verify the opening balances of each and every account. However, the auditor should see whether the entries for last year's Memorandum of Changes (MoC) are passed properly during the current year. Usually, the MoCs are passed at the Head Office level while finalising the financial statements and they are intimated to the branches subsequently. The auditor of the subsequent audit period should see whether the entries are passed correct. Sometimes there are chances that the entries may get passed twice at the branch level. The auditor should ensure that such mistakes are not there at the branch level.

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Audit Evidence

The auditor should collect the objective audit evidence to satisfy about the transactions recorded at the branch level. The audit evidence may be internal like books, registers, records, vouchers, etc. or the external evidence like third party confirmations, certificates, valuation reports, specific reports, etc. Sometimes the bank makes accounting estimate like provisions, value of security, useful life of fixed assets, contingent liabilities in case of legal disputes, etc. In such cases the auditor should review the basis of the estimate and if required make proper disclosure thereof.

Other Aspects

One of the fundamental accounting assumptions is going concern. The auditor should see whether there is any threat to the going concern principle of the bank. Similarly, the transactions with the related parties need to be scrutinised and disclosed. The auditor should obtain the list of related parties and the transactions with them. Though the time from the year end till the signing of audit report is very short, the auditor should see the subsequent events and take appropriate action on it. In most of the cases the related parties and going concern disclosure may not be relevant in case of bank branch audit. However, for SCAs it will be quite relevant.

The auditor should obtain written representation from the management about the assertions made by them during the course of audit.

3.4 Audit Documentation

The auditor should maintain proper audit documentation in its working paper file. The working paper file should include the audit plan, audit program, the terms of engagement, execution of audit work, audit evidence, accounting estimates made, management representations, audit findings and audit conclusions, reporting, etc. The audit documentation is helpful in subsequent reviews, investigations, or any other reference in relation to the audit carried out. The retention of audit working papers is seven years as per SQC-1. The working papers can be maintained electronically on computer system.

3.5 Using the Work of Other

During the course of audit, the auditor has to depend on the work of other professionals. In case of branch audit, the branch auditor depends on the reports given by the concurrent auditors of the branch. The auditor shall go through the reports and note the concerns mentioned therein. The auditor should plan its audit procedure in such a manner that the concerns noted are examined and the audit conclusions are confirmed.

As mentioned earlier the bank audit is carried at two layers branch audit and central office audit. Thus, the CSAs should depend on the work done by the branch auditors. While depending on the work of the branch auditors, the CSA should give the directions to the branch auditors, take a confirmation about the audit procedure used, use audit conclusions of the branch auditors while forming its opinion. However, while using the work of other auditors the auditor should review the reports and ensure that the audit conclusions are drawn properly. The auditor should also consider the materiality while forming its audit opinion.

Using the work of an Expert

While having accounting estimates the management may take report from the expert in different subjects. e.g. In case of the employee benefit liability the management shall appoint the actuary for actuarial calculation of the liability. In such case the auditor shall depend on the actuarial report. However, it is the duty of the auditor to see whether the data given to the actuary is correct. Similarly, the auditor should review the assumptions made by the actuary such as discount rate, salary escalation rate, composition of the salary, retirement age of the employee, etc.

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In case of valuation of the security offered against the loan, the bank will take valuation report from the empanelled valuer. In such case the auditor shall consider the same for the security value while making the provision on the NPAs. However, the auditor needs to see the reservations, exclusions, validity of the title of the property, etc, and form the audit opinion.

In short, the auditor should apply professional skepticism while accepting the work of another expert.

Responsibility of Joint auditors

Normally for the banks there are more than one auditor as SCAs. In such case SA 299 gets triggered. In case of the joint auditors the responsibility of individual firm needs to be spelled out clearly. The auditors should sign the work allocation sheet on the basis of the allocation of work agreed. Every individual audit firm is responsible for the area audited by the respective firm. In case an individual audit firm feel that the audit observation needs to be discussed with the other audit firm for taking collective view and conclude on the audit opinion, then it can do so against the principles enunciated in SA 299.

3.6 Audit Conclusions and Reporting

The auditor should finalise its audit finding, discuss them with those charged

with the governance. After discussion if he is satisfied with the explanations, then it may be concluded that there are no material misstatements. However, if auditor feels that there is material misstatement, he may deal in the audit report appropriately.

The audit report is the statement of audit opinion given by the auditor. It may be a clean report which is called as the unmodified report. In case of any material misstatement the auditor may suitably give modified report, which may be a qualified report or adverse report or a disclaimer of opinion. There may be certain facts or matters which, in the opinion of the auditor, are material to be known by the reader of the financial statements, however they will not amount to material misstatement. In such case the auditor may give Emphasis of Opinion (EOM) without qualifying the audit opinion. for using appropriate audit opinion, the auditor should look at the SAs and finalise the audit report.

Key Audit Matters (KAM)

Key Audit Matters are those matters that in the auditor's professional judgement, were of most significance in the audit of the financial statements of the current period. Key audit matters are selected from the matters communicated with those charged with governance.

In case auditor notices such matters, they should be mentioned in the audit report.

Other Information

The auditor should verify the corresponding figures related to the previous period in the financial statements (SA 710)

SA 720 deals with the auditor's responsibilities relating to other information, whether financial or non-financial information (other than financial statements and the auditor's report thereon) included in the bank's annual report. The annual report may be a single document or a combination of documents that serve the same purpose. Thus, the auditor should verify that the information given in the annual report is in line with the details given in the financial statements. In case of discrepancy, the fact should be brought to the notice of those charged with governance.

4. Conclusion

Standards on Auditing give a guidance to the members which ultimately lead to good quality in Audit. I am sure that the SAs will definitely come to the help of the auditors to maintain the quality and consistency in the audit. If we follow them properly, the quality in audit will definitely follow. Hence, we should read them, study them and implement them in right spirit. ■■■

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Income Recognition and Asset Classification (IRAC) Norms

The Audit of Advances can never be said to have concluded without verification of classification, income recognition, provisions w.r.t. Advances. Read on...



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The classification of assets of banks has to be done on the basis of objective criteria, which would ensure a uniform and consistent application of the norms. The provisioning should be made on the basis of the classification of assets based on the period for which the asset has remained non-performing and the availability of security and the realisable value thereof. It is expected that the bank should establish appropriate internal system for proper and timely identification of NPAs. There is no grace period granted for asset classification but a time period of one month as given by RBI is to settle the doubts in asset classification due to any reasons. The RBI issued circular RBI/2020-21/37 DoS.CO.PPG./SEC.03/11.01.005/2020-21 dated September 14, 2020 on 'Automation of Income Recognition, Asset Classification and Provisioning processes in banks' with reference to earlier circular DBS.CO.PPD. No.1950/11.01.005/2011-12 dated August 04, 2011 and have advised the banks to put in

place / upgrade their systems to ensure completeness and integrity of automated asset classification, provisioning calculation and income recognition process by June 30, 2021 in compliance with the extant guidelines issued vide the circular.

A Standard Asset can be defined as an asset which does not carry risk more than normal banking risk, whereas a Non-Performing Asset (NPA) is the one which either carries risk more than normal banking risk or ceases to generate income for the bank. The RBI has defined various objective criteria as regards classification of advances, which are as follows:

Firstly, one has to acquaint

oneself about the definition of Overdue which states 'If an amount due to bank under any credit facility is not paid on the due date fixed by the bank, such amount would be called as Overdue'. Secondly, the classification of advances would be qua borrower unless otherwise stated. Thus, all facilities granted to a borrower shall be treated as NPA and not only that facility which has become irregular.

1. **Term Loan:** If Interest and/or installment remains overdue for a period of more than 90 days. However, as per Para 2.1.3 of the Master Circular, on IRAC dated 01.07.2015, an account is classified as NPA only if interest due and



charged during any quarter is not serviced fully within 90 days from the end of the quarter.

The exception to the above criteria would be Term Loans with moratorium period granted for interest as well as principal wherein the interest would be accrued and due only after the completion of the moratorium period.

2. **Bills Purchased/ Discounted:** If such Bill remains overdue for period more than 90 days.
3. **Agricultural Advances:** If Interest or installment remains overdue for two crop seasons for short duration crop, one crop season for long duration crop. A crop season is defined as 'period up to harvesting of crops raised' as determined by State Level Bankers' Committee (SLBC) and Long duration crop means a Crop wherein crop season is more than 12 months. It is pertinent to note that Banks have discretion of rescheduling the agricultural advances in case of natural calamities, which impair repaying capacity (refer latest Master Direction dated October 17, 2018 by RBI on Relief Measures by banks in areas affected by Natural Calamities Directions 2018 - SCBs).
4. **Derivative Transaction:** Overdue receivables representing positive mark to market value of a derivative contract remaining unpaid for a period of 90 days from

specified due date.

5. **Liquidity facility:** If it remains outstanding for more than 90 days in respect of Securitization transaction.
6. **Credit card dues:** If the minimum amount payable is not paid fully within 90 days from the next statement date.
7. **Cash Credit / Overdraft Account:** The account is treated as NPA if the same is 'Out of Order'. The account is called as out of order if any one of the following condition is fulfilled:
 - a. Outstanding Balance remains continuously in excess of sanctioned limit / drawing power (whichever is lower) for more than 90 days;
 - b. No credit continuously for 90 days as on the date of Balance Sheet;
 - c. Credits in the account are not sufficient to cover interest debited during the same period.

The RBI has clarified as regards certain exceptions / clarifications to the above-mentioned criteria as follows:

1. **Non-submission / non-availability of stock statement:** outstanding Balance in account based on the drawing power calculated from stock statements older than 3 months would be deemed as irregular and if such irregular drawing is permitted for a period of more than 90 days, account needs to be classified as NPA. However, it would be pertinent to note that the

relaxation so given by RBI is 'considering the difficulties of large borrowers', thus, limiting its applicability accordingly and is not a relaxation given at large.

2. **Non-renewal/ Non-regularization of Regular / Adhoc limit:** If the same is not done within 180 days from the due date, the account would be classified as NPA.
3. **Advances against term deposits, NSCs, IVPs, KVPs and Life Insurance Policies** need not be treated as NPAs, till security cover is sufficient to cover outstanding balance, provided Income is recognized subject to availability of margin.
4. **Central Government guaranteed advance** to be classified as NPA only if Government repudiates the guarantee when invoked. However, income on such accounts is required to be recognized on cash (realization) basis.
5. **Letter of Credit Backed Bill Discounted (LCBD) Facilities:** The Bill discounted against accepted LC would be treated as PA (Performing Assets) even though rest of the facilities of the borrower are treated as NPA (since the exposure of the bank in such cases would be on the LC issuing bank and not on the borrower).
6. **In case of consortium banking arrangements,** each member banks shall classify the accounts according to their own record of recovery.

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7. **Potential threat of Recovery (Straightway Classification):** Where realisable value of security is less than 50% of the value assessed (by bank or value accepted in last RBI Inspection), account to be straightaway classified as Doubtful Asset and where realisable value (as assessed by Bank / Valuator / RBI Inspector) of security is less than 10% of outstanding balance, account to be straightaway classified as Loss Asset.
8. **Fraud Accounts:** In case of Fraud Accounts, 100% provision is to be made irrespective of security, spread over 4 quarters commencing from the quarter in which fraud has been detected wherein the same is reported to RBI and in cases wherein the fraud cases are not reported to RBI, 100% to be provided instantly.
9. **Solitary or few credit entries recorded before Balance Sheet to regularise the account:** In such cases, if the account is exhibiting signs of inherent weakness, such account is required to be marked as NPA and in other cases, the bank needs to evidence the auditors about manner of regularisation of account or otherwise in absence of such evidence such accounts should be marked as NPA. It would be germane to note that regularisation of the account either at year-end or otherwise needs to be out of genuine sources of

funds, ideally by way of income generating activities undertaken by the borrower and not by way of availing additional credit facilities to regularize existent credit facilities.

10. **Mandatory Valuation of Securities:** In case of NPAs, wherein the outstanding balance is more than Rs. 5 crores, it is mandatory to conduct stock audit by external agencies and as regards immovable properties taken as securities, the valuation is required to be carried out at least once in three years by approved valuer.
11. **Regularisation of accounts – Partial regularisation and regularisation after the balance sheet date:** In case if an account is a NPA, irrespective of whether the account is marked by the bank as NPA or not, the upgradation of the account would be subject to the condition that the entire portion of overdues are recovered (in case of Term Loan Accounts) or the working capital accounts are regularised out of genuine business credits. Further, it would be pertinent to note that regularisation of the account subsequent to the Balance Sheet date does not affect the

assets classification as the upgradation of the account would be effected only prospectively on the date of regularisation.

Project Loans

The change in repayment schedule is permitted without change in asset classification if the same is caused due to increase in project outlay on account of increase in scope and size of the project, subject conditions stipulated in Para 4.2.15.5 (ii) of the Master Circular on IRAC dated 01.07.2015.

The usual classification norms apply before the commencement of commercial operations. However, in case of accounts wherein the borrower fails to commence the commercial operations within two years and within one year from the date of commencement of commercial operations (DCCO) w.r.t. Infrastructure and non-infrastructure sectors respectively, the account needs to be classified as NPA, unless eligible to be restructured and classified as standard asset. The restructuring of Project Loans is permitted with retention of class of asset provided deferent and consequential shift in repayment schedule is for equal or shorter duration as follows:

Particulars	Infrastructure	Non-Infrastructure
Revised DCCO is within	Two years from original DCCO	One year from original DCCO
Revision due to Court Case	2 + 2 Years from original DCCO	1 + 1 Years from original DCCO
Revision due to any other reason	2 + 1 Years from original DCCO	



If an amount due to bank under any credit facility is not paid on the due date fixed by the bank, such amount would be called as Overdue.

An additional extension of DCCO is permitted for a further period of two years due to change of ownership of borrower entity, provided the conditions stipulated in Para 4.2.15.4 of the Master Circular on IRAC dated 01.07.2015 are complied with. Further, Financing of Cost Overruns is permitted by way of Standby Credit Facilities, with retention of class of asset subject to compliance of stipulated conditions.

Income Recognition

The income on Standard Assets is recognised on Accrual basis and the same on NPAs is recognised on Cash (realisation) basis. When an account is marked as NPA, the interest / bank charges debited to the account but not serviced as on the date of NPA are required to derecognised. Interest on additional finance in NPAs should be recognised on cash basis. If interest due is converted into unlisted equity / FITL, the same should be fully provided for and if the same is converted into a listed instrument, the interest should be recognised to the

extent of market value of the such security on the date of conversion.

In case of recoveries in NPAs, in the absence of clear agreement between the Bank and the Borrower, an appropriate policy to be followed in uniform and consistent manner as regards order of recovery of outstanding interest and principal amount.

Asset Classification and provisioning requirements

Type of NPA	Criteria	Provision	
		Secured Portion*	Unsecured Portion
Sub-Standard (SSA)	First 12 months from date of NPA	Secured SSA: 15% Unsecured SSA: 25% Infrastructure SSA: 20%	
Doubtful – I	Subsequent one year after SSA	25%	100%
Doubtful – II	Subsequent two years after DA-I	40%	100%
Doubtful – III	After two years in DA-II	100%	100%
Loss	identified by the bank or internal or external auditors or by RBI Inspectors as wholly irrecoverable but the amount for which has not been written off	100%	100%

* Without making any allowance to ECGC guarantee cover and securities available

* Intangible Security is considered only if backed by legally enforceable and recoverable right over collection and rest of intangibles like rights, licenses, etc. are considered as 'Unsecured'

As regards the prudential provision on Standard Assets the same has remained unchanged as provided in Para 5.5. of the Master Circular.

