KSCAA

Karnataka State Chartered Accountants Association ®

NEWS BULLETIN

November 2020

Vol. 8, Issue 3

₹ 25/-

Karnataka State Chartered Accountants Association

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Since 1957

English Monthly

for Private Circulation only

- Cross Charge under GST
- IPR in India
- Rule 36(4) - GST
- Sections 45(3), 50C & 56(2)(x) of Income Tax Act
- New Optional Tax Regime under Income Tax Act
- Section 80P of Income Tax Act

From the President

Dear Professional friends,

In the most intrigued and bitterly fought Elections to the Office of US President, the people of America have chosen Mr. Joe Biden as their President. The Indo- US relationship largely depend on the political aspiration of the belief they bring to the table. It is also historically important to note that, an Indian American, Ms. Kamala Harris will be the first Women Vice-President in the history of United States. In the world of diplomacy, "There are no permanent friends, or permanent enemies; but only permanent interests". India keenly awaits to unfold a lot of clarity in its Commercial, Defence and Diplomatic interest.

The month of November also marks the arrival of the "Festival of Lights – Deepawali", which sets in long period of leaves and festivities for Indians. The grand festival also symbolises, victory of light over darkness, good over evil and knowledge over ignorance. The sacrosanct essence of Deepawali is that we shell out the negativity and kill the demon inside us. This year's wish comes with set of caution due to the prevailing condition of COVID-19 and by being complacent, it can be ill fated and any negligence can create more concern.

Representations

Our association along with other professional bodies, vehemently made **representation along with a press note for extension of various due dates to the Hon'ble Finance Minister and Hon'ble Prime Minister of India.** All the requests which were made met a favourable outcome including the one made **to the Government of Karnataka** to extend the due date for **submission of Audit Report under the Karnataka State Co-operative Societies Act, 1959** and has brought cheer amongst the professionals and businessmen.

News Roundup

Direct Tax

As a result of representations made as mentioned above, the same has been well accepted and due dates for filing tax returns for AY 2020-21 in case of the taxpayers who need to get their accounts audited or furnish reports on Specific Domestic or International transactions, the deadline is now 31-01-2021. For the rest, it has been extended to 31-12-2020, from the earlier deadline of 30-11-2020. Further, the due date of filing tax audit report and report in respect of International / Specified Domestic Transactions has also been extended to 31-12- 2020 from the earlier extended deadline of 31-10-2020. Further, the due date for the taxpayer whose self-assessment tax liability is up to ₹1 lakh had been extended to 30-11-2020. The CBDT provided a sunset date of 31-12-2020 for filing declaration under Vivad Se Vishwas Act, 2020. Further, an extension has been provided of time limits for payment under the said Act at 100% of the disputed tax by 31-03-2021, with an additional amount of 10% on or after 01-04-2021, but before a date which is yet to be notified.

Indirect Tax

The festive mood of Dasara and Deepawali is rebooted with the news of GST Annual return extension for FY 2018-19, which is now due by 31-12-2020.

In this spree of extensions, we should also mind the fact that working till the last moment only adds to our pressure. I wish to give my thoughts on how we could win over this:

a) Complete the GST reconciliation for FY 2019-20 along with Tax Audits / Income Tax filings, without waiting for taking it up separately and keep the formats ready.
b) Propose clients and persuade your team to do the data compilation and reconciliation as soon as possible to reduce the last minute burden. This would give a better horizon of the GST position of your client.
c) Involve yourself and your team in various knowledge enriching sessions conducted by KSCAA and others on various topics of GST.
d) See how you could make the GST audit exercise a value additive one for your client rather than mere compliance of law. Work on ratios of Input, outputs and comparisons with previous year data, see the possibility of tax effective structuring of transaction, possibility of availing eligible credits, otherwise missed. A good amount of credit is generally accumulated on account of Bank Charges, POS machine rentals, Stationery and other Office Expenditures, which could miss out and could be traced from GSTR 2A.

Let us all work towards completing the GST audits well in advance, without expecting another extension.

Corporate Law

The MCA vide general circular dated 20th October, 2020 further relaxed the residency requirement of directors clarifying that non-compliance of minimum residency in India for a period of at least 182 days in a year, by at least one director in every company, under section 149 of the Companies Act, 2013 shall not be treated as non-compliance for the FY 2020-21.

The MCA vide notification dated 16th October, 2020 has eased the norms for companies issuing securities to QIBs on Private Placement basis by providing exception of passing a single blanket Special Resolution which shall be valid for a year.

As a part of Government of India's Ease of Doing Business (EODB) initiative, the Ministry of Corporate Affairs has integrated SPICe+ Incorporation Forms with Profession Tax [PT] – Karnataka w.e.f 08-10-2020.

Conclusion:

Our profession which relies on knowledge, beholds the rich heritage from experience of learnings, a treasure which every professional continues to practice to mend his learning. Even the great philosopher, Confucius once said "By three methods we may learn Wisdom: First, by reflection, which is noblest; Second, by imitation, which is easiest; and third by experience, which is the bitterest." This only assures that the wheel of learning needs to continue even during these times and its undiminishing importance.

On the auspicious occasion of festival of lights, I wish all the readers a very happy Deepawali.
Happy reading!

Yours' Sincerely,
CA. Kumar S Jigajinni
President

KSCAA NEWS BULLETIN

November 2020

Vol. 8 Issue 03

No. of Pages : 40

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Karnataka State Chartered Accountants Association ®

VISION

- KSCAA shall be the trusted and value based knowledge organisation providing leadership and timely influence to support the functional breadth and technical depth of every member of CA profession;
- KSCAA shall be the nucleus of activity, amity and unity among members aimed at enhancing the CA profession's social relevance, attractiveness and pre-eminence;
- KSCAA shall in the public interest, be a proactive catalyst, offering a reliable and respected source of public statement and comments to induce effective laws and good governance;
- KSCAA shall be the source of empowerment for leadership and excellence; disseminating knowledge to members, public and students; building a framework for new opportunities and partnerships that enhance life in the community and beyond; encouraging highest ethical standards and professional integrity, in realization of India global leadership vision.

MISSION

- The KSCAA serves the interests of the members of CA profession by providing new generation skills, amity, unity, networking and leadership to strengthen the professional capabilities, integrity, objectivity, social relevance, standards and pre-eminence of India's Chartered Accountants nationally and internationally through; becoming gateway of knowledge for Chartered Accountants, students and public; helping members add value to their customers/employers by enhancing their professional excellence and services; offering a reliable and respected source of public policy advice and comments to bring about more effective laws and policies and transparent administration and governance.

MOTTO: KNOWLEDGE IS STRENGTH

KSCAA welcomes articles & views from members for publication in the news bulletin / website.

email: journal@kscaa.com | Website: www.kscaa.com

Basic Concepts under Overseas Direct Investments (ODIs) in India

■ CA. Santhosha Kumar

Introduction

Liberalization, Globalization and Privatization of our economy has led to many structural changes in Indian tax and regulatory system including foreign exchange regulations which was governed previously under Foreign Exchange Regulation Act, 1973 popularly known as FERA. On 29th December 1999, The Foreign Exchange Management Act, 2000 was enacted and a new era of Foreign Exchange Management came into place.

Key ODI Drivers

ODIs through Joint Ventures are perceived to be a key in the economic integration policy which will enable Indian residents to:

- Access better technological know-how to Indian Companies
- Expand business across the globe
- Access more demanding and extensive markets
- Spread their customer base with global footprints

The Cumulative ODI outflows through Equity, Debt and Guarantee issued between April 18 to September 2020 is at ***USD Million 84,147.06. The top ODI destination being Singapore followed by the United States of America which accounts for nearly 42% of the total ODI outflows from India. (Source https://dea.gov.in)***

Regulatory Framework for ODIs

In 2000, The Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2000 was issued which paved the way for Direct Investments outside India by way of Joint Venture or Wholly Owned Subsidiary outside India. Over a period of time, these regulations went in for further liberal changes which is consolidated under the **Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad, FED Master Direction No. 15/2015-16.**

Direct Investment outside India is covered under *capital account transactions* which needs to be read with applicable notification, regulation, circular and FAQs to understand the latest position. Following are the applicable regulatory framework for ODIs.

- Section 6(3)(a) of FEMA, 1999 read with FEM (Permissible Capital Account Transactions), Regulations, 2000
- FEM (Transfer or Issue of Any Foreign Security) Regulations, 2000 popularly referred as (FEMA 120)
- AP(DIR Series) Circulars issued by RBI from time to time
- FAQ on Overseas Direct Investment released by RBI (as updated from time to time)

Important Definitions to Note

"Direct investment outside India" *means an investment by way of* ***contribution to the capital or subscription to the Memorandum of Association of a foreign entity*** *or by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange,* ***but does not include portfolio investment;***

"Indian Party" *means a* ***company incorporated in India*** *or a body created under an Act of Parliament or a* ***partnership firm registered*** *under the Indian Partnership Act, 1932, or* ***a Limited Liability Partnership*** *(LLP), registered under the Limited Liability Partnership Act, 2008 (6 of 2009), making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by the Reserve Bank:*

"Net Worth" *means paid up* ***capital and free reserves****;*

"Real estate business" *means buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential / commercial premises, roads or bridges;*

Investment routes available under ODI

I. Automatic Route

As per notification issued and amended from time to time, Indian Parties have been permitted to make Financial Commitment by way of Equity, Debt or Guarantee in Joint Ventures or Wholly Owned Subsidiaries by way of Automatic route if investment is within the ceiling limit specified by RBI.

The applicable ceiling limit of Financial Commitment by an Indian Party for automatic approval is capped at 400% of the Networth as per latest audited Balance Sheet. If the Financial Commitment is below 400% of Networth (refer definition above) then an application can be made directly to Authorized Dealer. Authorized Dealer shall process the application and remits the funds outside India and forward the application to RBI for issue of Unique Identification Number (UIN) for the application. Any further remittances for the Joint Venture or Wholly Owned Subsidiary can be made only after quoting Unique Identification Number (UIN).

If the financial commitment in Joint Venture or Wholly owned subsidiary exceeds USD Billion 1 or its equivalent in a financial year even if Networth criteria of the Indian Party qualifies to make investment of exceeding USD Billion 1, prior approval of Reserve Bank of India has to be obtained.

How to Calculate Financial Commitment Limit ?

Financial Commitment is calculated with an Example:

Company A has set up a JV as Company B in Dubai with initial Capital of Rs. 100,000 and provided Interest Free Loan of Rs. 500,000. Company has issued third party Financial Guarantee of Rs. 500,000 and Rs. 200,000 as Performance Guarantee. Company A wants to understand, what is the Financial Commitment as per ODI provisions?

Financial Commitment is calculated as below:

Column A	Amount Invested or Committed (in Rs.)	%	Financial Commitment (in Rs.)
Equity Shares or Compulsory Convertible Preference Shares – Initial Capital in JV	100,000	100%	100,000
Preference Shares	Nil	100%	Nil
Loan – Interest Free Loan	500,000	100%	500,000
Guarantees other than Performance Guarantees	500,000	100%	500,000
Performance Guarantees	200,000	50%	100,000
Total Financial Commitment (Amount Invested in each category in Column A) x (Applicable % in Column B)	13,00,000		12,00,000

One should plan the total financial commitment ensuring that there is no breach of limit on account of invocation of performance guarantee. If there is any breach due to invocation of performance guarantee, prior approval from RBI to be obtained before making payment outside India. It is also to be ensured that all forms of commitment including all forms of Guarantees are within overall ceiling prescribed in the master direction to the Indian Party.

Other Important pointers for Automatic Route

- Indian Party can give loan or provide guarantee only to a JV / WOS which it has **direct or indirect equity participation** of atleast 51%.
- Indian Party should not be in the **list of defaulters** as per RBI list or should not be under any investigation by enforcement agency or regulatory body.
- **Designated bank account** of one Authorized Dealer should be used for routing transactions relating to JV / WOS.
- On 100% acquisition and value more than USD Million 5, valuation of shares of the company shall be made by Category I Merchant Banker, in all other cases it can be done by CA / CPA.
- In case the Investment is by way of **Swap of Shares,** valuation of shares can only be done by Category I Merchant Banker.
- If the acquisition of shares of a foreign company is made in **exchange of ADRs / GDRs,** then the other **conditions to be met** such as the ADRs / GDRs should have been **listed outside of India on any stock exchange** after the new ADRs / GDRs issue, the **Indian Party FDI sectoral cap prescribed should not be breached after investment and valuation conditions** to be met.
- In **Bhutan,** Indian Party can make financial commitments in **Indian Rupees as well as in Freely convertible currency,** financial commitment in free foreign currency is permitted provided that repatriation is also received back in free convertible foreign currency. **For Nepal,** financial commitment is **permitted in Indian Rupees** only.
- There is certain specific sector based exemptions for automatic routes provided in the master

direction which needs to be examined before taking decisions on the commitment.

General Permission

Master direction also provides general permission to **Person resident in India** for acquisition of shares out of funds held in RFC account, to acquire bonus shares of foreign company and out of funds held in foreign accounts when a person resident in India was a person resident outside India.

The shares acquired through general permission can be sold without any specific approval from RBI.

Prohibition

- **Apart from general permission to invest outside India, there is a prohibition for Indian Parties from making financial commitment in foreign entity engaged in real estate business (as defined above) without the prior approval of the Reserve Bank.**
- **If any JV / WOS having direct or indirect equity participation by an Indian Party, that company is prohibited in the busines of offering financial products linked to Indian Rupee without the specific approval of the Reserve Bank.**

II. Approval Route

Indian Parties who are not eligible for Automatic route due to Networth cap of 400% or financial commitment beyond USD Billion 1 and all other cases, must make an application under approval route. Application has to be made through Authorized Dealer with all the documents necessary for RBI to take informed decision about providing an approval on the transaction.

These approvals are under the discretion of the Reserve Bank of India, which shall be taken into account for various factors such as prima facie viability of the JV / WOS, contribution to external trade and other benefits to India, financial strength and business record of the Indian Party and foreign JV / WOS and the expertise in the sector of the Indian Party in the line of busines of the JV / WOS.

Also, there are sector based applications which can be made with RBI.

