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@kscaa_ca

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KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION

KNOWLEDGE IS STRENGTH

Since 1957

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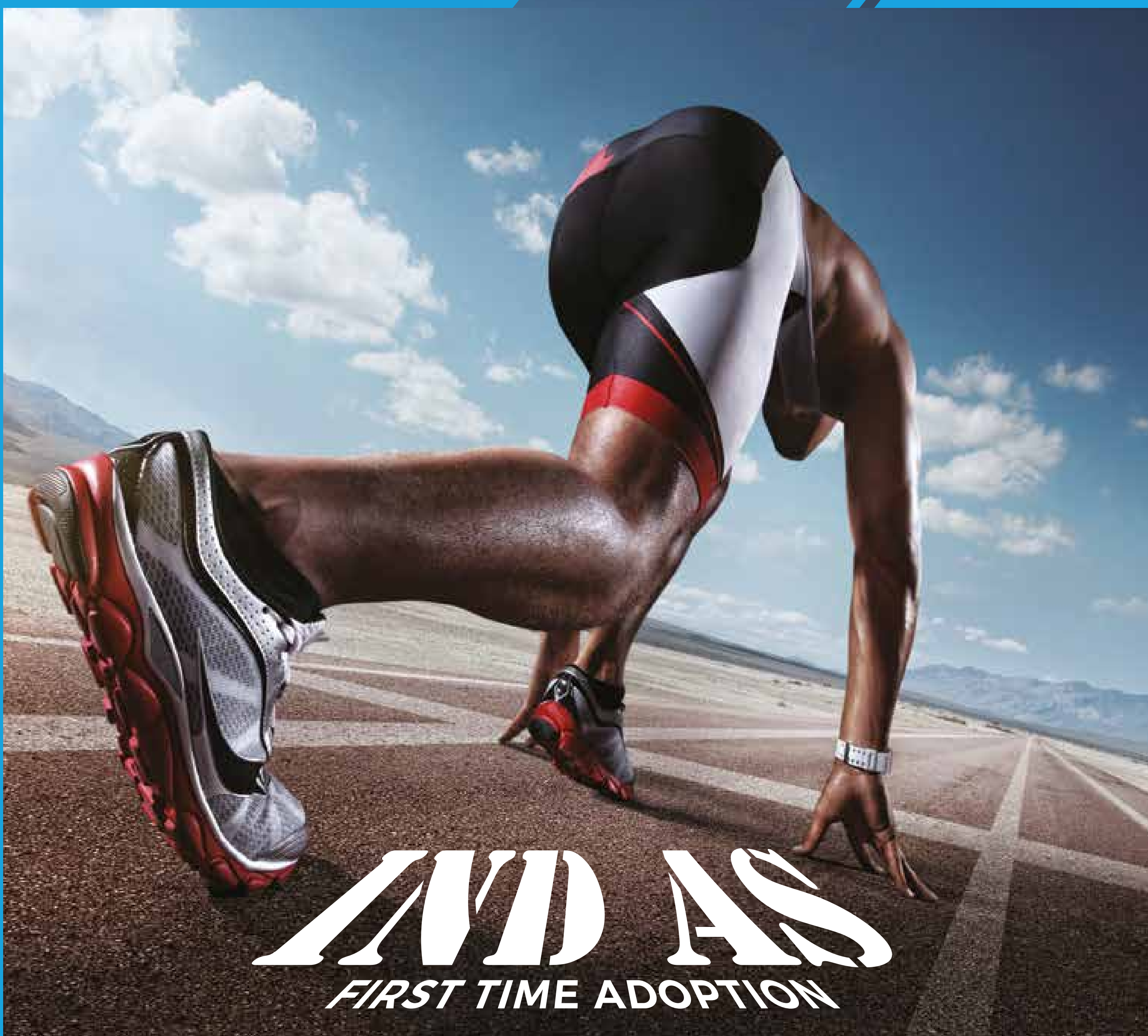

- Amazon-Future-Reliance Deal
- IPR in India
- Tolerating an Act-GST
- Rationalisation of Labour Laws
- GST on Motor Vehicles
- Ayurveda not an Alternate System

EVOLVE EXCEL EMPOWER

From the President

Dear Professional Friends,

Let me start this month's message by wishing you all a very Happy, Prosperous & Healthy New Year!

The year 2020 unwound faster than we thought and had a rollercoaster ride with pain bearing amount of ambiguity & uncertainty, amongst all the natural things we thought we did. If we count the provisions which created amongst us was the reflux of human response to the new reality and our agile response to the changed world. The learnings were deep and strong, how much ever one may call it unwarranted, the collateral damage of lives it took was deeply disturbing and sad. I personally hope that the year 2021 would negate the unsettling ride for a better and a bright future.

On a positive note, parameters of counting the economy looks dawning and surge in demand makes a promise of resilient Indian economy. I only hope the economy hits back to its track and run like well oiled machine. The rising domestic demand, performance of stock markets, inflows from Foreign Institutional Investors (FIIs) and moderate inflation are positive sides of the promising Indian economy, we hope the liquidity, exchange rate, etc. are also under check for a quicker comeback.

One of the greatest learning from 2020 was on adoption to the virtual world which forced to move to a faceless economy. This though looked tough initially, few even sensed it as time saving and prominent. But one of the ill effects of the virtual world is the fact that the official work has crossed the threshold and is part of private space, which brings the unwarranted chaos on a real time. Especially with due dates falling right across various dates in a month, the liberty of a weekly off and holidays have vanished among the professionals. I hope some sense prevail on stopping this chaos entering our private world. Our thought on virtual connect continues as we chalk out to conduct KSCAA's Annual Conference on a similar way and thereby we wish to continue the tradition of conference even this year with same vigour, joy and fame.

News Roundup

Direct Tax

Considering the ongoing unprecedented times, KSCAA along with other professional bodies made representation for timely extension of due dates. There was a wave of requests/appeals on twitter by various taxpayers, professionals, institutions and even political leaders to extend the due dates. The Ministry of Finance finally responded to the plea and vide its press release dated 30th December, 2020, a short extension was granted. The due date for filing tax returns in case of Assessee's not subjected audit is 10th January, 2021; Cases where Assessee's are subjected to audit is 15th February, 2021; Due date for furnishing tax audit / TP report is 15th January, 2021; Due date for filing declarations under VSVS is 31st January, 2021.

Indirect Tax

One of the many changes in this new year is the GST Law, new rules have been made effective from 1st January, 2021. The implementation of E-Invoicing for business entities with turnover greater than 100 crores happened without a glitch, thanks to the outreach programmes conducted by the GST Department and the handholding done by CA's for their client, in the same spirit, I request all CAs to help their clients in implementing the new rules with respect to return filings, claiming of Input tax credit, aadhaar authentication, etc. The nationwide crackdown on fake invoicing conducted in the month of December has resulted in the highest GST Collection till date to the exchequer, though this is an encouragaing sign, however the news about Chartered Accountants being involved in this has troubled me, let us all be on the right path as we are the bridge between the assessee and the departments.

Corporate Law

The MCA vide circular dated 17th December 2020 has extended the effective date for CARO 2020 from 1st April 2020 to 1st April 2021.

Through the Companies (Meetings of Board and its Powers) Fourth Amendment Rules, 2020 the MCA has extended the dates for conducting Board meetings through Video Conferencing (VC) / Other Audio-Visual Means (OAVM) for approving Financial Statements and other restricted agenda items under Rule 4 of Companies (Meetings of Board and its Power) Rules, 2014 from 31st December, 2020 to 30th June, 2021.

The Companies (Amendment) Act, 2020 was introduced with several measures to improve the ease of doing business and decriminalize certain offences under the Companies Act, 2013.

The MCA has now notified that 45 sections of the Companies (Amendment) Act, 2020 will be effective from 21st December, 2020.

Conclusion

While penning down the closing message for this month, the year 2020 had taken the calorific value amongst the other thing, I remember the opening paragraph of *Charles Dickens'* novel, <u>A Tale of Two Cities</u> *"It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of light, it was the season of darkness, it was the spring of hope, it was the winter of despair"*. The signal of change sends variety of meanings but it only bestows the reader what he perceives making his disposition a variant than the real word change. January signifies the rejoice of victory in efforts of our Freedom Fighters and the promise we made to abide by constitution. The construction of constitution and its beauty is a pride, which we celebrate and enjoy. As we celebrate 72nd Republic Day on 26th of this month, let us pray for prosperity and unity in our country while remembering those holy souls who gifted us this liberation and jubilation.

I wish you all a very Happy Republic Day and let's promise our motherland that we shall do everything to enrich and preserve our heritage and pride.

Happy Reading!

Yours' faithfully,
CA. Kumar S Jigajinni,
President

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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

AMAZON-FUTURE-RELIANCE DEAL - A CASE STUDY

(Part-II of the series)

■ CA. Chandrasekaran Ramadurai

Executive Summary:

The recent discussions on the Amazon-Reliance-Future acquisition throws the rights, limits and the modalities of exercising Shareholder rights. This has also thrown open specific issues on the supremacy of:

- the provisions of the Companies Act, 2013 which govern the Company Administration with regard to decisions taken by the Shareholders either through the Board or at the General Meetings or
- The Dispute Resolution Mechanism as contemplated under **Section 442 of the Companies Act, 2013** or
- the Provisions of the Arbitration & Conciliation Act, 1996 as amended or
- the Share Purchase Agreement (SPA) entered into between the Promoters and an investor shall overtake the provisions of the Companies Act, 2013 with regard to
  - ✓ **Chapter XV - Compromises, Arrangements & Amalgamation** that calls for approval by Shareholders at specially convened General Meetings
- Can a Minority Shareholder hold the majority decisions difficult to implement through a parallel Share Purchase Agreement with the Promoter?

We have discussed in the earlier part, the implications on the case from the view point of SEBI (SAST) Regulations. This part deals with the implications under the Companies Act, 2013 and the Indian Contract Act, 1872.

Discussion under the Companies Act, 2013

1) The present issue refers to a case of Share Subscription Agreement (SSA) between Amazon and Future Coupons Pvt. Ltd. and a Share Purchase Agreement (SPA) between Amazon and the promoters of Future Retail Ltd allowing Amazon a Call option to buy out the promoters' shares in Future Retail Limited.
2) The SSA allows Amazon to invest into Future Coupons an investment up to 49% of the Future Coupons Issued capital – this is a materialized contract where compliance requirements under the Companies Act, 2013 with reference to Section 62(1)(c) – Preferential Allotment have to be fulfilled.
3) The SPA allows Amazon the first right of refusal to buy out the promoters' shares in Future Retail. – This is contractual arrangement between Amazon and the promoters of Future Retail and outside of the provisions of the Companies Act, 2013.
4) The disclosure made by Future Retail on signing of this SSA & SPA is from the possibility that Amazon might exercise the option quickly and hence there could be a change in the promoter status in Future Retail.
5) The contractual fulfilment of the SPA by either of the parties (Amazon or Mr Biyani and other promoter group members) will be governed by the provisions of the Indian Contract Act 1872 and can also be resolved under Arbitration & Conciliation Act, 1996 if there is a Dispute Resolution Mechanism provided for in the SPA.[1]
6) Important ingredients of an SPA are:
   a. Parties – Amazon & the promoter group of Future Retail
   b. Indemnity against non-disclosure of material information – the intention to comply with

[1] https://blog.ipleaders.in/analysis-of-shareholders-agreement-share-purchase-agreement-and-share-subscription-agreement/#:~:text=Share%20Subscription%20agreement%20is%20drafted,new%20shares%20of%20the%20company.&text=A%20share%20subscription%20agreement%20acts,investor%20at%20a%20certain%20price

the terms of SPA must have been disclosed mutually

c. Resolution of dispute and arbitration – If parties are based in India, the seat of arbitration will be India and if one of them is an outsider then the place of choice by that party outside India- Since Amazon is a Company incorporated in the US, the seat of Arbitration has been chosen as Singapore

d. Execution and Effective date – the date of execution here is October 2019 while the effective date has to be after fulfilment of certain conditions. Since we are not privy to the terms of SPA, the conditions precedent could not be ascertained and only know that there is an offer period of a Minimum of 3 to a Maximum of 10 years meaning that the Amazon's responsibility shall be completed before the the end of 3rd year from the date of signing at the earliest and could be completed before the expiry of 10 years from that date – Not earlier than the end of October 2022 and not later than the end of October 2029

7) The Future Retail have chosen to enter into a composite scheme of amalgamation with Reliance Retail, a subsidiary of Reliance Industries Ltd. whereby the assets and liabilities of Future Retail shall be transferred to Reliance Retail for an agreed consideration of US$3.4 billion (approximately INR 24,711 Crores)

8) This is a Composite Scheme that is subject to approvals from SEBI, CCI, NCLT, Shareholders, Creditors and requisite approvals

9) This means the scheme is governed by the provisions of **Chapter XV Compromises, Arrangements and Amalgamations** under the Companies Act, 2013.