Restructuring of Advances:

The RBI, vide its Master Circular No.DBR.No.BP. BC.2/21.04.048/ 2015-16 dated

July 1, 2015 issued guidelines on prudential norms on Income Recognition, Assets Classification and Provisioning pertaining to Advances. Further, with issuance of circular no. RBI/2018-19/203 DBR. No.BP. BC.45/21.04.048/2018-19 on Prudential Framework for Resolution of Stressed Assets dated June 07, 2019 and circular no. RBI/2017-18/131 DBR.No.BP. BC.101/21.04.048/2017-18 on Resolution of Stressed Assets

– Revised Framework dated February 12, 2018, the extant instructions on resolution of stressed assets such as Framework for Revitalising Distressed Assets, Corporate Debt Restructuring Scheme, Flexible Structuring of Existing Long Term Project Loans, Strategic Debt Restructuring Scheme (SDR), Change in Ownership outside SDR,

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Interim order of honourable Supreme Court dated September 03, 2020 - 'the accounts which were not declared NPA till 31.08.2020 shall not be declared NPA till further orders.'

and Scheme for Sustainable Structuring of Stressed Assets (S4A) stand withdrawn with immediate effect. Accordingly, the Joint Lenders' Forum (JLF) as mandatory institutional mechanism for resolution of stressed accounts was discontinued.

MSME Sector – Restructuring of Advances

The RBI issued circular RBI/2020-21/17 DOR.No.BP. BC/4/21.04.048/2020-21 dated August 06, in continuation of earlier circular 2020RBI/2019-20/160 DOR.No.BP. BC/34/21.04.048/2019-20 dated February 11, 2020 extending the one-time restructuring of MSME advances classified as 'standard' without a downgrade in the asset classification and aligning the guidelines with the Resolution Framework for COVID19 – related Stress announced for other advances, with amended conditions as specified in the said circular.

COVID19 Regulatory Package

The RBI issued COVID19 Regulatory package vide circular RBI/2019-20/186 DOR.No.BP.

BC.47/21.04.048/2019-20 dated March 27, 2020 granting relief to borrowers, which was further followed by another circular RBI/2019-20/220 DOR.No.BP. BC. 63/21.04.048/2019-20 dated April 17, 2020 on COVID 19 Regulatory Package - Asset Classification and Provisioning, granting relief w.r.t. Asset Classification and Provisioning. The RBI also issued circular RBI/2019-20/219 DOR.No.BP. BC.62/21.04.048/2019-20 dated April 17, 2020 on COVID 19 Regulatory Package - Review of Resolution Timelines under the Prudential Framework on Resolution of Stressed Assets.

Resolution Framework for COVID19 related Stress

The RBI issued circular RBI/2020-21/16 DOR.No.BP. BC/3/ 21.04.048/2020-21 dated August 06, 2020 providing window under Prudential Framework to enable lenders to implement a resolution plan in respect of eligible corporate exposures without change in ownership and personal loans, while classifying such exposures as Standard, subject to certain conditions, enabling to retain the class of assets.

Interim order of honourable Supreme Court dated September 03, 2020

The honourable Supreme Court has passed as interim order on September 03, 2020 w.r.t. writ petition 825/2020 as 'the accounts which were not declared NPA till 31.08.2020 shall not be declared NPA till further orders.' The RBI has not issued any notification / circular

related to the said interim order. In the view of the said interim order, if a bank does not classify any account as NPA subsequent to August 31, 2020, which otherwise would have been classified as NPA, the auditor should ensure that

1. A suitable disclosure to that effect is given in the audit report quantifying the details of such accounts in terms of value and quantum (presuming that a similar disclosure is given by the bank in financial statements) along with reference to the said interim order of Supreme Court;
2. In the accounts which are not marked as NPA by a bank, (which otherwise would have been required to be marked as NPA as per IRAC norms), the income recognition and provisions norms would be continued to be applied as if such accounts are marked as NPA, i.e., income on such account would be recognised on cash basis and a provision would also be made as would have required to be made had this account been marked as NPA.

In case if a bank has followed IRAC norms without any deviation therefrom in context with the said order, there is no additional or specific disclosure required to be given by the auditor in the audit report or otherwise as the extant IRAC norms as specified in the RBI guidelines are followed. ■■■

LFAR for Bank Branch

LFAR format has been revised and a notification is issued by RBI dated September 5, 2020. There is no doubt the old format was long overdue as it contained the questions from pre-CBS era. During our audit for the financial statements as on March 31, 2021 it is necessary that we read and assimilate the questions carefully. The questions are formed in a manner where we may have to be careful in selection of the samples, ensuring that the questions in the LFAR are addressed with reference to the selected accounts. Read on...



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Hitherto, the accounts selected for the purpose was forming part of our documentations and working papers. However, now LFAR expects us to list the accounts selected, which increase our responsibility manifold as the answers to the question in LFAR are expected with reference to the selection.

This article makes an attempt to address the nuances of LFAR. It must be remembered that where any of the comments made by the auditors in their LFAR is adverse, auditor should consider whether a qualification in their main report is necessary. It should not, however,

be assumed that every adverse comment in the LFAR would necessarily result in a qualification in the main report. In deciding whether a qualification in the main report is necessary, the auditors should use their professional judgment in the facts and circumstances of each case. Where the auditors have any reservation or adverse remarks with regard to any of the matters to be dealt with in their Long Form Audit Reports, they may give the reasons for the same. Also, where relevant, instances of situations giving rise to their reservations or adverse remarks may also be given.



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ASSETS

1.	Cash	Comments / Views
a)	Does the system ensure that cash maintained is in effective joint custody of two or more officials, as per the instructions of the controlling authorities of the bank?	
b)	Have the cash balances at the branch/ATMs been checked at periodic intervals as per the procedure prescribed by the controlling authorities of the bank?	
c.1)	Does the branch generally maintain /carry cash balances, which vary significantly from the limits fixed by the controlling authorities of the bank?	
c.2)	Does the figure of the balance in the branch books in respect of cash with its ATM(s) tally with the amounts of balances with the respective ATMs, based on the year end scrolls generated by the ATMs? If there is any difference, same should be reported.	
d)	Whether the insurance cover available with the branch adequately meets the requirement to cover the cash-in hand and cash-in transit?	
2.	Balances with Reserve Bank of India, State Bank of India and Other Banks(For branches with Treasury Operations)	
a)	Were balance confirmation certificates obtained in respect of outstanding balances as at the year-end and whether the aforesaid balances have been reconciled? The nature and extent of differences should be reported.	
b)	Observations on the reconciliation statements may be reported in the following manner:	
i)	Cash transactions remaining unresponded (give details)	
ii)	Revenue items requiring adjustments/write-off (give details)	
iii)	Other Credit and debit entries originated in the statements provided by RBI/other banks, remaining unresponded for more than 15 days:	
iv)	Where the branch maintains an account with the Reserve Bank of India, the following additional matter may be reported:	
	Entries originated prior to, but communicated/recorded after, the year end in relation to currency chest operations at the branch/other link branches, involving deposits into/ withdrawals from the currency chest attached to such branches (Give details)	
c)	In case any matter deserves special attention of the management, the same may be reported.	
3.	Money at Call and Short Notice	
a)	Has the Branch kept money-at-call and short notice during the year?	
b)	Has the year end balance been duly confirmed and reconciled?	
c)	Has interest accrued upto the year end been properly recorded?	
d)	Whether instructions/guidelines, if any, laid down by the controlling authorities of the bank have been complied with?	

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4.	Investments
	(For Branches outside India)
a)	In respect of purchase and sale of investments, has the branch acted within its delegated authority, having regard to the instructions/ guidelines in this behalf issued by the controlling authorities of the bank?
b)	Have the investments held by the branch whether on its own account or on behalf of the Head Office/other branches been made available for physical verification? Where the investments are not in the possession of the branch, whether evidences with regard to their physical verification have been produced?
c)	Is the mode of valuation of investments in accordance with the RBI guidelines or the norms prescribed by the relevant regulatory authority of the country in which the branch is located whichever are more stringent?
d)	Whether there are any matured or overdue investments which have not been encashed and / or has not been serviced? If so, give details?

5.	Advances General Instructions
	(i) The answers to the following questions may be based on the auditor's examination of all large advances For this purpose, large advances are those in respect of which the outstanding amount is in excess of 10% of outstanding aggregate balance of fund based and non-fund based advances of the branch or Rs.10 crores, whichever is less. Care- For all accounts above the threshold, the transaction audit/account specific details to be seen and commented, whereas below the threshold, the process needs to be checked and commented upon. Comments of the branch auditor on advances with significant adverse features, which might need the attention of the management / Statutory Central Auditors, should be appended to the LFAR
iii)	The critical comments based on the review of the above and other test check should be given in respective paragraphs as given in LFAR given below.

a)	List of accounts examined for audit				
	Account No.	Account Name	Balance as at year end – Funded	Balance as at year end – Non- funded	Total
	XXXXXX				
	XXXXXX				
	Total		A	B	C = A + B
	Total Outstanding of the Branch		X	Y	Z = X + Y
	Percentage examined		A as % of X	B as % of Y	C as % of Z

You may observe that the LFAR expects us to attach an annexure giving details of the accounts selected during the course of our audit. It may be remembered that the questions at various places have specific purpose. Therefore, one simple selection will not help giving answers to all the questions. It is suggested that for each section and in some cases few questions in the section, list of accounts chosen for audit may be listed separately. However, for the purpose of overall percentage of coverage as envisages above, common accounts, if any may have to be merged.

b)	Credit Appraisal	
(i)	In your opinion, has the branch generally complied with the procedures/instructions of the controlling authorities of the bank regarding loan applications, preparation of proposals for grant/ renewal of advances, enhancement of limits, etc., including adequate appraisal documentation in respect thereof. What, in your opinion, are the major shortcomings in credit appraisal, etc.	

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(ii)	Have you come across cases of quick mortality in accounts, where the advance became Non-performing within a period of 12 months from the date of first sanction? Details of such accounts may be provided in following manner: - Account No. - Account Name - Balance as at year end	
(iii)	Whether in borrowal accounts the applicable interest rate is correctly fed into the system?	
(iv)	Whether the interest rate is reviewed periodically as per the guidelines applicable to floating rate loans linked to MCLR / EBLR (External Benchmark Lending Rate)?	
(v)	Have you come across cases of frequent renewal / rollover of short-term loans? If yes, give the details of such accounts.	
(vi)	Whether correct and valid credit rating, if available, of the credit facilities of bank's borrowers from RBI accredited Credit Rating Agencies has been fed into the system?	The credit rating is essential for all the exposures above 5 Cr. This determines the risk weight for the purpose of CRAR calculations. Non availability of credit rating would attract higher risk. In case the rating is not available, auditor should find out the earlier rating. Further banks many times confuse between Govt. Corporations and Government undertaking. Unless there is specific sanction term for not taking rating (only in case of Govt. undertaking, others have to be rated) valid rating certificate should be verified.
c)	Sanctioning/Disbursement	
(i)	In the cases examined by you, have you come across instances of:	
	(a) credit facilities having been sanctioned beyond the delegated authority or limit fixed for the branch?	(c)
	(b) Are such cases promptly reported to higher authorities?	
(ii)	Whether advances have been disbursed without complying with the terms and conditions of the sanction? If so, give details of such cases.	
(iii)	Did the bank provide loans to companies for buy-back of shares/securities?	It is suggested that the management representation to this clause should be obtained as it is difficult for a auditor to find out unless specifically mentioned (which is very unlikely)
d)	Documentation	
(i)	In the cases examined by you, have you come across instances of: Credit facilities released by the branch without execution of all the necessary documents? If so, give details of such cases.	
(ii)	Deficiencies in documentation, including non-registration of charges, non-obtaining of guarantees, etc.? If so, give details of such cases.	

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(iii)	Advances against lien of deposits have been granted without marking a lien on the Bank's deposit receipts and the related accounts in accordance with the guidelines of the controlling authorities of the bank.	
e)	Review/Monitoring/Supervision	
(i)	Is the procedure laid down by the controlling authorities of the bank, for periodic review of advances, including periodic balance confirmation / acknowledgement of debts, followed by the Branch? Provide analysis of the accounts overdue for review/ renewal. What, in your opinion, are major shortcomings in monitoring, etc.	
	a) between 3 to 6 months, and b) over 6 months	c)
(ii)	a) Are the stock/book debt statements and other periodic operational data and financial statements, etc., received regularly from the borrowers and duly scrutinized? Is suitable action taken on the basis of such scrutiny in appropriate cases? b) Is the DP properly computed? c) Whether the latest audited financial statements are obtained for accounts reviewed / renewed during the year?	d)
(iii)	a) Whether there exists a system of obtaining reports on stock audits periodically? b) If so, whether the branch has complied with such system? c) Details of: - cases where stock audit was required but was not conducted - where stock audit was conducted but no action was taken on adverse features	d)
(iv)	Indicate the cases of advances to non-corporate entities with limits beyond that set by the bank where the Branch has not obtained the duly audited accounts of borrowers	
(v)	Does the branch have on its record, a due diligence Report in the form and manner required by the Reserve Bank of India in respect of advances under consortium and multiple banking. Give the list of accounts where such certificate/ report is not obtained, or on record. (In case the branch is not the lead bank, copy of certificate/ report should be obtained from lead bank for review and record)	
(vi)	Has the inspection or physical verification of securities charged to the bank been carried out by the branch as per the procedure laid down by the controlling authorities of the bank?	

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	Whether there is a substantial deterioration in value of security during financial year as per latest valuation report in comparison with earlier valuation report on record?	
(vii)	In respect of advances examined by you, have you come across cases of deficiencies, including in value of securities and inspection thereof or any other adverse features such as frequent/ unauthorized overdrawing beyond limits, inadequate insurance coverage, etc.?	
(viii)	Whether the branch has any red-flagged account? If yes, whether any deviations were observed related to compliance of bank's policy related with Red Flag Accounts?	
(ix)	Comment on adverse features considered significant in top 5 standard large advances and which need management's attention.	
(x)	In respect of leasing finance activities, has the branch complied with the guidelines issued by the controlling authorities of the bank relating to security creation, asset inspection, insurance, etc.? Has the branch complied with the accounting norms prescribed by the controlling authorities of the bank relating to such leasing activities?	RBI has issued Master circular on Lending to NBFCs (RBI /2004-05/14/ DBOD / IECS.No. 7 /08.12.01/2004-2005). Further the Exposure Norms also suggest the cap on lending of such activity. It is necessary at the branch to understand the correct categorization of advances and whether such instructions from the controlling office of the bank are adhered to. Please note that the error of categorization has impact on disclosure of Exposure norms as well as risk parameters change due to such change.
f)	Asset Classification, Provisioning of Advances and Resolution of Stressed Assets	
(i)	a) Has the branch identified and classified advances into standard/ substandard/doubtful/loss assets through the computer system, without manual intervention? b) Is this identification & classification in line with the norms prescribed by the Reserve Bank of India c) Whether the branch is following the system of classifying the account into SMA-0, SMA-1, and SMA-2. Whether the auditor disagrees with the branch classification of advances into standard (Including SMA- 0, SMA-1, SMA-2) / substandard / doubtful / loss assets, the details of such advances with reasons should be given.	d)
	d) Also indicate whether required changes have been incorporated/ suggested in the Memorandum of Changes.	
	e) List the accounts (with outstanding in excess of Rs. 10.00 crore) which have either been downgraded or upgraded with regard to their classification as Non-Performing Asset or Standard Asset during the year and the reason thereof.	This question expects auditor to select all the accounts having exposure of 10 Cr and above who have any classification movement from & to Standard accounts during the year. The upgrading, especially would need greater audit check for its accuracy.
	f) Whether RBI guidelines on income recognition and provisioning have been followed.	This is overreaching question would for part of our opinion.