Other Important pointers for Automatic Route

- Investments by other than Indian Parties such as Proprietorship firms / Unregistered Partnership Firms, Registered Trust and Registered Societies are also eligible to make investment outside India only through approval route provided the eligibility criteria is met as on the date of application.
- Proprietorship firms / Unregistered Partnership Firms must have proven export track record for being eligible to invest outside India with an export outstanding of less than 10% of the average export realisation of preceding three years.
- Proprietorship concern / Unregistered Partnership Firm has not come under the adverse notice of any Government agency such as Enforcement Directorate, CBI, Income Tax Department and does not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters.
- The overall financial commitment outside India is lower of 10 per cent of the average of last three years export realisation or 200 per cent of the Net Owned Funds.
- Only Registered Trusts and Societies engaged in manufacturing / educational / hospital sector are allowed to make investment (or financial commitment) in the same sector (s) in a JV / WOS outside India, with the prior approval of the Reserve Bank.
- Resident individuals may invest in equity shares and Compulsory convertible preference shares of a JV / WOS outside India within the LRS limit of USD 250,000 as prescribed by RBI.

All the applications under Approval or Automatic route to be sent in Form ODI to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Overseas Investment Division, Central Office, Amar Building, 5th Floor, Fort, Mumbai 400 001, through the AD Category - I Bank. AD Category - I Banks may forward the application to the Reserve Bank, after ensuring the above terms and conditions along with their comments and recommendations, for consideration.

Conclusion

ODIs are increasingly becoming popular due to market potential outside of India resulting in more and more business houses looking to expand by way of setting up of JV / WOS, or by acquisition. Hence, ODI is gaining more attention for consultants and business houses to ascertain the methods, routes and ceiling limits available for investment / Financial commitment. One must read entire master direction and other applicable regulations before reaching conclusions.

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FDI IN DIGITAL NEWS MEDIA - A QUANDARY


■ CA. Sandeep Jhunjhunwala & CA. Arshita Ketan

The exponential growth of internet access in recent years has led to an increased investment in digital spaces such as social media, mobile applications, etc. India continues to advance in the digital start-up space through innovation and investment, leveraging the internet and the emerging digital economy. The preferences and choices of consumers are fast changing. News media is one such area having a shake up with new generation of consumers who predominantly use their smart phones and gadgets for news consumption due to convenience of access and ease of sharing. To capitalize this market, foreign backed digital media houses have been setting up and expanding their presence in India.

Uncalled times call for uncalled measures and a leash around a sector that has been gaining immense popularity was unsurprising. Recognising the impact of this sector on the sovereignty of the country and in the interest of national security, the Government recognized the absence of regulations governing this sector and decided to specifically include digital news media under Foreign Direct Investment (FDI) vide Press Note No 4 (2019 Series) dated September 18, 2019, capping the foreign investments at 26 percent under the Government approval route. This new regulation came into effect from December 5, 2019 vide Notification SO 4355(E).

Prior to this, the media sector was broadly categorized into broadcasting and print media with investment caps at 49 percent for up-linking of news and current affairs television channels and at 26 percent for publishing of newspapers and periodicals dealing with the same matters, under the Government approval route. Owing to the technologically driven nature of business and the manner in which digital content is consumed, there was lack of clarity as to the scope of new FDI regulations and activities covered under digital media, requiring compliance with the new FDI regulations. The Government issued a clarification recently, clearing the air around certain aspects like scope of applicability of new FDI regulations, transition period, etc. However, even after the clarification from the Government, this new FDI regulation has raised more questions than providing answers relevant for digital media companies, especially at a time when adoption of digital news has seen substantial growth.

The clarification has significantly increased the scope of the new FDI regulations to cover Indian entities "registered or located" in India that are engaged in streaming or uploading news and current affairs on websites, apps or other platforms; news agency that gathers, writes and distributes or transmits news, directly or indirectly, to digital media entities or news aggregators or both; and news aggregator that, using software or web application, aggregates news content from various sources, such as news websites, blogs, podcasts, video blogs, user-submitted links, etc in one location. The clarification also imposes certain additional conditions on such entities like majority of directors on the board and the Chief Executive Officer (CEO) must be an Indian citizen and also the requirement to obtain security clearances before deploying any foreigners, who are likely to be employed with the entity for more than 60 days in a year. Additionally, a one-year window has been provided to such entities to align their foreign investment in compliance with the new FDI regulation.

The clarification states that new FDI regulation applies to Indian entities "registered or located in India" and not just Indian entities registered in India. The term "Indian entities" is not defined under the regulations and therefore, the use of words "located in India" raises the question on applicability of these regulations to entities that operate from outside India but may have sales or operations or marketing offices located in India. Further, this may also have a far-reaching impact on foreign entities that do not have a presence in India but source news and content from third party Indian entities, located in India. The new FDI regulations are applicable to news aggregators as well, but there is no clarity if it also applies to social media or Over The Top (OTT) platforms that aggregate news from different sources among other services like social and entertainment content provided by them. Therefore, it is ambiguous whether the regulations are applicable only to an entity which is primarily a news aggregator, or it will cover any entity that may be aggregating news as a secondary business function. Multiple such businesses have already received a significant amount of foreign funding and may now have to re-look at their business models. Options such as entering into a strategic partnership with investors in India and license-based models would need a detailed evaluation to ensure compliance with the new FDI regulations.

On the other hand, the most affected by the new FDI regulations will be foreign media houses that have set-up 100 percent subsidiaries in India to operate India specific websites, which will now have to restructure its Indian businesses, and consider joint ventures with Indian majority partners. A question that is left hanging in the air is whether the existing television news companies who also run digital news, with FDI up to 49 percent can continue as is or whether they too will have to restructure their shareholding and business models in order to align with new FDI shareholding of 26 percent or otherwise spin off its digital news business to separate entity with FDI capped at 26 percent. Restructuring business models and shareholding is a mammoth task that is inadvertently coupled with multiple tax and regulatory considerations. Some of the glaring implications such as capital gains tax outflow in the hands of existing foreign investors, eligibility to carry forward business losses and restrictions under the exchange control regulations will require an in-depth study to best design tax optimal alternatives for restructuring that can also meet business commercials.

The additional conditions provided in the clarification are similar to the existing mandatory conditions for the key executives of a broadcasting carriage services companies. However, the CEO of a broadcasting carriage services company should be resident Indian citizen, but as per the clarification, the CEO of a digital media company should be just an Indian citizen adding to ambivalence, if a non-resident Indian can be a CEO of a digital media company.

Though the intentions of the FDI cap on digital news media is to give the Government a level playing field in the sector, since many players in this space are start-ups, when seen with a different lens, the 26 percent FDI cap may be considered a setback to the advancing digital media sector in India and it may also be inconsistent with the Start-up India and Digital India campaign. Given the one-year window to comply with the new FDI regulations, companies are keeping their options open and are identifying and evaluating permissible operating structures and business models. The clarifications issued by the Government have opened a floodgate of ambiguities and divergent interpretations. It will be interesting to see how these companies restructure their businesses to align with new FDI regulations after considering various tax and exchange control provisions in the hands of the foreign investors as well as the investee entities.

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KSCAA REPRESENTATIONS:

1. Follow up request for taking up certain matters under the Income-tax Act, 1961 in the backdrop of COVID-19 pandemic dated 15th October, 2020 to the Hon'ble Minister of Finance, Government of India
2. Representation Seeking Relief Measures By Extending The Due Date Of Submission Of Audit Reports Of Co-Operative Societies And Souharda Societies dated 18th October, 2020 to the Hon'ble Minister of Co-Operation, Government of Karnataka

JOINT PRESS RELEASE:

1. Issued in the interest of lakhs of tax payers and tax professionals of the country to the Hon'ble Prime Minister of India

For full text of above representations, please visit: www.kscaa.com

New Optional Tax Regime and Tax on Dividends

■ CA. S Krishnaswamy

- ***70 deductions mainly for savings etc. option to forgo for lower rate of tax.***
- ***Dividends to be taxed in the hands of shareholders.***

The Finance Act 2020 gives a sudden twist to deductions for certain types of savings etc. linking it to the rate of tax. Those Individuals / HUFs who saved in approved modes of investment and claimed permitted deduction will now pay higher rate of tax than those who do not make such investments. These deductions are now listed in a New Section 115BAC. It splits a tax payer into two categories. Tax payers opting for deductions / incentives will have a higher rate of tax and tax payers not opting for tax deductions / incentives will pay a lower rate of tax. This option can vary from year to year except in the case of salaried class. Every year a tax payer has to review which option is more beneficial.

Major provisions affected are as follows -Deduction / Exemption option:

- Section 10(13A) Special allowance - residential
- Section 10(14) Special allowance - any other special allowance not being perquisites
- Section 10(17) Any allowances to salaried employee
- Section 10(32) Minor child
- Section 10AA Newly established units
- Section 16 Deduction from salaries
- Section 24(b) Interest on housing loan
- Section 32(1) Depreciation
- Section 32AD Investment allowance
- Section 33AB Tea development
- Section 33ABA Site Restoration Fund
- Section 35 (2AA) Payment to National Laboratory or University or an Indian Institute of Technology
- Section 35AD Deduction in respect of expenditure on specified business
- Section 35CCC Expenditure on agricultural extension project
- Section 57(iia) Family pension
- Deduction under Chapter VI-A like Section 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80EE, 80EEA, 80EEB, 80G, 80GG, 80GGA, 80GGC, 80IA, 80IAB, 80IAC, 80IB, 80IBA, 80TTA, 80TTB and further any of the provisions of Chapter VI-A other than the provisions of Sub-Section(2) of Section 80CCD or Section 80JJA.

The above are part of total of 70 deductions and tax exemptions that will not be available in the new tax regime.

To highlight, if the assessee opts for lower rate, he will not be eligible for any small savings investment importantly investment in EPF, PPF, NPS, Life insurance premium, home loan principal payment, HRA, Medical insurance premium etc., tax break for disabled, charitable donations will all be foregone.

However, deduction under Sub-Section (2) of Section 80CCD (employer contribution on account of employee in notified pension scheme-mostly NPS) and Section 80JJAA (for new employment) can still be claimed.

Memorandum explaining the provision in the Finance Bill, 2020 pertaining to rate of tax as follows-

"Incentives to Individuals and HUF:

In line with the options provided to Domestic Companies under the TLAA (Taxation Law Amendment Act) and proposed to be provided to resident Co-operative Societies under this Bill, it is also proposed to provide similar option to Individual and HUF by insertion of Section 115BAC in the Act, which provides the following-

(i) On satisfaction of certain conditions, an Individual or HUF shall, from Assessment Year 2021-22 onwards, have the option to pay tax in respect of the Total Income at following rates:

Total Income (Rs)	Rate
Upto 2,50,000	Nil
From 2,50,001 to 5,00,000	5 per cent
From 5,00,001 to 7,50,000	10 per cent
From 7,50,001 to 10,00,000	15 per cent
From 10,00,001 to 12,50,000	20 per cent
From 12,50,001 to 15,00,000	25 per cent
Above 15,00,000	30 per cent"

The twist to tax incentives being balanced with higher rate of tax does not appear to be logical as the incentives were mainly to recognise taxpayer ability to pay having regard to the obligation on his income to provide for future security. This was an accepted principle laid down in the long term fiscal policy adopted long time ago. To explain further, one of the canons of taxation is that the tax levied must take into account a taxpayer's ability to pay and such ability should be reckoned on the basis of obligation of one's income like savings for the future in instruments devised by the Government including Pension Fund, Housing, Risk of Life (Insurance) etc. This was recognised in Section 80C of the Income Tax Act, 1961 and Government also launched a series of Small Saving Scheme including Public Provident Fund, Pension Fund in the first place. It is not appropriate to consider deductions in respect of obligation on one's income as incentives and further logic that these incentive "obscure" the effective rate of taxation with the new section introduced. Now, a person who saves for the future provides for life cover spends on medical relief, has to pay higher tax if it is not claimed under this deduction. A person who foregoes post retirement life savings will now enjoy lower rate of tax; Prudence takes a hit and it is opposed to public policy.

In India, compared to USA there is nothing like Social Security Plan and therefore every tax payer has to fend himself for his post retirement life.

USA Social Security Plan:

Government takes 7% of each person's income as Social Security Tax. You must have worked for 40 quarters for you to get your social security benefits. Based on the total income contributed, after certain deductions a monthly payment is made during retirement, in case of disability, divorce, for children upon their parent's death etc.

Finance Minister instead of bringing optional tax system could have introduced a Social Security Plan which will be taking care of post-retirement issues.

Exemption of Dividends withdrawn:

The Finance Act 2003 had exempted dividend from tax in the hands of the shareholders by introducing the Dividend Distribution Tax (DDT) that was applicable for Companies. It was stated at that time that it is more convenient to tax dividends at a single point i.e. in the hands of the Company itself and hence the tax on dividend distributed was to be paid by the Company and no tax was to be paid by the Shareholders. One of the canons of taxation is ease of payment of tax, viewed from this angle as it was more convenient to collect tax at one point i.e. in the hands of the Company itself so that the work of millions of Shareholders like paying the tax on dividends, claiming exemption, filing of TDS returns by Companies, TDS credit matching and reconciliation and rectification issues post filing of returns can be avoided. The reintroduction of tax on dividend in the hands of Shareholders generate immense amount of clerical work not withstanding technology availability as stated in the memorandum explaining the provision in the Finance Bill, 2020 as follows-

"The incidence of tax is, thus, on the payer Company / Mutual Fund and not on the recipient, where it should normally be. The dividend is income in the hands of the Shareholders and not in the hands of the Company. The incidence of tax should therefore, be on the recipient. Moreover, the present provisions levy tax at a flat rate on the distributed profits, across the board irrespective of the marginal rate at which the recipient is otherwise taxed. The provisions are hence, considered, iniquitous and regressive. The present system of taxation of dividend in the hands of Company / Mutual Funds was reintroduced by the Finance Act, 2003 (with effect from the Assessment Year 2004-05) since it was easier to collect tax at a single point and the new system was leading to increase in compliance burden. However, with the advent of technology and easy tracking system available, the justification for current system of taxation of dividend has outlived itself."