10) As shareholders of Future Retail, the promoter group that has signed the SPA with Amazon in October 2019 will have to exercise their voting rights when the approval of Shareholders for the proposed scheme of arrangement comes up for voting as required under Section 230 (6) of the Companies Act, 2013.

11) With the obligation to sell their promoter shares to Amazon based on the SPA, whether they will be permitted to exercise their voting rights at the EGM held for the purpose of approval of the scheme is a question to be answered.

12) The above is a Contractual Right / Obligation which requires study under the provisions of the Indian Contract Act, 1872.

Under the Indian Contract Act, 1872

1) Whether the Amazon – Future promoters' Share Purchase Agreement over a period of 3 to 10 years is a contract or a contingent contract?

2) If it is a Contract because

a. It is made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and is not hereby expressly declared to be void

b. The consideration of Amazon's 49% Investment in Future Coupons Pvt Ltd, could not be for its acquiring Call options to buy out the promoters' shares in Future Coupons at a future date (3 to 10 years). The allotment of 49% shares in Future Coupons against the Subscription Money received is the consideration

c. The Call option rights can at best be considered as a promise which though agreed and accepted by the promoters under the SPA does not provide the consideration – it has to be tangible and not a promise

3) Could it be a Contingent Contract?-

a. Section 31 of the Indian Contract Act, 1872 - "Contingent Contract" defined.—A "contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

i. The contract specifies by which the promoters of Future Retail have to sell their shares to Amazon when the latter offers to buy them which will be exercised not earlier than 3 years from October 2019 and not later than October 2029

[2] https://www.barandbench.com/dealstreet/sam-khaitan-cam-trilegal-wadia-ghandy-act-on-reliance-acquisition-of-future-group

ii. If Amazon chooses to exercise its call option to buy the shares not before the end of the 3 year period, or chooses to wait till the close of the offer period i.e. 10 year period (close to October 2029), then there is a risk of the valuation of Future Retail shares getting completely wiped out considering the financial stress the company is going through with reference to settling its materialised liabilities

b. Under Section 32 of the Indian Contract Act, 1872 - **Enforcement of contracts contingent on an event happening** —Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

c. Till the expiry of a Minimum of 3 years and a Maximum of 10 years for which Amazon has time to make a decision to acquire the promoters' share is a long shot for the promoters to wait and not do anything till the expiry of the uncertain future event.

4) The Call option as understood from the SPA gives Amazon a First Right of Refusal to buy out the Equity Shares of the promoters.

5) This also has a condition that each time a suitor approaches the promoters, they are expected to communicate Amazon of the offer from the suitor and Amazon shall either exercise the call option or refuse to exercise in which case the promoters shall be permitted to sell their holdings to the other suitor.

6) The SPA also provides that the promoters shall not sell their stakes to a host of 15 Investors that includes Reliance, Walmart, Alibaba and other names included in the SPA.

7) Do we understand that if proposed suitor who offers to buy out the promoters' shares is one of those in the list of 15, then Amazon will compulsorily acquire the promoters' shares?

8) It does not specifically say that but only show a restricting clause that prevents the promoters from selling to any one from the list

9) **Is it not an agreement in restraint of Trade?-**

a. According to Section 27 of the Contract Act, Agreement in restraint of trade, void.—every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

b. Restraining the promoters from selling their shares to any suitor who is named in the prohibited list in the SPA is clearly an agreement in restraint of the lawful right of the promoters to sell their shares to anyone of their choice based on commercial consideration. This restraint also does not come within the Exception provide[1] in the section.—Saving of agreement not to carry on business of which good-will is sold

Recourse when one of the parties refuse to perform the Contract

Now with the Composite Scheme being signed and the process put in motion for the necessary approvals by the Shareholders, SEBI, Competition Commission and NCLT, Amazon's option is to ensure specific performance under the Contract (SPA).

Chapter V of the Contract Act 1872 deals with the performance of the contract. Since the discussion veers around whether the SPA between Amazon and the promoters of Future Retail is a contract under Section 10 or a Contingent Contract under Section 31, it is not possible to decide on who will start the performance, whether Amazon or Future Retails promoters. Though the SPA is signed in October 2019, there is no visible offer to exercise their call option by the Amazon and with the mounting debt in Future retail, it is only commercially prudent to allow a cash rich suitor (Reliance Retail) to acquire the Target Company (Future Retail) which will save the company from going into liquidation and also give the promoters the much needed Return on their Investment. Whether the SPA comes under the provisions of Section 29 of the Contract Act is a matter for judicial interpretation (Section 29 - **Agreements void for uncertainty Agreements,** the meaning of which is not certain, or capable of being made certain, are void)

To be concluded in the 3rd part......

Author can be reached at : crd27220@icai.org

Rationalisation of Labour Law – What's in it for Hirers and Employees?

■ CA. Sandeep Jhunjhunwala & CA. Arshita Ketan

In the seven-decade era of independent country, India has housed a complex regime of labour laws affecting every person in India working for their livelihood, right from white collar employees to those in organised sectors, and addressing complex issues for every employer in the country. With the Government taking heed of several committees working on these labour laws and recommending simplifications, four labour codes replacing a mammoth legal web of 29 central laws in the country were introduced lately. Industrial relations, Social security, Wages and Occupational safety, Health and working conditions are the four new codes which subsumed a larger chunk of primeval laws. Approving the code on wages in the previous year, the other three bills were pushed to a Standing Committee for their deliberations. After paying much consideration to the reports of the Standing Committee, the three bills were revised, receiving Presidential assent in September 2020, thus becoming law of the land. However, the Union Labour Ministry expects to notify the applicability of these codes from the beginning of the next fiscal year. The new regulations reflect a significant transference for the working population of the country and the economy at large.

Amongst numerous key changes introduced by the Government having both financial and non financial impact on the stakeholders, the one that steals the limelight is the standardisation of the definition of 'Wages' across all the labour codes. The Code on Wages 2019 brings in the revamped definition of 'Wages' according to which the allowance component (apart from PF, Gratuity and other retrenchment benefits) cannot exceed 50 percent of the total Salary / Compensation of the employees, implying that the employers would have to hike the Basic Pay component to such extent. Ergo, enhanced outflow from employers while decline in take-home pay for the employees could be noticed as the payments based on Basic Pay components such PF, Employees' State Insurance, Leave Encashment and Statutory Bonus would also rise proportionally. While the new definition of wages may drive down the in-hand compensation, the move indeed is aimed at providing better social security and retirement benefits.

Towards the direction of better social security benefits, certain essential modifications have also been made to the norms such as no applicability of wage ceiling for PF coverage (erstwhile PF scheme to continue for one-year post notification of codes) is prescribed inferring enhanced scope of coverage for all. However, there is no indication yet of continuance of INR 15,000 monthly pay limitation under the current scheme. Gratuity benefits have been extended to fixed term employees with the removal of condition of 5 years of service. Nevertheless, completion of one year of service is mandatory to claim benefits of fixed term employment. These new PF and Gratuity norms tagged along with the revamped definition of wages are certain to widen the employers' budget bucket for employee related expenses. Nonetheless, the contributions to PF are set at 10 percent under the Social Security Code with the power entrusted to Government to raise it to 12 percent. 10 percent contribution would not just solve the cash crunch crisis for the employers but also enable them to release extra wages during the much needed time of the economy facing reeling effects of the deadly pandemic.

Consequentially, the above discussed changes begs the focus of the organisations and employers towards restructuring the compensation model tackling both the 50 percent condition for maximum allowances and perks under the new definition of wages and the inherent cost from the Income Tax stand-point for employees. Further, special attention is vital towards refining of payroll policies giving due regards to PF, ESI, Gratuity contributions, Statutory Bonus and other dues, along with various HR policies and process considering working conditions, leaves, over-time, night shifts and others in the light of changes introduced by the new codes. Financial impact analysis of all these changes and overhauling of workforce manual are the sine qua non step for all employers, irrespective of their size and structure or the sector they cater the needs of.

Another major amendment is towards the penalties and consequences for offences and non compliances. Recognising the violations like late or non compliances to be technical rather than criminal in nature, various provisions have been decriminalized retaining the imprisonment only for repeat offenders within 5 years. Additionally, provisions relating to compounding of offences have been instituted for the first-time offenders with fee up to 50 percent of fine / penalty amount. However, with the advancement of time, fines / penalty amount under the new codes have been increased by 5 to 10 times in comparison with the erstwhile laws.

Amendments have been made to the contract labour ecosystem and require special attention of the Indian start-up ecosystem. The new code not just prohibits the employment of contract labours in core activities but explicitly allows the employment only for a specified list of non-core activities including security, canteen, sanitation services and others. These provisions pertaining to contract labours are applicable to contractors providing at least 50 workers or to establishments employing at least 50 contract labours.

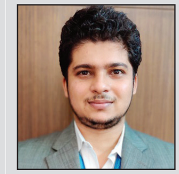
Emphasis has also been placed on the small and mid-sized business houses of the country with significant increment in several thresholds. The threshold under the Industrial Employment (Standing Orders) Act, 1946 requiring applicability of various Standing Orders and employers to formally define conditions of employment if they have employed at least 100 workers is increased to 300 workers. A similar increment to 300 workers is instituted for seeking prior permission of the Government before any retrenchment. These increments aim to reduce the compliance for the relatively smaller organisations thereby providing them a breather from compliance along with opportunity to grow at a rapid pace and also likely to generate employment opportunities especially in the pandemic ridden economy.

Apart from these major changes, the Codes also bring in speedier resolution of disputes, women empowerment and equality in operational activities considered to be dangerous, universal social security regulations for everyone including informal and gig work force and various other matters. Further, flash strikes and lockouts are barred as labour unions cannot go on strike without furnishing 60 days advance notice or within 14 days of giving such a notice and the same is now applicable for all Industrial Establishments.

Rationalisation of labour laws should now lessen the overall compliance burden for the employers to a greater extent. The 29 Central Acts entailing 937 compliances and 135 filings in a year, are now subsumed into four codes with just 480 sections reflecting unfathomed approach to simplifying the labour laws of the country. The Code of Wages requires the maintenance of merely 2 registers instead of 10 and just one return to be filed for wages, bonus and other related payments instead of 4 forms. With the advent of technology and modernisation, the laws governing an integral leg of the economy also need an update and there could be no perfect timing for the introduction of these codes than now as the wheels of economy have started churning again.

Author can be reached at :
writetosandeepj@gmail.com

GST Credit on Motor Vehicles

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

The Tax Credit on Motor Vehicles has been a highly disputed area despite the February 2019 GST Act amendment in the law providing some clarity on the subject. In this article, we have analysed the provisions, impact, practical suggestions to optimise ITC. We have also touched upon the other important provisions in relation to GST on Motor Vehicles under the GST law.

Reason for ITC restriction

A Motor Vehicle being highly mobile in nature, inherently lowers the ability to verify whether it is used for business / personal purpose. The utility of a Motor Vehicle used in business is that, it is not required to be used at the place of business specifically. Therefore, the Indian Law, along with various International Laws have restricted / provide conditional eligibility of the credit on passenger transport vehicles.

The Government, in addition to ITC restriction levies Compensation Cess on certain class of Vehicles, considering them to be luxury / sin goods.

Note-1: ITC eligibility is subject to satisfaction of conditions mentioned in Section 16 & 17 of CGST Act 2017.

Note-2: Compensation cess credit can be utilised against outward compensation cess only.

ITC on Motor Vehicles from 1st July 2017 to date

The scenarios mentioned below, are the cases where the law has not been amended. Below are the scenarios wherein ITC on Motor Vehicles is eligible when used for:

- <u>Credit in relation to Goods Transport Vehicles</u>

  From inception of GST credit in relation to Goods Transport Vehicle has been eligible. This would include, Purchase, Lease, Rental, Repairs & Maintenance, Insurance, etc.

- <u>Further supply of such Motor Vehicles</u>

  Further supply not only includes as such Sale as Goods, but also includes further Supply as Services. For example – Rental, Leasing activity of such car.

- <u>Transportation of Passengers</u>

  'Passengers' must not be misconstrued to mean persons within the same entity such as Directors, Employees. The Transportation of Passengers mentioned would be the Commercial activity. For example – Uber or Ola.

- <u>Imparting training on driving such Motor Vehicles</u>

  Driving School Institutions are provided licenses to conduct as such as are required to renew it's license periodically. Such Institutions would be liable to pay tax on imparting training and are eligible for credit of the Motor Vehicle.