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(ii)	a) Whether the branch has reported accounts restructured or rephased during the year to Controlling Authority of the bank?	c)
	b) Whether the RBI Guidelines for restructuring on all such cases have been followed	
	d) Whether the branch complies with the regulatory stance for resolution of stressed assets, including the compliance with board approved policies in this regard, tracking/reporting of defaults for resolution purposes among others?	e) Enquire whether there is any account in the branch that has exposure of 2000 cr and above in the entire banking system. Check for the stress and regularity of these accounts. f) Ensure that branch is prompt in reporting under CRILC. Any delay in reporting should be viewed seriously and reported. g) In case the account continues to be under SMA category for 180 days continuously, the same should be reported for stress resolution. Please report in case such accounts are not reported.
(iii)	a) Whether the upgradations in non-performing advances is in line with the norms of Reserve Bank of India	c)
	b) Where the auditor disagrees with upgradation of accounts? If yes, give reasons thereof.	
(iv)	Have you come across cases where the relevant Controlling Authority of the bank has authorized legal action for recovery of advances or recalling of advances but no such action was taken by the branch? If so, give details of such cases.	
(v)	Whether there are any accounts wherein process under IBC is mandated but not initiated by the branch? Whether there are any borrowers at the branch against whom the process of IBC is initiated by any of the creditors including bank? If yes, provide the list of such accounts and comment on the adequacy of provision made thereto?	
(vi)	a) Have appropriate claims for credit guarantee (ECGC and others), if any, been duly lodged and settled?	d)
	b) Give details of claims rejected? (As per the given table)	
	c) Whether the rejection is appropriately considered while determining the provisioning requirements	

Particulars	Number	Amount
Claim at the beginning of the year		
Further claim lodged during the year		
Total A		
Amounts representing		
(i) Claims accepted/settled		
(ii) Claims rejected		
Total B		
Balance as at year end (A-B)		

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(vii)	In respect of non-performing assets, has the branch obtained valuation reports from approved valuers for the immovables charged to the bank, once in three years, unless the circumstances warrant a shorter duration?	
(viii)	In the cases examined by you has the branch complied with the Recovery Policy prescribed by the controlling authorities of the bank with respect to compromise/settlement and write-off cases? Details of the cases of compromise/settlement and write-off cases involving write-offs/waivers in excess of Rs. 50.00 lakhs may be given.	
(ix)	Is the Branch prompt in ensuring execution of decrees obtained for recovery from the defaulting borrowers? Give Age-wise analysis of decrees obtained and pending execution.	
(x)	Whether in the cases concluded the recoveries have been properly appropriated against the principal / interest as per the policy of the Bank?	
(xi)	In cases where documents are held at centralized processing centers / office, whether the auditor has received the relevant documents as asked by them on test check basis and satisfied themselves. Report the exceptions, if any	
(xii)	List the major deficiencies in credit review, monitoring and supervision.	Self-explanatory
g)	Non-Fund Based facilities	
(i)	List of borrowers with details of LCs devolved or guarantees invoked during the year	

Sr. No.	Invocation Date	Party Name	Beneficiary Name	Amt	Recovery Date
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(ii)	List of borrowers where the LCs have been devolved or guarantees have been invoked but not paid with amount thereof				
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Sr. No.	Invocation Date	Party Name	Beneficiary Name	Amt	Reason for non-payment
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(iii)	List of instances where interchangeability between fund based and non-fund based facilities was allowed subsequent to devolvement of LC / invocation of BG				
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6. Other Assets

(a)	Suspense Accounts/Sundry Assets				
(i)	Does the system of the Bank ensure expeditious clearance of items debited to Suspense Account? Details of outstanding entries in excess of 90 days may be obtained from the Branch and the reasons for delay in adjusting the entries may be ascertained. Does your scrutiny of the accounts under various sub-heads reveal balances, which in your opinion are not recoverable and would require a provision/write-off? If so, give details.				
(ii)	Does your test check indicate any unusual items in these accounts? If so, report their nature and the amounts involved. Are there any intangible items under this head e.g. losses not provided / pending investigation?				

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I. LIABILITIES

1. Deposits	
(a) Does the bank have a system of identification of dormant/ inoperative accounts and internal controls with regard to operations in such accounts? In the cases examined by you, have you come across instances where the guidelines laid down in this regard have not been followed? If yes, give details thereof.	
(b) After the balance sheet date and till the date of audit, whether there have been any unusual large movements (whether increase or decrease) in the aggregate deposits held at the year-end? If so, obtain the clarifications from the branch and give your comments thereon.	
(c) Whether the scheme of automatic renewal of deposits applies to FCNR(B) deposits? Where such deposits have been renewed, report whether the Branch has satisfied itself as to the 'non-resident status' of the depositor and whether the renewal is made as per the applicable regulatory guidelines and the original receipts / soft copy have been dispatched.	
(d) Is the branch complying with the regulations on minimum balance requirement and levy of charges on non-maintenance of minimum balance in individual savings accounts?	- RBI specifically has mandated Certification for penalty levied by banks for non-maintenance of minimum balance (DBR, no. Leg. BC.21/09.07.006/ 2015/16 dated July 1, 2015) - Although the general answer given at the branch is that the calculations are automated through system, it is expected that the auditor takes at least 5 samples and calculates whether the levy of these charges is fair and as per the policy.
2. Other Liabilities	
Bills Payable, Sundry Deposits, etc.	
a) The number of items and the aggregate amount of old outstanding items pending for one year or more be obtained from the Branch and reported under appropriate heads. Give details thereof	

Year	Number of Items	Amounts	Remarks
b)	Does your test check indicate any unusual items or material withdrawals or debits in these accounts? If so, give details thereof.		
3. Contingent Liabilities			
	List of major items of the contingent liabilities (other than constituent's liabilities such as guarantees, letter of credit, acceptances, endorsements, etc.) not acknowledged by the Branch?		

I. PROFIT AND LOSS ACCOUNT

a)	Has the test checking of interest/discount/ commission/ fees etc. revealed excess/short credit of a material amount? If so, give details thereof.	The question is self-explanatory. However, few insights with respect to taking percussions on certain aspects are given in appendix.
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Bank Audit

b)	Has the branch complied with the Income Recognition norms prescribed by R.B.I.? (The Auditor may refer to the instructions of the controlling authorities of the bank regarding charging of interest on non-performing assets).	
c)	Has the test check of interest on deposits revealed any excess/ short debit of material amount? If so, give details thereof.	
d)	Does the bank have a system of estimating and providing interest accrued on overdue/matured/ unpaid/ unclaimed term deposits including in respect of deceased depositors?	
e)	Are there any divergent trends in major items of income and expenditure, in comparison with corresponding previous year, which are not satisfactorily explained by the branch? If so, the same may be reported.	

II. GENERAL

1	Gold/ Bullion/ Security Items	
a)	Does the system ensure that gold/bullion is in effective joint custody of two or more officials, as per the instructions of the controlling authorities of the bank?	
b)	Does the branch maintain adequate records for receipt, issues and balances of gold/bullion and updated regularly? Does the periodic verification reveal any excess/shortage of stocks as compared to book records and if any discrepancies observed have been promptly reported to controlling authorities of the bank?	
c)	Does the system of the Bank ensure adequate internal control over issue and custody of security items (Term Deposit Receipts, Drafts, Pay Orders, Cheque Books, Traveler's Cheques, Gift Cheques, etc.)? Whether the system is being followed by the branch? Have you come across cases of missing/lost items?	Self-explanatory
2.	Books and Records	
a)	Whether there are any software / systems (manual or otherwise) used at the branch which are not integrated with the CBS? If yes, give details thereof.	
b)	i) In case the branch has been subjected to IS Audit whether there are any adverse features reported and have a direct or indirect bearing on the branch accounts and are pending compliance? If yes give details.	
	ii) Whether branch is generating and verifying exception reports at the periodicity as prescribed by the bank	
	iii) Whether the system of bank warrants expeditious compliance of daily exception reports and whether there are any major observations pending such compliance at the year end.	

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	iv) Whether the bank has laid down procedures for manual intervention to system generated data and proper authentication of the related transactions arising there from along with proper audit trail of manual intervention has been obtained.	
	v) Furnish your comments on data integrity (including data entry, checking correctness/ integrity of data, no back ended strategies etc.) which is used for MIS at HO / CO level.	
3.	Inter-Branch Accounts	
(a)	Does the branch expeditiously comply with/respond to the communications from the designated cell/Head Office as regards unmatched transactions? As at the year-end are there any un-responded/un-complied queries or communications beyond 7 days? If so, give details?	
4.	Frauds	
	Furnish particulars of: (i) Frauds detected/classified but confirmation of reporting to RBI not available on record at branch (ii) Whether any suspected or likely fraud cases are reported by branch to higher office during the year? If yes, provide the details thereof related to status of investigation. (iii) In respect of fraud, based on your overall observation, please provide your comments on the potential risk areas which might lead to perpetuation of fraud (e.g. falsification of accounts/false representation by the borrower; misappropriation of funds especially through related party/ shell company transactions; forgery and fabrication of financial documents like invoices, debtor lists, stock statements, trade credit documents, shipping bills, work orders and encumbrance certificates and avail credit; Use of current accounts outside consortium where Trust and Retention Account (TRA) is maintained, to divert funds; List of Debtors/ Creditors were being fabricated and receivables were not followed up/ write off of debt of related parties; Fake export/shipping bill, etc.; Over statement of invoice amounts, stock statements, shipping bills, turnover; fly by night operations -including the cases where vendors, related/ associate parties, manufacturing units etc. aren't available on the registered addresses; Round Tripping of funds, etc.) (iv) Whether the system of Early Warning Framework is working effectively and, as required, the early warning signals form the basis for classifying an account as RFA.	The detailed guideline is available in the annexure to this article.

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5.	Implementation of KYCAML guidelines	
	Whether the branch has adequate systems and processes, as required, to ensure adherence to KYC/AML guidelines towards prevention of money laundering and terrorist financing	As regards KYC SBA may go through and rely on the concurrent audit reports. However, it needs to ensure that the concurrent audit has sufficient coverage with regard to this aspect. Auditor is also suggested to ask for CTR/STR reports of the branch. This will provide sufficient insight into the adherence to AML and other suspicious monetary activity of any of the account in the branch.
	Whether the branch followed the KYC/AML guidelines based on the test check carried out by the branch auditors	
6.	Management Information System	
(a)	Whether the branch has the proper systems and procedures to ensure data integrity relating to all data inputs which are to be used for MIS at corporate office level and for supervisory reporting purposes. Have you come across any instances where data integrity was compromised?	As such these aspects are controlled centrally. However, the only place where data integrity at the branch would affect is nonadherence to Password Protection policy. Further any transaction process where the maker-checker principle is missing, such observations must be highlighted as these practices are highly susceptible to misstatement or fraud. It is suggested that the SBA obtains the copy of IS audit report to get comfort on this issue.
7.	Miscellaneous	
(a)	In framing your audit report/LFAR Report, have you considered the major adverse comments arising out of the latest reports such as a) Previous year's Branch Audit Report/ Long Form Audit Report; b) Internal audit/ Snap Audit/ concurrent audit report(s); c) Credit Audit Report;	
	d) Stock audit Report e) RBI Inspection Report, if such inspection took place; f) Income and Expenditure (Revenue) Audit; g) IS/IT/Computer/Systems Audit; and h) Any special inspection/investigation report?	
(c)	Are there any other matters, which you, as branch auditor, would like to bring to the notice of the management or the Statutory Central Auditors?	

Aspects to be taken care of during checking of Profit & Loss Account

1. Application of Interest on Deposits

- Interest on Term Deposits / Cumulative Deposits:

This is generally done at the central level. Hence no action is necessary at the branch level.

- Overdue Term Deposits:

During day end process, system automatically renews matured deposit accounts. However in some banks cases where old

data migration or system snags continues in this data. It is generally done manually at the branch level.

- Interest paid to / received from Treasury Branch:

This is generally done at Category A branches for Borrowings in

Bank Audit

Foreign Currency or Interest received/paid on Foreign Currency Settlement Accounts.

• Current Deposits:

Generally interest to be provided only in case of balances in Individual/Proprietary Current A/c of deceased persons at SB interest rates from the date of the death of the depositor.

• Savings Bank Deposits:

At times interest application for accounts under specific Scheme is done at the branch level. For other than the specific schemes i.e. general Savings Bank Deposits where interest is applied at quarterly rest, the required provision for interest is made at Central Office.

2. Interest on Advances:

- Interest for all advances (EMI and non EMI) is generally charged

centrally. Though the system is charging interest, it is necessary for the Branches to check & ensure that correct amount of interest has been charged/ provided in respect of all the eligible advances accounts in the system. This is because branch has the actual control over the account.

- Interest collected on **BILLS DISCOUNTED** (i.e. Advance Interest received):

The entire amount collected is first credited to Rebate on Bills Discounted and only portion of interest relevant for the month is taken to Income account every month end. The amount outstanding under Rebate on Bills discounted head of account should match with bill-wise rebate on bills discounted amount.

3. Interest on overdue Export Bills:

- Interest on Export Bills which are overdue for less than 90 days categorized under Standard Advances should be calculated on accrual basis from the due date 31st March and credited to Income Account Interest on Foreign Bills purchased by debiting Suspense Account - Interest Accrued on Advances and the same is generally reversed on the next working day

4. Interest paid on Borrowings:

- In respect of refinance availed from IDBI / SIDBI / NABARD / EXIM Bank / NHB etc. ascertain the amount of interest payable on such borrowings up to 31st March and make necessary provision in respect thereof to the debit of "Expenditure Account - Interest Paid on Borrowings"



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Account - Refinance availed from IDBI/SIDBI etc." by giving corresponding credit to "Bills Payable - Others - Int. payable on NABARD/ SIDBI/ Bank Refinance". This entry is generally reversed on next working day in April.

5. Provision for other expenses and entry for prepaid expenses:

- This is generally a grey area where mistakes are found. Many times the amounts are not material & hence ignored. I suggest, either MOC should be passed or if not material, pass the entries as on the date.

6. Bank charges - Accounts maintained with Other Banks:

- All the charges levied by other banks up to 31st March as reflected in the reconciliation, which are not in dispute, should be responded by debit to Expenditure a/c.

7. Depreciation:

- Ensure that New standard on PPE is adhered to.

Annexure on Fraud

In terms of extant RBI guidelines, auditors are required to report any suspicious/fraudulent activities, which comes to their attention during the course of audit. Hence, in terms of regulatory expectations role of Statutory Auditors in Identification of Non-Performing Assets (NPAs) is wider. Expectations from Statutory Auditors is to display a greater degree of skepticism and independence in assessing asset classification, especially large-value accounts. As per RBI observation in respect of the 20 large value fraud cases, except one case where the external auditors pointed out the non-compliance with the credit sanction conditions, in no other case reviewed by the Committee, frauds were detected through the audit process, external or internal.

The occurrence of most of these frauds were related to failure on the part of

the Credit and the Risk Management Departments to discharge their duties adequately. In most cases, frauds were detected when the borrower was classified as an NPA and forensic audits were commissioned. In some other cases, there were warnings from the enforcement agencies regarding the existence of a fraud. In many banks, complaints from customers and other sources were the major source of detection of frauds.

Administrative lapses that may lead to Fraud

- Opening of current accounts by banks outside the consortium without obtaining NOC and thus facilitating diversion of funds lent by consortium.
- Deficiency in implementation of the Early Warning Signals (EWS) and Red Flagging of Accounts (RFA) Mechanism by banks
 - Banks have not adopted any or all of the indicative list of EWSs provided by RBI
 - Non-integration of the mechanism into banks' credit monitoring software
 - Not concluding investigation after RFA within the stipulated 6 month timeline
 - Inconclusive forensic audits due to non-cooperation by the borrowers
- Some banks in a consortium sell some accounts to ARCs just before their recognition as a fraud by the consortium.
- Slow progress in investigations and prosecution of fraudsters.
- Delayed recognition and reporting is one of the important factor facilitating the fraudsters to further their ill intent. It was observed following factors contributed to arrest the frauds at the early stage:
 - Advances related frauds often seasoned for 3 to 4 years as NPAs.
 - Time between first bank and last

bank in consortium reporting fraud

- Ideally within six months from date first entity reports the account as fraud.
- Complicity of bank officials and third parties with the borrower
- Reluctance to conduct the meeting of the lenders.
- Delay in reporting in CRILC.

Illustrative transactions to exercise extra skepticism:

- liberal cash flow projection at proposal stage
- security perfection and over valuation
- gold plating of projects
- Deviation from credit and other related policies
- Lack of continuous monitoring of cash flows
- Diversion of funds

A few important Early Warning Signals

- Critical issues highlighted in the stock audit report
- Poor disclosure of materially adverse information
- Frequent change in the scope of the project
- Liabilities appearing in ROC search report, not in annual report.
- Not routing sales through consortium member bank
- LCs issued for related parties without underlying trade transaction.
- Raid by Income tax /sales tax/ central excise duty officials
- Significant reduction in the stake of promoters or pledging of shares.