Section 10(34) and Section 10(35) now stands deleted;

The above sections amended so that dividend or income from units are taxable in the hands of the Shareholders or Unitholders at the applicable rate and the Domestic Company or Specified Company or Mutual Funds are not required to pay any DDT. It is also provided that the deduction for expense under Section 57 of the Act shall be maximum 20 per cent of the dividend or income from Units. Further, certain amendments have also been made in various Sections to remove the cascading effect. There is no exemption limit provided for dividends.

Tax deduction on dividend income / distributed income:

Dividends paid or distributed by Indian Companies on or after April 1, 2020 would be taxable in the hands of the Shareholders. As per the new provisions, an Indian company is required to deduct the applicable tax at source under Sections 194 & 195 of the Act in case of Resident & Non-resident Shareholders respectively.

At the same time, the rate of TDS u/s 194 of 10 per cent (7.5% due to Covid-19 conditions at present) is prescribed. The threshold limit is increased from Rs 2,500/- to Rs 5,000/- for the dividend paid other than by cash only for a Resident Individual. Further, the earlier mode of payment of "an Account Payee Cheque or Warrant" is changed to 'any mode'.

In the same run, due to abolishment of DDT on the distributed income by the Mutual Funds to its Unitholders and subsequent withdrawal of exemption of such income in the hands of the Unitholders, the dividend income will now be taxable in the hands of the respective Unitholders and TDS applicable u/s 194K in respect of units of Mutual Fund @ 10% (7.5% due to Covid-19 conditions at present) with a threshold limit of Rs. 5000/-.

Amendment Impact on Taxability of dividend from a Special Purpose Vehicle (SPV) in the hands of a Unitholder of a business trust:

Income earned from a business trust in the nature of dividend from a SPV, which were earlier exempt from tax, is now required to be offered to tax by the Unitholder. The limitation has been imposed on interest expenditure allowance to the extent of 20% of the income from Mutual Fund u/s 57.

TDS on certain income from Units of business Trust u/s 194LBA:

Now, a business trust, while distributing dividend to its Unit-holders shall also deduct TDS at 10% in the case of payment to Resident Unitholders and @5% in the case of payment to Non-resident Unitholders.

Conclusion:

The amendments have a far reaching effect. The tax payer has to review the option carefully year after year for investment decision. The amendments breaches two canons of taxation:

(1) ability to pay, reckoned on the basis of obligations of one's income like saving for the future,

(2) ease of payment of tax.

Tax on dividends replacing Dividend Distribution Tax complicates the system of levy of tax.

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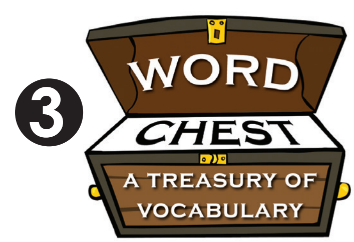
Solution to Sudoku - 2 (October 2020)

7	6	8	3	4	9	2	5	1
2	4	1	5	6	8	7	9	3
5	9	3	2	7	1	4	6	8
4	2	6	7	9	3	1	8	5
3	7	9	8	1	5	6	2	4
8	1	5	6	2	4	9	3	7
6	3	7	4	8	2	5	1	9
1	8	4	9	5	6	3	7	2
9	5	2	1	3	7	8	4	6



Word of the month:

Pellucid

What is this?

Clear in meaning, expression, or style

Use instead of:

Clear or comprehensible

How can I use it?

✓ The contract was *pellucid* and left no confusion about each party's responsibilities.

✓ The poem was easy to understand because of its *pellucid* style.

Interplay Between Sections 45(3), 50C And 56(2)(x) of the Income Tax Act, 1961

■ CA. Sairam V

In this article, an earnest attempt has been made to understand the interplay between three deeming fictions under the Income Tax Act, 1961, namely, Section 45(3), Section 50C and the recent entrant, Section 56(2)(x).

We shall analyse if the provisions of Section 50C override the provisions of Section 45(3) in the hands of the Partner and whether the provisions of Section 56(2)(x) would be applicable to the recipient Firm.

***

First and foremost, let us try to decode the provisions of Section 45(3).

This section deals with the taxation of capital contribution by a Partner to a Partnership Firm. The section states that where a Partner transfers a Capital Asset as capital contribution or otherwise to a Partnership Firm, the value recorded in the books of accounts of the Firm shall be 'deemed' to be the full value of consideration in the hands of the Partner for the purpose of computing the Capital Gain.

To get a complete essence of this section, we shall go back in time to look at the reasons for bringing in this deeming fiction.

As most of us are aware, this section was brought in by the Finance Act, 1987 w.e.f 01.04.1988 with the purpose of this deeming fiction being to override the decision of the Supreme Court in the case of **Shri Sunil Siddharthbhai vs Commissioner of Income Tax**, rendered on 27th September, 1985.

So, what was the case all about?

In the aforementioned case, the question before the Apex Court was, whether introduction of a Capital Asset as capital contribution by a Partner to a Partnership Firm tantamount to transfer and if yes, what is the consideration for determining the Capital Gain in the hands of the Partner?

The Apex Court while holding that there is a transfer of Capital Asset also ruled that the consideration cannot be determined, since the consideration for a Partner being his share of profit cannot be determined.

The relevant extract of the decision is as under:

"What is the profit or gain which can be said to accrue or arise to the assessee when he makes over his personal asset to the partnership firm as his contribution to its capital? The consideration, as we have observed, is the right of a partner during the subsistence of the partnership to get his share of profits from time to time and after the dissolution of the partnership or with his retirement from the partnership to receive the value of the share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges.

...

In the result, the questions which arise in these appeals are answered as follows: -

1. There was a transfer of the shares when the assessee made them over to the Partnership Firm as his capital contribution.

2. When the assessee transferred his shares to the Partnership Firm he received no consideration within the meaning of Section 48 of the Income-Tax Act 1961 nor did any profit or gain accrue to him for the purpose of Section 45 of the Income-Tax Act, 1961".

The Apex Court while ruling as above also gave out a strong word of caution against misusing the provisions and evading taxes. The Apex Court observed that where the ITO is of the opinion that the whole transaction is nothing but a tax planning device and a ruse for evading taxes, then the ITO is free to call for the required information and assess it as the circumstances call for.

However, by taking undue shelter of this decision, several cases of tax evasion came into the limelight. Hence, it was felt essential to legislate a new provision so as to override the Supreme Court verdict and plug the tax evasion.

Accordingly, Section 45(3) was brought in, to enable computation of Capital Gain which hitherto could not be computed.

The key takeaway is that consideration which existed but could not be measured, was made measurable by bringing in a deeming fiction.

***

Now we shall look at another deeming fiction i.e., Section 50C and understand its implications.

Section 50C was enacted with a view to curb black money in cases where Immovable Property constituting Land or Building or both is transferred at less than the Stamp Duty Value. It was under the assumption that the difference between the Stamp Duty Value and the value as appearing in the Sale Deed is received in Cash. To curb such practice, Section 50C was brought in, which effectively considered the Stamp Duty Value as the deemed Sale Consideration, if the same was higher than the value mentioned in the Sale Deed, subject to certain exceptions.

The essence of this provision is that where the Immovable Property is transferred at less than the Guideline Value, then, for the purpose of computing the Capital Gain in the hands of the transferor, the Guideline Value shall be taken as the full value of Consideration.

INTERPLAY BETWEEN 45(3) & 50C

Now the moot question is, where a Partner contributes Land as Capital to a Partnership Firm and the value recorded in the books of the Firm is less than Guideline Value on the date of transfer, then, whether the difference between the value recorded in the books of the Firm and the Guideline Value will be treated as deemed Consideration in the hands of the Partner as per Section 50C or will the Partner be taxed in accordance with Section 45(3) which mandates that the value recorded in the books of the Firm will be deemed to be the Full Value of Consideration?

To answer this question, it is essential that we gain a deeper understanding of deeming fiction under the Income Tax Act and its scope, by looking at certain landmark decisions of the Apex Court; At the same time we must also fall back on the 'Rules of Interpretation'.

Deeming provisions are important part of Statutes in general and Income Tax Act ('Act') in particular. Without deeming provisions modern tax legislation cannot think of implementing effective tax administration.

The word 'deem' or 'fiction' is nowhere defined much less in the Income Tax Act. We can generally say that a deeming provision considers a particular set of facts and then proceeds to assume that it is something else.

'Deem' is a useful word when it is necessary to establish a legal fiction either positively by 'deeming' something to be something it is not or negatively by 'deeming' something not to be something which it is.

Legal fiction is an assumption that something is true even though it may be untrue. Such an assumption is especially made in judicially reasoning to alter how a legal rule operates.

The use of the device known as a legal fiction -*'fictio juris'* - is for certain specific purposes by which the law deliberately departs from the truth of thing.

Every deeming provision under the Income Tax Act is created with certain intent, purpose or objective sought to be achieved and that can be gathered from applying the Hayden's Rule or Mischief Rule of Interpretation i.e., what was the problem sought to be remedied or by reading memorandum explaining the provisions introduced in the Finance Bills or sometimes the speech of Finance Minister while presenting the provisions. Though the words 'deem/ed' or 'as if' etc. are used to denote deeming, it serves variety of purposes and thus it becomes essential to understand the real intent behind introducing deeming provision.

There are several decisions not only under the Income Tax Act, but even when it comes to interpretation of the Constitution of India, where the scope of deeming fictions is interpreted.

In the Principles of Statutory Interpretation - 3rd Edition - Chief Justice, Shri G.P. Singh has so explained the scope of legal fiction:-

"In interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created. It cannot also be extended by importing another fiction".

The Supreme Court in the case of **M/s. Bengal Immunity Co. Ltd. Vs. State of Bihar - AIR 1955 (SC) 661,** while interpreting Article 286 of the Constitution, held that the scope of a legal fiction should be limited for its avowed purpose and could not be extended for any other purpose. The Court held that legal fictions are created only for some definite purpose.

Though the above decision is in the context of interpretation of the Constitution of India, it holds good for other laws as well. Since, 'The Constitution of India' is the 'Grundnorm', i.e., it is the mother of all laws. Hence, what holds good for interpretation of the Constitution holds good for other laws as well.

There are several decisions in this sphere of taxation as well, constantly dealing with the scope of deeming provisions.

One such decision is the decision of the Apex Court in the case of **CIT v Moon Mills Ltd.** In this case, the Court observed that one deeming fiction cannot be extended by importing another deeming fiction.

Further, it is a Rule of Construction that the Special Provisions prevail over General Provisions as per Latin Maxim.

The Hon'ble Supreme Court in the case of **D.R. Yadhav v. R.K. Singh [2003] 7 SCC 110** held, that when there are two conflicting provisions of law in operation in the same field, the rule that specifically operates in that field would apply over the general rule.

WHAT IT MEANS?

As per the Apex Court verdict, one deeming fiction cannot be imported into another deeming fiction.

Meaning thereby, Section 50C being a deeming fiction cannot be imported while arriving at the consideration for transfer of a Capital Asset as per Section 45(3), because Section 45(3) itself deems the Full Value of Consideration to be the value recorded in the books of accounts of the Firm.

Further, the legal maxim that a Specific Rule will prevail over General Rule is undisputed.

Section 45(3) was inserted to specifically deal with transfer of a Capital Asset by a Partner to the Partnership Firm; Whereas Section 50C is a general provision inserted to check evasion of taxes in cases of transfer of Immovable Properties.

A co-joint reading of the above would lead to an irrebuttable and logical presumption that Section 45(3) and 50C operate in two different spheres. What is covered within the ambit of Section 45(3) does not fall within the purview of Section 50C.

This is also echoed from the decision of the Hon'ble Mumbai ITAT in the case of **Dy. CIT v M/s.Amartara Pvt Ltd,** wherein the Hon'ble ITAT held that Section 50C will not operate where Section 45(3) operates.

Similar view is upheld by the Hon'ble ITAT of Chennai in the case of **Shri Sarrangan Ashok v ITO.**

It is interesting to note that the Hon'ble High Court of Allahabad, reversing the decision of the Hon'ble ITAT of Lucknow in the case of **ACIT vs Carlton Hotel Pvt Ltd** has held that the provisions of Section 50C override Section 45(3). It is however relevant to note that in this case, the genuineness of the transaction itself was questioned and the matter was set aside to the Tribunal to look afresh at the transaction.

Thus, one can conclude that if the transaction of Capital Contribution is genuine and is not a sham transaction, then, the provisions of Section 50C cannot override the provisions of Section 45(3).

***

SECTION 56(2)(x)

We shall now understand the nuances of Section 56(2)(x) and its implication for the Partnership Firm in a transaction contemplated u/s 45(3).

As most of us are aware, clause (x) was inserted by the Finance Act, 2017 to replace the then existing clauses i.e., (vii) and (viia) and also to further enhance the ambit of the clause from *'any individual or HUF' to 'any person'.*

This Section seeks to provide for the taxation under the head 'Income from Other Sources' in respect of transactions referred to under that section in the hands of the recipient defined therein.

ISSUE ON HAND

Where a Partner transfers an Immovable Property at less than the Guideline Value as Capital Contribution to a Partnership Firm, whether in the hands of the Firm, the difference between value at which it is recorded in the books of the Firm and the Guideline Value will be treated as 'Income from Other Sources' in the hands of the firm in accordance with Section 56(2)(x)?

There are four different approaches under which this question can be answered.

Under the first approach, we need to understand in detail the provisions of Section 56(2)(x).

Section 56(2)(x) reads as under:

"where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,-

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any Immovable Property,-

*(A) **without consideration,** the Stamp Duty Value of which exceeds fifty thousand rupees, the Stamp Duty Value of such property;*

*(B) **for a consideration which is less than the Stamp Duty Value** of the property by an amount exceeding fifty thousand rupees, the Stamp Duty Value of such property as exceeds such consideration:*

As one can observe, in respect of Immovable Property, there are two legs i.e., 'without consideration' or 'for a consideration which is less than the Stamp Duty Value'.

The answer to the above question lies in the interpretation of the above phrases read with the decision of the Apex Court in the case of **CIT v Sunil Siddarthbhai** discussed earlier.

As we can see, the provisions are applicable only when the Immovable Property is received for 'No Consideration' or for 'Inadequate Consideration'. It does not cover a scenario where the consideration is 'indeterminate'. However, in the case of a transaction contemplated u/s 45(3), the consideration is 'deemed' for the transferor, since as per the decision of the Apex Court, the consideration representing share of interest in the Partnership could not be measured. Thus, Section 45(3) was inserted to create a deeming fiction so as to enable the determination of the consideration (being interest in the Partnership Firm) which could not be measured.