Other than the various scenarios mentioned above, the following scenarios pertain to where the law was amended. The GST implication and interpretation is given below:

ITC on Motor Vehicles upto 31st January 2019

The summary of the GST law on credits in relation to Motor Vehicles from 1st July 2017 upto 31st January 2019 was as follows:

1. Purchase of Passenger Transport Vehicles – ineligible (seating capacity not considered)
2. Renting, Leasing of Passenger Vehicle – ineligible / eligible *

3. Repairs & Maintenance, Insurance, etc of Passenger Vehicle – ineligible / eligible #

* - Renting, Leasing of Passenger Vehicle – Eligible:

Rent a cab services were specifically restricted. Although, 'Leasing / Hiring' of Passenger Vehicles was not specifically restricted along with various such Services (Renting & Hiring, with / without fuel, Contract with / or without Chauffer, Outward Tour Operator Service / Passenger Transportation Service). This led to an ambiguity in Classification of service and ITC eligibility. In our view, the classification of Renting and Leasing is provided separately and together in the GST law. Where, the activity pertains to Leasing and not renting of Motor Vehicle the credit would have been eligible.

Also, another view which could be substantiated was that, "Cab" defined under the Motor Vehicles Act, includes Maxi Cab (not more than 12-seater) and Motor Cab (not more than 6-seater). Therefore, any Vehicle with 13-seater or more taken on rent could be considered to be eligible for credit. This was later clarified through correction in the amendment to the Act.

- Repairs & Maintenance, Insurance, etc of Passenger Vehicle – Eligible:

There was no specific clause restricting such credit. Although, the wordings, in Section 17(5) "in respect of" could have been interpreted to have a wider meaning, covering all expenses in relation to the purchase. Although, in our view, considering various judicial pronouncements and the nature and intention of Section 17 (5), including the usage of the word "namely" indicates that the restrictions in the section are specific and cannot be construed liberally.

Therefore, such credit could have been claimed on Repairs & Maintenance and Insurance on Passenger Vehicles even though credit on the purchase of such vehicle was restricted. This view is disputable.

Note: Where Motor Vehicle Services such as Renting or Insurance are used by a supplier to further provide services in the same category – Input Tax Credit of the same is eligible.

These concepts would be prevalent today, as the GST Annual Return and Audit by professional for FY 2019-20 is still underway, and Department is yet to conduct GST Audits on a larger scale.

ITC on Motor Vehicles from 1st February 2019 onwards

1. Purchase, Renting, Leasing, Repairs & Maintenance, Insurance of Passenger Transport Vehicles having less than 13-seater capacity – ineligible
2. Purchase, Renting, Leasing, Repairs & Maintenance, Insurance of Passenger Transport Vehicles having 13-seater or more capacity – eligible

The words used in the law are "approved seating capacity", although, this has not been defined specifically under GST law. The Regional Transport Authority (RTA) is authorised through the Motor Vehicles Act, 1988 to issue a permit. This permit, would have information of seating capacity, and therefore, the Certificate of Registration issued by State RTO could be used as the basis to decide the approved seating capacity. This is the No Dispute safe option.

Example – Tempo traveller (11+1 seater), wherein service provider has modified the interiors to add 2 more seats (totally 14 seater). As per the RC card, this vehicle is 12-seater and is ineligible to credit under GST law. Therefore, just physical verification may not suffice.

Clarity in the law has been brought through amendment in the law from 1st February 2019 onwards. The GST Credit on activities related to the Motor Vehicle are linked to the Motor Vehicle itself to avoid confusion, and ensure that the ITC restriction is fair.

Also, the classification issue between Renting, Leasing, Hiring, etc. has also been put to rest.

Example – Company ABC purchases a Bus having a seating capacity of 22 persons. They also incur expenses in relation to Vehicle Insurance, Repairs and Maintenance. The GST credit is eligible on the Vehicle itself as well as all expenses.

Note: Similar eligibilities and ineligibilities extended to Vessels and Aircrafts.

Sample Classification for easy understanding:

HSN	Description	GST impact
8702	Motor Vehicles for the transport of ten or more persons, including the driver	Verify classification on Tax Invoice + RC card for seating capacity > 13 for ITC eligibility.
8703	Motor Cars and Other Motor Vehicles principally designed for the transport of persons (other than those of heading 8702) This heading includes 2 & 3 wheeled vehicles.	Verify classification on Tax Invoice for ITC ineligibility.
8704	Motor Vehicles for the transport of goods	Verify classification on Tax Invoice for ITC eligibility.

Other common issues w.r.t Motor Vehicles

Some common issues faced during the GST regime w.r.t Motor Vehicles have been listed along with possible solutions:

A. Two-wheeler / Electric Vehicles credit is eligible? – As per Motor Vehicles Act, 1988, Two Wheelers & Electric Vehicles (based on amendments) are considered to be Motor Vehicles, and therefore, credit on Purchase, Renting, Leasing, Repairs & Maintenance, Insurance of Two Wheelers would be ineligible generally. This would also cover electronically operated ones.

B. Place of Supply for Services – Repairs & Maintenance services, includes Goods and Services components. The practice of the dealerships is to consider all components separately and tax them accordingly. This leads to an ambiguity For Inter-State Repairs & Maintenance transactions, where the place of Supply of Goods and Services may not match. To overcome this issue, it is suggested that IGST is charged providing clarity in requisite document that the delivery of goods terminate based on the GSTIN registered address / address on record as provided by the customer.

C. E-way bill requirement - There is no requirement to raise an e-way bill when a Motor Vehicle is purchased from the dealer and is driven on the road itself [may also cross the border] Only where the Goods (Motor Vehicle) are transported via a motorized conveyance e-way bill would be required. (assuming Motor Vehicle value including all taxes is more than limit mentioned in the law).

D. Some insights on old / used Motor Vehicle Sale – Earlier 35% abatement was provided. This abatement was understood to be given to leasing companies, although, based on certain interpretation it could have been applied to any registered person. Although, ambiguity on sale of old / used Motor Vehicle was cleared with the introduction of Notification 08/2018-CT(R) which provides to tax positive margin only at concessional rates of 12% or 18% (classifiable based on engine capacity, length and HSN). This is a welcome provision, which reduces the burden on the assessees.

Useful Court rulings

Excise / Service Tax

Passenger / Goods Vehicle: ***Mahindra & Mahindra Ltd Vs CC,CE & ST (2019-TIOL-71-SC-CX)*** – Mahindra Bolero Camper was designed to carry both goods and passengers, but the utility of the vehicle was for the purpose of goods transport. This was upheld in the Supreme Court where the classification was considered correctly under HSN

8704 and not 8703. One of the concepts considered was the registration with the Regional Transport Authority.

GST

Demo cars: *Chowgule Industries Private Limited – Goa Advance Ruling – GAAR/07/2018-19/4796* – Whether credit on the Motor Vehicle purchased for demonstration purposes can be availed as credit under GST - It was decided in favour of the assessee. The contention used for the demo car was to be sold at a future date, and the GST law does not specify time limit for 'Further Supply' thus credit is eligible. It is important to note, Advance Rulings are not binding on others although the concept could be adopted from reasoned rulings. Authors agree that this decision is in line with the decision.

Impacted Sectors

Many sectors directly or indirectly incur transportation costs wherein availment of credit would bring down the costs. Some examples could be as under:

- Goods Transport: Those under Forward Charge would be able to take advantage. Those under Reverse Charge would not be eligible. Now that all Dealers / Service providers in general are paying GST one may look at availment.
- Passenger Transport: All those who are opting for the normal rate would be eligible. Whether the service receiver can avail the credit could be a challenge.
- Courier / Express delivery service providers: Eligible. Where the GTA in the activity chain is under Forward Charge and claiming credit, may be beneficial in overall cost reduction.
- Logistic: Eligible. If in export transportation then exporters eligible for refund of GST charged to them.
- Mining: Eligible.
- Manufacturing: All vehicles used for transportation of goods as well as eligible passenger vehicles. (similar for Construction sector)

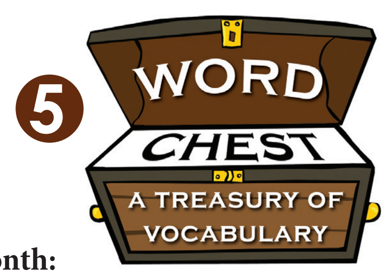
Conclusion

The above deliberation helps clear the air on GST credits in terms of Motor Vehicles. There has been a continuous expectation that petrol and diesel would be subsumed into GST, which would help further reduce the costs and boost the vehicle industry. Alternatively, many incentive schemes and rate benefits are expected for Electric Vehicles to reduce the dependency on natural resources.

Authors can be reached at :
madhukar@hiregange.com & akshay@hiregange.com

Solution to Sudoku - 4
December 2020

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



Word of the Month:

Vacillate

What is this?

To waver between different opinions or actions

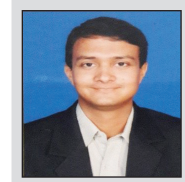
Use instead of: Fluctuate, Oscillate

How can I use it?

✓ The president continues to ***vacillate*** over foreign policy.

✓ Her mood ***vacillated*** between hope and despair.

Tolerating An Act Or A Situation – Obligation And GST Impact



■ CA Srikantha Rao T

Synopsis:

The article seeks to look at the vexed issue of taxability of supply relating to tolerating an act or situation or one agreeing to the obligation to do an act or to refrain from doing an act under GST to understand possible views and complexities involved therein.

1. In the last few years one of the issues that assessee's have been confronting both under the Old Service Tax provisions as well as present GST law is the taxability of amounts received where the payee can be construed to have tolerated an act of the payer or tolerated a situation. In most cases, the issue is flagged during Revenue / Departmental audits or review rather than the assessee voluntarily recognising liability (if at all any) and paying the tax upfront. The problem is exacerbated by the fact that Departmental auditors often look at consideration flowing to the payee and seek to tax the same by trying to link it to a possibly existing service or supply rather than first of all identifying the taxable event and then looking at consideration following the same. The problems that assessee's faced under Service Tax under Section 66E(e) of Chapter V of Finance Act 1994 are likely to be faced by many under GST as well owing to the fact that the said provision has been copied as it is into GST law in the form of Clause 5(e) of Schedule II to the CGST Act, 2017.

2. The saving grace though, is Section 7(1A) of the said Act which requires a supply to exist in the first place for classification thereof without bringing into effect a deeming fiction on the concept of supply. Tax authorities would therefore be required to look at the concept of supply and try to identify whether or not a supply of service can be said to exist in a given case before seeking to tax anything received by assessee as consideration therefor. In recent years, there have been few cases which have gone up to the Tribunal or Courts for resolution. Since the clause under GST is the same as one under Service Tax, assessee's would be in a position to rely on some of the past judicial precedents in their favour.

3. Complexities arise owing to the meaning of the term "tolerate" which can be wide at times as well as perception of the term "Obligation". If we go by the phraseology adopted in Clause 5(e), there appears to be a need for a pre-existing obligation on this count in order to have a supply scenario. A reference to Volume 3 (4th Edition Page 3319) of P Ramanatha Aiyar's Advanced Law Lexicon published by LexisNexis Butterworths Wadhwa, Nagpur would reveal that the term "Obligation" would mean a duty; the bond of legal necessity which binds together two or more determinate individuals. It may be to do or not to do an act. It can arise out of contract or otherwise. Obligation could also be seen as a proprietary right in personam or a duty which corresponds to such a right. (Page 480 of Salmond on Jurisprudence Eighth Edition by C.A.W Manning). Looked at from

the point of view of the person entitled, an obligation is a right; looked at from the point of view of the person bound, it is a duty.

4. It is worthwhile noting that this issue has seen plenty of litigation in the European Union in the past on a similar clause and matters had often to be referred to the European Court of Justice for a preliminary ruling on the issue of taxability as Revenue Authorities in almost all cases were quite confident of existence of tax liability.

Notice period recovery

5. ***In GE T&D India Limited Vs Deputy Commissioner of Central Excise Chennai (2020 (35) GSTL 89 (Mad.)),*** the issue involved was whether amount received by employer from employee not serving the notice period could be subjected to Service Tax. The terms of employment of the company included a stipulation for a notice period prior to quitting from employment, ranging from two to three months. An option was provided to the employees to the effect that if they were not in a position to stay and serve out the notice period, then in lieu of the same, the employee could pay the equivalent pay of salary for the period for which notice was not served. The Court held that the employer could not be said to have rendered any service per se much less a taxable service when he has merely facilitated the exit of the employee upon imposition of a cost upon him for the sudden exit. The definition in Clause (e) of Section 66E was not attracted to the scenario as the employer had not 'tolerated' any act of the employee but had permitted a sudden exit upon being compensated by the employee in this regard. Notice pay, in lieu of sudden termination does not give rise to the rendition of service either by the employer or the employee.