Finally, it may be concluded, the responsibility as SBA was always like this. The only difference now is the part our working papers is becoming the reporting requirement. ■■■



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Bank Audit

Importance of Advances in Bank Audit

The revenue of the Banks is generated majorly through advances and investments. Hence, both areas form core areas of Bank Audit. As per RBI publication "Operations and Performance of Commercial Banks" dated December 24, 2019 Advances comprise around 58% of total assets of all Scheduled Commercial Banks put together for year ended March 31, 2019. This emphasize importance of Advances in the Banking. Hence, Advances also form an important area of Bank Audit. Read on...

The advances portfolio consists of Fund Based and Non Fund Based Advances. Fund based advances include Term loans, Cash Credits, Housing Loans, Education Loan, Overdrafts, whereas non fund based advances include Bank Guarantee, Letter of Credit.

The various stages of advances



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are Appraisal, Sanctioning & Documentation, Disbursement, Monitoring and Repayment. The audit shall be carried out each of these stages. The revised LFAR issued by RBI consist questions on each of the above stage.

Selection of Sample

It is advisable that auditor should cover 60% to 70% of the total advances portfolio of the Branch, which covers all types of loan sanctioned by the Branch. As mentioned in Revised LFAR, for all accounts above 10% of outstanding aggregate balance of fund based and non-fund-based advances of the branch or ₹10 crores whichever is less, the transaction audit/account specific details to be seen and

commented, whereas below the threshold, the process needs to be checked and commented upon.

The Auditor shall read Credit policy / Product Document, delegation of power and Manuals/ Circulars before commencing the audit of advances.

Brief Audit Process

Appraisal: The auditor shall review the appraisal note for sample advances which mainly contain information about Borrower, its business, sector of business, current financial position of the borrower, future financial projections. The auditor shall not only verify whether as part of appraisal





Auditor should verify whether the advance has been sanctioned by the competent authority and any deviation from standard terms and conditions is approved.

process Branch has focussed on objective criteria like Current Ratio, Debt Service Coverage Ratio, Profitability, Debt Equity Ratio but also considered subjective criterias like present challenges to the industry which borrower belongs to, the overall market for the product, the geo political situation affecting borrower's business, etc. If the Auditor finds factors like subjective factors mentioned above and notes that feasibility of achievement of projections, realizability of security, etc. are not commented in appraisal, the Auditor shall report the same in LFAR.

Sanctioning and

Documentation: Auditor should verify whether the advance has been sanctioned by the competent authority and any deviation from standard terms and conditions is approved. The auditor should verify whether documents are executed as per manuals, circulars and product notes. The auditor should also verify that the executed documentation has been vetted by empanelled advocate or by legal department of the Bank. In respect of Bank Guarantees issued auditor should verify

whether Guarantees issued in format other than prescribed by the Bank, the Branch has obtained approval of Bank's legal department. The auditor should verify whether Letter of Credits issued by the Branch are as per the prescribed norms. Also, verify in case of foreign L.Cs, the Branch has carried out swift reconciliation with CBS on daily basis.

Disbursement: The auditor should verify whether masters have been correctly created in the core banking system as per the sanction letters. The maker checker control has been exercised while creating masters. Also, the auditor should verify whether Branch has ensured end use of funds as per the Sanction Letter.

Monitoring: Auditor should verify whether procedure laid down by the controlling authorities of the bank, for periodic review of advances, including periodic balance confirmation / acknowledgement of debts, followed by the branch. In respect of cash credit account, the Auditor should verify whether stock and book debt statements are received on regular basis and analysed by the Branch. The auditor should also analyse stock and book debt statements on sample basis to verify whether slow moving inventories, debtors beyond days mentioned sanction letter, creditors, unrealisable stock has been reduced while calculating Drawing Power. In respect of Cash Credit accounts on sample basis, the auditor should verify whether funds have been withdrawn for business only.

The same can be conducted by extracting account statements in excel.

Repayment: In respect of repayments of term loan, the auditor should verify whether Bank is exercising due diligence to verify the source of funds and in respect of credits in cash credit accounts, the receipts are business receipts only. Also, auditor shall verify the same on sample basis. In respect of closed accounts, auditor should verify whether account is closed in the CBS after following prescribed procedure. With respect to repayment received by debiting any office account, the auditor should verify the corresponding credit in the respective office account and source thereof. Also, review the process of operations and reconciliation of office accounts.

Restructuring of Advances

The current financial year 2020-21 has been a year with challenges for economy due to outbreak of pandemic. The first two months of financial year, the economic activity is at minimal due to lockdown. The same has adversely affected businesses and consequently the repayment capacity of borrowers of the Bank. Hence, RBI has issued / extended following restructuring / resolution guidelines for stressed asset.

As per Income Recognition and Asset Classification circular, if the account is restructured, then the same shall be classified as non performing, however RBI has allowed to retain the account as standard by issuing following circulars.

Bank Audit

1. RBI/2018-19/100
DBR.No.BP.
BC.18/21.04.048/2018-19 dated January 1, 2019
Micro, Small and Medium Enterprises (MSME)
sector – Restructuring of Advances and RBI/2019-20/160 DOR.No.BP.
BC.34/21.04.048/2019-20 dated February 11, 2020
Micro, Small and Medium Enterprises (MSME)
sector – Restructuring of Advances [Hereinafter referred as “MSME Restructuring Circulars”]
2. RBI/2020-21/16
DOR.No.BP.
BC/3/21.04.048/2020-21 dated August 6, 2020
Resolution Framework for COVID-19-related Stress and RBI/2020-21/34 DOR.No.BP.BC/13 /21.04.048/2020-21 dated September 7, 2020
Resolution Framework for COVID-19-related Stress – Financial Parameters [Hereinafter referred as “Covid Relief Circulars”]

MSME Restructuring circulars

1. Restructuring Under MSME Restructuring circulars

Eligible Borrowers

Borrowers falling under category MSME borrowers. MSME is defined in the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006

Pre-Conditions

- The aggregate exposure, including non-fund based facilities, of banks and

NBFCs to the borrower does not exceed ₹25 crore as on March 1, 2020.

- The borrower's account was a 'standard asset' as on March 1, 2020.
- The restructuring of the borrower account is implemented by March 31, 2021.
- The borrowing entity is GST-registered on the date of implementation of the restructuring. However, this condition will not apply to MSMEs that are exempt from GST-registration. This shall be determined on the basis of exemption limit obtaining as on March 1, 2020.
- Asset classification of borrowers classified as standard may be retained as such, whereas the accounts which may have slipped into NPA category between March 2, 2020 and date of implementation may be upgraded as 'standard asset', as on the date of implementation of the restructuring plan. The asset classification benefit will be available only if the restructuring is done as per provisions of this circular.
- As hitherto, for accounts restructured under these guidelines, banks shall maintain additional provision of 5% over and above the provision already held by them.
- Account should not have been already restructured in terms of the circular dated January 1, 2019.

Details of restructured accounts should be disclosed in notes to accounts in format specified in circular.

2. Covid Relief Circulars

Eligible Borrowers are borrowers other than

- a. MSME borrowers whose aggregate exposure to lending institutions collectively, is ₹25 crore or less as on March 1, 2020.
- b. Farm credit as listed in Paragraph 6.1 of Master Direction FIDD, CO.Plan.1/04.09.01/2016-17 dated July 7, 2016 (as updated) or other relevant instructions as applicable to specific category of lending institutions.
- c. Loans to Primary Agricultural Credit Societies (PACS), Farmers' Service Societies (FSS) and Large-sized Adivasi Multi- Purpose Societies (LAMPS) for on-lending to agriculture.
- d. Exposures of lending institutions to financial service providers.
- e. Exposures of lending institutions to Central and State Governments; Local Government bodies (eg. Municipal Corporations); and, body corporates established by an Act of Parliament or State Legislature.
- f. Exposures of housing finance companies where the account has been rescheduled in terms of para 2(1)(zc)(ii) of the Master Circular – The Housing

Finance Companies (NHB) Directions, 2010 after March 1, 2020, unless a resolution plan under this framework has been invoked by other lending institutions. However, from the date of this circular, any resolution necessitated on account of the economic fallout of Covid-19 pandemic, shall be undertaken only under this framework.

Reference date : 1st March 2020

Date of Invocation: date on which both the borrower and lending institution have agreed to proceed with a resolution plan under this framework. Date of invocation shall not be later than 31 December 2020

Board of Directors of Bank should lay down Board Approved Policy (include eligibility criteria for borrowers & due diligence consideration)

Personal Loans

Personal Loan refers to loans given to individuals and consist of (a) consumer credit, (b) education loan, (c) loans given for creation/ enhancement of immovable assets (e.g., housing, etc.), and (d) loans given for investment in financial assets (shares, debentures, etc.).

Conditions

- Standard, but not in default for more than 30 days with the lending institution as on March 1, 2020.
- **Resolution framework** must be implemented within 90 days from the date of invocation.

- Resolution under this framework may be invoked not later than December 31, 2020
- The concessions / moratorium under resolution plans shall be subject to a maximum of two years

Criteria for Implementation of Resolution Plan

- Execution of Documentation
- Changes are updated in system/ books
- Borrower is not in default with the lending institution as per the revised terms.

Asset Classification & Provisioning

- Lending institutions shall keep provisions from the date of implementation, which are higher of the provisions held as per the extant IRAC norms immediately before implementation, or 10 percent of the renegotiated debt exposure of the lending institution post implementation.

Reversal of provision

- Half of the above provisions may be written back upon the borrower paying at least 20 per cent of the residual debt without slipping into NPA post implementation of the plan, and the remaining half may be written back upon the borrower paying another 10 per cent of the residual debt without slipping into NPA subsequently.

Loans Other than Personal Loans referred above

Conditions

- Standard, but not in default for more than 30 days with the lending institution as on March 1, 2020.
- **In case of multiple lending institution Resolution framework is approved by lenders having 75% of total outstanding (FB + NFB) and 60% of lending institution in numbers**
- **Resolution framework** must be implemented within 180 days from the date of invocation.
- Resolution under this framework may be invoked not later than December 31, 2020
- The concessions / moratorium under resolution plans shall be subject to a maximum of two years
- **The Reserve Bank shall constitute a committee to decide financial parameters** which, in their opinion would be required to be factored into the assumptions that go into each resolution plan, and the sector specific benchmark ranges for such parameters. **(Expert Committee).** The financial parameters are prescribed in RBI/2020-21/34 DOR.No.BPBC/ 13 /21.04.048/2020-21 dated September 7, 2020
- Expert Committee shall also have the responsibility of vetting the resolution plans in respect of all accounts

Bank Audit

where the aggregate exposure of the lending institutions at the time of invocation of the resolution process is ₹1500 crore and above.

- The concessions / moratorium under resolution plans shall be subject to a maximum of two years
- The Resolution Plan may involve any action / plan / reorganization including, but not limited to, regularisation of the account by payment of all over dues by the borrower entity, sale of the exposures to other entities / investors, change in ownership and restructuring except compromise settlement.
- The securities, if any received by Lending Institution by conversion of Debt into security shall be governed by extant instructions on investments.
- The valuation of Equity Shares received as per resolution plan shall be as under:
 - a. Equity instruments, where classified as standard, shall be valued at market value, if quoted, or else, should be valued at the lowest value arrived using the following valuation methodologies:
 - i. Book value (without considering 'revaluation reserves', if any) which is to be ascertained from the company's latest audited balance sheet. The date as on which the latest balance sheet is drawn up should not

precede the date of valuation by more than 18 months. In case the latest audited balance sheet is not available the shares are to be collectively valued at Re.1 per company.

- ii. Discounted cash flow method where the discount factor is the actual interest rate charged to the borrower on the residual debt post restructuring plus a risk premium to be determined as per the board approved policy considering the factors affecting the value of the equity. The risk premium will be subject to a floor of 3 per cent and the overall discount factor will be subject to a floor of 14 per cent. Further, cash flows (cash flow available from the current as well as immediately prospective (not more than six months) level of operations) occurring within 85 per cent of the useful economic life of the project only shall be reckoned.
- b. Equity instruments, where classified as NPA shall be valued at market value, if quoted, or else, shall be collectively valued at Re.1.
 - In case the lending institutions convert any portion of the debt into any other security, the same shall collectively be valued at Re.1.
 - Resolution plans in respect of accounts

where the aggregate exposure of the lending institutions at the time of invocation of the resolution process is ₹100 crore and above, shall require an independent credit evaluation (ICE) by any one credit rating agency (CRA)

- Additional Lending and Repayment should be routed through escrow mechanism.

Criteria for Implementation of Resolution Plan

- Execution of ICA within 30 days by **lenders having 75% of total outstanding (FB + NFB) and 60% of lending institution in numbers**
- Changes are updated in system/ books
- Borrower is not in default with the lending institution as per the revised terms.

Asset Classification & Provisioning

- Additional Finance standard till implementation of resolution plan – Standard, if not implemented within 180 days then classification based on extant guidelines for additional finance or based on original facility whichever is worse.
- In case where Resolution plan is implemented

Bank Audit

- o For lending institutions which signed ICA within 30 days : higher of the provisions held as per the extant IRAC norms immediately before implementation, or 10 percent of the total debt, including the debt securities issued in terms of clause 30, held by the ICA signatories post-implementation of the plan (residual debt).
- o Lending institutions which did not sign the ICA within 30 days of invocation shall, immediately upon the expiry of 30 days, keep provisions of 20 per cent of the debt on their books as on this date (carrying debt), or the provisions required as per extant IRAC norms, whichever is higher. Even in cases where the invocation lapses on account of the thresholds for ICA signing not being met, in terms of clause 18 of RBI circular, such lending institutions which had earlier agreed for invocation but did not sign the ICA shall also be required to hold 20 percent provisions on their carrying debt.

Reversal of provision

- In respect of ICA signatories within 30 days Half of the above provisions may be written back upon the borrower paying at **least 20 per cent of the**

residual debt without slipping into NPA post implementation of the plan, and **the remaining half may** be written back upon the borrower paying **another 10 per cent of the residual debt** without slipping into NPA subsequently.

- In respect of the others while half of the provisions may be reversed upon repayment of **20 percent of the carrying debt**, the other half may be reversed upon repayment of another **10 per cent of the carrying debt** subject to the required IRAC provisions being maintained.

Performance Monitoring

- Default within monitoring period (i.e. 10 percent of the *residual debt, subject to a minimum of one year from the commencement of the first payment of interest or principal (whichever is later)*) shall trigger review period of 30 days.
- If default continues then downgraded to NPA from the date of implementation of the resolution plan or the date from which the borrower had been classified as NPA before implementation of the plan, whichever is earlier.

Extension for Resolution of Stressed Assets

RBI has issued direction 'Prudential Framework for Resolution of Stressed Assets'

vide circular RBI/2018-19/ 203 DBR.No.BP. BC.45/21.04.048/2018-19 dated June 7, 2019 with a view to providing a framework for early recognition, reporting and time bound resolution of stressed assets.

The RBI circular RBI/2019-20/219 DOR.No.BP. BC.62/21.04.048/2019-20 dated April 17, 2020 on COVID19 Regulatory Package – Review of Resolution Timelines under the Prudential Framework on Resolution of Stressed Assets states as under;

- In respect of accounts which were within the Review Period as on March 1, 2020, the period from March 1, 2020 to May 31, 2020 shall be excluded from the calculation of the 30-day timeline for the Review Period. In respect of all such accounts, the residual Review Period shall resume from June 1, 2020, upon expiry of which the lenders shall have the usual 180 days for resolution.
- In respect of accounts where the Review Period was over, but the 180-day resolution period had not expired as on March 1, 2020, the timeline for resolution shall get extended by 90 days from the date on which the 180-day period was originally set to expire.
- The requirement of making additional provisions specified in paragraph 17 of the Prudential Framework shall be triggered as and when the extended resoluti

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Ind AS Alert

I. Indian Accounting Standards: Update

- **Exposure Draft of Amendments to Ind AS 37, Ind AS 16, Ind AS 103 and Annual Improvements to Ind AS (2021)** – The ASB has issued the Exposure Drafts on February 18, 2021, proposing the following amendments to Ind AS corresponding to the amendments to respective IFRS Standards for seeking public comments:

(i) **Onerous Contracts—Cost of Fulfilling a Contract (Amendments to Ind AS 37, Provisions, Contingent Liabilities and Contingent Assets)** – Proposed amendments specify which costs an entity includes in determining the cost of fulfilling a contract for the purpose of assessing whether the contract is onerous.