But as was discussed in the preceding paragraphs, the scope of a deeming fiction cannot be extended beyond the purpose for which it was enacted.

Thus, one can contemplate that, for all practical purposes [other than Section 45(3)], the decision of the Apex Court mentioned earlier will still hold good. Meaning, the consideration, though exists, cannot be determined. In other words, the consideration is indeterminate for the purposes of Section 56(2)(x).

And since the above-mentioned section does not cover within its ambit the scenario where the consideration exists but cannot be determined, one can argue that the provisions of Section 56(2)(x) will not be applicable in the hands of the recipient Firm.

***

Now let us look at the second approach of answering this question.

In this approach, an analogy can be drawn from the reasoning adopted to substantiate the non-applicability of Section 50C vis-à-vis Section 45(3).

It was stated that one deeming fiction cannot be extended by importing another deeming fiction.

Similarly, when the consideration is 'deemed' to be the value recorded in the books of the Firm for the 'transferor' and once it is accepted that the same cannot be modified by taking recourse to Section 50C, then, it is only but logical that in the hands of the recipient Firm, the value recorded in the books is taken as the cost and consequently, there cannot be a deemed income in the hands of the Firm by taking recourse to Section 56(2)(x).

This reasoning gains all the more traction from the fact that Section 49 which deals with cost of acquisition in respect of different modes of acquisition is silent about the cost to the Partnership Firm in respect of the transaction covered u/s 45(3).

This signifies that even the legislators in their true wisdom have assumed and envisaged that the value at which it is recorded in the books of the Firm is deemed to be the cost for the Firm as also the consideration for the Partner.

***

Now let us look at the third approach of answering this question.

As one must be aware, the provisions of Section 56(2)(viib) are kept outside the ambit of Section 56(2)(x).

Section 56(2)(viib) deals with the receipt of consideration for issue of shares by a company in which the public are not substantially interested.

The section states that where the consideration received exceeds the fair value of the shares, the difference is treated as income in the hands of the Company.

It is now essential to note that the Supreme Court in the case of **CIT v Sunil Siddarthbhai** [discussed earlier], held that the consideration that is parted with by the Firm to the Partner for receipt of the capital contribution is in reality nothing but the share of profit to which the Partner is entitled to in the Firm or the asset to which he is entitled to in case of dissolution.

If one were to draw an analogy to the ratio laid down in the above decision with the provisions of Section 56(2)(viib), then, it can be said that both the transactions are similar i.e., a company issues shares for a consideration, whereas a Firm receives capital contribution for parting with the profits of the Firm.

In such a scenario, it appears that when a Partnership Firm receives any capital asset in consideration for parting with the share of profits, it cannot be said that the transaction is covered by Section 56(2)(x) in the absence of any specific type covered in Section 56(2)(viib).

Therefore one can say that, without any specific provision of the type referred to in Section 56(2)(viib), the provisions of Section 56(2)(x) may not apply to the transaction referred to in Section 45(3).

***

Now let us look at the fourth and the last approach of answering this question.

To answer this question, we shall fall back on another landmark decision of the Supreme Court. The decision in the case of **'Malabar Fisheries Co, Calcutta vs Commissioner of Income Tax'.**

The two decisions of the Apex Court paved the way for two back to back amendments in the Act: Insertion of Section 45(3) & 45(4).

In the aforementioned decision, the Apex Court held that there is no difference between the Partners and the Partnership Firm and that the Firm has no separate legal existence devoid of the Partners. Accordingly, the Court held that there is no transfer of assets when a Firm is dissolved, and the assets of the Firm are distributed to the Partners.

To counter this decision, Section 45(4) was inserted in the Finance Act, 1987 w.e.f 01.04.1988.

Once again, Section 45(4) is a deeming fiction. Hence, its scope is restricted to Section 45(4) and cannot be expanded to other sections.

This being the legal position, for all practical purposes, the Firm and the Partners are treated as one and the same, as held by the Supreme Court.

In this scenario, it can be contended that when a Partner introduces a capital asset as capital contribution to a Partnership Firm, by virtue of the deeming fiction enshrined in Section 45(3), taxation is made possible in the hands of the Partner. However, it does not extend to the Partnership Firm. There cannot be invocation of another deeming fiction for the Partnership Firm since the Partner cannot contribute to himself.

Accordingly, it can be said that Section 56(2)(x) will have no operation, when a Partner introduces a capital asset as capital contribution to a Partnership Firm.

Another way to look at is that when the value is deemed to be 'x' in the hands of the Partner by virtue of the provisions of Section 45(3), it cannot be deemed to be 'y' in the hands of the Partnership Firm. That is, the benefit that is conferred by one section cannot be taken away by another section, since both the deeming fictions are products of the legislature.

An interesting question that may arise is, whether 56(2)(x) will be applicable if the recipient is a Limited Liability Partnership (LLP) instead of a Partnership Firm?

Well…that's a question for another day!!

CONCLUSION:

Thus, to conclude, we can say that when a Partner transfers a Capital Asset to a Partnership as capital contribution or otherwise, then, the taxation in the hands of the Partner ought to be in accordance with Section 45(3) and that Section 50C cannot be invoked.

Similarly, in the hands of the Partnership Firm, Section 56(2)(x) ought not to be made applicable for reasons mentioned above.

The three sections operate in their own spheres and do not intersect with each other. Unfortunately, this aspect of taxation has not been a subject matter of any litigation. Until then, one can only ponder over its applicability as has been done in this article.

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Section 80P of Income Tax Act and Case Laws

■ CA. Mangala Hampasagar

Co-operative societies have played a major role in economic development of India. Forming a co-operative society is now a fundamental right under Article 19(1)(i) of the Constitution of India.

Section 80P of the Income Tax Act was introduced to encourage and strengthen the co-operative development in the country. Under this section, a certain specified income of an eligible co-operative society engaged in specific activities is considered as a deduction if such income is included in the gross total income of the society.

Meaning of a Cooperative Society

A co-operative society is not defined specifically for the purpose of Section 80P. However, Section 2(19) of the Income Tax Act, 1961, defines. As per Section 2(19) of the IT Act, a cooperative society is an entity that is registered under the Cooperative Societies Act of 1912. Even entities registered under any specific laws that govern cooperative societies in a particular state are eligible for Section 80P deduction.

Specific exclusions

The Finance Act, 2006 introduced specific exclusions to the applicability of the benefit of deduction under Section 80P. Section 80P is not made applicable to any **co-operative bank** (including Regional Rural Banks) other than a **primary agricultural credit society** (as defined in the Banking Regulation Act) or a **primary co-operative agricultural and Rural development bank** (a society having its area of operation confined to a taluk and the principal object of which is to provide long-term credit for agricultural and rural development activities). Benefit of deduction is withdrawn with an intention to treat co-operative banks on par with commercial banks that do not enjoy any such tax benefit.

80P of Income Tax Act 1961 provisions

Sections	Activities covered	Amount of deduction
80P(1)	An assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section	
80P(2)(a)	**Co-operative society engaged in:**	
i.	The business of **banking or providing credit facilities** to its members	100% of profits and gains attributable to these activities
ii.	Cottage industry	
iii.	Marketing of agricultural produce grown by its members	
iv.	Purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members	
v.	Processing of agricultural produce of its members without the aid of power	
vi. & vii.	Collective disposal of the labor of its members, or fishing, or any allied activities (catching, curing, processing, preserving, storing, marketing of fish etc.) However, rules and by-laws of these co-operative societies must restrict voting rights to: 1. Members, who are individuals who contribute with their labor 2. Is a co-operative society which provides financial assistance to the society or 3. Is a State Government.	

80P(2)(b)	A co-operative society which is primarily engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to: 1. A federal co-operative society, a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables, as the case may be 2. The Government or Local authority 3. Either a government company as per the company law or a corporation established by or under the Central, State or Provincial Act, which is engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public	100% of profits and gains of such business
80P(2)(c)	A co-operative society engaged in any other activities	1. For consumer co-operative society* – Upto Rs 1 lakh 2. Others – Upto Rs 50,000
80P(2)(d)	A co-operative society earning: 1. Interest or dividend from its investment with any other co-operative society or 2. Income from letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities	100% of such income
80P(2)(e)	A co-operative society earning: 1. Income from letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities	100% of such income
80P(2)(f)	Interest on securities or income from the house property of a co-operative society other than a Housing society or 1. Urban consumers' society** or 2. Society carrying on a transport business or 3. Society engaged in manufacturing operations with the aid of power whose gross total income is not more than Rs 25,000	100% of such income
80P(3)	Deduction under Section 80P in respect of business income of a co-operative society shall be available with reference to income after claiming deduction under sections 80HH, 80HHB, 80HHC, 80HHD, 80I 80-IA, 80J and 80JJ.	
80P(4)	The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.	

** 'Consumers' co-operative society' means a society for the benefit of its members*

*** 'Urban consumers' co-operative society' means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.*

Deduction u/s 80P (2)(a)(i) has been a vexed issue of litigation. The scope of the section has been a matter of consideration for the judiciary in many of the cases.

A perusal of various provisions of Section 80P indicates that the provisions are meant for deductions in respect of income of the co-operative societies. It is noted that various words /terms used in the section have not been defined in the Act except the definitions of co-operative society, co-operative bank and primary co-operative agricultural and rural development bank.

Therefore, other terms used in the section will have to be interpreted by using the common meaning of those words and the interpretations made by various judicial forums such as ITAT, High Courts and the Hon'ble Supreme Court. In order to have a clear and easy understanding of various provisions of the section 80P2(a)(i), the provisions are being discussed.

Discussion is only on the section 80P2(a)(i) of Income Tax Act.

Following are the views taken by judiciary

Case Laws	Decision	Comments
Meaning of 'Credit Facility'		
Andhra Pradesh Co-op. Central Land Mortgage Bank Ltd. v. CIT [1975] 100 ITR 472 (AP).	The expression 'facilities' used in the provision is an inclusive term of wide import embracing anything which aids or makes easier the performance of a duty	The expression 'facilities' is inclusive.
CIT v. Madras Auto rickshaw Drivers' Co-operative Society Ltd. [1983] 143 ITR 981 (Mad.).	Selling goods on hire-purchase basis does not amount to providing credit facilities	Selling goods on hire-purchase basis does not amount to providing credit facilities
CIT v. Kottayam Co- operative Bank Ltd. [1974] 96 ITR 181 (Ker.).	Conducting chit fund amounts to providing credit facilities	Conducting chit fund amounts to providing credit facilities
Maharashtra State Co-operative Bank Ltd. v. CIT [2010] 38 SOT 325 (Mum.) (SB), CIT v. Haryana State Co-operative Apex Bank Ltd. [2010] 322 ITR 404 (Punj. & Har.).	interest income is taxable under Section 56	Interest income is taxable under Section 56
Meaning of 'Member' as per THE KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959 'member' means a person joining in the application for the registration of a cooperative society and a person admitted to membership after such registration in 1959: KAR. ACT 11] Co-operative Societies accordance with this Act, the rules and the bye-laws and includes a nominal and an associate member.		
P. Co-operative Cane Union Federation Ltd. v. CIT [1999] 237 ITR 574/103 Taxman 376 (SC)	The meaning of the expression "members" cannot, therefore, be extended to include the members of a primary co-operative society which is a member of the federated co-operative society seeking exemption	The meaning of the expression "members" cannot, therefore, be extended to include the members of a primary co-operative society which is a member of the federated co-operative society seeking exemption.
The Citizen Co-operative Society vs ACIT (SC) 397 ITR 1	The activities of the assessee were akin to that of finance business rather than a co-operative society. Loans were also granted to general public. With such activities the assessee has made a violation of co-operative societies Act. Hence, it was held that it was not eligible for deduction u/s 80P.	The meaning of the expression "members" cannot, therefore, be extended to include nominal members.
Sarroday Gramin Bigarsheti Sahakari Path Sanstha Maryadit Vs ITO (ITAT Pune)	Assesse-cooperative society registered under the Maharashtra Co-op. Society Act, 1960 was entitled for exemption under section 80P on giving of loans to members/nominal members as the definition of 'member' given in section 2(19) of the Maharashtra Co-operative Societies Act took within its sweep even a nominal member, associate member and sympathizer member and there was no distinction made between duly registered member and nominal, associate and sympathizer member.	The meaning of the expression "members" can, therefore, be extended to include nominal members.

Quepem Urban Co-operative Credit Society Ltd vs ACIT,(Bom) 377 ITR 272	After the amendment in The Maharashtra Co-operative Societies Act, (Amendment Act, 2017 Section 144-5A was inserted) Prohibiting accepting deposits from non-members, there is a change in law governing acceptance of deposits from nominal members. Any deposits accepted from nominal members may be considered as a violation of Maharashtra Co-operative Societies Act. In such a case, if majority of the deposits are received from nominal members by a society in violation of the Act, the deduction may be denied and the ratio In the case of Citizen Co-operative (supra) may apply.	The deduction may be denied and the ratio In the case of Citizen Co-operative (supra) may apply
Sai Prerana Gramin Bigarsheti Sahakari Pat Sanshta Maryadit vs ITO (Pune ITAT) ITA NO 1431/PUN/2018	As per Section 2(19) of the Maharashtra Co-operative Societies Act, member includes a nominal/ sympathizer/associate member and there is no distinction made between duly registered member and nominal/sympathizer/associate member and hence the society is eligible for deduction u/s 80P.	The society is eligible for deduction u/s 80P.

Section 80P (2)(a)(i) contains two limbs, first is applicable to the co-operative society carrying on banking business and second is providing credit facilities to its members. Explanation to Section 80(P)(4) borrows the definition of Co-operative Bank, primary agricultural credit society from the Banking Regulation Act,1949.

However, the term 'Banking' is not defined in the act and hence the definition of Banking as provided in Section 5(b) of the Banking Regulation Act has to be considered. The term 'Member' has also not been defined under the Act; hence the definition has to be borrowed from the respective co-operative law.