6. A similar view had been taken a little earlier in ***Amit Metaliks Limited Vs Commissioner of CGST Bolpur (2020 (41) GSTL 325 (Tri-Kolkata))*** in respect of amount of compensation received by the assessee under a settlement agreement from owners of land who could not proceed with the earlier signed Development Agreement. The compensation was due as the owners of land who were to provide contiguous piece of land for development to the assessee could not do so and wished to settle the matter. The compensation amount payable was held to be one for non-performance of a contract and in the nature of an actionable claim rather than a consideration for agreeing to the obligation to refrain from the Act or to tolerate [an] act [or] situation by the service provider.

Ex-gratia job charges

7. In ***K.N Food Industries Pvt Ltd Vs Commissioner of CGST & Central Excise Kanpur (2020 (38) GSTL 60 (Tri-Allahabad))***, the issue arose as to taxability of ex-gratia job charges received by a job worker, manufacturing confectionaries for the principal manufacturer i.e. M/s Parle Biscuits Pvt Ltd. The ex-gratia job charges was received by the job worker as the principal could not use the production capacity of the job worker that had been agreed to be utilised under their agreement.

8. The tribunal held that for invocation of the said Clause to levy tax, there has to be first a concurrence to assume an obligation to refrain from an act or tolerate an act etc. which were clearly absent in that case. If the delivery of project had been delayed, or any other terms of the contract had been breached, which were expected to cause some damage or loss to the appellant, the contract itself provided for compensation to make good the possible damages owning to delay, or breach, as the case may be, by way of payment of liquidated damages to the assessee. As such, the contracts provided for an eventuality which was uncertain and also corresponding consequence or remedy if that eventuality occurred. As such the ex-gratia charges made by M/s. Parle to the appellant were towards

making good the damages, losses or injuries arising from "unintended" events and did not emanate from any obligation on the part of any of the parties to tolerate an act or a situation and could not be considered to be the payments for any services.

Issue of consumption of service

9. The views taken in aforesaid cases seem to correspond to the ones taken in European Union on referrals for Preliminary Rulings in ***Jurgen Mohr & Finanzamt Bad Segeberg (Case C-215/94 Judgment of The Court (Fifth Chamber) dated 29.02.1996)*** and the Judgment of the same Court in ***Landboden-Agrardienste GmbH & Co. KG & Finanzamt Calau (Case C-384/95 dated 18.12.1997)***. In the former case, the issue was whether or not compensation received by a farmer for discontinuing milk production could be taxed as a consideration for supply of service under Article 6(1) of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes (old Sixth Directive). This article involved a Clause very similar to the one under discussion in our GST law. The Court was of the view that by compensating farmers who undertake to cease their milk production, the Community does not acquire Goods or Services for its own use but acts in the common interest of promoting the proper functioning of the Community milk market.

10. The Court further held that the undertaking given by a farmer that he will discontinue his milk production does not entail either for the Community or for the competent National Authorities any benefit which would enable them to be considered Consumers of a Service. The undertaking in question does not therefore constitute a supply of services within the meaning of Article 6(1) of the Directive. An undertaking to discontinue milk production given by a farmer under a Regulation did not constitute a supply of services. Consequently, any compensation received for that purpose was not subject to turnover tax.

11. The decision in ***Landboden-Agrardienste GmbH & Co. KG & Finanzamt Calau (Case C-384/95 dated 18.12.1997)*** also involved a discussion under the said Article 6(1) of Council Directive 77/388/EEC of 17 May 1977 where the issue was taxability of compensation received for reducing annual potato production. The Court held that the undertaking given by a farmer to reduce production, does not fall within the scope because it does not give rise to any consumption of service. The farmer did not provide services to an identifiable consumer or any benefit capable of being regarded as a cost component of the activity of another person in the commercial chain. Since the undertaking given by a farmer to reduce production did not entail either for the competent national authorities or for other identifiable persons any benefit which would enable them to be considered to be consumers of a service, it could not be classified as a supply of services within the meaning of Article 6(1) of the Sixth Directive.

Damages and reciprocal obligations

12. The issue of reciprocal obligations to constitute a supply for GST also came up before the High Court in Mumbai in ***Bai Mamubai Trust Vs Suchitra (2019 (31) GSTL 193 (Bom.))***. The point of contention here was GST liability on royalty paid by defendant for damages for violating plaintiff's legal right in suit premises or immovable property. While the State of Maharashtra and Union of India were of the view that the Court Receiver acts as an agent of the Plaintiff and collects royalty, which is in substance a rent and therefore the transaction in question is a 'Renting of Immovable Property' within the meaning of Item No. 5 of Schedule II of the CGST Act amounting to 'Supply' on which GST is payable, the High Court was of the view that GST was not payable on royalty.

Indirect Tax

13. It held that the Defendant had not been able to demonstrate any semblance of right to occupy the Suit Premises, and it could not be said that the Defendant's occupation pursuant to an Order of the Court was a contract involving a 'Supply' for consideration. In the absence of reciprocal enforceable obligations, it would not be correct to characterise the Defendant's occupation of the Suit Premises against payment of royalty as a 'Supply' for 'Consideration' on which GST was payable by the Court Receiver. The payment of royalty as compensation for unauthorized occupation of the Suit Premises was only to remedy the violation of a legal right, and not as payment of consideration for a supply. An act of illegal occupation, which may be compensated in damages by mesne profits, does not amount to a voluntary act of allowing, permitting, or granting access, entry, occupation or use of the property.

Compensation for loss suffered

14. In ***Société thermale d' Eugénie-les-Bains v. Ministry of The Economy, Finance and Industry (Case C-277/05 Judgment of The Court (First Chamber) dated 18.07.2007),*** the issue was regarding taxability of deposits retained by the assessee / hotelier on cancellation of hotel room reservations by its clients. The Court on the referral for Preliminary Ruling was of the view that the payment of a deposit by the client, on the one hand, and the obligation of the hotelier, on the other, not to contract with anyone else in such a way as to prevent it from honouring its undertaking towards that client could not be classified as reciprocal performance, because the obligation arose directly from the contract for accommodation, and not from the payment of the deposit. The fact that the amount of the deposit is applied towards the price of the reserved room, if the client takes up occupancy, confirms that the deposit cannot constitute the consideration for the supply of an independent and identifiable service.

15. The aforesaid decision in the European Union has very recently been relied on in CESTAT New Delhi in ***M/s South Eastern Coalfields Limited Vs Commissioner of Central Excise and Service Tax Raipur (2020 (12) TMI 912 (CESTAT New Delhi)) (Final Order 51651/2020 dated 22.12.2020)*** where the Tribunal held penalty / compensation received by assessee from buyers of coal for short lifted quantity and from contractors for breach of terms and conditions as not being liable to tax under the clause in discussion. The Tribunal was of the view that the agreements the assessee had did not specify what precise obligation has been cast upon the appellant / assessee to refrain from an act or tolerate an act or a situation. It is no doubt true that the contracts may provide for penal clauses for breach of the terms of the contract but there is a marked distinction between 'conditions to a contract' and 'considerations for a contract'.

16. The deposit paid did not constitute the fee collected by a hotelier by way of genuine consideration for the supply of an independent and identifiable service to his client and, on the other hand, the retention of that deposit, following the client's cancellation, was intended to offset the consequences of the non-performance of the contract. Therefore, it had to be held that neither the payment of the deposit, nor the retention of that deposit, nor the return of double its amount was covered by Article 2(1) of the Sixth Directive. The sum retained by the hotelier, as a fixed cancellation charge paid as compensation for the loss suffered as a result of client default therefore had no direct connection with the supply of any service for consideration for Article 6(1) and, as such, was not subject to tax. An identical view has been taken by CESTAT New Delhi in ***Lemon Tree Hotel Vs Commissioner GST, C.E & Customs, Indore (2020 (34) GSTL 220 (Tri-Del))***. Here, the Tribunal held that amount retained by appellant as cancellation

charges on cancellation of booking did not undergo a change after receipt and could not be taxed under the Clause in discussion.

Economic and Commercial reality

17. In the European Union of late focus has been on the concept of economic and commercial reality in order to determine the taxability or otherwise of the amounts received vis-à-vis direct nexus with a supply of service. In ***Vodafone Portugal V. Tax & Customs Authority Portugal (Case C-43/19 Judgment of The Court (Ninth Chamber) dated 11.06.2020)*** the Court held the amount received by an operator liable where he was to provide advantages to his customer who opted for a minimum tie in period but who later on resorted to early termination. The Court was of the view that an operator determines the price for its service and monthly instalments, having regard to the costs of that service and the minimum contractual commitment period. The amount payable in the event of early termination must be considered an integral part of the price which the customer committed to paying for the provider to fulfil its contractual obligations. This was in a scenario where local laws in that country did not permit an operator to claim compensation for such early termination.

Readers may therefore also note the importance of prevailing laws in a country as well as economic practices besides contractual terms in taking a call on taxability on the subject matter.

Authors can be reached at : srikantharaot@gmail.com

First-Time Adoption of IND AS

■ CA. Vinayak Pai V

Ind AS 101, the subject matter of this article, acts as a bridge standard for transitioning from AS to the Ind AS Accounting Framework. Ind AS 101 is applied in the Preparation and Presentation of an entity's first set of Ind AS compliant Financial Statements. This article attempts to provide an overview of the Standard; Applicability; Principles; Key considerations; and Compliance aspects.

1. Setting the Context

India has currently two Accounting Frameworks that are statutorily recognized (for Corporate Reporting purposes) viz. 'AS' and 'Ind AS'. Listed companies have bid adieu to AS (Courtesy IFRS convergence in India) and are now in steady state of Ind AS reporting. Unlisted Companies (that includes the sub-set of Private Companies) that are relatively larger in size (as measured on a single dimension of Net Worth) have also embraced Ind-AS in line with the roadmap for Ind-AS implementation that was laid down by the MCA earlier. Post the mandatory implementation dates that have now gone by, Unlisted Companies that grow in size need to switch over to the new accounting language of Ind AS and many will therefore be implementing Ind AS in FY 2020-21.

Ind AS, the Indian variant of International Financial Reporting Standards (IFRS) is a principles-based Accounting Framework. India's approach has been that of convergence with IFRS issued by the International Accounting Standards Board (IASB). The IASB firmly believes that high-quality financial information is the lifeblood of Capital Markets. IFRS as an accounting language gained momentum in 2005 with the EU's decision to adopt IFRS in their jurisdiction. The European Commission has opined that *'IFRS was successful in creating a common accounting language for Capital Markets.'*

Fair value; wider concept of income that encompasses Other Comprehensive Income; standard-setters focus on the Balance Sheet rather than the Income Statement, comprehensive disclosure requirements; relatively newer accounting models (Acquisition Method of Accounting, Revaluation Model, Fair Value Model, Expected Credit Loss Model, etc); 'Control' concepts that are pervasive across the accounting literature; latest upgraded versions of key standards (Revenue, Leases, etc); Balance Sheet approach to Deferred Taxes are some of the key features of Ind AS.

Moving from existing GAAP ('AS' in our example) to Ind AS is an exercise that is aided and facilitated by Ind AS 101, First-time Adoption of Indian Accounting Standards. The principle is retrospective application of all Ind AS in the preparation of the first Ind AS Financial Statements. Is it compulsory for all items on the Balance Sheet? The answer is Yes if one (Management) so desires and No, if one elects for certain / all exemptions provided in the standard.

2. Which companies would be reporting their Financial Statements under Ind AS for the first time in FY 2021 (YE 31st March 2021)?

Examples of Companies moving from AS to Ind AS in the current fiscal year ending 31st March 2021 would include:

- An Unlisted Company with Net Worth that breached Rs. 250 crores as of 31st March 2020. [Prepared Financial Statements as per AS for FY 2020 and has to compulsorily migrate to Ind AS for FY 2021];
- An Unlisted Company (that without compulsion from Companies Act, 2013) seeks to Prepare and Present its Financial Statements under Ind AS;

- A Company whose status changed from an Unlisted Company to that of a Listed Company in the specified period, etc.

The above is an indicative list of scenarios. As a first compliance check, subject the client Company to **testing which Accounting Framework applies for FY 2021.** [Refer - *Companies (Indian Accounting Standards) Rules, 2015. [MCA Notification G.S.R.111(E) dated 16th February 2015.]*

Certain relevant Extracts from the Rules: *For Companies which are not in existence on 31st March, 2014 or an existing Company falling under any of thresholds specified in sub-rule (1) for the first time after 31st March, 2014, the Net Worth shall be calculated on the basis of the first audited Financial Statements ending after that date in respect of which it meets the thresholds specified in sub-rule (1). Explanation - For the purposes of sub-clause (b), the Companies meeting the specified thresholds given in sub-rule (1) for the first time at the end of an accounting year shall apply Indian Accounting Standards (Ind AS) from the immediate next accounting year in the manner specified in sub-rule (1).*

3. Once the applicability of Ind AS is confirmed, what is the big picture of deliverables?

The big picture being referred to here is the final output both from the preparers and auditors stand-point. The final output in terms of external purpose Financial Reporting for a Company that in FY 2019-20 prepared its Financial Statements under 'AS' (applying AS 1 to AS 29) and in migrating to 'Ind-AS' (Ind AS 101 to 116 and Ind AS 1 to 41) in FY 2020-21 is that the Company will prepare its Financial Statements in line with the requirements of **Schedule III Division II** in contrast with Schedule III, Division I in the Previous Year. It will also prepare its first set of Ind AS Financial Statements in **compliance with Ind AS 101.**

Accordingly, the users of Financial Statements will be presented (for FY 2020-21) Ind AS compliant Balance Sheet, Statements of Profit and Loss (that includes an additional performance measure layer viz. Other Comprehensive Income or OCI), Statement of Changes in Equity, Statement of Changes in Cash Flows and Notes that are in compliance with all applicable Ind AS disclosure requirements. The Company is also required to present comparative information for the preceding year as per Ind AS.