(ii) **Property, Plant and Equipment: Proceeds before Intended Use (Amendments to Ind AS 16, Property, Plant and Equipments)** – Paragraph 17(e) of Ind AS 16 specifies that directly attributable costs includes the costs of testing whether an asset is functioning properly, after deducting the net proceeds from selling items produced while bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management. Amendments to Ind AS 16 proposes to prohibit an entity from deducting the proceeds from selling items produced before that asset is available for use (proceeds before intended use) from the cost of an item of property, plant and equipment.

(iii) **Reference to the Conceptual Framework (Amendments to Ind AS 103, Business Combinations)** – Amendments propose to replace the reference to the Conceptual Framework and to add an exception to its recognition principle to avoid any changes to the assets and liabilities recognised in a

business combination and also to clarify the requirements for contingent assets—that is, possible assets whose existence is uncertain.

- (iv) **Annual Improvements to Ind AS (2021)** – Amendments are proposed to Ind AS 101, Ind AS 109 and Ind AS 41 corresponding to amendments to IFRS Standards issued by IASB as part of its annual improvements process.

The Exposure Drafts of aforesaid amendments to Ind AS can be assessed at <https://www.icai.org/post/exposure-drafts-of-amendments-to-indas-for-comments>. The last date for submitting comments is March 20, 2021.

- **Amendment to Ind AS corresponding to amendments to IFRS Standards due to IBOR Phase II project of IASB** – The amendments focus on the effects on financial statements when a company replaces the old interest rate benchmark with an alternative benchmark rate as a result of the reform. The amendments relate to specific requirements of these Ind AS to assist companies to provide investors with useful information about the effects of the reform on the financial statements. As informed to stakeholders in the last edition of Ind AS Alert, the Exposure Draft of Amendments to Ind AS 104, Ind AS 107, Ind AS 109 and Ind AS 116 corresponding to respective IFRS Standards was issued by the ASB of ICAI seeking comments from stakeholders. The Amendments to Ind AS, as finalised and approved by the ASB and the Council of the ICAI have been submitted to NFRA as per due process.

- **Educational Material on Ind AS 105, Non-current Assets held for Sale and Discontinued Operations** – As a part of Ind AS Implementation initiatives, the ASB has issued the Educational Material on Ind AS 105. The same can be assessed at <https://www.icai.org/post/educational-material-on-indas-105>

Contributed by Accounting Standards Board of 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, https://www.icai.org/post.html?post_id=15770 for Ind AS Implementation Guidance

II. IFRS Foundation & IASB: Stakeholder Consultations

(A) Exposure Draft: Regulatory Assets and Regulatory Liabilities

The IASB has proposed a new accounting standard that would require companies subject to rate regulation to give investors better information about their financial performance. Rate regulation determines how much compensation a company is entitled to charge customers for goods or services supplied in a period and when the company can include that compensation in the regulated rates charged. In some cases, a difference in timing arises because part of the compensation for goods or services supplied in a period must be included in the rate charged for goods or services supplied in a different period (past or future).

When those differences in timing occur, the revenue reported by a company for a period in its statement of financial performance and the assets and liabilities reported in its statement of financial position do not give a complete picture of the compensation that the rate regulation entitles the company to charge for goods or services supplied in that period. Currently, IFRS Standards do not require companies to inform investors about those differences in timing. The proposed Standard would introduce a requirement for companies to give investors such information by reporting regulatory assets and regulatory liabilities in their statement of financial position, and related regulatory income and regulatory expense in their statement of financial performance. This information would help investors understand which fluctuations in the relationship between a company's revenue and expenses are caused by those differences in timing so that investors could make better assessments of the company's prospects for future cash flows. If finalised as a new IFRS Standard, the IASB's proposals would replace IFRS 14 Regulatory Deferral Accounts.

To invite comments from Indian stakeholders, the above Exposure Draft has been issued, with last of comments being May 10, 2021, by the ASB of ICAI at its website and the same can be assessed at <https://www.icai.org/post/ed-regulatory-assets-and-regulatory-liabilities>

(B) COVID-19 related IFRS 16 amendments

The IASB had added a project to the work plan to extend the time period over which the practical expedient in paragraph 46A of IFRS 16 is available for use. The practical expedient permits lessees not to assess whether particular rent concessions occurring as a direct consequence of the COVID-19 pandemic are lease modifications and, instead, to account for those rent concessions as if they were not lease modifications. The IASB added this project in the light of (a) information about lessors continuing to grant COVID-19-related rent concessions to lessees; and (b) the ongoing significant effects of the COVID-19 pandemic. The IASB had issued the Exposure Draft proposing amendment to IFRS 16 to extend the availability of the practical expedient in paragraph 46A so that it applies to rent concessions for which any reduction in lease payments affects only payments originally due on or before 30 June 2022, provided the other conditions for applying the practical expedient are met. The shorter period of 14 days till February 25, 2021 was provided for comments. The ICAI has submitted the comments on the Exposure Draft.

(C) IFRS Interpretation Committee (IFRS IC) Agenda Decision:

The IFRS IC from time to time issues Tentative Agenda Decisions for public comments across the globe on various issues considered by it. In this regard, following Tentative Agenda Decisions are issued with last date of comments being April 14, 2021:

- Costs Necessary to Sell Inventories (IAS 2)
- Preparation of Financial Statements when an Entity is No Longer a Going Concern (IAS 10)

National Update

RBI sets rules for digital payments in India

The Reserve Bank of India (RBI) published detailed guidelines to strengthen India's digital payments architecture and improve security, control and compliance among banks, gateways, wallets and other nonbanking entities that are at the vanguard of helping New Delhi achieve its goal of a 'less-cash' economy. The new rules come at a time when India's burgeoning payments ecosystem has seen increased instances of outages, frauds and cyber breaches. The new rules set the framework for all regulated entities to standardise their security operations to emulate best practices defined by Mint Road. The RBI circular on payments security will have implications for not only banks but also third party payments apps. These rules are directly applicable for scheduled commercial banks, small finance banks, payment banks and credit card-issuing NBFCs. The new set of norms also specifies the criteria under which regulated entities can form partnerships and interact with third-party apps and ecosystem players such as mobile applications, payment operators and gateways.

Source: <https://economictimes.indiatimes.com>

MCA to lift open the 'ownership' veil on Limited Liability Partnerships

After taking steps to identify the "real owners (individuals)" with "beneficial ownership" in companies, the government has now turned its sight on Limited Liability Partnerships (LLPs). It has now decided to identify those individual(s) holding/exercising significant ownership/control in LLPs by requiring them to disclose details of their "Significant Beneficial Owners" (SBOs) so that those with "controlling interests" are identified. A beneficial owner -- different from a legal owner -- is an individual who ultimately owns or controls more than 25 per cent (or sometimes even more than 10 per cent) of a company's shares or exercises control over the management. The provisions around SBOs in the Companies Act 2013 are proposed to be soon extended to LLP Act, the MCA has now said.

The whole intent behind obtaining SBO declaration in LLPs is to find out the real owner of the entity concerned.

(Source: <https://rbidocs.rbi.org.in/>)

RBI permits residents to make remittances to IFSCs under LRS

The Reserve Bank on Tuesday permitted resident individuals to make remittances under the Liberalised Remittance Scheme (LRS) to International Financial Services Centres (IFSCs) in the country. The decision of the RBI is aimed at deepening the financial markets in the IFSCs and providing an opportunity to resident individuals to diversify their portfolios.

The RBI, in a notification, said it has reviewed the extant guidelines on LRS and decided to permit resident individuals to make remittances under LRS to IFSCs set up in India under the Special Economic Zone Act, 2005.

(Source: <https://www.livemint.com/>)

MCA & CBIC sign MoU for exchange of data for enhancing Ease of Doing Business in India

The Ministry of Corporate Affairs (MCA) and the Central Board of Indirect Taxes and Customs (CBIC) recently signed a Memorandum of Understanding (MOU) for data exchange between the two organisations. The MoU was signed by Joint Secretary, MCA, and ADG, CBIC, Secretary, MCA and Chairman, CBIC. The arrangement will ensure that both MCA and CBIC have seamless linkage for regulatory purposes. In addition to regular exchange of data, MCA and CBIC will also exchange with each other, on request, any information available in their respective databases, for the purpose of carrying out scrutiny, inspection, investigation and prosecution. Technology and data will play a critical role going forward in fulfilling the Government's vision of minimum government, maximum governance and both MCA and CBIC are well placed to fulfil this vision. The MoU comes into force from the date it was signed and is an ongoing initiative of MCA and CBIC, who are already collaborating through various existing mechanisms. A Data Exchange Steering Group has also been constituted for the initiative, which will meet periodically to review the data exchange status and take steps to further improve the effectiveness of the data sharing mechanism. The MoU marks the beginning of a new era of cooperation and synergy between the two organisations.

International Update

Call for academic research to inform the IASB's post-implementation reviews of IFRS Standards

The IFRS Foundation is calling for research proposals to help inform the International Accounting Standards Board's planned post-implementation reviews of three Standards, focusing specifically on the quality of disclosures provided by companies applying IFRS 9 Financial Instruments, together with the disclosure requirements in IFRS 7 Financial Instruments: Disclosures, and on the disclosures required by IFRS 15 Revenue from Contracts with Customers. The deadline for submitting research proposals is 31 March 2021. Access more details about the call for research on IFRS website.

Additionally, the Australian Accounting Review is calling for papers for a special issue of the journal that will focus on academic research related to the application and impact of IFRS 9. Expressions of interest to contribute to the special issue must be given by 15 April 2021.

(Source: <https://www.ifrs.org>)

Voices Accountants can Save the Planet while Helping Businesses Flourish

Sustainability data will be central to a corporation's long-term license to operate and thus inseparable from prospective financial return and risk. To be viable, these reporting standards should be focused solely on sustainability-related financial disclosure tailored to the investor's needs. They must relate to the economic value creation of the business. However, their impact would be much broader. The benefits would be threefold: First, we would see better-informed dialogue between investors and companies. A research has already shown how companies with higher sustainability ratings receive 15 percent more investment. At the same time, the agreed standards would lead to better alignment between the license to operate

and the demands of sustainable development. Finally, they would allow businesses to see and reflect on their performance in a new and radical business environment, while keeping accountancy relevant in the 21st century.

(Source: <https://www.accountingtoday.com>)

FASB OKs goodwill alternative for private cos., nonprofits

The Financial Accounting Standards Board approved a tweak to the goodwill rules for private businesses and not-for profits, giving them more flexibility on when to do impairment assessments of triggering events. FASB voted to approve the goodwill triggering event alternative during a virtual board meeting last week, giving privately held companies and non profit organizations the ability to put off doing an impairment assessment until they have to prepare an annual report, instead of needing to monitor and measure such events throughout the year. Entities won't be required to provide incremental disclosures as a result of the new amendments that are coming out from FASB. The move comes at a time when FASB has been providing extra flexibility during the COVID-19 pandemic to both private and public companies, as well as non-profits. It has been delaying effective dates for a year or more to give them more time to deal with not only the pandemic, but also the constant succession of accounting standards they have needed to implement at their organizations. At the same time, FASB has been continuing work on a larger goodwill impairment project that has been the subject of debate among its stakeholders.

FASB is expected to issue an Accounting Standards Update soon, however, on the tweak in the triggering event rules for private companies, but that too could have an impact on companies that go public.

(Source: <https://www.accountingtoday.com>)

Reference

ACCOUNTANT'S BROWSER

PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE

Index of some useful articles taken from Periodicals received for the reference of Faculty/Students & Members of the Institute.

1. Accountancy

Does IFRS mode of annual reporting meet the expectations of the investor? A case study of Dr. Reddy's laboratories limited by Suleman and K V Achalapathi. *Indian Journal of Accounting*, Vol.52/1, 2020, pp.67-74.

Has tax and accounting relationship come to nothing? An investigation into the decision usefulness of financial information disclosure by Koholga Ormin and Bashir Tijjani. *Journal of Accounting and Taxation*, Vol.12/4, 2020, pp.157-174.

2. Auditing

Fraud risk management in internal audit by Deepjee Singhal and Manish Pipalia. *Bombay Chartered Accountant Journal*, Vol.52-B/4, January 2021, pp.33-36.

Independence of statutory auditors- Controversies and remedies by Somnath Ghosh. *Indian Journal of Accounting*, Vol.52/1, 2020, pp.83-91

Reporting in Secretarial Audit- A Transformational perspective by Abhinav Kumar K P. *Chartered Secretary*, Vol.51/1, January 2021, pp.138-141.

3. Economics

External debt and growth: Role of stable macroeconomic policies by Sima Rani Dey and

Mohammad Tareque. *Journal of Economics, Finance and Administrative Science*, Vol.25/50, 2020, pp.185-204.

Indian Economy : Independent Economic Policy by Madhusudhanan S. *The Global Analyst*, Vol.10/1, January 2021, pp.24-26.

RBI working group recommends changes to banking guidelines by Abdullah Fakihi. *Chartered Secretary*, Vol.51/1, January 2021, pp.128-132.

Relationship between Economic Growth and Foreign Direct Investment & Global Competitiveness: Indian evidence by Subrata Roy. *Indian Journal of Accounting*, Vol.52/1, 2020, pp.16-33.

4. Management

Evolution of corporate governance in Anglo-European Jurisdictions- An overview by O.N. Ravi. *Chartered Secretary*, Vol.51/1, January 2021, pp.86-89.

5. Taxation and Finance

Progression of direct tax revenue in India- An assessment by S. Jayadev and Anupama R. *Indian Journal of Accounting*, Vol.52/1, 2020, pp.75-82.

Recent development in GST by G.G. Goyal and C.B. Thakar. *Bombay Chartered Accountant Journal*, Vol.52-B/4, January 2021, pp.91-93.

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.

Legal Decisions

Income Tax



**LD/69/107, [ITAT Delhi: ITA. No.4965/Del/2016],
Dy. Commissioner of Income Tax Vs.
DLF Assets Pvt. Ltd., 25/01/2021**

Assessee was engaged in developing, leasing as well as maintenance and operations of commercial properties under SEZ. Section 80-IAB deduction allowed on rental income derived from SEZ which was reported under the head of 'Income from House Property' for AY 2012-13. Revenue had denied deduction on the ground that deduction under section 80-IAB is available only from the profits and gains derived by an undertaking from any 'business'. As per ITAT, profits should be derived from eligible business irrespective of head of income. Head of income would not be a limiting or debilitating factor as per ITAT.

LD/69/108, [Telangana High Court: W.P. Nos.19243 and 19259 of 2020], Business parks Hyderabad Pvt. Ltd. Vs. Income Tax Department, 22/01/2021

Adjustment of refund under section 245 against stayed demand, in excess of 20%, held to be illegal. High Court directed refund of amount so adjusted alongwith interest @ 15% p.a. within 4 weeks to the assessee. For appeal pending for AY 2017-18, assessee had paid 10% of disputed total demand of ₹ 8.01 crore and requested the Revenue to adjust balance 10% amounting to 80lakhs against refund pending for AY 18-19 and the Revenue however adjusted refund of ₹ 1.30 crore without prior intimation. High Court held that invocation of Section 245 without giving prior written intimation about the proposed adjustment of refund against the outstanding demand is bad in law. At best only 80lakhs of refund was adjustable as per the High Court as per CBDT Office Memorandum dated 29/02/2016.

**LD/69/109, [Delhi High Court: W.P. (C) 9020/2019],
Sarita Puri Vs. Principal Commissioner of Income Tax-
18 & Anr, 22/01/2021**

Petitioner had preferred a Writ petition for AYs 2011-12 and 2013-14 against incorrect calculation of refund and interest under section 244A which was due to petitioner's late husband. Revenue submitted that refund was granted to the Petitioner on the basis of records furnished. High Court rejected the petition holding that there is remedy provided for under the statute which should be followed prior to invoking Article 226 of the Constitution.