Co-operative Societies is a State Subject (Entry 32 of List II of Seventh Schedule to the Constitution of India, i.e. the State List) hence each state has its own law governing the co-operative societies. Hence, the allowability of deduction depends upon the co-operative laws applicable to the society, and there cannot be a straight jacket formula which can be applied across the country for determining the eligibility of deduction.

For testing the eligibility of the co-operative society the test of 'Substance over form' has to be applied. The Deduction cannot be granted merely on the basis of the certificate of Registration but enquiry into the actual conduct of the society is required.

If the Co-operative Society Cumulatively satisfies the following three conditions as laid down in Section 5(ccv) of the Banking regulation Act, 1949 they shall be termed as a Co-operative Bank and would be ineligible for Deduction.

1. The primary object or principal business of which is the transaction of banking business;

2. The paid-up share capital and reserves of which are not less than one lakh of rupees; and

3. The bye-laws of which do not permit admission of any other co-operative society as a member

Conclusion: If the respective co-operative law makes no distinction between Nominal members and Ordinary members, and freely allows acceptance of deposit from nominal members; the deduction should be denied only in case of dealings with non-members. However, if the co-operative law does not allow acceptance of deposit from nominal members, the deduction should only be allowed in respect of dealings with ordinary members.

The following chart can be referred to for determining the eligibility for deduction u/s 80P

Is it a co-operative society registered under the Co-operative Societies Act

↓ Yes

Does the Co-operative society have a banking license?

↓ No

Does it cumulatively satisfy the three conditions laid down in S. 5(ccv)?

↓ No

Does it accept deposits from general Public at large/non members in violation of the applicable co-operative law and its bye laws?

↓ No

Eligible for Deduction U/S 80P(2)(a)(i)

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OBITUARY

We deeply regret to inform sad demise of our senior fraternity

CA. UPPIN SHRISHALI CHANAVIRAPPA

Belagavi

May his soul rest in peace.

All about Cross Charge under GST

■ CA. Srikanth Acharya

As the businesses grow, more and more units of business are set up at multiple locations. These business units could be in the same state or in different states. With the increase in business locations, the number of transactions and managerial activities also increase. This leads to inter-dependency of the business units on each other for various operations and managerial activities. These activities include Accounting, Taxation, Human Resources Support, IT service and Other Administrative work.

To establish effective control and agility in an organization, businesses may also go for centralization of these business operations leading to dependency of all other business units on that one central location or head office for such activities. The head office maintains the accounts of all the units, incurs expenses on Audit and Legal Services, IT and Software Service, Customer Support and Other Administrative Services. From the perspective of the business entity, these activities are like any other day-to-day business activities, carried out for the functioning of all its business units; wherein all the units are functioning for common interest as a single entity.

However, the Goods and Services Tax (GST) Law treats different units of the same entity, functioning in different states, as "distinct persons" (Section 25 of the CGST Act, 2017). Any supply of goods or services made between "distinct persons" even if made without consideration, is treated as supply under GST (Section 7 read with schedule I of the CGST Act, 2017), thereby making it leviable to tax. This concept, though nowhere termed in the GST Law, is called as "Cross Charge".

The sole reason for this treatment is to maintain the supply chain so as to facilitate seamless flow of credit. Wherein, the distinct person (ex. Branch Office in different state) is liable to be Cross Charged by other distinct person (Ex - Head Office) for the goods or services supplied by it (HO), even if it is supplied without consideration.

In case when business unit in one state is supplying goods (Stock) without consideration to business unit in other state, it is very well identifiable as stock transfer and tax is levied on the same. However, in cases where the business unit is supplying services of Accounting, Human Resources, IT, Administration Support, etc. without consideration, the same is, many a times, not identifiable physically due to the "service" element but tax is still leviable on such supply. This emanates various issues such as the basis for valuation in case of supply of such services, the basis for apportionment of value when the service is commonly used by multiple business units, and whether to even treat certain services as supply or not?

With this as a background, let us now discuss the concept of Cross Charge and various issues in detail.

<u>What is Cross Charge?</u>

As per **Section 25 (4) of the CGST Act, 2017**, *"A person who has obtained or is required to obtain more than one registration, whether in one State or Union Territory or more than one State or Union Territory shall, in respect of each such registration, be treated as* ***distinct persons*** *for the purposes of this Act"*

As per **Entry 2 of Schedule I to the CGST Act, 2017**, *"Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business, is to be* ***treated as supply even if made without consideration****"*

By virtue of the above provisions, **Cross Charge is a "supply" between two or more related or distinct persons, made without consideration, in the course or furtherance of business.**

<u>GST Implications of Cross Charge:</u>

When a transaction falls under the purview of Cross Charge, the supplier branch has to raise an invoice on the recipient branch. The supplier branch shall remit the GST amount received from recipient branch to the government and the recipient branch can accordingly claim ITC of the same.

For example, if there are two branches A and B. Branch A is incurring expenses of Rs. 1,00,000/- for Accounting services. The Accounting service is for the company as a whole. This has to be apportioned between both the branches. Branch A has to raise invoice on Branch B to the extent of the service pertaining to Branch B. The moot question here is that how to value and apportion such supply, in order to raise the invoice?

The GST Act does not specify any particular basis for valuation in cross charging. Therefore, it is very subjective to determine the value of the service that has to be allocated to the recipient Branch. In case of ISD mechanism, generally the taxable turnover is taken as basis for apportionment of common inputs. Similarly, even in Cross Charge, turnover can be taken as the basis for apportionment of value of service and accordingly the invoice has to be raised with the apportioned value and GST on the same, as per the provisions of the GST Law.

<u>Points to ponder</u>

It has to be noted that the concept of "Cross Charge" is different from that of "Input Service Distribution (ISD)"

ISD has prevailed from the erstwhile service tax regime. It is a concept of distribution of the Input Tax Credit (ITC) derived from the "services" individually or commonly used by one or more business units of an entity. It requires a separate registration as "Input Service Distributor". Suppliers raise invoice on the ISD registered office. Later, the ISD distributes ITC to the unit for whom the cost was incurred.

ISD is just a mechanism to distribute ITC among various units of an entity and not mandatory under the law. This mechanism can be used by businesses to keep a control and procedural flow of transactions (cost / expenses), in the organization.

However, Cross Charge is not just a mechanism, but a requirement by the law. It is mandatory for every registered taxpayer to Cross Charge its business unit which utilizes the goods or services supplied by other business unit, even if it is without consideration. This concept did not prevail in the erstwhile service tax regime.

<u>Illustrative Example</u>

A Company ABC Pvt. Ltd. has 3 business units A, B and C. "A" is the Head Office located at Ahmedabad, Gujarat. It has two Branch Offices- "B" at Bangalore, Karnataka and "C" at Chennai, Tamil Nadu.

Below is an extract of Income and Expenses of ABC Pvt. Ltd.

Sl. No.	Particulars		Amount (Rs.) [excl. GST]
I	**Income:**		
i	Sales- of A		2,70,00,000
ii	Sales- of B		1,50,00,000
iii	Sales- of C		1,50,00,000
iv	Dividend Income *(Exempt under GST)*		1,20,000
v	Sale- Stock transfer from A to B		20,00,000
vi	Sale- Stock transfer from A to C		10,00,000
	Total Income		**6,01,20,000**
II	**Expenses:**		
A	**Specific to each unit:**	**Specific to**	
i	Purchases- by A	A	50,00,000
ii	Purchases- by B	B	40,00,000
iii	Purchases- by C	C	20,00,000
iv	Purchases- Stock transfer from A to B	B	20,00,000
v	Purchases- Stock transfer from A to C	C	10,00,000
vi	Rent - at A	A	100,000
vii	Rent - at B	B	50,000
viii	Rent - at C	C	50,000
ix	Brand Promotion- for C	C	35,000
B	**Common expenses incurred at Head Office:**		
x	Legal Charges (*Common expenses, incurred for the entity as a whole, to be Apportioned for Cross Charge)*		1,75,000
xi	Communication Expenses to provide customer care support for the company		45,000
xii	Accounting Expenses (Software Subscription)		25,000
xiii	Meeting and Events		40,000
xiv	Business Travel expenses		50,000
xv	Advertisement Expenses		2,40,000
xvi	Audit Fees		1,75,000
xvii	Employee Salary at HO *(Specific + Common)*		6,50,000
	Total Expenses		**1,56,35,000**

	Notes:
	i. The Employee Cost mentioned above includes Rs. 4,50,000 specifically incurred for Staff at HO. The balance Rs. 2,00,000 was incurred for staff at HO involved in performing activities such as Accounting, HR, IT support, etc. which were utilized by all the three business units.
	ii. Considering the rate of tax for all the expenses to be 18% (for calculation)

The above transactions include expenses, the benefit of which is utilized by all the branches of the entity. However, the suppliers have raised invoice on the Head office. It will be incorrect for the Head Office, which has incurred the expense but not utilized the complete service, to claim the ITC of that portion of service which is utilized by other branches. Therefore, the Head Office has to raise invoice on the branch which is receiving the benefit of such services and charge GST on the same. It can be done in the below manner:

Basis of apportionment:

Sl. No.	Turnover	Amount (Rs.)	Ratio (%)
1	A (incl. stock transfer)	3,00,00,000	50%
2	B	1,50,00,000	25%
3	C	1,50,00,000	25%
	Total	**6,00,00,000**	**100%**

Note: Dividend, being exempt under GST, is not considered in the above turnover.

Apportionment of cost in order to raise invoice:

Sl. No.	Expenses	Amount (Rs.)	Apportionment of Cost		
			A (50%)	B (25%)	C (25%)
1	Legal Charges				
2	Communication Expenses to provide customer care support for the company	45,000	22,500	11,250	11,250
3	Accounting Expenses (software subscription)	25,000	12,500	6,250	6,250
4	Meeting and Events	40,000	20,000	10,000	10,000
5	Business Travel Expenses	50,000	25,000	12,500	12,500
6	Advertisement Expenses	2,40,000	1,20,000	60,000	60,000
7	Audit Fees	1,75,000	87,500	43,750	43,750
	Total	**7,50,000**	**3,75,000**	**1,87,500**	**1,87,500**

In this case, the transactions will flow as follows:

i. HO will pay for entire expenses Rs. 8,85,000/- [Taxable Value Rs. 7,50,000/- (+) CGST Rs. 67,500/- (+) SGST Rs. 67,500/-] to the suppliers and claim ITC of Rs. 67,500/- each CGST and SGST (assuming all are intra-state supplies).

ii. HO will raise invoice on Branch B and Branch C for a total amount of Rs. 2,21,250/- each branch [Taxable Value of Rs. 1,87,500/- (+) IGST of Rs. 33,750/-] and remit the output tax of Rs. 67,500/- (total tax of both the branches). Both the branches can claim ITC of Rs. 33,750/- IGST.

iii. In this way the supply chain is maintained.

The above procedure is a way to Cross Charge different units of an entity. Another way can be by going for ISD mechanism, where the concept of Cross Charge will not arise. The ISD registered office can receive invoices on its name and apportion ITC to different units.

For certain expenses, Cross Charge can be avoided by using ISD mechanism. This can be done only for expenses which are incurred for services provided by third party suppliers.

In cases where the service is provided by one of the units of the entity, Cross Charge has to be mandatorily done by that unit. For example, in case if the Head Office is using its resources such as Accounting Software, staff, IT facility, etc. to provide benefit to all its branches; the service here, is provided by one of the units of the entity, that is, the Head Office. Here, the HO has to mandatorily Cross Charge its other branches by raising invoice on the branches and charging GST.

In the above illustration, one such expense incurred by the HO is common employee cost of Rs. 2,00,000/-. However, Cross Charge of such expense is a debatable issue since the expense incurred here is by way of salary, and salary is outside the purview of GST. Further, if GST is to be charged, then on what basis of valuation will it be charged?

Also, the Authority for Advance Ruling (AAR), in the case of **Columbia Asia Hospitals Pvt Ltd,** has held that since the HO and other Units in a different State of an entity are distinct persons, the employees of HO are not employees of the Unit in different States and hence, the transaction is covered by Schedule I of the Act, and GST is payable. Assuming that an entity is having four units in four different States and a Corporate office. If the employee cost has to be shared among the four units, by raising a GST invoice, in what proportion the employee cost can be shared among the units for the purpose of GST valuation? There are no guidelines in this regard in the statutory provisions.

There are two possibilities in such situation:

i. Cross Charge such expense and avoid litigation, or

ii. Do not Cross Charge such expense and litigate the issue ;

Conclusion

The concept of Cross Charge did not prevail in the pre-GST regime. The same should not be confused with the concept of ISD. ISD mechanism is a more efficient way of distributing credit across an entity. Cross Charge is a provisional requirement for every taxpayer who is making a supply to related or distinct person, without consideration. The Advance Ruling of Columbia Asia Hospitals Pvt. Ltd. had brought up some context and also raised certain arguments in relation to applicability of Cross Charge on employee cost. The non-availability of proper guidelines in relation to valuation and taxability of certain transactions makes it a more open-ended topic of discussion.

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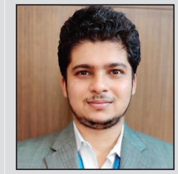
Rule 36(4) – Impact & Validity



■ CA. Madhukar N Hiregange & CA. Akshay M Hiregange

Input Tax Credit (ITC) matching – GSTN- not ready- A thorny issue for the department and the assessee's. It is little more than 3 years since the inception of GST, one would have expected the early teething problems to overcome, and the new radical indirect tax regime would be up and running! Although, due to various factors, including the recent pandemic, we are seeing continuous amendments, delays in implementation and lack of a dependable infrastructure. Rule 36(4), i.e. the ITC matching and claim based on vendor GSTR filings is one such insertion into the law which is creating more harm than good. In this article, we have analysed the impact, practical suggestions, and also touched upon the validity of Rule 36(4) in GST law.

ITC reconciliation as per Rule 36(4)

In terms of Section 16 read with Rule 36(4) inserted w.e.f. 9th October 2019, ITC can only be claimed by an assessee based on the outward supply details (tax invoice, CN/DN) uploaded by the vendor in their GSTR-1. To provide some room for filing errors/delay in filing, etc. an ad-hoc additional 20% (upto December 2019) / 10% (from January 2020 onwards) limit was provided.