4. Will the comparative period figures change?

As discussed above, the comparative period figures that were earlier prepared under AS will be reported under Ind AS in the current year financials. Answers to questions like will the figures change and if yes, by how much can be best answered by first preparing a draft Ind AS Balance Sheet by pinning down what accounting policies will change under the new Accounting Framework and working out the corresponding impact on P & L and Balance Sheet.

Here it is pertinent to note that the Company which for the first time prepares its Financial Statements under Ind AS for FY 2020-21 will present its Balance Sheet and P & L under Ind AS for FY 2020-21, present comparative period figures for FY 2019-20 under Ind AS. Any applicable GAAP difference, positive or negative, would be adjusted to Opening Retained Earnings (with certain exceptions where the impact would be accounted in another component of equity say OCI) which in the current example is 1st April 2019.

The Opening Retained Earnings adjustment will be net of any applicable tax impact (applying the Balance Sheet approach to Deferred Taxes under Ind AS 12, *Income Taxes* and Income Tax provisions: MAT, transition adjustments, et al.)

5. What are the relevant applicable accounting and auditing literature?

In the exercise of preparing or auditing the first set of Ind AS Financial Statements, key applicable accounting literature includes:

- **Companies Act** Schedule III, Division II,
- **Ind AS 101,** *First-time adoption of Indian Accounting Standards,* and
- **Ind ASs** (Ind AS 101 to 116; Ind AS 1 to 41) as applicable to the individual company.

One is also guided by the **Ind AS Transition Facilitation Groups (ITFG) Clarification Bulletins** that cover a host of issues surrounding applicability of Ind AS, first-time adoption and Ind AS accounting issues.

In Focus

Certain non-authoritative guidance include: ICAIs Educational Material on Ind AS 101, *First-time adoption of Indian Accounting Standards,* ICAIs Indian Accounting Standards: An Overview, ICAI's Ind AS Disclosure Checklist, etc.

With respect to audits, applicable *guidance includes ICAIs Guidance Note on Division II- Ind AS Schedule III to the Companies Act, 2013 and Implementation Guide on Auditor's Reports under Indian Accounting Standards for Transition Phase.* The implementation Guide inter-alia provides guidance on reporting responsibilities of the auditors for the audit of Ind AS Financial Statements prepared for the first year in which Ind AS are applicable to the Company.

6. What are the principles that underpin the first-time adoption standard?

Akin to one of the **key principles** in the Ind AS Standard on '*Accounting Policies, Changes in Accounting Estimates and Errors*' [Ind AS 8], the principle in Ind AS 101 is also that an entity that moves to Ind AS does so by applying Ind AS standards retrospectively. The standard states that the objective of Ind AS 101 is inter-alia to ensure that an entity's first Ind AS Financial Statements contains **high quality information that is comparable over all periods presented.** At the same time, it also acknowledges that the first set of financials needs to be generated at a cost that does not exceed benefits.

Accordingly, an array of **exemptions** has been provided for ease of transition for preparers. Such exemptions[1] that are contained in Appendices C-D of Ind AS 101 which an entity could elect (to use or not to use) typically results in application of Ind AS only from date of transition and not going back retrospectively. It may be noted that Appendices C-D is one category of exception to the principle that an entity's opening Ind AS Balance Sheet shall comply with each Ind AS. An entity may elect to use one or more of the exemptions contained in Appendices C-D and an entity shall not apply these exemptions by analogy to other items [Ind AS 101.18]

The standard also **prohibits retrospective application** (termed as exceptions – Refer Paragraphs 14-17 of the standard) in specified accounting areas which is the other exception to the general principle.

[1] One example of such exemptions: Where there is no change in its functional currency on the date of transition to Ind ASs, **a first-time adopter to Ind ASs may elect to continue with the carrying value for all of its Property, Plant and Equipment as recognised in the Financial Statements as at the date of transition to Ind ASs, measured as per the previous GAAP and use that as its deemed cost** as at the date of transition after making necessary adjustments in accordance with paragraph D21 and D21A, of this Ind AS. [Ind AS 101.D7AA.] **Deemed cost** is an amount used as a surrogate for cost or depreciated cost at a given date. Subsequent depreciation or amortisation assumes that the entity had initially recognised the asset or liability at the given date and that its cost was equal to the deemed cost.

7. What are the key compliance aspects involved upon first-time adoption?

The key compliance aspects include:

- A Statement of Compliance
  - o **An explicit and unreserved statement of compliance** with Ind AS needs to be made in the first Ind AS Financial Statements. [Ind AS 101.3]
- Opening Ind AS Balance Sheet
  - o Presenting an **opening Ind AS Balance Sheet** as at the date of transition to Ind AS. [Ind AS 101.6] The date of transition to Ind AS is the beginning of the earliest period for which an entity presents full comparative information under Ind AS in its first Ind AS Financial Statements.
- Consistent accounting policies
  - o The **accounting policies** used in the opening Ind AS Balance Sheet should be used throughout all periods presented in its first Ind AS Financial Statements. [Ind AS 101.7]
- Explanation of transition to Ind AS
  - o **Reconciliation Statements:**
  - o Reconciliation of **Equity** reported in accordance with previous GAAP to its equity in accordance with Ind AS for both of the following dates:
    - Date of transition to Ind ASs, and

- The end of the latest period presented in the entity's most recent annual Financial Statements in accordance with previous GAAP

o **Reconciliation of Total Comprehensive Income** (TCI) in accordance with Ind ASs for the latest period in the entity's most recent Annual Financial Statements. The starting point for that reconciliation is TCI in accordance with previous GAAP for the same period. [Ind AS 101.24]

o The above reconciliations should **provide sufficient detail** to enable users of Financial Statements to **understand the material adjustments** to the Balance Sheet and Statement of Profit and Loss. [Ind AS 101.25]

o The Statement of Cash Flows (if presented under previous GAAP) – Explanation of material adjustments is required. [Ind AS 101.25]

8. What are the key considerations in the preparation of the Opening Ind AS Balance Sheet?

The key considerations in the preparation of the opening Ind AS Balance Sheet includes:

- **Recognizing all Assets and Liabilities** whose recognition is required by IND ASs.
- **De-recognizing items as Assets or Liabilities** if IND ASs do not permit such recognition.
- **Reclassification of items** that were recognized in accordance with previous GAAP (AS), as one type of Asset, Liability or Component of Equity, but are a different type of Asset, Liability or Component of Equity in accordance with IND ASs.
- **Applying IND AS** in measuring all recognized Assets and Liabilities.
- Recognition of GAAP differences directly in Retained Earnings or, if appropriate, another category of equity, at the date of transition to IND AS.
- Consideration of Exceptions and Exemptions in the preparation of the first IND-AS Financial Statements. [Ind AS 101.12]

Refer Section 9 below for an indicative list of examples in explanation of the above key considerations.

9. GAAP differences: An illustrative list

An illustrative non-exhaustive listing of concepts / line items that would be impacted at date of transition and subsequently during steady-state Ind AS reporting is provided in this section.

The list highlights potential accounting areas that would be treated / presented differently under Ind AS and also feeds into the Retained Earnings adjustment at the date of transition. It may be noted that typical key impact areas are Leases (Ind AS 116), Revenue (Ind AS 115), Financial Instruments (Ind AS 109), Share-based payments (Ind AS 102), Fair Value (Ind AS 113) Business Combinations (Ind AS 103) and the suite of standards on group accounting (Ind AS 110, 111, 112, Ind AS 27 and 28).

- The concept of Other Comprehensive Income does not prevail under AS as of date. Under Ind AS, certain items of Income / Expense are not recognized in P & L but are included in Other Comprehensive Income.
- A company recognizes Deferred Taxes on temporary differences based upon the Balance Sheet Approach. This is in contrast with the P & L approach to Deferred Taxes that prevails under the AS framework.
- AS requires Goodwill to be amortized to the Income Statement based on the assessment of its useful life. Ind AS, on the other hand treats Goodwill akin to an indefinite life Intangible Asset.
- From a Lessee's perspective, long term (and high value) leases would result in recognition of a right-of-use asset on the Balance Sheet and a lease liability. Under AS, an evaluation of such arrangements could have led to certain arrangements being classified as Operating Leases thereby eliminating the need to incorporate related Assets and Liabilities on the Balance Sheet.
- Under AS, Investments in Equity Instruments are classified as Long-Term or Current Investments based on intended holding

period and realizability with Long-Term Investments carried at cost less provision for other than temporary decline in value and current investments being carried at lower of cost and fair value. Under Ind AS, Equity Instruments are measured at fair value with the fair value changes being recorded either in P & L or Other Comprehensive Income (an irrevocable election for specified Equity Investments).

- Provision for doubtful debts under Ind AS requires the application of the Expected Credit Loss Model.
- Under AS, employee loans at concessional rates are recorded at their transaction value. Under Ind AS these are recognized at fair value with the difference between the fair value and transaction value of the employee loans being recognized as deferred employee cost.
- Under AS, retention money on capital expenditure are recorded at face value. Under Ind AS, the retention money is required to discounted to their present values (when they are non-current).

10. Are there any updates that need to be taken into consideration?

The MCA notified the Companies (Indian Accounting Standards) Amendment Rules, 2020 on 24th July 2020 that made certain amendments including Covid-19-related rent concession for lessees. These amendments are applicable for FY 2020-21 Ind AS Financial Statements. Ensure you factor in the latest version of all notified standards as many amendments have taken place from the date when the standards were first notified and now (apart from full-fledged standard changes like the leases standard, there have been amendments to certain provisions of various standards). Watch this space.

And as applicable to any company, whether AS or Ind AS, the various Covid-19 accounting and auditing guidance and advisories issued by the ICAI would invariably need to be considered and complied with.

Author can be reached at :
vinayakpaiv@hotmail.com

Classification And Measurement Of Financial Assets Under IND AS

■ CA. Anjani Kumar Khetan

Introduction:

Under Indian Accounting Standard (Ind AS), Financial Instruments related guidance is covered under multiple literature, viz. Ind AS 32, Ind AS 109 and Ind AS 107. This article focuses primarily on the Classification and Measurement of Financial Assets like Debt Instruments, Derivatives and Equity Instruments – contemplated under Ind AS 109.

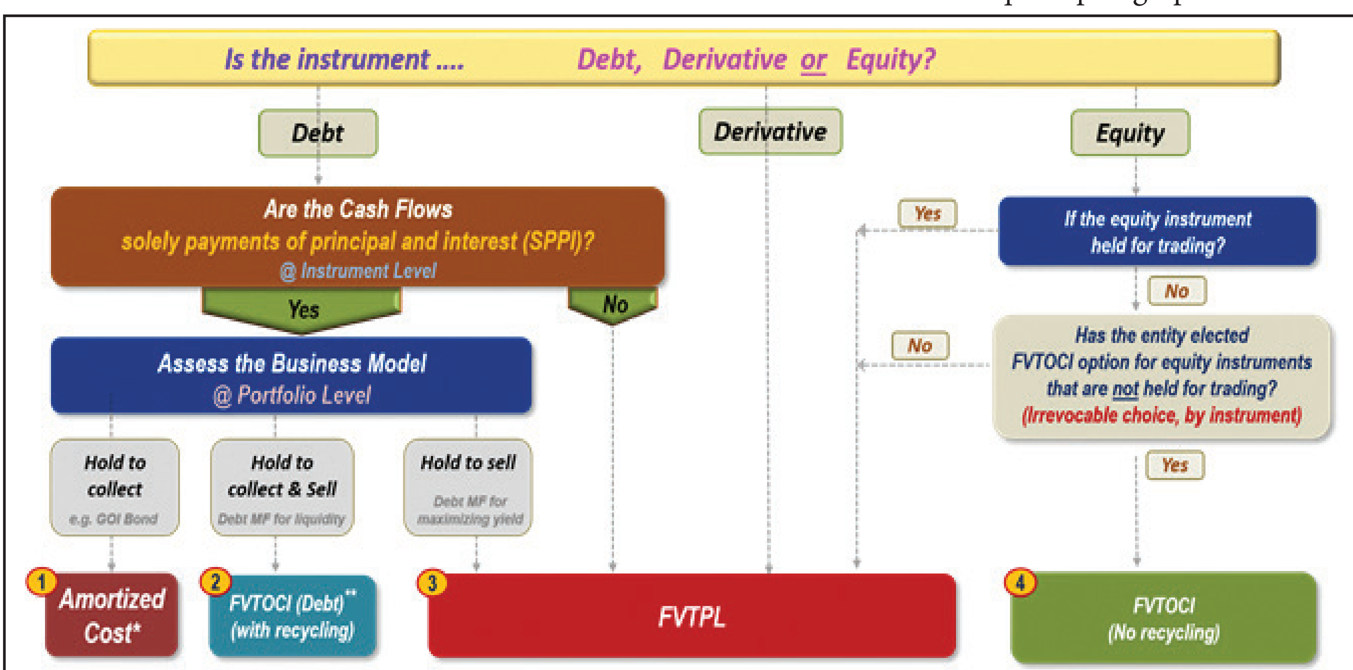
The classification of the Financial Asset determines how they are accounted for and, in particular, how they are measured on an ongoing basis.