**LD/69/110, [ITAT Mumbai: ITA No.6528/M/2018],
Shri Shailendra Bhandari Vs. Asst. Commissioner of
Income Tax, 21/01/2021**

The assessee had paid an advance of ₹ 10.75 crore to a builder against booking of Flat, which booking was cancelled later and the builder returned the said amount alongwith a compensation of ₹ 2.5 crores. Cancellation had to be done since builder was not allowed to raise the building height upto a level on which the flats were to be constructed. Revenue rejected assessee's stand that said ₹ 2.5 crore formed part of the sale consideration and was to be assessed under 'capital gains' and rather Revenue contended that the same was taxable as Income from other sources. Revenue based their argument on the fact that gain accreted on transfer of shares in the immovable property did which did not exist at all. ITAT noted that transfer of capital asset includes transferring or enabling the enjoyment of any immovable property by way of becoming a member of or acquiring a share in a company or by way of any agreement or arrangement or in any other manner whatsoever.

**LD/69/111, [Dehli High Court: W.P. (C) 285/2020,
CM Nos. 857/2020], Tahiti Design Private Limited
Vs. Joint CIT, Central Wing, Central Range-8, Delhi,
19/01/2021**

Pursuant to search and seizure, the assessee had

Contributed by CA. Sahil Garud, GST & Indirect Taxes Committee (CA, Member Telang), Disciplinary Directorate and ICAI's Editorial Board Secretariat. For details please visit Editorial Page webpage at <https://www.icai.org/post/editorial-board>. Readers are invited to send their comments on the selection of cases and their utility at cbboard@icai.in. For full judgement write to cbboard@icai.in.

Legal Update

approached the Settlement Commission pursuant to notices served under section 153A for AYs 2013-14 to 2018-19, despite which the Revenue passed the order under section 271DA for violation of provisions of Section 269ST for AYs 2018-19 & 2019-20. High Court observed that powers of the Settlement Commission under section 245D(4) to pass such order as it thinks fit are not confined to matters covered by the application but also extend to "any other matter relating to the case not covered by the application, but referred to in the report of the Principal Commissioner or Commissioner". High Court held that Settlement Commission has exclusive jurisdiction on the imposition of penalty in matter before it.

LD/69/112, [Bombay High Court: ITA. No. 1544 of 2012], Commissioner of Income Tax 1 Vs. Chempsec Chemicals P. Ltd, 19/01/2021

During pendency of Revenue's appeal before the HC, assessee opted for settlement under the Vivad se Vishwas Act and upon payment of the amounts as arrived at by the designated authority, sought for withdrawal of appeal by the Revenue. High Court observed that having allowed an assessee to opt for settlement and having determined the tax payable, it would be wholly unjust and unfair to allow the Revenue to continue proceeding with the appeal pending in the High Court notwithstanding settlement of dues of the assessee under the scheme. High Court clarified that even when the income tax department is in appeal before the High Court the assessee can ask for settlement under the Act and if he pays the determined tax amount, the income tax department would be under an obligation to withdraw the appeal.

LD/69/113, [ITAT Bench Mumbai: ITA. No. 3788/Mum/2018], M/s Go Airlines (India) Limited Vs. Deputy Commissioner of Income Tax -5(1)(1), 13/01/2021

Unabsorbed depreciation being lower of, brought forward loss and unabsorbed depreciation as per books of account, directed to be reduced for the computation of book profits under section 115JB in case of assessee. Assessee had reduced

depreciation for computing its book profit under section 115JB in AY 2011-12 and 2013-14, however the Revenue had denied the reduction 'to eliminate the multiple relief'. Unless the entire loss as per books of accounts gets wiped out by profits earned in subsequent years, the said loss would continue to remain in the balance sheet of the assessee i.e. "books of accounts" and would be eligible for reduction for purposes of Section 115JB.

LD/69/114, [ITAT Mumbai: ITA. Nos. 3590 & 3592/MUM/2019], Dy. Commissioner of Income Tax, Vs. M/s. Reliance Infrastructure Ltd., 13/01/2021

Interest on external commercial borrowing (ECB) utilised by assessee-company for making investment in its sister concern held to be an allowable business expenditure since income from such investment was offered to tax by the assessee. Revenue alleged that the assessee had made indirect investment in Reliance Communications Ltd. (RCL) through Mauritius protected investment vehicle 'Pluri Cell E' (who issued yield management certificates linked to RCL shares) and disallowed proportionate interest holding the same was not related to business purposes. ITAT stated that after taxing the income from application of funds, the AO cannot turn his back and claim that the expenditure on borrowing is not allowable as business expense.

LD/69/115, [ITAT Pune: ITA. No. 601/PUN/2017], DCIT Vs. M/s. Barclays Technology Centre India Pvt. Ltd, 12/01/2021

Disallowance disallowance under section 40(a) (ia) for TDS non-deduction under section 194J on leased line charges paid by assessee-company deleted by the ITAT. Leased line charges paid by the assessee was in the nature of 'Royalty' under the terms of Explanation 6 to Section 9(1) (vi), inserted by the Finance Act, 2012 w.r.e.f. 01-06-1976. ITAT noted that Finance Act, 2012 was enacted somewhere after the close of the F.Y. 2011-12 (i.e. AY 2012-13), explains that the liability to deduct tax at source can be fastened only under the law prevailing at the time of payment and if no liability exists at the time of payment, any

subsequent retrospective amendment cannot be enforced against the payer.

Pune ITAT deletes disallowance under section 40 (a)(ia) for TDS non-deduction under section 194J on leased line charges paid by assessee-company during AY 2012-13 acknowledges that the leased line charges paid by the assessee was in the nature of ₹ 'Royalty' under the terms of Explanation 6 to Section 9(1)(vi), inserted by the Finance Act, 2012 w.r.e.f. 01-06-1976. However noting that the Finance Act, 2012 was enacted somewhere after the close of the F.Y. 2011-12 (i.e. AY 2012-13), explains that the liability to deduct tax at source can be fastened only under the law prevailing at the time of payment and if no liability exists at the time of payment, any subsequent retrospective amendment cannot be enforced against the payer.

*LD/69/116, [ITAT Bangalore: ITA. No. 282/Bang/2017],
M/s. Karnataka Power Corporation Limited, Bengaluru
Vs. The Asst. Commissioner of Income-tax, 11/01/2021*

Revenue had done a suo-moto rectification of issues which were not raised in appellate proceedings. ITAT dismissed the same holding as time-barred under section 154(7). Revenue calculated the period of limitation from the date of order passed after ITAT's remand order instead of the date of assessment order initially passed by applying the doctrine of merger. Doctrine of merger applies only in respect of such items which were the subject matter of appeal. If the matter of dispute is same in two rectification orders passed then the period of limitation would be calculated from the date of first rectification



GST

*LD/69/117, [2021-TIOL-147-HC-AHM-GST]
Nipun a Bhagat Proprietor of Steel Kraft
Industries Vs. State Of Gujarat, 04/01/2021*

The Blocking of Electronic credit Ledger under rule 86A of the CGST Rules is permissible only in circumstances mentioned in the said rule and not for recovery of tax dues of the entity where the

assessee was a director for some period of time. In the above case, the Hon'ble High Court held that Rule 86A can be invoked only if the conditions stipulated therein are fulfilled. In other words, it is only if the Commissioner or an officer authorized by him has reasons to believe that the credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible for the reasons stated in Rule 86A(1)(a) to (d) that the authority would get the jurisdiction to exercise the power under Rule 86A of the Rules. It therefore cannot be invoked for the recovery of dues of any other company.

SERVICE TAX

*LD/69/118, [2021-TIOL-84-CESTAT-DEL],
M/s Beekay Engineering Corporation Ltd. Vs
Principal Commissioner Of Central Tax And Central
Excise, 27/01/2021*

Indivisible Turnkey contracts are not liable to service tax prior to 01-06-2007. In the above case, the Hon'ble Tribunal did not accept the argument of the Revenue that the contracts are divisible. It noted that an identical matter was decided by the court in respect of the same assessee in the case of Beekay Engineering 2017-TIOL-1116-CESTAT-DEL. It further held that the Hon'ble Supreme Court in the case of CCE, Kerala vs. Larsen and Toubro Ltd. - 2015-TIOL-187-SC-ST has categorically held that the Works Contracts involving the supply of goods as well as the provision of services cannot be subjected to service tax for the period up to 31.05.2007. Since the entire demand in the present case is prior to 01.06.2007, the demand is not sustainable, as has been held in the impugned order. The Tribunal also held that when the applicability of judgment of the Supreme Court in the case of Larsen and Toubro Ltd (supra) to the appellant's case was decided by the Tribunal, Commissioner was required to follow the judicial discipline. The impugned order was therefore set aside and the appeal was allowed#

Legal Update

EXCISE

LD/69/119, [2021-TIOL-257-HC-MAD-CX], In the High Court of Madras Commissioner of Central Excise Vs. M/s Aswin Textiles Pvt Ltd., [20-01-2021]

When an employee of the assessee committed bona-fide mistake of availing CENVAT credit based on the CVD amounts mentioned on the bill of entries by custom authorities, although no CVD was paid and reversed the same along with interest when pointed out by the department during the audit and the department issued Show Cause Notice for imposing penalty under section 11AC of the Central Excise Act after 2.5 years, the

provisions of section 11AC cannot be said to be attracted on the ground of intention to evade tax.

LD/69/120, [2021-TIOL-216-HC-AHM-CX], Cebon Apparels Pvt. Ltd. Vs The Commissioner Central Excise, 18/01/2021

When the tribunal was convinced as regards the actual export of the goods and that a report of the superintendent verifying the actual physical export of goods based on shipping bills and BRC etc was available on record, the tribunal was not right in remanding the matter back to the adjudicating authority.

Disciplinary Case



Signing of Balance sheet, Profit & Loss Account and Audit Report without holding certificate of practice (COP) -- Held, Respondent is guilty of professional misconduct within the Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act 1949

Held:

In the instant case, the allegation against the

Respondent is that he signed the Balance sheet, Profit & Loss Account and Audit Report for the financial year 2009-10 without holding certificate of practice. The Respondent in his defence submitted that he signed the financial report of the firm for the Financial Year 2009-10 unintentionally as he was not aware that his certificate of Practice has been cancelled due to non-payment of fees and further accepted/admitted his mistake. The Committee noted the provision of Section 6 (1) of the Chartered Accountants Act, 1949 states that "no member of the Institute shall be entitled to practice (whether in India or elsewhere) unless he has obtained from the Council a certificate of practice." Thus the Respondent has clearly violated the provisions of Act and is prima facie guilty as admitted by him. In view of above noted facts, the Committee was of the opinion that the Respondent is guilty of professional misconduct falling within the meaning Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 (as amended).

Circulars/Notifications

Given below are summarised important Circulars and Notifications issued by the CBDT, CBIC-GST, MCA and FEMA since the publication of the last issue of the journal, for information and use of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/notification. Suggestions on this column can be submitted at eboard@icai.in



I. NOTIFICATIONS

1. Procedure, Formats and Standards of issue of Permanent Account Number (PAN) - Notification No. 01/2021, dated 08-02-2021

This Notification supersedes Notification No. 07/2018 dated 27.12.2018. Vide this notification, DGIT(Systems) has laid down the procedure, format and standards for issue of PAN.

Refer: <https://www.incometaxindia.gov.in/communications/notification/notification2021.pdf>

2. Notification u/s 138 for sharing of information with "Chief Executive Officer, Center for e-Governance, Government of Karnataka" - Notification No. 05/2021, dated 11-02-2021

In exercise of the powers conferred by section 138(1)(a), the CBDT vide this notification has directed that DGIT(Systems), New Delhi shall be the specified authority for furnishing information to CEO, Center for e-Governance, Government of Karnataka. The mechanism of sharing of information is specified vide Order dated 11.02.2021.

Refer: https://www.incometaxindia.gov.in/communications/notification/notification_5_2021.pdf

II. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM/ORDER

1. Clarification regarding approval for attachment provided in the Order dated 19.10.2020 issued u/s 119 - Office Memorandum, dated 19-01-2021

CBDT has clarified that the prior approval of Pr. CIT/Pr. DIT/CIT/DIT concerned shall be required

for requisition u/s 226(2) and issuance of notice u/s 226(3) w.r.t. Order u/s 119 dated 19.10.2020 wherein, at Para 2 the provision of approval for attachment of movable or immovable property by AO or Tax Recovery Officers (TRO) is mentioned.

Refer: https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/436/Clarification_TRO_Misc_Comm_20_1_21.pdf



GST

I. CIRCULARS

Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017

The CBIC has issued Circular No. 145/01/2021 GST dated 11th February, 2021 to provide the guidelines for implementation of the provision of suspension of registrations under **sub-rule (2A) of rule 21A** of the CGST Rules, 2017, till the time an independent functionality for **FORM REG-31** is developed on the portal.

It has been clarified that the registration of specified taxpayers shall be suspended on the recommendation of the Council and system generated intimation for suspension and notice for cancellation of registration shall be made available to the taxpayer on their dashboard on common portal in **FORM GST REG-17** till the time **FORM REG-31** is made functional on the portal. The taxpayers, whose registrations are suspended, would be required to furnish reply to the jurisdictional tax officer within thirty days from the receipt of such notice / intimation in **FORM GST REG-18** online through Common Portal.

Matter on Direct and Indirect Taxes, is contributed by Direct Taxes Committee, GST & Indirect Taxes Committee and Corporate Laws and Corporate Governance Committee of ICAI respectively. FEMA updates by CA. Manoj Shah, CA Himesh Doshi and CA. Sudha G. Bhushan

Legal Update

The Proper officer, post examination of the response received from the said person, may pass an order either for dropping the proceedings for suspension/ cancellation of registration in **FORM GST REG-20** or for cancellation of registration in **FORM GST REG-19**. Based on the action taken by the proper officer, the GSTIN status would be changed to "Active" or "Cancelled Suo-moto" as the case maybe.

Such suspension can be revoked by the proper officer by passing an order in **FORM GST REG-20** if he is prima facie satisfied by the reply of the taxpayer. Post such revocation, the proper officer can continue with the detailed verification of the documents and recovery of short payment of tax, if any. Further, he can re-initiate the proceeding of cancellation of registration by issuing notice in **FORM GST REG-17** if he finds that the registration of the said person is liable for cancellation.

Detailed guidelines can be accessed from www.cbic.gov.in.

CUSTOMS

I. NOTIFICATIONS

Amendments in Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 [IGCR Rules] have been amended vide *Notification No. 09/2021-Customs (N.T.) dated 1st February, 2021* as under:

- to allow job-work of the materials (except gold and jewellery and other precious metals) imported under concessional rate of duty
- to allow 100% out-sourcing for manufacture of goods on job-work
- to allow imported capital goods that have been used for the specified purpose to be cleared on payment of differential duty, along with interest, on the depreciated value. The depreciation norms would be the same as applied to EOUs, as per Foreign Trade Policy.

II. CIRCULARS

Systemic improvements regarding modification in the Bond (B-17) Execution process

The CBIC has issued *Circular No.03/2021-Customs dated 3rd February, 2021* to clarify that in case of B-17 bond executed by EOU/STP/EHTPs in capacity of proprietorship or partnership firm, surety cannot be given by proprietor/ partner himself. Such sureties must be given by an independent legal entity other than the proprietor/ partner of the concerned proprietorship/ partnership.



Clarification on holding of AGM through VC (Video Conferencing) or OAVM (Other Audio Visual Means)

The Ministry of Corporate Affairs via Circular no. 02/21 dated 13th January, 2021 clarified that companies whose AGMs were due to be held in the year 2020, or become due in the year 2021, are allowed to conduct their AGM on or before 31st December 2021 through Video Conferencing (VC) or Other Audio-Visual Means (OAVM) i.e. in accordance with the requirements as provided in paragraphs 3 and 4 of the General Circular No. 20/2020 dated 5th May, 2020.