Note: The ITC rule restriction does not apply to ITC on - Import of Goods, Input Service Distributor (ISD) invoices and under Reverse Charge Mechanism (RCM).

Various pronouncements under GST law on this topic have been listed below:

A. Introduction of Section 43A – CGST Amendment Act 2018 w.e.f 01.02.2019

B. Applicability of Section 43A kept on hold - NN. 02/2019-CT dt. 29.01.2019

C. Introduction of Rule 36(4) - NN. 49/2019-CT dt. 09.10.2019

D. Clarification on Rule 36(4) - Circular 123/42/2019 dt. 11.11.2019

Simple Illustration:

Particulars	1st Month	2nd Month	3rd Month
Eligible ITC as per Books	140	100	60
ITC Carried Forward	-	30 (140-100-10)	20 (30-10)
Eligible ITC as per GSTR-2A*	100	100	100
Maximum ITC available u/r 36(4)	110 (100*110% as ITC as per books is higher)	110 (10% ad-hoc claimed due to books ITC C/F)	80 (books are less than 110%)
Total ITC for 3 months as per books	300		
Total ITC for 3 months as per GSTR-2A	300		
** Eligible ITC as per GSTR 2A – Management would require to perform eligibility test as per Section 16 & 17 of CGST Act upon GSTR 2A downloads.*			

Impact – Credit not reflecting in GSTR 2A

A. Possible reasons for differences -

- B2B updated instead as B2C transaction in GSTR 1
- Incorrect GSTIN updated in GSTR 1
- Delay in filing GSTR 1 (for the month/for the transaction)
- Quarterly filers GSTR 1 reflects in GSTR 2A on a quarterly basis. (Credit could be eligible on monthly basis)
- Data entry errors – incorrect invoice number or date, taxable value/taxes

B. Communications / notices from the department requiring reasons for mis-match between ITC claimed in GSTR 3B against ITC in GSTR 2A. (e-mail / printed letter with DIN). The point in (A) above where applicable could be shared in the reply.

C. Interest being demanded at 24% p.a. as per Section 50(3).

D. Blockage of Electronic Credit Ledger - Rule 86A had been introduced in December 2019, wherein the Department now has the powers to block the amounts lying in Electronic Credit Ledger subject to underlying conditions. If not, recovery proceedings also may be initiated. Although, principles of natural justice are expected to be followed.

E. The above leads to a business process impact necessitating change such as cash flow management, revision of payment terms / contracts, increase in vendor relationship management, etc.

Practical Issues & Changes

Due to the hasty introduction of the Rule, it led to several practical issues which are not resolved or partially resolved till date. Some of the important ones are highlighted below:

A. Section 43A not notified – Section 43A remains un-notified till date although it was brought in through the GST law in February 2019. The Possibility of questioning validity of introducing Rule 36(4), instead of notifying Section 43A remains. [However, it may be brought in retrospectively]

B. No clarity on Quarterly return filers – The due date to file GSTR 1 for quarterly filers was after GSTR 3B for the said month, also the portal does not allow to upload the data on a monthly basis. This has only been partially resolved from October 2020 as the due date to file GSTR 1 for quarterly filers has been brought before the GSTR 3B due date.

C. Introduction and scrapping of New Returns (ANX-1,2 etc.) - The highly anticipated new GST returns, looked like it was expected to be implemented in 2020, which was an improved version of the present GST returns as it links the outward supply to tax payments and could assist in the ITC reconciliation as per Rule 36(4), alas, the concept itself was scrapped completely in September 2020.

D. Introduction of GSTR 2B – Significant difference between GSTR 2B and GSTR 2A is that, GSTR 2B is not a dynamic report. Details uploaded by suppliers in GSTR 1 after due dates would be considered in the forthcoming month. Therefore, GSTR 2B for a month would be constant after the due date. It would also indicate those invoices which are uploaded beyond the ITC claim time limit under "ITC not available", although, there is no verification link to GSTR 3B ITC claimed. This has been introduced from July 2020 GST returns onwards.

E. Common GSTR 1 errors – Vendor uploading invoice in B2C instead of B2B, or disclosing incorrect GSTIN in B2B are common errors. Assuming that vendor has also paid the taxes through GSTR 3B, whether such procedural errors can disallow credit eligibility for the recipient? In our view, the intention of the law is to enable credit to the recipient. Where the vendors provide declarations that tax on the invoices have been paid, credit must not be denied to the recipient.

F. ITC Claim based on GSTR 2A – There are rising number of cases where GST is being claimed solely on the basis of GSTR 2A without verification of the credit eligibility u/s 16 & 17 of CGST Act. This could lead to serious consequences in the form of interest and penalty.

G. Applicability of 24% interest – As the provisions of Section 42 & 43 have not been enabled as yet (GSTR

2 & 3 deferred indefinitely), the applicability of Section 50(3) could be questioned entirely, therefore, the residual rate under Section 50(1) could be said to be applicable, i.e. 18% p.a. Also, it is important to note there is no interest on interest.

H. GSTR 1 is not tax payment return – Section 16(2)(c) – recipient must ensure tax charged on supply has been actually paid to the Government. As GSTR 1 is not a tax payment return, but in fact is only an outward supply disclosure return, whether this process would help satisfy the ITC availment condition? If not, whether any assessee aggrieved by departmental notices on GSTR 2A mis-match can take shelter under the legal maxim - Lex non cogit impossibila (law does not compel a man to do that which he cannot possibly perform) ?

Practical Solutions – Compliance of Rule 36(4)

Other than the option to litigate the validity and question the practical compliance abilities for Rule 36(4), below are the suggestions to comply with Rule 36(4):

1. Freezing books of accounts – Ensuring back-dated entries are not passed. Use authorization levels for exceptional cases. (Ex: year-end audit entries)

2. Obtaining YTD (Year-To-Date) GSTR 2A – As the GSTR 2A is a dynamic report, ensure for the Financial Year, GSTR 2A is downloaded on a year to date basis. (Ex: For GSTR 2A Vs GSTR 3B of October 2020, download GSTR 2A from April to September 2020 again to avoid missed out entries.)

3. Tracking mechanism for delayed / non-filings – Maintain a master tracker on a vendor-invoice-period level to identify delays / non-filers.

4. Vendor management system – Develop a system to grade vendors, where payment terms are decided based on GST compliance and track record to hold back payment of GST portion to those who may be non-compliant. GST would only be paid for them on its confirmation entry in 2.

5. Software integration / use of 3rd party websites – Integrate GST software to books of accounts to enable GSTR 2A Vs ITC as per books reconciliation / utilize 3rd party transactions. Benefits – Reduces time, increases accuracy, also can identify possible reasons for mis-match.

6. Training to employees – Regular updation of GST law along with training on utilization of software is suggested.

Useful Court rulings

Kay Kay Industries – Hon'ble Supreme Court - Civil Appeal 7031 (2009) – Petitioner claimed MODVAT credit based on invoice, although, department contended that as the vendor has not discharged the liability, it was the responsibility of the recipient to ensure tax is paid to the Government. Hon'ble Supreme Court upheld the Tribunal and High Court decision allowing the credit to the petitioner.

Alstom India Vs UOI – – Hon'ble Gujarat High Court - Special Civil Application 11031 (2013) - Petitioner succeeded in proving Constitutional invalidity on certain provisions laid down by DGFT which did not have legal grounds. Even though it is a writ petition ruling in Hight Court of another State, the decision can be relied upon by the tax payers of other States on similar grounds.

Conclusion

The above deliberation throws light on the poorly constructed and implemented ITC reconciliation process. The legal validity of the new Rule itself is questionable. Unless the verification is enabled on the portal easily it is expected to be quashed. There are many other practical issues which are not yet addressed although it has been a year from the insertion of the Rule.

The Government is expected to implement the process appropriately, i.e. notify Section 43A, link disclosures to payment, and provide adequate infrastructure for implementation. The objective / goal of the rule was to curb the revenue leakage, but it has impacted business functioning and resulted in nuisance and also a lot of possible litigation consequently.

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FINANCIAL REPORTING AND ASSURANCE - REFERENCER

■ CA Vinayak Pai V

This Feature provides: snapshot of key monthly practice updates in the Financial Reporting and Assurance space; a recent Ind AS Amendment; a KAM Case Study; and extracts from Published Financial Statements

1. UPDATES: Monthly Roundup[1]

INDIA	
AS / IND AS	• ICAI Publication ○ **Indian Accounting Standards: *An Overview*** (Revised 2020)
	• ICAI **Exposure Draft** ○ **Interest Rate Benchmark Reform – Phase 2** (Amendments to **Ind AS 109, 107 and Ind AS 116**)
ASSURANCE	• ICAI **Exposure Drafts - Forensic Accounting and Investigation Standards** (FAIS) ○ FAIS No. 210, *Engagement Objectives* ○ FAIS No. 240, *Engaging With Agencies* ○ FAIS No. 310, *Planning the Assignment* ○ FAIS No. 320, *Evidence and Documentation* ○ FAIS No. 330, *Conducting Work Procedures* ○ FAIS No. 340, *Conducting Interviews* ○ FAIS No. 350, *Review and Supervision*
	• ICAI **Advisory** ○ Compliance with the ***Website Guidelines*** *of the Institute*
	• ICAI **Announcement** ○ **Further extensions** regarding the **validity of Peer Review Certificate** in the wake of Covid-19 spurt – Modifications in Part C of the Announcement hosted on 29th May, 2020
	• **IESBA** Publication ○ **Using Specialists in the Covid-19 Environment** – *Including Considerations for Involving Specialists in Audits of Financial Statements*
RBI	• RBI **Notifications** ○ **Interest Subvention Scheme** for MSMEs – **Co-operative Banks** ○ EDPMS Module for '**Caution / De-caution Listing of Exporters**' – Review ○ Review of **Regulatory Framework** for **HFCs** ○ **Individual Housing Loans** – Rationalization of **Risk Weights** ○ **Scheme** for grant of ex-gratia payment of **difference between compound and simple interest** for 6 months to Borrowers in specified loan accounts (1st March, 2020 to 31st August, 2020)

INTERNATIONAL	
IFRS	• IFRS Foundation Publication ○ *Compilation of **Agenda Decisions** – Volume 3* ▪ Compilation of all Agenda Decisions published by IFRS Interpretations Committee from April 2020 to September 2020
US GAAP	• **FASB** ○ **Accounting Standards Update (ASU)** ▪ ASU No.2020-08: *Codification Improvements to Sub-topic 310-20, **Receivables - Non Refundable Fees and Other Costs*** ○ Proposed ASU ▪ **Leases** (Topic 842) – ***Targeted Improvements*** ○ Staff **Educational Paper** ▪ Topic 470 (Debt): ***Borrowers Accounting for Debt Modifications*** • **SEC** ○ **Auditor Independence Rules Updated** - Amendments reflect SEC staff experience in applying the Auditor Independence Framework • **PCAOB** Staff Update ○ Spotlight: *Staff Update and Preview of **2019 Inspection Observations*** • **PCAOB** Release ○ Interim Analysis Report: *Evidence on the **Initial Impact** of **Critical Audit Matter (CAM) Requirements***

[1] *Updates for the month of October 2020.*

2. **RECENT AMENDMENT:** Ind AS – **Covid-19 Related Rent Concession**

Background The Companies (Indian Accounting Standards) Amendment Rules, 2020 amended Ind AS 116, Leases by inserting accounting provision for Covid-19-Related Rent Concessions for Lessees. As a practical expedient, a lessee may elect not to assess whether a rent concession that meets the specified conditions (Para 46B) is a lease modification. A lessee that makes this election shall account for any change in lease payments resulting from the rent concession the same way it would account for the change applying Ind AS 116 if the changes were not a lease modification.

The practical expedient applies only to rent concessions occurring as a direct consequence of the Covid-19 pandemic and only if all the following conditions are met viz.

a) the change in lease payments results in revised consideration for the lease that is substantially the same as, or less than, the consideration for the lease immediately preceding the change,

b) any reduction in lease payments affects only payments originally due on or before 30th June, 2021, and

c) there is no substantive change to other terms and conditions of the lease.

Extracts from financial statements of a listed company:

During the period ended 30th September, 2020, the Company has renegotiated with certain landlords on the rent reduction / waiver due to Covid-19 pandemic. The management believes that such reduction / waiver is short term in nature and also meets the other conditions specified in the notification issued by the Central Government in consultation with NFRA dated 24th July, 2020 as Companies (Indian Accounting Standards) Amendment Rules, 2020 with effect from 1st April, 2020. Thus, in accordance with the said notification, the Company has elected to apply exemption as the reduction / waiver does not necessitate a lease modification as envisaged in the Standard by recording in the 'Other *income'. Accordingly, the Company has recognized Rs. 26 crores during the quarter (Rs. 49 crores for the six months period) in the Statement of Profit and Loss.*

3. **CASE STUDY: Reporting on A Key Audit Matter (KAM) – Recognition of Supplier Rebates**

Background: Company X has entered into rebate arrangements with a significant number of its suppliers. Supplier rebates received and receivable in respect of goods purchased are deducted from cost of sales in the Statement of P&L or the cost of inventory, to the extent that those goods remain in inventory at the year end. Due to the nature of the arrangements in place, a significant portion of the Company's supplier rebates recognized during the year is not finalised or received until after the year end. Certain arrangements have volume targets that span the year end.

Assessment as a KAM: The auditors focused on this accounting area as the calculation of supplier rebates recognized in the year and the rebates receivable at the reporting date involves the use of estimates and because of the manual nature of the underlying calculations in some business units.

Audit procedures applied to obtain sufficient appropriate audit evidence: The following audit procedures were applied, inter alia, by the auditors to obtain sufficient appropriate audit evidence:

- The auditors **updated their understanding of the significant rebate arrangements** that the Company entered into by meeting procurement personnel and reading a sample of contracts.
- They **assessed the reasonableness of estimates made** by the management in the calculation of rebate income and rebate receivables.
- On a **sample basis, they calculated rebates recognized** during the year and receivables by reference to supplier arrangements and purchase reports. Where arrangements had volume targets, the auditors assessed the appropriateness of assumptions made by reference to purchases in the period.
- The auditors **obtained third party confirmation** of rebate income and rebates due at the reporting date, for a sample of suppliers. Where responses were not received, they **completed alternative procedures** including obtaining rebate arrangements and re-computing rebate income and rebates receivable.
- The auditors also considered the actual results of the collection of rebates during the year including those relating to the prior year **comparing the amount collected to the related estimated rebates receivable** and noted that recovered amounts did not vary significantly from amounts estimated. The **appropriateness of related disclosures** within the financial statements was also assessed.