Classification and subsequent measurement under Ind AS 109:

Ind AS 109 introduces a principle-based requirement for Classification of Financial Assets, using the following ***Measurement categories:***

1. Debt Instruments at amortized cost
2. Debt Instruments at Fair Value Through Other Comprehensive Income (FVTOCI) - with cumulative gains and losses re-classified to Profit and Loss upon de-recognition
3. Debt Instruments, Derivatives and Equity Instruments at Fair Value Through Profit or Loss (FVTPL)
4. Equity Instruments designated as measured at FVTOCI - with gains and losses remaining in OCI upon de-recognition (i.e. accumulated gains or losses not re-cycled to the Profit and Loss Account, upon de-recognition)

This is summarized in the following chart and elaborated in the subsequent paragraphs.



* *Impairment considerations apply*

** *FVTOCI designation for Debt Instruments is available only when it:*

either (a) eliminates or (b) significantly reduces accounting mismatch

Debt Instruments

Under Ind-AS 109, the assessment as to how an asset should be classified is made on the basis of both:

(a) the entity's business model for managing Financial Assets and

(b) their contractual cash flow characteristics of the Financial Asset.

Under Ind AS 109, Debt Financial Assets are classified into one of following three categories:

<u>Category I:</u> Debt Financial Assets at amortized cost

A Debt Financial Instrument is generally classified as subsequently measured at amortized cost if ***both*** of the following conditions are met:

(a). The asset is held within a business model, whose objective is to hold assets in order to *collect contractual cash flows;* **and**

(b). The asset contractual cash flow characteristics meet the criteria of *Solely Payment of Principal and Interest* ("SPPI").

Financial Assets included within this category are *initially recognized at* ***Fair Value*** and subsequently measured ***at amortized cost***. Examples of Financial Instruments that are likely to be classified and accounted for at amortized cost include Trade Receivables, Loan Receivables, Investment in Bonds not held for trading etc.

<u>Category II:</u> Debt Financial Assets at FVTOCI (Fair Value Through OCI)

A Debt Instrument is normally classified as subsequently measured at FVTOCI if both of the following conditions are met:

(a). The asset is held within a business model, in which assets are managed to achieve a particular objective by both

(i) collecting contractual cash flows and

(ii) selling financial assets; ***and***

(b). The asset meets the SPPI criteria.

Financial Assets included within the FVTOCI category are initially recognized and subsequently measured at ***Fair Value***. Movements in the carrying amount is recorded through Other Comprehensive Income (OCI), except for the recognition of

(i) impairment gains or losses,

(ii) interest revenue and

(iii) foreign exchange gains and losses

- which are recognized in Profit & Loss Account. When the Financial Asset is de-recognized, the cumulative gain or loss previously recognized in the OCI is reclassified from OCI in Equity to Profit or Loss Account.

<u>Category III:</u> Debt Financial Assets at FVTPL (Fair Value Through Profit or Loss)

Under Ind-AS 109, Fair Value Through Profit or Loss (FVTPL) represents the third and the residual category. Accordingly, all other Financial Assets, i.e., Financial Assets that do not meet the criteria for classification as subsequently measured at either amortized cost or FVTOCI – are classified as subsequently measured at Fair Value Through Profit or Loss (FVTPL).

Financial Assets included within the FVTPL category are measured ***at fair value,*** with all changes to Fair Values is recorded ***through Profit and Loss.***

It is worthwhile to note that regardless of the business model assessment, an entity has the option, ***at initial recognition,*** to irrevocably designate a Financial Asset as measured at FVTPL, provided such an election eliminates or significantly reduces either measurement or recognition inconsistency (sometimes referred to as an "*accounting mismatch*") – that would otherwise arise from measuring assets or liabilities, or recognizing the gains or losses on them, on different bases.

Now, let's understand two of the most important aspects that govern classification of Financial Assets, viz. Contractual Cash Flow Characteristics Test (the "SPPI Criteria") and the assessment of the Business Model.

Contractual Cash Flow Characteristics Test – the SPPI criterion

One of the criteria for determining whether a Financial Asset should be classified as measured at amortized cost or at FVTOCI - is whether the cash flows from the Financial Asset meet the ***SPPI criteria,*** that is, whether the ***contractual terms*** of the Financial Asset give rise, on specified dates, to cash flows that are *solely payments of principal and interest*. A Financial Asset that does not meet the SPPI criteria is always measured at FVTPL, unless it is an Equity Instrument for which an entity applies the OCI election.

Such an SPPI test is performed at an ***instrument level*** and in the currency in which the ***Financial Asset is denominated.*** For instance, if the principal amount of an instrument is denominated in one currency, say, US Dollar but interest payments are made in another currency, say Euro - this would be inconsistent with the SPPI test - because the relationship between principal and interest would be affected by foreign exchange rates.

In the context of SPPI criterion, the term **"Principal"** represents 'the Fair Value of the asset at initial recognition', although it ***may change*** over the life of the Financial Asset (e.g., if there are repayments of principal).

Likewise, '**Interest**' – in the context of SPPI criterion - is taken to be the ***return on a basic lending arrangement to the holder.*** The most significant elements of interest within a basic lending arrangement are typically the consideration for

(a) time value of money;

(b) credit risk;

(c) other basic lending risks (like liquidity risk) and other costs associated with holding the financial asset for a particular period of time (like administrative costs); and

(d) a profit margin that is consistent with a basic lending arrangement.

As mentioned above, the time value of money is one of the components of the interest payment and represent *consideration* ***only*** *for the passage of time, and not for other risks and costs associated with holding the Financial Asset.* To assess whether an element provides consideration only for the passage of time, an entity uses judgement and considers all relevant factors, such as the currency in which the Financial Asset is denominated and the period for which the interest rate is set.

It is worthwhile to note that contractual terms that introduce exposures to risks or volatility in the contractual cash flows that are unrelated to a basic lending arrangement (such as, exposure to changes in equity prices), fail the SPPI test. For instance, assume that an entity issues a bond which is repayable after 10 years and under the terms of the bond, interest resets periodically to an amount determined as *a fixed margin plus twice the published rate of LIBOR. In this case, the bond would fail the SPPI test - because the interest rate is* ***leveraged****.*

Business Model Assessment

In addition to the results from the SPPI test, the classification of Financial Asset is also dependent on the business model under which the entity holds the Financial Asset. Financial Assets that *do not meet* the SPPI criterion are classified as FVTPL, irrespective of the business model in which they are held - except for *Investment in Equity Instruments,* for which an entity may elect to present gains and losses in FVTOCI.

It is pertinent to note that the term *business model,* as envisaged in Ind AS 109, refers to the way an entity manages its Financial Assets in order to generate cash flow. An entity's business model determines whether cash flows will result from collecting contractual cash flows, selling the Financial Assets or both. Ind AS 109 provides detailed guidance on how to assess the business model.

It is worthwhile to mention that, in practice, the 'Business Model Test' is relevant *only for* debt-type Financial Assets such as receivables, or purchased loans and debt securities - because Derivative Financial Assets and Investments in Equities will be generally be classified at FVTPL, as alluded to in earlier paragraphs.

The following table summarizes the key features of each type of business model:

Business Model	Key Features / Objective of the Business Model	Possible Examples
Held-to-collect contractual cash flows	• To hold assets to collect contractual cash flows over the life of the instrument • Need not hold all instruments until maturity • Selling of assets is only incidental to the business model objective • Typically, this model will see the lowest sell (in frequency and volume)	• Trade Receivables • Originated loans and debt securities held to maturity
Held-to-collect contractual cash flows ***and*** to sell	• Both (a) collecting contractual cash flows and (b) selling Financial Assets are integral to achieving the objective of the business model • Typically involves greater frequency, volume and value of sales compared to *hold-to-collect business model*	• Liquidity portfolio • Assets held by an insurer to back insurance liabilities
Other business models	• Business model is (a) neither held-to-collect (b) nor held to collect and sale • Collection of contractual cash flows is incidental to the objective of the model	• Trading portfolios • Assets managed on fair value basis

Determination of the business model:

The business model of an entity is determined by its Key Management Personnel (KMP), after taking into consideration the manner in which the assets are managed and how their performance is reported internally. The business model is determined at a level that reflects how *groups of Financial Assets* are managed together to achieve a particular business objective. It is **not** *an instrument-by-instrument analysis; rather it can be performed at a* ***higher level of aggregation.*** However, the assessment *is* ***not*** *performed at the* ***entity level.*** In fact, an entity may have more than one business model for managing Financial Instruments. For example, an entity may hold a portfolio of investments that it manages in order to collect contractual cash flows and another portfolio of investments that it manages by actively trading them to realize fair value changes.

Ind AS 109 further stipulate that an entity's business model for managing financial assets is a *matter of fact* and *not merely an* assertion. It is typically observable through particular activities that the entity undertakes to achieve the objective of the business model. The business model for managing Financial Assets is not determined by a single factor or activity. Instead, the entity must consider *all relevant and objective evidence* that is available *at the date of the assessment* to determine the business model for particular Financial Assets.

Note that determining the business model will often involve expectations about the future actions of the entity. However, it should not be based on scenarios that the entity *does not reasonably expect to occur.* Accordingly, *the worst-case scenario or a stress test scenario* need to be excluded when determining the business model.

The following chart summarizes some of the key factors that ought to be considered by an entity and its KMPs while determine the business model:

How performance is evaluated and reported to key management personnel

How manager are compensated

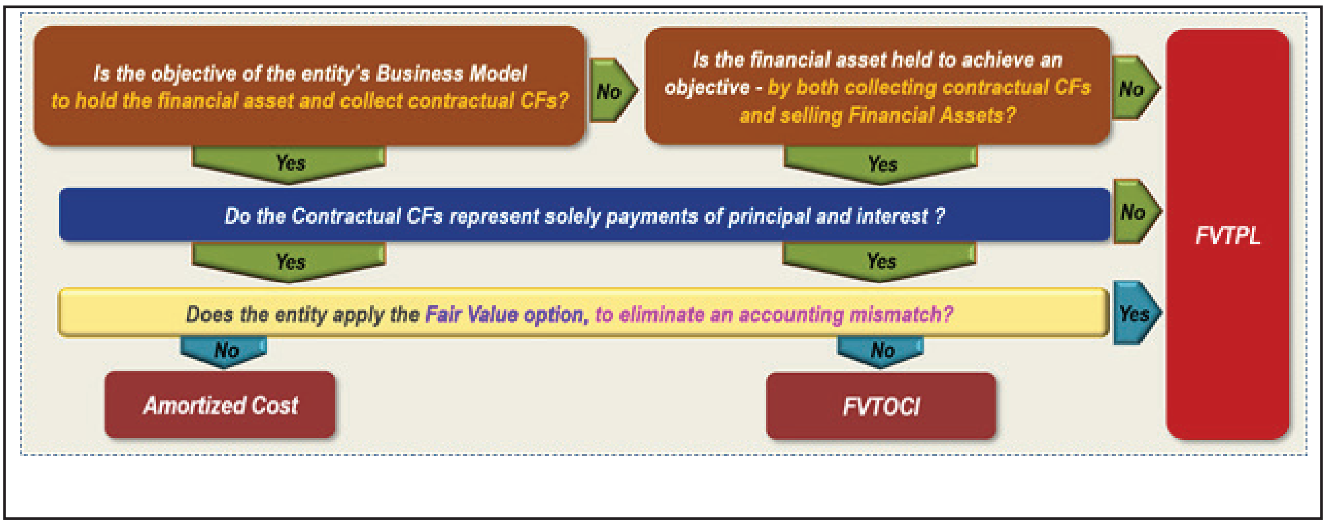
The level that financial assets are managed, e.g. Portfolio

Risk affecting performance and how t hey are managed

Actual and expected frequency, value and timing of sales

Further, given that the business model assessment is forward-looking, sometimes cash flows might be realized in a way that is *different from* the *entity's* expectations at the time of the *original assessment.* For example, an entity might sell more assets from the portfolio than it had anticipated at the time of making the original assessment. However, this, does not result in a *prior period error* if the original assessment considered *all the relevant information* that was available *at that point in time.* It does not change the classification of the remaining assets that continue to be held within the business model, unless the entity changes its business model in a manner that meets re-classification requirements under Ind AS 109.