An announcement in this regard, has also been hosted on the ICAI website. Link for the same has been given below: <https://icai.org/post/clarification-on-holding-of-agm-through-vc>

Scheme for condonation of delay for companies restored during Dec 2020 u/s 252 of the Companies Act, 2013

The Ministry of Corporate Affairs has introduced a new scheme namely, "Scheme for condonation of delay for companies restored on the Register of Companies between 01 December, 2020 and 31 December 2020, under section 252 of the Companies Act, 2013". The Scheme provides to condone delay in filing forms with the Registrar, and spares payment of additional fees.

The Scheme shall be applicable for filing of all e-forms except e-form SH-7 (where any increase in authorised share capital is involved) and Charge Related Documents such as CHG-1, CHG-4, CHG-8 and CHG-9.

An announcement in this regard, has also been hosted on the ICAI website. Link for the same has been given below: <https://icai.org/post/scheme-for-condonation-of-delay-for-companies-restored-on-the-register-of-companies>.

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Availability of Companies Fresh Start Scheme-2020 Form as e-form w.e.f. 16th January, 2021

With regard to the Companies Fresh Start Scheme, 2020 (CFSS-2020) introduced by MCA, the application for seeking immunity in respect of belated documents filed under the CFSS Scheme has to be made electronically in the Form CFSS-2020 after closure of the scheme i.e. 31.12.2020 and after the documents are taken on file, or on record or approved by the Designated Authority as the case may be but not after 30th June' 2021 i.e. the expiry of six months from the date of closure of the Scheme.

In this regard, MCA has informed that the CFSS 2020 Form is available for filing as e-form w.e.f. 16th January, 2021 for all the stakeholders.

An announcement in this regard, has also been hosted on the ICAI website. Link for the same has been given below: <https://icai.org/post/availability-of-companies-fresh-start-scheme-2020>.

Commencement notification for the provisions of Companies (Amendment) Act, 2020

The Central Government has appointed the 22nd day of January 2021 as the date on which the following provisions of the Companies (Amendment) Act, 2020 shall come into force namely: Section 2, 11, 18(c), 21, 22(ii), 25, 27, 53, 55, 58, 59, 60, 62, 64, 65.

The said section of Companies Act, 2013 are as follows; Section 2(52), 62(1)(a)(i), 89, 105(5), 117(3)(g), 129A, 135, 379, 393A, 410, 418A, 435(1), 446B, 452(2), 454(3).

Refer: <https://resource.cdn.icai.org/62854/clcg50849.pdf>

Companies (CSR Policy) Amendment Rules, 2021

The Ministry of Corporate Affairs has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 via notification dated 22nd January, 2021 w.r.t Rule 2 for Definitions, Rule 4 for CSR Implementation, Rule 5 for CSR Committees, Rule 7 for CSR Expenditure, Rule 8 for CSR

reporting, Rule 9 for Website Disclosure, Rule 10 for Transfer of Unspent CSR.

Refer: https://www.mca.gov.in/Ministry/pdf/CSRAmendmentRules_22012021.pdf

Extension of filing of e-form AOC-4, AOC-4 (CFS), AOC-4 XBRL and AOC-4 Non XBRL for the FY 2019-20 upto 15th Feb 2021

The Ministry of Corporate Affairs has extended the due date for filing e-form AOC-4, AOC-4 (CFS), AOC-4 XBRL and AOC-4 Non XBRL for the Financial Year ended 31.03.2020 upto 15th February 2020 vide its notification dated 28th January, 2021.

An announcement in this regard, has also been hosted on the ICAI website. Link for the same has been given below: <https://resource.cdn.icai.org/62885/clcg300121b.pdf>.

Amendment in Companies (Specification of Definitions Details) Rules, 2014

The MCA has amended Rule 2 of the Companies (Specification of Definitions Details) Rules, 2014 pursuant to which the definition of small company as specified in Sec 2(85) of the Companies Act, 2013 has been revised. The revised limits for determining small company is paid up capital and turnover of the small company shall not exceed two crore rupees and twenty crore rupees respectively.

Refer: <https://www.egazette.nic.in/WriteReadData/2021/224862.pdf>

Amendment of Companies (Incorporation) Rules, 2014

The MCA amends the Companies (Incorporation) Rules, 2014 w.e.f. 1.4.2021.

Pursuant to the amendment, an 'Indian Citizen whether Resident in India or otherwise' is eligible to incorporate a OPC and become a nominee for the sole member of a OPC. Further, the eligibility criteria for 'residential status' for the purpose of OPC has been reduced to 120 days from 182 days. Moreover, the threshold prescribed for mandatory conversion of OPC into Private Company or Public Company has been removed.

Refer: <https://www.egazette.nic.in/WriteReadData/2021/224872.pdf>

Legal Update

Amendment of Companies (Share Capital and Debentures) Rules, 2014

The Ministry of Corporate Affairs has inserted rule 12A in the Companies (Share Capital and Debentures) Rules, 2014 w.e.f. 01.04.2021 for reducing the offer period for Right Offer under Section 62(1)(a)(i) of the Act to minimum seven days.

Accordingly, after amendment, where a company having a share capital proposes to increase its subscribed capital by the issue of further shares, by offering such shares to its existing equity shareholders, the time period, within which the offer shall be made for acceptance shall not be less than seven days from the date of offer.

Refer: <https://www.egazette.nic.in/WriteReadData/2021/225109.pdf>

Commencement notification of provisions of Producer Companies under Companies Act, 2013

The Central Government has appointed the 11th February 2021, as the date on which the provisions of the Producer Company as provided in Section 52 of the Companies (Amendment) Act, 2020 shall come into force.

Further, vide notification dated 11.02.2021, the MCA introduced Producer Companies Rules, 2021.

Refer: <https://www.egazette.nic.in/WriteReadData/2021/225115.pdf>

and <http://www.egazette.nic.in/WriteReadData/2021/225116.pdf>



Summary Information on few Compounding Orders issued after 1st March 2020

S. No.	Party Name	Nature of Contravention	Date of Order	Compounding Fees (₹)
1.	Hussain Herbal Ltd.	Regulation 15(iii) of FEMA 120 – Delay in filing for APR with respect to overseas investment. Regulation 6(2)v of FEMA 120 – Not routing all transactions relating to investment in JV/WOS through only one branch of authorised dealer.	22-01-2021	2,05,246
2.	Dina Manoj Thacker	Regulation 3 of Schedule 3 of FEMA 5(R) – Credits and Debits to NRO Accounts are specified at Regulation 3 of Schedule 3 of FEMA 5(R). Any debit/credit other than those specified will be treated as Contravention.	23-11-2020	65,000
3.	Ajay Virchand Dharamshi	Regulation 3 of FEMA 7(R)/2015-RB dated January 21, 2016 – Restriction on acquisition or transfer of immovable property outside India without general or special permission of RBI.	29-06-2020	2,65,786
4.	M/s ETF Noida Project Office (CT-19A)	Regulation 4(f) read with Annex D of Regulation 4(l) of Notification No. FEMA 22(R)/RB-2016 – Contravention in relation to delayed/non submission of Annual Activity certificate for Project office	04-06-2020	2,02,284

Composition of the Standing and Non-Standing Committees for the Year 2021-22

A. STANDING COMMITTEES

Executive Committee
President in Office
CA. Nihar N Jambusaria
Vice-President in Office
CA. (Dr.) Debashis Mitra
Examination Committee
President in Office
CA. Nihar N Jambusaria
Vice-President in Office
CA. (Dr.) Debashis Mitra
Finance Committee
President in Office
CA. Nihar N Jambusaria
Vice-President in Office
CA. (Dr.) Debashis Mitra
Disciplinary Committee (u/s 21 D)
President in Office
CA. Nihar N Jambusaria
Vice-President in Office
CA. (Dr.) Debashis Mitra

B. NON-STANDING COMMITTEES

Accounting Standards Board
Chairman
CA. M P Vijay Kumar
Vice Chairman
CA. (Dr.) Sanjeev Kumar Singhal
Audit Committee
Chairman
Dr. Ravi Gupta
Vice Chairman
CA. Babu Abraham Kallivayalil
Auditing & Assurance Standards Board
Chairman
CA. G Sekar
Vice Chairman
CA. Shriniwas Y Joshi
Board of Studies (Academic)
Chairman
CA. Jay Chhaira
Vice Chairman
CA. Ranjeet Kumar Agarwal
Students Skills Enrichment Board (Board of Studies – Operations)
Chairman
CA. Sushil Kumar Goyal

Vice Chairman
CA. Pramod Kumar Boob
Banking, Financial Services and Insurance Committee
Chairman
CA. Prakash Sharma
Vice Chairman
CA. Chandrashekhar V Chitale
Committee for Members in Practice
Chairman
CA. (Dr.) Sanjeev Kumar Singhal
Vice Chairman
CA. Prasanna Kumar D
Committee on Capital Markets and Investors' Protection
Chairman
CA. Anuj Goyal
Vice Chairman
CA. Rajesh Sharma
Committee on Economic, Commercial Laws & Economic Advisory
Chairman
CA. Tarun J Ghia
Vice Chairman
CA. Manu Agrawal
Direct Taxes Committee
Chairman
CA. Chandrashekhar V Chitale
Vice Chairman
CA. Pramod Jain
Corporate Laws and Corporate Governance Committee
Chairman
CA. Shriniwas Y Joshi
Vice Chairman
CA. Anuj Goyal
Editorial Board
Editor-in-chief
CA. Nihar N Jambusaria
Joint Editor
CA. (Dr.) Debashis Mitra
Ethical Standards Board
Chairman
CA. Prafulla P Chhajed

ICAI News

Vice Chairman

CA. Kemisha Soni

Expert Advisory Committee

Chairman

CA. Nandkishore C Hegde

Vice Chairman

CA. G Sekar

Financial Reporting Review Board

Chairman

CA. Aniket S Talati

Vice Chairman

CA. Dayaniwas Sharma

Committee on Public and Government Financial Management

Chairman

CA. Dheeraj Kumar Khandelwal

Vice Chairman

CA. Rajesh Sharma

Coordination Committee with Sister Institutes

Leader

CA. Nihar N Jambusaria

Deputy Leader

CA. (Dr.) Debashis Mitra

GST & Indirect Taxes Committee

Chairman

CA. Rajendra Kumar P

Vice Chairman

CA. Sushil Kumar Goyal

Digital Accounting and Assurance Board

Chairman

CA. Manu Agrawal

Vice Chairman

CA. Dayaniwas Sharma

Internal Audit Standards Board

Chairman

CA. Charanjot Singh Nanda

Vice Chairman

CA. Anil S Bhandari

International Affairs Committee

Chairman

CA. Nihar N Jambusaria

Vice Chairman

CA. (Dr.) Debashis Mitra

Committee on International Taxation

Chairman

CA. Pramod Jain

Vice Chairman

CA. Nandkishore C Hegde

Committee on Management Accounting

Chairman

CA. Charanjot Singh Nanda

Vice Chairman

CA. Satish Kumar Gupta

Committee for Members in Industry & Business

Chairman

CA. Hans Raj Chugh

Vice Chairman

CA. Durgesh Kumar Kabra

Peer Review Board

Chairman

CA. Dayaniwas Sharma

Vice Chairman

CA. Nandkishore C Hegde

Professional Development Committee

Chairman

CA. Babu Abraham Kallivayalil

Vice Chairman

CA. Satish Kumar Gupta

Research Committee

Chairman

CA. Anuj Goyal

Vice Chairman

CA. Pramod Kumar Boob

Committee for Development of International Trade, Services & WTO

Chairman

CA. Tarun J Ghia

Vice Chairman

CA. Hans Raj Chugh

Infrastructure Development Committee

Chairman

CA. Nihar N Jambusaria

Vice Chairman

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CA. Pramod Jain

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CA. Sushil Kumar Goyal
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Vice Chairman
CA. Prasanna Kumar D
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Deputy Convenor
CA. Kemisha Soni
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Convenor
CA. Shriniwas Y Joshi
Deputy Convenor
CA. Rajendra Kumar P
Legal Directorate
Convenor
CA. (Dr.) Debashis Mitra, Vice President
Deputy Convenor
CA. Pramod Kumar Boob
Publication & CDS Directorate
Convenor
CA. Sushil Kumar Goyal
Deputy Convenor
CA. Rajendra Kumar P
Members & Students Services (Grievances Handling and e-Sahaayataa) Directorate
Convenor
CA. Dayaniwas Sharma
Deputy Convenor
CA. Prakash Sharma

ICAI News

Publications released by Sustainability Reporting Standards Board, ICAI (2020-21)

Background Material on Business Responsibility and Sustainability Reporting (BRSR)



Sustainability Reporting Standards Board of the Institute of Chartered Accountants of India has developed "Background Material on Business Responsibility and Sustainability Reporting (BRSR)" to provide guidance on disclosure of qualitative information, assurance aspects and adoption of best practices. Business

Responsibility and Sustainability Report is an open and transparent way of disclosing non-financial information to the stakeholders. Securities and Exchange Board of India (SEBI) has mandated top 1000 listed entities by market capitalisation to file Business Responsibility Reports (BRR) as per the disclosure requirement emanating from the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business' (NVGs). In November 2018, Committee on Business Responsibility Reporting was constituted by the Ministry of Corporate Affairs. The Committee released its report in August 2020, recommending new comprehensive framework of Business Responsibility and Sustainability Report (BRSR) in line with global trends.

SRSB has taken this initiative of bringing out this "Background Material on Business Responsibility and Sustainability Reporting (BRSR)" to provide necessary guidance and in-depth knowledge of this area to all members and other stakeholders at large. This background material contains an overview of global trends in corporate sustainability reporting, National Guidelines on Responsible Business Conduct, 2018 (NGRBC), UN Sustainable Development Goals, MCA

BRSR disclosures, sustainable finance, assurance aspects, etc. The objective of this background material is to aid chartered accountants in playing proactive role in integration of business practices in line with global sustainability frameworks and support businesses to measure, assess and report social impacts. The publication is available online at <https://resource.cdn.icai.org/63084srsb51035.pdf>

Standard on Assurance Engagements (SAE) 3410 "Assurance Engagements on Greenhouse Gas Statements"



Sustainability Reporting Standards Board of the Institute of Chartered Accountants of India has issued Standard on Assurance Engagements (SAE) 3410 "Assurance Engagements on Greenhouse Gas Statements" to strengthen assurance frameworks for Non-Financial Information.

This Standard on Assurance Engagements (SAE) 3410 deals with assurance engagements to report on an entity's Greenhouse Gas (GHG) statement. The objective of an engagement under SAE 3410 is to obtain either limited or reasonable assurance, as applicable, about whether the GHG statement is free from material misstatement, whether due to fraud or error. GHG statements are assured to enhance the reliability of the emissions information being reported on. The approach adopted in SAE 3410 requires the practitioner to select procedures appropriate to the circumstances of the engagement based on an assessment of risks of material misstatement. The Standard is available online at <https://resource.cdn.icai.org/62857srsb50843.pdf>

Classifieds

- 5841** A 40 year old CA firm based in Mumbai is looking for paid assistance/partner having experience of more than 10 years in Audit & Assurance can send CV/Profile on shahpathik123@gmail.com
- 5842** CA firm in Gurugram requires Articles having both groups of IPCC passed. Good academic record. Excellent communication skills must.

Contact :- Nisha Rana, RKACA & Associates LLP, Phone :- 0124-4102000, Extn. 108, E-mail: nisha.rana@rka-india.com

- 5843** We are looking for expansion of our existing firm through merger of old proprietorship firm based in Delhi/NCR. Interested chartered accountant/tax practitioners may contact us at taxserz@gmail.com

Online Self-Paced Course on 'Public Finance and Government Accounting'

The Committee on Public and Government Financial Management (CP&GFM) has recently launched online Self-paced course on Public Finance & Government Accounting on Digital Learning Hub (DLH) Platform of ICAI.