4. **FINANCIAL STATEMENT EXTRACTS:** *Ind AS –* **Business Model Assessment for Financial Assets**

Extracts from financial statements of a listed company with respect to **Business Model Assessment** for **Financial Assets** is provided herein below.

Classification and measurement of financial assets depends on the results of the SPPI (Solely Payments of Principal and Interest) and the Business Model Test.

The Company determines the business model at a level that reflects how groups of financial assets are managed together to achieve a particular business objective. This assessment includes judgements reflecting all relevant evidence including how the performance of the assets is evaluated and their performance measured, the risks that affect the performance of the assets and how these are managed and how the managers of the assets are compensated.

The Company monitors financial assets measured at amortised cost or fair value through Other Comprehensive Income (OCI) that are derecognized prior to their maturity to understand the reason for their disposal and whether the reasons are consistent with the objective of the business for which the asset was held. Monitoring is part of the Company's continuous assessment of whether the business model for which the remaining financial assets are held continues to be appropriate and if it is not appropriate whether there has been a change in business model and so a prospective change to the classification of those assets.

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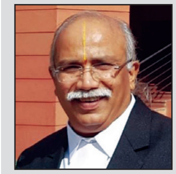
Intellectual Property Rights and Protection in India



Selection of a Mark (part-III of IPR series)

■ **Adv. M G Kodandaram,** ***IRS, Assistant Director (Retd.), NACIN***

Functions of a Trademark

As learnt in the earlier parts, the Trademarks (hereinafter 'Marks' for brevity) make it easy for the consumers to go for a particular Goods or Services (herein after referred as 'product') from a particular source or say, of the person being the producer or provider of such business activity. The marks help to distinguish one's business from those of the competitors, as they are a system in place to identify the source. To serve this purpose such selected marks must be distinct marks, meaning that no one has used it earlier or no one is allowed to counterfeit after due process of registration. This is one of the important aspects to be considered during the selection of a mark. To say in technical and legal words, there should not be any prior use of the mark by any person for a particular business and such a mark should not be in the knowledge of the consumers. How to conduct this search before filing for registration will be narrated in the up-coming article.

The marks are also the basis for building brand image and reputation so as to create a relationship of trust which can enable the enterprise to establish loyal patronage and goodwill of the consumers to the business. It is of common knowledge that the consumers often cultivate an emotional attachment to certain marks based on a set of desired qualities or features embodied in the product bearing those marks. Therefore, selection of a mark should go hand in hand in meeting the quality and needs of the consumers. Business grows only if it could meet the needs, requirements and aspirations of the consumers, otherwise it will end up as a non-profitable activity, which is disastrous for any enterprise. Therefore, the entities always should seek feedback on the requirements of the consumers and modify their products to have an edge on the competitors.

Marks not to describe the products

The marks are among the most efficient marketing and communication tools and their selection should hover around to gather the consumer's attention so as to make the products stand out in the market place. When one studies the various marks in use, it is clear that the marks do not describe the products, but have become the most popular. When one says *APPLE*, the immediate reply will be computers as the consumers have forgotten it to be the name of a fruit too! Let us examine the criteria adopted in selection of the following marks:

1) KITKAT for chocolates: the marks do not describe the product.
2) Logo 'M' in the distinctive style and design of McDonald's do not describe or suggest the products they provide.
3) MARS for chocolates, confectionery etc. The marks do not describe or indicate the product.
4) NIRMA for washing & cleaning preparations: the terms such as soap, washing material etc., that describe the products are not used as marks.
5) ODONIL & ODOMOS for mosquito repellants are abstract words.

Then what is the legally tenable way to select a good 'mark' in addition to such marks being attractive?

The most common error we make in selection of a mark is to choose a word that is to describe the product. Enterprises resort to do this under the belief that the consumer will straight away know what the product is. But the law does not allow such words or marks to be registered and owned. Although it may be easier to market products using describing or suggestive words as marks at the inception stage, but such marks offer least protection as they could be used by all in that particular business. As registrations are not allowed on such terms or marks, it would be difficult to stop the competitors from using the same or similar marks. Therefore, your search should be for an attractive mark, which should not describe the product and should not have been used, meaning that selection should aim at having distinctiveness and Non-descriptiveness as the important component.

Further, it must be noted that in these days of e-commerce, such a mark needs to be used to formulate the web address to operate the business in cyber society, so that consumers are attracted. In view of this requirement it is desirable to check the availability of web address before finalising the selection of a mark.

The 'Coronil' Saga

It is important to understand as to how one should not go about in selecting a mark. This can be well understood by referring to the recent case where the Coronil mark used by Patanjali Ayurved Limited (*"Patanjali"*), for an immunity booster has been reserved as the said mark had already been registered and in use by another person for a different product. In other words, the said marks are deceptive and confusingly similar which has strained the process of owning the mark.

Patanjali used the "Coronil" as a mark for an Ayurvedic product suggesting the consumers that the product is a "cure" for Covid19. The said mark had already been registered and owned by another company *M/s Arudra Engineers Private Limited (Arudra),* for a different product, who approached the courts alleging infringement and seeking necessary redressal. Patanjali lost their claim, besides receiving a severe reprimand from the Madras High Court for its brazen attempt at using the marks owned by another entity. The arguments of the petitioner and defendants and the observation of the court in a nut shell assist in appreciating the issues to be considered while selecting a mark.

The Plaintiff claimed that they are in the business of chemical cleaning etc., for Systems in India and abroad for over two decades; that they are the registered proprietor of the trademarks 'CORONIL-92 B' and 'Coronil-213 SPL' since 1993, used for chemical agents; that Patanjali marketing their product using the name "Coronil" amounts to an infringement of their registered marks. They contended that use of the mark 'Coronil' dilutes the distinctiveness of their mark.

The Defendants contended that the suit was part of a larger conspiracy against the group to scuttle their business; that the Coronil tablet was an immunity booster; that the trials at the NIMS University, showed that Coronavirus-infected persons recovered after using. They further argued that the Plaintiff had not raised any objection when it had obtained approval for processing Coronil tablet and also till the license was granted by the Government after scrutiny by the Ministry of Ayush, GOI; that Coronil tablets sold are of different classification of goods; that it was a settled law that a proprietor of a trademark cannot enjoy monopoly over the entire classes of goods.

<u>Decision of the Madras High Court</u>

A single member bench of the Madras High Court held that a prima facie case was made out by the Plaintiff, on account of its prior registration; the primary word is 'Coronil' must be afforded protection from infringement, even if it was for a different class of goods. The Court further held that it was not always obligatory that the whole or part must be registered as separate trademarks. The Court observed ex-parte that permission was not granted to Patanjali to market its product, holding out that it cures Coronavirus. The company could have used any name to signify its product as an immunity booster and market the same to the general public rather than play upon the fear and panic among the public by introducing a product ostensibly to cure Coronavirus, when as a fact, it does not. Thus, the Court held that 'the company had failed to prove that Coronil tablet is a cure for Coronavirus. Consequently, the use of the very name 'Coronil' by the Defendants was without any due cause and took unfair advantage of the term 'Coronil', a registered trademark of the Plaintiff'. The Court held that Patanjali are at fault as it had not checked with the Registry before commercialising their subject goods.

The Court allowed the suit and imposed a cost of INR 10 Lakh on Patanjali stating that the company was merely chasing further profits by exploiting the fear and panic among the general public by projecting a cure for the Coronavirus, when, in fact, its 'Coronil Tablet' is not a cure but rather an immunity booster for cough, cold and fever. Aggrieved by the order Patanjali appealed and the division bench of the High Court stayed the order. On appeal by Arudra, the Supreme Court refused to take up the case, observing that it would be terrible to prevent the use of Coronil in the times of Covid. The matter hasn't yet attained finality as it is pending before the Madras High Court. So that lessons to be learnt are: -

- Conduct proper search to find out any prior use, before finalizing a mark.
- Do not use a descriptive or suggestive mark for a product as it may already be in use at public space and may not merit registration.
- Go for an arbitrary mark as it has more strength and are much favored under law.

- Publicize, advertise and start connecting with the consumers so that it will be your unique way to establish the communication with them.
- Wrong selection may end up in prolonged litigation and
- may end in coughing up huge amounts as damages, in addition to denting the goodwill in the market.

Legal prescriptions for selection of a mark

For selecting the mark, the first element to be observed is the definition of trademark under Section 2(1)(m), which has been deliberated in the previous part. Such chosen mark must be capable of being graphically represented so as to enable the mark in question to be represented visually, could be identified precisely before considering for grant of rights. Later an application has to be made in the prescribed form to the trade mark registry for consideration of granting authorities. The details of further procedures will be undertaken in the upcoming part.

The selected mark must be easy to speak & spell, appealing and easy to remember or recollect. It is that it consists of invented or coined word, unique monogram, logo or a geometrical device etc. A mark can be striking, fanciful, unusual, memorable or different, which can contribute to it being distinctive. The ultimate objective of a mark is to enable people associate themselves with the products being offered by the owner of that mark.

Spectrum of strength or distinctiveness

The Trademarks can be categorized as having the following levels of distinctiveness or strength:

Fanciful or coined marks: The strongest kind of mark is a coined or made-up word that has no meaning other than as a trademark. A fanciful mark is a term, name, or logo that is different from anything that exists. Due to this unique nature of these marks, they easily qualify as better trademarks for valid registration and receive broadest protection. While such marks may be more difficult for consumers to remember in the beginning, a trademark owner has an opportunity to create a positive association between the mark and a product, service, or business. For example: KODAK for cameras, EXXON for petroleum products, VERIZON, Canon etc.,

Arbitrary marks: These marks include words that may have a common meaning but not in relation to the Goods or Services for which they are used as brand names. Popular names with a well-known meaning are employed in a different context so that a new line of communication is established with consumers like using word mirchi for a dress material. Like fanciful or coined marks, commercially established arbitrary marks are afforded a broad scope of protection against third-party use of the mark. For example: APPLE for mobile phones (iPhones) and personal computers (MacBooks and iMacs), SAMSUNG for electronic products, *SHELL* for gasoline, BATA for footwear and BLACKBERRY for cell phones.

Suggestive marks: These marks suggest some attribute or benefit of the Goods or Services, but do not describe the goods themselves. They do not directly describe the product or service, but will require some imagination, thought, or perception for the consumer to reach a conclusion as to the exact nature of product. It is like the automobile brand 'Jaguar' is suggestive of speed, flexibility and agility. For example: MICROSOFT for software, AIRBUS for airplanes, VOLKSWAGEN for automobiles, KITCHENAID for kitchen appliances, and SWEETARTS for candy.

Descriptive marks: In most countries, including India, terms that describe Goods, Services or their characteristics cannot be protected as a mark except in cases where the public has come to recognize them as marks and to have "acquired distinctiveness" or "secondary meaning". Descriptive marks directly identify the nature of the products or services without imagination, thought, or perception. It is difficult to register and to prevent others from using merely descriptive marks because of the competitive need to describe products and services accurately.

For example: RICH 'N CHIPS for chocolate chip cookies, HOMEMAKERS for housekeeping services, Uncle Sam's Pizza, COLD AND CREAMY for ice cream, Clean-Plus for Detergents.

The generic word can never be a goods mark because such marks name the product, but not the source. Escalator and cellophane are classic examples of terms that once functioned as trademarks but through lack of protection, became generic and now are used as the common names for the products, regardless of their source. Generic terms are not registerable. For example: lawn mower, razor, candy, credit card.

Grounds for Refusal of Registration

The ground for the refusal under the Act provides useful information in making fair decisions for selection of a trademark. Section 9 of The Trade Marks Act provides the following as absolute grounds for refusal of registration, which render such marks unregistrable and therefore should be avoided.

"(a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;

(b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the services or other characteristics of the goods or services;

(c) which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade, shall not be registered".

A mark shall not be registered as a trade mark, if

(a) it is of such nature as to deceive the public or cause confusion;

(b) it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;

(c) it comprises or contains scandalous or obscene matter;

(d) its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950. The Trade Marks Act defines "deceptively similar" [ref : Sec 2(1)(h) of the act] as a mark shall be deemed to be deceptively similar to another mark if it so nearly resembles the other mark as to be likely to deceive or cause confusion.

Section 11 of The Trade Marks Act provides for the relative ground of refusal of registration on the ground of it being in violation of an earlier existing right if it is likely to cause confusion, including likelihood of association shall not be registered. A mark which is identical / similar to an earlier well-known mark but sought to be registered in relation to a different Goods or Services would also be refused registration. Some of the common reasons for rejection of application are that such marks are generic terms, descriptive terms, offensive words, patriotic sovereign marks, obscene / misguiding terms, surnames, brand names which are famous in other countries etc.,

The following types of marks are to be **avoided** so as to get a trademark registered without any hindrance under the act:

a) Superlative or laudatory words such as Premium, Gold, Deluxe.

b) Descriptive words like Coffee shop for coffee bars; Cooler for Refrigerators.

c) Trademarks confusingly similar to existing trademarks

d) Words which have direct reference to the character or quality of the product / service. Examples: Best Choice, Easy Cook, Super coolers.

e) Common personal names or surnames.

f) Geographic Indications: In many jurisdictions including India, prohibit the registration of marks that are merely the geographic location where the products are made or from which the services emanate. For example: Mysuru Mallige, Byadagi Mirchi, Darjeeling Tea. However, some countries offer protection for Geographical Indications [GI] through particular certification programs. The details of GI law and registration are discussed separately in subsequent issues.