The following chart summarizes *how* (a) SPPI test and (b) Business Model Assessment - impact the classification and subsequent measurement of financial assets:



Equity Instruments and Derivatives

Equity Instruments and Derivatives are normally measured ***at FVTPL.***

However, ***at initial recognition***, an entity may make an ***irrevocable election*** to classify an Equity Instrument (within the scope of Ind AS 109) as at *Fair Value Through Other Comprehensive Income (FVTOCI)*, provided the Equity Instrument is neither held for trading nor represent a contingent consideration recognized by an acquirer in a business combination, to which Ind-AS 103 *Business Combinations* apply.

Such an election can be made by an entity on an *instrument-by-instrument basis*. If an entity chooses to classify equity instruments at FVTOCI, all *subsequent changes in the Fair Value* of the instrument is routed through and presented in Other Comprehensive Income (OCI).

For this category of Financial Asset, though changes in *Fair Value of the Equity Instrument* are recognized in OCI, dividends will normally be recognized in Profit and Loss Account. Further, on disposal of such FVTOCI *Equity Instruments,* the cumulative Fair Value changes continue to remain in OCI (and is *not allowed to be recycled* to Profit and Loss Account).

Conclusion:

The above discussion amply makes it clear the importance of appropriate classification of the Financial Assets, since the subsequent accounting (including its effect on the Profit and Loss Account, volatility in the Income statement and the presentation) is impacted by such classification.

Author can be reached at : anjanikhetan@gmail.com

Impact Of IND AS On Direct Taxes

■ CA. Mohan R Lavi

EXECUTIVE SUMMARY

This article attempts to analyse the impact of Ind-AS on the Income Tax payable by an entity including MAT. Readers may be aware that Ind-AS entails a number of notional entries which may not be as per ICDS or the allowance sections of the Income Tax Act.

In Focus

1. Introduction

As on date, 39 Ind AS Accounting Standards have been notified by the Ministry of Corporate Affairs (MCA). Out of these, only one standard – Ind AS 12 provides guidance on Income Taxes and Deferred Taxes. In contrast, only 10 ICDS Standards have been notified by the CBDT and most provisions of the Income Tax Act do not consider the accounting aspects of a transaction. Due to this, there are bound to be differences between book taxes and taxes as per the Income Tax Act. Many people are of the opinion that the concept of Deferred Taxes takes care of this difference but entities would still need to know the impact since income taxes are paid on a Cash basis while Deferred Taxes as per Ind AS are accounted for by doing a comparison between two Balance Sheets.

2. Calculation of Taxable Income

Business income is computed in accordance with the Method of Accounting regularly employed by the taxpayer - could be either Cash or Mercantile / Accrual basis. The steps in calculating Taxable Income from the profits as per the Books of Account are:

- Business Income as per Method of Accounting adopted to be adjusted by the specific Deductions / Allowances / Disallowances specified in the Act
- Real Income is taxable and not Hypothetical Income. For Eg: Unrealized Gains / Losses not recognized for tax computation
- Concept of Time Value of Money not recognized
- Notional Expenses not allowable. However, provisions are allowed if there is a basis that can be explained.
- Adjustments to be made to Accounting Profits as per notified Income Computation and Disclosure Standards (ICDS) – effective from FY2016-17
- Each and every ICDS Standards begins with a preamble that in case ICDS does not provide clarity, the provisions of the Income Tax Act would prevail.

3. Examples of differences between Ind-AS and ICDS

Example 1

Ind AS 2 requires that where the purchase of inventories on deferred settlement terms effectively contains a financing element, the same is to be recognized as interest expense over the period off financing. For example, difference between the purchase price for normal credit terms and the amount paid deferred settlement terms, is to be recognized as interest expense

For example, an entity purchases an item of inventory for Rs 100,000/- payable in two years' time. Purchase price for normal credit terms is Rs 90,000/-

Period	Particulars	Debit	Credit
		Rs.	Rs.
Year 1	Purchases	90,000	
	Interest	5,000	
	Creditors		95,000
Year 2			
	Interest	5,000	
	Creditors		5,000

Valuation of inventory can be done at **Cost or NRV whichever is lower** as per Section 145A of the Act

Tax provisions / ICDS II(Inventory) do not stipulate splitting of the purchase price to recognize interest component in case of deferred settlement.

Further, interest is to be capitalized for the purpose of determining cost of inventory only if it takes more than 12 months to bring the inventory in saleable condition.

The allowability of the interest as a deduction could be a matter of dispute between the taxpayer and the department.

Example 2

Under Ind AS, all Financial Assets and Liabilities are required to be recorded at Fair Value at initial recognition instead of the actual cost. Difference between the same is required to be accounted in the P & L Account in most cases.

For example, interest free loans given / taken are required to be apportioned as principal and notional interest. Such notional interest should be recognized as income / expense in the P & L account over the period of loan.

A five year interest free loan of Rs 1 crore to a subsidiary is re-casted in the books of accounts so as recognize Rs 88 lakhs as principal and Rs 12 lakhs interest to be paid by the subsidiary over the period of 4 years. Rs 12 lakhs will be recognized as income and investment by the parent company and as expense and equity contribution by subsidiary company in their respective books of accounts over a period of 5 years.

Holding company

Period	Particulars	Debit	Credit
		Rs.	Rs.
Year 1	Loan to Subsidiary	88,00,000	
	Investment in Subsidiary	12,00,000	
	Creditors		1,00,00,000
Year 2	Loan to Subsidiary	300,000	
	Interest Income		300,000

Subsidiary Company

Period	Particulars	Debit	Credit
		Rs.	Rs.
Year 1	Bank Account	100,00,000	
	Loan from Parent		88,00,000
	Equity		12,00,000
Year 2	Interest Expense	300,000	
	Loan from Parent		300,000

Under tax provisions, Loans and Investments to be recorded at historical cost as against Fair Value. Once again, the allowability of the interest expense in the tax computation of the subsidiary and the recognition of the income in the tax computation of the holding company could be challenged. Of course, the tax department would not mind the latter!

Example 3

As per Ind AS 37, Companies are required to discount provisions to their present value where the effect of Time Value of Money is material. The increase in the provision due to the passage of time will be recognised as a finance cost-resulting in higher interest cost.

ICDS X specifically provides that the amount of provision should not be discounted to its present value.

Here again there could be an issue in allowing the interest cost as a deduction.

Permissibility of the deduction of nominal costs

As can be seen from the above examples, there would be a number of notional entries in the Financial Statements as per Ind-AS. As there is a lack of clarity in permitting these deductions as per ICDS / Income Tax Act, taxpayers should exercise prudence while claiming these deductions. If the amount is material and the taxpayer is in not very sure regarding the deduction, he would be well advised to pay tax on it.

Accounting treatment of the interest and penalties related to Income Taxes

Many a time, doubts arise on the accounting treatment of interest and penalties related to Income Taxes. The Ind AS Transition Facilitation Group (ITFG) had an opportunity to issue a clarification on this matter. (ITFG Clarification Bulletin 16, Issue 2). The clarification provided by ITFG was as follows:

Paragraph 9.7.1 of 'Guidance Note on Division II – Ind AS Schedule III to the Companies Act, 2013' issued by the ICAI states as follows:

'Any interest on shortfall in payment of advance Income-Tax is in the nature of finance cost and hence should not be clubbed with the Current tax. The same should be classified as Interest expense under finance costs. However, such amount should be separately disclosed. Any penalties levied under Income tax laws should not be classified as Current tax. Penalties which are compensatory in nature should be treated as interest and disclosed in the manner explained above. Other tax penalties should be classified under 'Other Expenses'.'

The above recommendations of the Guidance Note are based on the difference between the nature of current tax on the one hand and that of interest or penalties levied on an entity under the Income-Tax law on the other. As per Ind AS 12, "current tax is the amount of income taxes payable (recoverable) in respect of the taxable profit (tax loss) for a period." Thus, an entity's obligation for current tax arises because it earns taxable profit during a period. An entity's obligation for interest or penalties, on the other hand, arises because of its failure to comply with one or more of the requirements of Income-Tax law (e.g. failure to deposit Income-Tax). Thus, obligations for current tax and those for interest or penalties arise due to reasons that are fundamentally different in nature. Paragraph 29 of Ind AS 1, Presentation of Financial Statements, requires, inter alia, that "an entity shall present separately items of a dissimilar nature or function unless they are immaterial except when required by law." It is with a view to properly reflect the difference in the nature of current tax and interest / penalties imposed under Income-Tax law that the Guidance Note requires interest or penalties to be not clubbed with current tax and to treat penalties that are compensatory in nature and interest as part of finance cost and to treat other penalties as part of other expenses.

An entity should determine whether a particular amount payable or receivable for interest and penalties is in the scope of IAS 12 (or Ind AS 12) considering the tax laws applicable in its individual jurisdiction. For this purpose, an entity should consider whether tax laws in the jurisdiction and other facts and circumstances indicate that this amount is based on a taxable profit – i.e. a 'net' amount. For example, in India, interest and penalty payable under section 234A/B/C will not qualify as income-taxes within the meaning of IAS 12 (or Ind AS 12). Thus, the related amount will be recognised as interest (similar to the approach under the Guidance Note). Other interest and penalties under the Indian Income Tax act are also generally not expected to qualify as income-taxes.

Conclusion

As can be seen from the above discussion, implementation of Ind-AS would have a significant impact on income taxes of an entity. With the introduction of faceless assessments, taxpayers would be hoping that the group who is in charge of their assessment have a fair idea about Ind-AS and are able to interpret the provisions appropriately. Faceless assessments should not become baseless assessments!

Author can be reached at : mohan.lavi@gmail.com

Intellectual Property Rights and Protection in India

Infringement of Trademarks (Part-V of IPR Series)

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

Role of Trademarks in the Market place

In the earlier parts, the types of Trademarks, the process to be followed in Selection, Registration and the Process of registration have been deliberated. In this article the Rights of a Trademark Owner and the Trademark Infringements occurring in business and commerce are narrated. Remedies available as a relief against infringement of rights in respect of the Intellectual Property will be dealt separately in the later part of the series, under the topic 'Enforcement of Intellectual Property Rights'. The Trademark as an Intellectual Property promotes Sales / Transactions and brings in high returns and aids to retain the goodwill & growth. This helps the MSMEs more extensively as it develops a borderless communication with the consumers and the society. The 'Knowledge Economy' advances, as more value are achieved by the entities.

The development of economy occurs as a result of accrued wealth from such Intangible Assets. As deliberated earlier the Trademarks are a symbol of goodwill and also assure the consumers the consistency in assured quality and make the purchasing decision by them easier. The business entity has easier popular way to advertises & create an image of the Goods / Services in the market place at global level and therefore it is a critical tool in business aggregation. The property could be owned perpetually for generations without any limitations of time, provided the renewal is done on time, once in every ten years. However, it must be realised that Trademark ownership is not an end in itself and it makes no economic sense, unless it is put to use by the owner, bundled together with quality products.

At the same time, it must be noted that this Property is capable of being misused by the competitors or fraudulent businesses entities, who without a valid permission, likely to pass off their goods as original, by using identical marks or confusingly similar or deceitful marks to mislead the consumers. This will be against the interests of the owner of Trademark as well as the consumers, and therefore it is of paramount importance to know what amounts to infringement and the ways of protections available under law?

Rights available to the owner of a Trade Mark

As per The Trade Marks Act, 1999 (TMA for short) the person whose name is entered in the register of the Registrar of Trademarks as proprietor in relation to a Trade Mark, is called as 'registered proprietor' [Sec 2 (v) of TMA]. The "registered user" means a person who is registered as such under Section 49, through a joint application with proprietor of Trademark enclosing the agreement and an affidavit in respect to such permitted use of the Trademark. [Sec 2 (x) of TMA]. The "permitted use", in relation to a registered Trade Mark, means the use of Trade Mark has been defined under Section 2 (r) of TMA. The Rights available to a valid Registered Trademark Proprietor or Owner are:

(i) Right to exclusive use in relation to the Goods or Services in respect of which the Trademark is registered; [Sec 28(1) of TMA]

(ii) Right to seek statutory remedy against an infringement;

(iii) Right to assign such marks to any other person;[Sec 37 of TMA]

(iv) the Right to Seek Correction of Register at the Registry Office;

(v) the Right to alter Registered Trademark.