Modules covered:

Module 1: Public Finance
Module 2: Public Revenue & Taxation
Module 3: Public Debt
Module 4: Public Expenditure
Module 5: Government Accounting
Module 6: Accounting Rules, Process, in general & at specific Ministries
Module 7: Union Accounts
Module 8: State Accounts
Module 9: Accounting / Auditing of Constitutional, Statutory, Autonomous and Regulatory Bodies
Module 10: Accounting in Local Bodies (Both Urban and Rural)
Module 11: Internal Control and Risk Management
Module 12: Professional Opportunities for Chartered Accountants in Government Accounting

- The course consists of video recordings of lectures of the Certificate Course on Public Finance and Government Accounting and MCQ based assessment.
- The course cover concepts of Public Finance and Government Accounting at Central and State Governments and Local Bodies as well.
- The course will make members aware about Professional Opportunities and Challenges for CAs in the field of Public Finance and Government Accounting.
- The access to this course is free to all members of ICAI at the DLH Platform of ICAI at <https://learning.icai.org/iDH/icai/>.
- Members of ICAI may claim 20 Unstructured CPE Hours on completion of the said course.

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Campus for Newly Qualified Chartered Accountants (NQCA's) February- March, 2021

Maintaining strong and spontaneous relationship with the industry and other business houses remains the main focus of the Committee for members in Industry & Business (CMI&B) of the Institute of Chartered Accountants of India (ICAI). An initiative to that effect remains the Campus Placement Programme (held twice a year) that provides a platform to both the NQCA's and the organizations looking for to hire the best available talents to fulfil their human resource requirement. ICAI simply acts as a facilitator to bring the recruiter and NQCA's together.

Invitation to Organisations: Any corporation, irrespective of its size, standing in the market and boundary of its business, can take part in this placement programme being held at several centers across the country during February- March, 2021.

Campus Interview Schedule:		
No.	Centre	Dates
1	Mumbai & New Delhi	4 th , 5 th , 6 th , 8 th , 9 th & 10 th March, 2021
2	Bengaluru	5 th , 6 th , 8 th , 9 th & 10 th March, 2021
3	Chennai	6 th , 8 th , 9 th , 10 th & 11 th March, 2021
4	Kolkata	8 th , 9 th , 10 th , 11 th & 12 th March, 2021
5	Ahmedabad, Jaipur, Pune & Hyderabad	9 th , 10 th & 11 th March, 2021
6	Durgapur, Ernakulam & Visakhapatnam	31 st March, 2021
7	Kanpur	31 st March & 1 st April, 2021
8	Bhubaneswar, Chandigarh, Coimbatore, Indore, Noida & Thane	31 st March & 1 st April, 2021

Invitation to Candidates: The above Campus is meant for the candidates, who would be passing the CA Final examination held in Nov- Dec, 20 and also for others who have qualified earlier and are fulfilling the criteria mentioned in the Announcement.

Organizations intending to recruit NQCA's through campus scheme are requested to get in touch with the CMI&B Secretariat, ICAI Bhawan, Indraprastha Marg, New Delhi -110002, and Email: campus@icai.in, Tel No. (011)30110555 and to register log on to <https://cmib.icai.org/>.

Candidates may email at cjob@icai.in, Tel No. (011)30110491 and to register log on to <https://cmib.icai.org/>.

Chairman
Committee for Members in Industry & Business
The Institute of Chartered Accountants of India

Organised By:
Committee for Members in Industry & Business (CMI&B)
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

'ICAI BHAWAN', Post Box No.: 7100, Indraprastha Marg, New Delhi - 110002
Tel. No.: (011) 30110555 | E-mail: campus@icai.in

Result of Chartered Accountants Foundation Examination held in November - 2020

The result of the Foundation Examination held in November 2020 was declared recently.
The details of percentage of candidates passed in the above said examination are given below:

GENDER	No. of Candidates appeared	No. of Candidates passed	% of Pass	No. of Exam Centres
MALE	40276	14543	36.11	976
FEMALE	37738	12784	33.88	
TOTAL	78014	27327	35.03	

The details of top three rank holders on the all India basis for the Foundation Examination held in November - 2020 with the marks secured by them are also given herewith.

Toppers of Chartered Accounts Foundation Examination November - 2020

	ALL INDIA TOPPER FIRST RANK		ALL INDIA SECOND RANK	ALL INDIA THIRD RANK
				
Name	Puneet Agrawal	Nidhi Dineshkumar Lalwani	Chinmay Bengani	Prasannakumar Prafull Surana
City	Bharatpur	Ichalkaranji	Coimbatore	Nashik
Marks	361/400	361/400	359/400	357/400
%	90.25	90.25	89.75	89.25

Result of Chartered Accountants Intermediate (IPC) Examination held in November - 2020

The result of the Chartered Accounts Intermediate (IPC) Examination was declared recently.
The details of percentage of candidates passed in the above said examination are given below:

	Candidates applied for	No. of candidates appeared	No. of candidates passed	% of pass
I	Group-I	9608	1129	11.75
II	Group-II	21119	3192	15.11
III	Both Groups	4094	74	1.81

The details of top three rank holders on the all India basis for the Intermediate (IPC) Examination held in November - 2020 are also given herewith.

ICAI News

Toppers of Chartered Accountants Intermediate (IPC) Examination November - 2020

	ALL INDIA TOPPER FIRST RANK	ALL INDIA SECOND RANK	ALL INDIA THIRD RANK
			
Name	Zarin Begum Yusuf Khan	Ajit B Shenoy	Siddarth Menon R
City	Mumbra	Chennai	Palakkad
Marks	461/700	436/700	408/700
%	65.86	62.29	58.29

Result of Chartered Accountants Intermediate (New) Examination held in November - 2020

The result of the Chartered Accountants Intermediate (New) Examination was declared recently. The details of percentage of candidates passed in the above said examinations are given below:

	Candidates applied for	No. of candidates appeared	No. of candidates passed	% of pass
I	Group- I	64243	16473	25.64
II	Group-II	43134	9425	21.85
III	Both Groups	28644	4895	17.09

The details of top three rank holders on the all India basis for the Intermediate (New) Examination held in November - 2020 are also given herewith.

Toppers of Chartered Accountants Intermediate (New) Examination November - 2020

	ALL INDIA TOPPER FIRST RANK	ALL INDIA SECOND RANK	ALL INDIA THIRD RANK
			
Name	Shreya Rakesh Tibrewal	Ranveer Sanju Soni	Sanskruti Atul Parolia
City	Ahmedabad	Mumbai	Mumbai
Marks	701/800	699/800	690/800
%	87.63	87.38	86.25

Result Analysis of Chartered Accountants Final Examination (Old Scheme) held in November - 2020

The details of percentage of candidates passed in the above said examinations are given below:

	Candidates applied for	No. of candidates appeared	No. of candidates passed	% of pass
I	Group-I	12026	2145	17.84
II	Group-II	17132	5442	31.77
III	Both Groups	4143	242	5.84

Consequent to declaration of result as mentioned above, 5675 candidates qualified as Chartered Accountants.

Toppers of Chartered Accountants Final (Old Scheme) Examination November - 2020

	ALL INDIA TOPPER FIRST RANK	ALL INDIA SECOND RANK	ALL INDIA THIRD RANK
			
Name	Essakiraj A	Sripriya R	Mayank Singh
City	Salem	Chennai	Jaipur
Marks	553/800	501/800	489/800
%	69.13	62.63	61.13

Result Analysis of Chartered Accountants Final Examination (New Scheme) held in November - 2020

The details of percentage of candidates passed in the above said examinations are given below:

	Candidates applied for	No. of candidates appeared	No. of candidates passed	% of pass
I	Group-I	32542	4179	12.84
II	Group-II	27907	8643	30.97
III	Both Groups	19284	2790	14.47

Consequent to declaration of result as mentioned above, 5392 candidates qualified as Chartered Accountants.

Toppers of Chartered Accountants Final (New Scheme) Examination November - 2020

	ALL INDIA TOPPER FIRST RANK	ALL INDIA SECOND RANK	ALL INDIA THIRD RANK
			
Name	Komal Kishor Jain	Mudit Agrawal	Rajvi Bhadresh Nathvani
City	Mumbai	Surat	Mumbai
Marks	600/800	589/800	587/800
%	75	73.63	73.38

ICAI in Media

ICAI in Media : Glimpses of January 2021-February 2021



ICAI becomes Affiliate Member of Pan African Federation of Accountants (PAFA)

By Taxscan, On Jan. 28, 2021

In its endeavor of expanding its global outreach and getting a foothold in African regions, the Institute of Chartered Accountants of India (ICAI) has taken membership of Pan African Federation of Accountants (PAFA) which would enable ICAI to connect closely with the professional organizations based in African countries and also to promote such initiatives of ICAI which are of global relevance with PAOs in these jurisdictions.

Established in 2011, PAFA is a non-profit organisation currently with 55 Professional Accountancy Organisations (PAOs) from 44 African countries. Its mission is to accelerate and strengthen the voice and capacity of the Accountancy profession to work in the public interest, facilitate trade, and enhance benefits and quality services to Africa's citizens.

ICAI has a strong base in Africa with about 2500 members

and a robust presence with 6 ICAI overseas Chapters and 13 Representative Offices.

ICAI has also signed a mutual reciprocity agreement with the South Africa Institute of Chartered Accountants (SAICA) and has technical co-operation agreements with the National Board of Accountants & Auditors, Tanzania, and Institute of Certified Public Accountants of Kenya (ICPAK).

ICAI has offered the PAOs in Africa its initiatives namely Unique Documents Identification Number (UDIN), Digital Learning Hub, and Digital Competency Maturity Model (DCMM) 2.0: which has been well appreciated by them.

ICAI strongly believes that it has a larger role to play in the development of the global accountancy profession and ICAI would be happy to extend its assistance in developing of the accountancy profession in the African Region. Being an Affiliate member of PAFA would provide the relevant impetus for the same by sharing its initiatives with PAOs in the African Region.

Further, cordial relations in the region along with a strong presence there would facilitate in bringing foreign investment to India and aiding in the vision of "Aatmanirbhar Bharat" of the Government of India.

Feb 03, 2021, Mid-Day

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DOI: 10.1002/pola.23901

Two Mumbai girls bag CA top honours

Komal Jain from Chatkopar comes first, while Kandivli resident Rajvi Nathani secures the third place in the national-level examination.

FALLS ENANT

Journal of Management Inquiry 20(1) 3-14
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Two girls are among the top five scores in Chaffetz's *Accountancy* Agent. The results for which were distributed on Tuesday. *Alma Jean* (Chaffetz) and *Rachel* (Nashville) from Knoxville, both Commerce graduates, graduated from their respective colleges last year and cleared the CPA Exam in their first attempt. While they ranked first with 100.00% marks, *Nashville* ranked third with 99.00% marks, after *Alma Jean* scored from four in the second place.

"I spend much time as I had promised and told his people, you, was good for me. But the time has certainly come as a great surprise after all the state's and shows this year."



Equal杰哥with her parents. She scored 60(5/100). Raju/赫哥with her parents. She scored 51(3/100)

"I want to work for a company that is committed to sustainability or human rights," said Jain, whose father is a doctor in the U.S. Army.



on January 1, they scored 517,000

The University of Utah declined to comment on whether its position on taking out the bookends. The issue is currently a major topic for discussion on the Senate and State Committee with long papers. "It was not as good as I thought it would be, there is a lot of work to be done," said the staff.



12 February, 2021, by ANI

New Delhi [India], February 12 (ANI): The Council of the Institute of Chartered Accountants of India (ICAI) on Friday elected its new President and Vice-President for 2021-2022.

"Nihar N Jambusaria has been elected as the President and Debashis Mitra has been elected as the Vice-President of ICAI with effect from February 12, 2021," an official statement by the institute informed.

The ICAI is a statutory body established by the Chartered Accountants Act, 1949 for regulating the profession of Chartered Accountancy in the country.

The Institute, functions under the administrative control of the Ministry of Corporate Affairs, Government of India. The ICAI is the second largest professional body of Chartered Accountants in the world. (ANI)

EducationTIMES

ICAI elects Nihar N Jambusaria as New President

TNN | Posted on Saturday, February 13, 2021

The Council of the Institute of Chartered Accountants of India (ICAI) has elected its new president and vice-president for the term 2021-2022.

Nihar N Jambusaria is the new president and Debashis Mitra has been elected as the new Vice-President of ICAI.

Jambusaria qualified as a Chartered Accountant in 1984 and was in practice for nearly 27 years. He has also served as Chairman of WIRC of ICAI in 2004-05.

Jambusaria is now Chairman of all Standing Committees including Executive, Finance and Examination Committees. He is also the chairman of the ICAI Research wing, ICAI – Accounting Research Foundation and Extensible Business Reporting Language (XBRL) India.

Debashis Mitra has an extensive experience of more than 33 years. Besides being a practicing member, he is a Cost Accountant, Company Secretary, Law graduate and a qualified Information Systems Auditor. He was awarded PhD for his Thesis 'A Critical Study of Select Indian GAAP, US GAAP and IAS / IFRS'.



February 14, 2021, by The Sentinel

ICAI elects new office-bearers, Guwahati CA holds top post

STAFF REPORTER

GUWAHATI, Feb 13: The Institute of Chartered Accountants of India (ICAI), a statutory body set up in 1949 by an Act of Parliament to regulate the CA profession in the country, has elected its new president CA Nihar N Jambusaria from Mumbai and vice president CA (Dr) Debashis Mitra from Guwahati.

This is first time in the history of ICAI that a member from Guwahati has been elevated to the post of vice president of the Second largest Accounting body in the world. CA Dr Mitra has an extensive experience of more than 33 years. Apart from a CA he is also Cost Accountant, Company Secretary, Law Graduate, qualified Information System Auditor and Ph D holder. He is regular trainer in various fields in audit, corporate law. He has served as chairman of Eastern India Regional Council and also chairman of Guwahati Branch of ICAI. He has held various key positions in Central council like chairman Board of Studies, Corporate Law Committee, member of Disciplinary Body of ICAI. Apart from being associated with ICAI he is active member of other organizations and bodies.

BusinessLine

ICAI reads out riot act to members, students

KR Srivats New Delhi | Published on February 15, 2021

Cautions them against using social media to tarnish the image of the profession CA Institute members and students watch out. The Institute of Chartered Accountants of India (ICAI) has cautioned them against taking to social media to post any content that tarnishes the image of the CA profession or the Institute in the eyes of the public.

According to the Institute, the punishment for any such action could be as harsh as initiating disciplinary proceedings against the member concerned and even cancellation of registration of the student, thereby preventing the student from pursuing a career in chartered accountancy.

This move is seen as the Institute's response to the recent agitation through the social media by certain sections of students to get the November/December edition of the CA exams postponed.

Redress of grievances

In an advisory, the Institute said that it has come across certain instances where members and students have taken to the social media to express their grievances related to profession/academics without first taking up the issue(s) with the Institute. Some had also written directly to the Corporate Affairs Ministry and other higher forums for redress of grievances, the advisory noted.

The advisory highlighted that some of the posts are "highly objectionable" and have the potential to create social and communal disharmony, threatening peace, tranquility and may disrupt the security of the nation, public order and friendly relations with other nations.

In certain cases, material posted on social media was found to be false and misleading and tarnishing the image of the profession in the eyes of the public and bringing disrepute to the profession, the advisory said.

It highlighted that under the Chartered Accountants Act 1949, a member of the Institute, whether in practice or not, would be "deemed to be guilty of other misconduct", if he brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

As far as the students are concerned, the ICAI advisory said that any such action will be liable for appropriate action including cancellation of their registration.



ICAI launches international curriculum

The curriculum is launched to achieve internationalisation of higher education as per the NEP

Times News Network

Over the years, the role of a chartered accountant (CA) has been evolving continually to assume newer responsibilities in a dynamic environment. The causative factors for the change include glob-

alisation leading to an increase in cross border transactions and consequent business complexities, significant developments in Information and Technology and financial scams underlining the need for a stringent regulatory setup.

As a result, the Institute of

Chartered Accountants of India (ICAI) has launched courses in the international affairs policy and international curriculum.

The international curriculum of ICAI is, in line with the stated intent, being designed to attract students and aspirants from develop-

ing nations in the initial stages of economic development, who in turn will contribute to the economic growth of their countries.

The international curriculum has been launched with an aim to achieve internationalisation of higher education.



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