Registration of a trade mark - Not essential

Trademark rights could be acquired either by use or by registration. The 'use' system is based on the objective facts of trademark usage in market. It decides the ownership of a trademark according to the time that the trademark was first used. While the 'registration' system grants trademark rights according to registration and the first applicant will obtain the rights. Registration usually gives the enterprise the right to use the mark nationwide, expandable as worldwide, whereas unregistered trademarks acquire limited rights. Further in cases of infringements the registration enables a party to bring an infringement suit whereas the owner of an unregistered trademark has the remedy of passing off alone. Trademark registration grants the right of the proprietor to use his trademark as well as to exclude all others from such use. Always we should select pool of marks and then discuss with the trademark attorneys or agents to conduct prior use searches and prepare applications for obtaining the trade marks. *Those aspects are discussed in part IV of this series in the upcoming edition*

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YOGA FOR HEALTH - A QUINTESSENTIAL TO LEAD A BALANCED LIFESTYLE

■ CA. Pooja Jain

Health & Fitness

Good health is a recipe for overall well-being:

"*Yoga is a light, which once lit will never dim. The better your practice, the brighter your flame.*" — B.K.S. Iyengar

We as Chartered Accountants are the doctors of the financial health of our clients, which includes the family of the client and also his employees and his close associates. It's crucial for us to understand the impact of our health and our team members' health on work performance and decision making. It is not just physical fitness as it is generally pursued to be the lone parameter of good health. True health is being physically, mentally, emotionally and spiritually fit.

Yogasana, Pranayama and Meditation - a panacea for improved personality:

All of us are juggling multiple responsibilities and do not get enough time to unwind. This unending race against time causes stress, anxiety and other health problems such as headaches, backaches, lethargy, and many more. With the help of yogasanas, pranayama and meditation, one can achieve an integrated total personality and unlock the dynamic self. This also paves the way for creativity and innovations at work, thus increasing work efficiency.

It is generally observed that professionals who practice yoga before or during work hours are better placed to manage their challenges during the day. It is also well understood that their general efficiency and mood improved on days they practiced yoga and were less calm on days they did not.

Merits of inculcating Yoga at workplace:

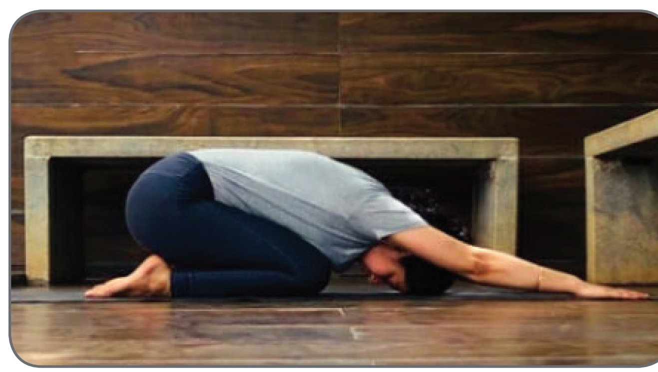
The benefits of introducing yoga at workplace are manifold, some common benefits are:

1. Alleviates common pain from desk jobs
2. Increases energy and reduces fatigue
3. Improves concentration and focus
4. Improves posture
5. Develops immunity
6. Reduces absenteeism
7. Reduces irritability and aggression
8. Promotes team spirit & morale
9. Increases confidence
10. Promotes workforce bonding

A glimpse into few basic Yoga Asanas:

Here are few yogasanas for the greater benefit of all:

1. Adho-Mukha-Vajrasana



A child's pose is soothing and quieting for the mind and body. This pose can be practiced to build flexibility in the back to prepare for deeper forward bending poses.

It is also a counter pose to recover from back bending poses like Bhujangasana, Urdhvadhaburasana, Shalabhasana and the like.

Benefits:

- ➢ Stretches back, hips and legs and provides relief from lower back pain
- ➢ Reduction of stress, tension and anxiety
- ➢ Can help relieve menstrual or digestive discomfort
- ➢ Helps mental and physical relaxation
- ➢ Assists spine lengthening, groin release and improves knee, ankle and foot mobility

2. Badhakonasana

In Sanskrit, the word 'Baddha means Bound, 'Kona' meaning Angle or Split, and 'Asana' meaning posture.

Badhakonasana is popularly known as the Butterfly Pose and sometimes also as the Cobbler Pose.

This asana is simple and highly effective, it is one of the "must-do" yoga asanas for all.

Benefits :

- This asana stretches the inner and outer thighs, groins, and knees
- It strengthens hips, legs, lower back and abdomen
- Badhakonasana helps the intestine and bowel movements
- Removes fatigue from long hours of standing and walking
- Badhakonasana gives relief from menstrual discomfort and menopause symptoms
- Also gives relief from urinary discomfort and prevents hernia
- It soothes sciatica pain
- It is a great pose during the time of pregnancy. Helps in smooth delivery if practiced regularly until late pregnancy

3. Sirsasana

"*Sirsasana the king of all asanas and the reasons are not hard to find*" – B.K.S. Iyengar

Sirsasana is an advanced inversion (i.e., hanging your head upside down to increase blood flow to your scalp) that exhibits strength, control and the beauty of overcoming the fear of falling through physical and mental balance. The name is derived from the Sanskrit Sirsa, meaning "head," and asana meaning "pose" or "posture."

Benefits :

- Calms the brain and helps relieve stress and mild depression
- Stimulates the pituitary and pineal glands
- Strengthens the arms, legs, and spine
- Strengthens the lungs
- Tones the abdominal organs
- Improves digestion
- Helps relieve the symptoms of menopause
- Therapeutic for asthma, infertility, insomnia, and sinusitis

Yoga can help to create healthy, less-stressed and motivated team members who are more productive and cost-effective for organisations. Encouraging employees to take just 10 minutes during work hours to practice some simple yoga stretches or breathing exercises at their desk or out in the fresh air can help tremendously.

Besides yoga, all professionals must consume a nutritional diet, get adequate sleep and stay positive.

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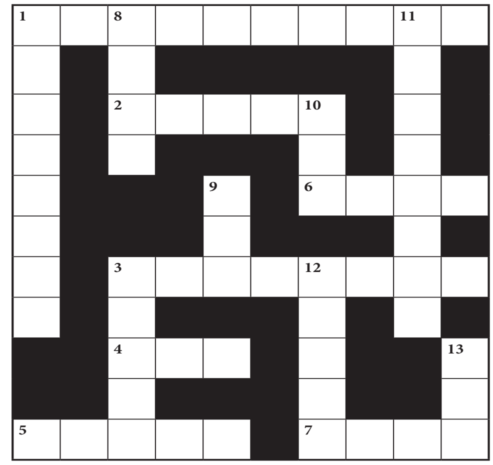
CROSS WORD

3



DOWN	
1	Type of Audit evidence, it includes both information collected from underlying entity records and processes, as well as information from the performance of various audit activities and testing procedures (8)
3	Also known as national accounting, the data form the basis for tracking and forecasting the nation's economic performance and development and is used to form government policy (5)
8	The statement of …... review has been issued by the ICAI to further enhance the quality of professional work of practicing Chartered Accountants (4)
9	This is a decentralized database managed by multiple participants, across multiple nodes, related to block chain (3) (Abbreviation)
10	A measure used to consider how effectively a management is using a company's assets to create profits (3) (Abbreviation)
11	……. profit is not taxed under Income tax act (8)
12	Investors and analysts employ this analysis to evaluate the financial health of companies by scrutinizing past and current financial statements (5)
13	After prolonged period of corporate scandals (e.g., Enron and WorldCom), this was enacted. (relating to Internal control) (3) (Abbreviation)

ACROSS	
1	Term relating to the Standard that prescribes the procedures that an entity applies to ensure that its assets are carried at no more than their recoverable amount (IND AS 36) (10)
2	IND AS 8 provides for accounting treatment relating to this (5)
3	A …….misstatement is information in the financial statements that is sufficiently incorrect that it may impact the economic decisions of someone relying on those statements (8)
4	Bank regulators enforce this ratio to ensure credit discipline in order to protect depositors and promote stability and efficiency in the financial system (3) (Abbreviation)
5	This technology has redefined the way we store and share information (5)
6	A corporate-finance strategy to align the interests of the employees with those of their shareholders (4) (Abbreviation)
7	These expenses are incurred in the regular operations of a business (4) (Abbreviation)

Answers will be published in next month's News Bulletin.

sudoku-3

					4	6		9
		1			2			
							1	
	4					7		
			2			4	3	1
	1		7					
		2		5			6	3
				1				
		9	8		3	5		

Answers to "Cross Word 2" (October 2020)

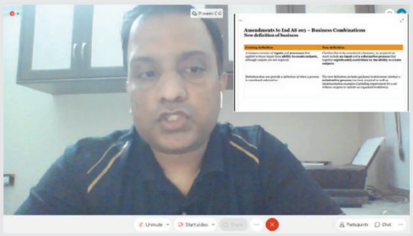
Across

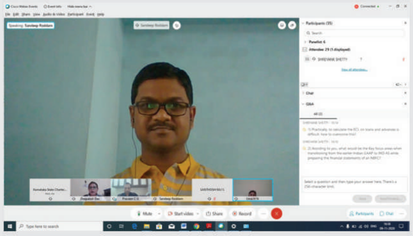
1. Analytical, 2. Benami, 3. TAT, 4. ROC, 5. OCI, 6. HSN, 7. EVA, 8. Hedge, 9. Wage

Down

1. Angel, 2. BITCOIN, 10. Netting, 11. Composite, 12. Estimate, 13. SOD

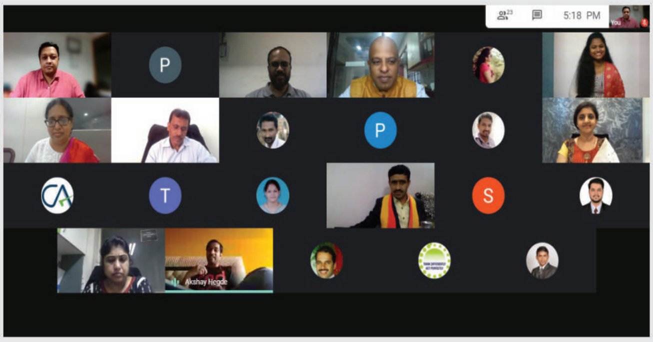
Photo Gallery



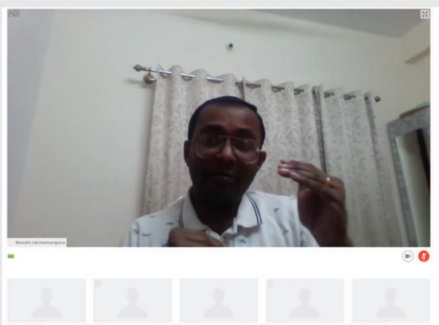


Webinar on Ask an Xpert Series - "Schedule III Presentation and Disclosure on IND AS & Accounting Standards" by speakers CA. Praveen C G and CA. Sandeep Roddam held on 9th November, 2020

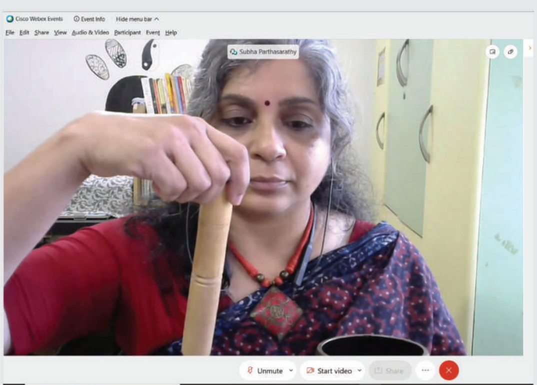
Special Event on "Kannada Rajyotsava 2020" graced by Guest of Honour, CA. Ravindra S Kore and Chief Guest - Shri Keshava Malagi held on 6th November, 2020

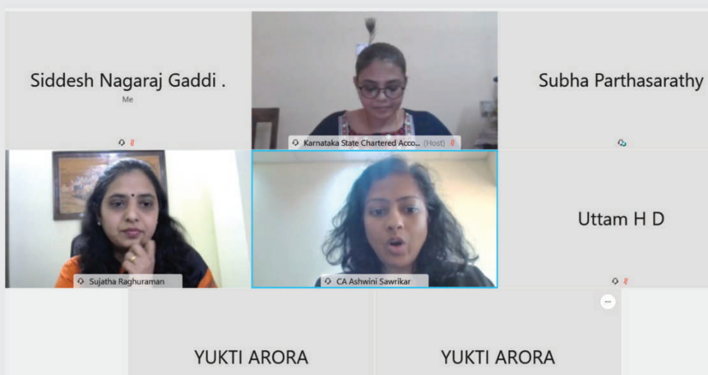


Unique 57th Eloquent Professionals' meet on the occasion of "Kannada Rajyostsava" in the theme of 'ವಾಘ್ ವೈಖರಿ' (Vagha Vaikhari) on 7th November 2020



Ongoing 9 days Landmark program on "Transfer Pricing Masterclass for Beginners" by speakers CA. Narendra Jain, CA. Bharath Lakshminarayana and CA. Umesh Rao on 7th, 8th and 9th November 2020.





Webinar on "Igniting minds - Mindfulness" by CA. Subha Parthasarathy and "Learning in Depth - Cyber Security, IT Risk & Control" by CA. Yukti Arora held jointly with Muscat Chapter of ICAI on 5th November, 2020

"Registered" News Bulletin for India vide No.KA/BGGPO/2542/2018-20
RNI Regn. No. KARENG/2013/51293
Licensed to post without prepayment License No. PMG/BG/WPP-309/2018-2020

Total No. of Pages Printed : 40
Date of Publishing & Posting 15th of the month
Permitted to Post on 17th November 2020
Place of Posting at Bangalore PSO, Mysore Road, Bangalore 560026

KSCAA NEWS BULLETIN English Monthly Printed, Published & Edited by **CA. Kumar S Jigajinni**, President on behalf of **Karnataka State Chartered Accountants Association**,
No 67, 1st Floor, 2nd Stage, West of Chord Road, Mahalaxmipuram, Below Rajaji Nagar Metro Station, Bengaluru – 560 086. **Ph : 2955 2155, e-mail : info@kscaa.com, Website : www.kscaa.com**
Printed at **POORNIMA PRINTERS** # 1764, 22nd Cross, M.C. Layout, Govindrajnagar, Vijayanagar, Bangalore - 560 040. Ph. : 080 - 23359588, E-mail.: info@poornimaoffset.com
Published at No 67, 1st Floor, 2nd Stage, West of Chord Road, Mahalaxmipuram, Below Rajaji Nagar Metro Station, Bengaluru – 560 086. Editor : **CA. Kumar S Jigajinni**