Legal protection for a Trademark is obtained through registration. In some countries, including India, such rights are vested legally with the first user of a mark and therefore it is not essential to register the trademark. However, in such instances,

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protections of the rights are available through application of common law justice system. The holder or owner of the unregistered mark has no exclusive usage rights, but can prevent any third party from using an identical or deceptively similar Trademark, provided such an unauthorized use by the rival results in passing-off. Much stronger protection is extended to the registered Trademarks as relief for infringement of rights could be obtained by application of the provisions of Trademarks Act. Therefore, even in countries where the Trademarks are also protected through first to use principle, one is advised to register the Trademarks so as to enjoy such rights to the exclusion of others (Monopolistic Rights).

Infringements under the Trademarks Act

The Trademark infringement claims generally involve the issues of

(i) likelihood of confusion,

(ii) deceptive marks,

(iii) identical marks and

(iv) dilution of marks.

The deceptively similar means that when an average consumer looks at the mark, it is likely to confuse him / her of the origin of the Goods or Services. If there is a chance of misrecognition of the marks, it is enough for proving an infringement. As per Section 2 (h) of TMA a mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion. It must be noted the confused state of a person referred to here is the consumer in the appropriate market and not the mind of the owner of Trademark.

An owner of a Trademark may commence legal proceedings against a party which infringes its registration. Infringement of a Trademark may occur when one party, the "infringer", uses a Trademark which is identical or confusingly similar to a Trademark owned by another party, in relation to products or services which are identical or similar to the Goods or Services which the registration covers. As per Section 28 of the Act the registration of Trademark shall, if valid, gives to the registered proprietor the exclusive right to use of the Trademark in relation to the Goods or Services in respect of which the Trademark is registered and obtain relief in respect of the infringement in the manner provided under the Act. Trademark infringement is a violation of the exclusive rights attached to a Trademark without the authorization of the proprietor of the Trademark or any licensees. The various types of infringements and the ratios of decision by the court are dealt through the following case studies.

Case 1: Priority in adoption and use over Registration

As stated earlier, India follows the common law system where prior adoption and usage of the mark is of utmost importance. The rights of prior adopter and user of a mark have been held to be superior to even that of a registered proprietor. This principle is understood better by referring to the arguments and decision of the Supreme Court of India in the case of ***M/s. L. D. Malhotra Industries v. M/s. Ropi Industries,[(1975 SCC OnLine Del 172)].***

In this case the litigants are industries engaged in the manufacture of dress hooks bearing brand KISMAT which are used in garment making industry. M/s Malhotra's got their mark Kismat (word mark) registered with the Registrar of Trade Marks in December, 1967. During December, 1969 the other company M/S Ropi's made an application for registration of Trade Mark KISMAT which was opposed by Malhotra's. Ropis claimed that 'they were using the label mark Kismat since the year 1963, prior to application date of Malhotra's. The Supreme Court observed that Ropi's were first in the field as their user dates back to 01.01.1963, but they are late in registration, as the Malhotras were the first to get their Trade Mark registered. In other words, Ropis were prior in use and late in Registration while Malhotras were anterior in registration but posterior in use. Based on the above facts the court held, *"Use plays an all important part. A trader acquires a right of property in a distinctive mark merely by using it upon or in connection with his goods irrespective of the length of such user and the extent of his trade. The trader who adopts such a mark* *is entitled to protection directly the article having assumed a vendible character is launched upon the market. Registration under the statute does not confer any new right to the mark claimed or any greater right than what already existed at common law and at equity without registration. It does, however, facilitate a remedy which may be enforced and obtained throughout the State and it established the record of facts affecting the right to the mark. Registration itself does not create a Trade Mark. The Trade Mark exists independently of the registration which merely affords further protection under the statute. Common law rights are left wholly unaffected."*

Case 2: Registration in one category is no bar for registration in the same class

There are instances where the Trade Marks may sound alike, may be in use within the same class, but depending upon the market presence, the consumer is able to differentiate the mark who may not be deceived by presence of identical or similar word or sound. In case of a Trademark, which may be similar to an earlier registered Trademark belonging to a different owner, but the rival goods happen to be dissimilar though falling under the same class, the later applicant may be able to obtain registration of his Trademark, pleading dissimilarity of goods so far as the earlier registered Trademark is not held to be a well-known Trademark in a particular business sector. It should be noted that only when the consumer finds it difficult to differentiate the source or owner of the goods, such marks could be treated as deceptive marks. This aspect we shall understand with the recent decision by the Supreme Court in the case of ***Nandhini Deluxe v. Karnataka Co-Operative Milk Producers Federation Ltd. (KMF) [(2018) 9 SCC 183].***

M/s KMF are the registered proprietors of Trademark "NANDINI" for milk and milk products of Class 29 and 30 since the year 1985. The Nandhini Deluxe who are in the business of running restaurants under the mark 'NANDHINI', in the year 1989, applied for registration of the said mark in respect of various food and services sold by them in their chain of restaurants. The respondent opposed the registration but the Trademark Registry allowed registration of Appellant's Trademark. In appeal, the IPAB and the High Court set aside appellant's Trademark registration on the ground that the Respondent's mark 'NANDINI' had acquired distinctiveness and the goods registered also fall in the same class against which the Appellant approached the Supreme Court.

The Supreme Court in the present facts of the case held that not only visual appearances of the two marks are different, they even relate to different products. They concluded that the proprietor of a trade mark cannot enjoy monopoly over the entire class of goods and, particularly, when he is not using the said Trade Mark in respect of certain goods falling under the same class.

Case 3: Mark infringed if used as trade name by another person

In certain instances the Trade Mark of a Company could be used as the trade name of another company, thereby any product with the same name in the market is likely to be associated with the Company, especially in cases where the good are identical. Therefore, in such situations namely cases where the Trade Name of a Company is similar to the Trade Mark of another, a right against the infringement could arise. This could be understood through the decision of the Delhi High Court in the case of ***Kala Niketan v. KalaNiketan [AIR 1983 Delhi 161]***

In this case the Plaintiff carried on business of selling sarees under the Trade Name 'Kala Niketan' and had made wide publicity of the Name 'Kala Niketan' through various media and had gathered a big share in the sales of sarees. The Defendant, being aware of the popularity of the name, started business in sarees under same name. In December 1977, the Defendant was served with a notice to stop using the Trade Name 'Kala Niketan' but he continued to sell the product with the same name. The Defendant published a caution notice dated 13th May 1978 claiming that he was the proprietor of the name 'Kala Niketan' in respect of trade of all kinds of Sarees and textiles. During the litigation process, the Court found that the adoption of the Trade Name 'Kala Niketan' by the defendant was to ride on the popularity of the Plaintiff's Trade Name and granted a decree for permanent injunction restraining the Defendant from using the name of 'Kala Niketan' or any other identical or deceptively similar Trade Name.

Case 4: Principles to be followed in identifying the infringement of a mark

M/s Glenmark Pharmaceuticals Ltd., are the manufacturers of pharma product which included product Candid – B, an anti-fungal cream. In the meanwhile, M/S Galpha Laboratories came out with a similar drug and marketed in the trade name Clodid – B. The products had similar contents, packaging & trade dress. On examination the Court noticed it to be an instance of obvious counterfeiting. The defendant claimed that the mark was adopted by mistake, and chose not to contest the suit. The Bombay High Court imposed costs of Rupees 1.5 Crores against the defendant as he is found to be 'habitually' committing Trademark infringement of pharmaceutical products.

The Apex court in the case of ***Cadila Health Care Ltd., Vs Cadila Pharamaceuticals Limited [(2001) 5 SCC 73]*** listed the factors to be considered for deciding deceptively similar or confusingly similar Trademarks. They are :

(i) Nature of the goods (word, label, device);

(ii) Degree of resemblance;

(iii) Nature of the mark;

(iv) Similarity in the nature, character and performance of the goods and rival traders;

(v) Class of purchasers who are likely to buy the goods bearing the mark they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and / or using the good;

(vi) Mode of purchasing; and

(vii) any other surrounding circumstances.

Case 5: A well-known mark even without presence in the country is entitled for protection from infringement

In the case of **N.R. Dongare v. Whirlpool Corp. Ltd.** *[1996 (16) PTC 583]* the defendants have failed to renew their Trademark 'WHIRLPOOL' and in the meantime the plaintiffs have got registration of the same. In this case, the Court said that though there was no sale in India, the reputation of the plaintiff Company was travelling trans-border to India as well through commercial publicity made in magazines which are available in or brought in India. The Court held that," *the "WHIRLPOOL" has acquired reputation and goodwill in this country and the same has become associated in the minds of the public. Therefore, the plaintiff acquired trans-border reputation in respect of the Trademark "WHIRLPOOL" and has a right to protect the invasion thereof"*

Case 6 - Cyber-squatting -domain names disputes

We are aware that the registrations of domain names result in a global presence of a business entity as it becomes accessible from anywhere in the world via the Internet. There is no separate Intellectual Property Right related to the Domain Name System exists. The function of domain name as identifier is similar to the Trademark in the physical world and this common feature gives rise to significant Intellectual Property related issues. Trademarks and domain names, having similar functions, are being exploited by fraudsters who register popular Trademarks of others as their domain names and try to sell those domain names back to the Trademarks owners or third parties at a profit. In the era of e-commerce, domain names have become the real identifiers of business. The development of this new global common medium in which traffic / communication circulates without cognizance of borders with the traditional territoriality based system that emanates from the sovereign authority of nation states has diluted the Trademark as an Intellectual Property Right. Such illegal transactions which amount to crime are happening in many jurisdictions and are under litigation before various Courts world over. The issue involves the use of a domain name by a person with neither registration nor any inherent rights to the name as a domain name. This crime is popularly known as 'Cyber-Squatting' in the Netizen-centric Cyber Society.

The first of such case in India with regard to cyber squatting was ***Yahoo! Inc. v. Akash Arora & Anr, [1999 (19) PTC 201 (Del)]***. In this case, the Internet search engine Yahoo! Inc sued the defendant, who

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had not only copied the domain name Yahooindia.com but had used Yahoo India as a Trademark in a similar script on its website by offering directory services with information specific to India, and was passing itself off as an extension of Yahoo. In this landmark judgment in cyber-squatting, Delhi HC held that a *domain name served the same function as a Trademark* & therefore entitled to equal protection. It observed that the plaintiff 'Yahoo!' & defendant 'Yahoo India!' are nearly identical and phonetically similar. The yahoo! Name had acquired uniqueness & distinctiveness and was associated with the plaintiff. A domain name is like a corporate asset of a company, the Court observed.

In ***Satyam Infoway Ltd v. Sifynet Solutions Pvt. Ltd [2004 (6) SCC 145]***, the respondent had registered domain names www.siffynet.com and www.siffynet.net which were similar to the plaintiff's domain name www.sifynet.com. Satyam (plaintiff) had an image in the market and the word Sify was first coined by the plaintiff using elements from its corporate name Satyam Infoway and enjoyed reputation and goodwill in the market. In this case the appellant served notice to cease & desist from carrying on business in name of Siffynet Solutions (P) Ltd. or Siffynet Corporation and to transfer domain names. After due process of hearing the Supreme Court stated that the domain name is accessible by all internet users & the need to maintain an exclusive symbol for such access is crucial. It went on to hold that the domain name can be treated as a legitimate Trademark as deceptively similar domain name may not only lead to a confusion of the source but the receipt of unsought for services. It held that such Usage of registered trade names as domain names without assignment or permission of the right holder would amount to infringement under Trademarks Act.

In view of the above cyber crimes, it is recommended that whenever selection and registration of a Trademark is planned, the availability of the same name as a domain name could be searched. The domain name if available may be registered, even before applying for registration of the mark. If it found to be in use, such mark may be discarded from the selection so as to avoid litigation on this front.

The importance of protection of industrial design rights to preserve the presence and growth of an industry in the market will be deliberated in the coming article.

To be continued in next issue......

Author can be reached at :
mgkodandaram@gmail.com

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KSCAA REPRESENTATIONS:

1) Representation requesting extension of Companies Fresh Start Scheme i.e. CFSS 2020 and LLP Settlement Scheme 2020 dated 2nd January, 2021 to Hon'ble Minister of Finance and Minister of Corporate Affairs - Smt. Nirmala Sitharaman, Government of India.
2) Representation requesting relief from late fees for delayed filing of gst statements / returns from august 2020 dated 17th december, 2020 to Hon'ble Minister of Finance and Hon'ble Chairman, GST Council - Smt.Nirmala Sitharaman, Government of India.
3) Representation requesting to permit utilization of accumulated funds for purposes other than the purpose for which it is so accumulated under section 11(2) of the Income-tax Act, 1961 dated 12th January, 2021 to Hon'ble Minister of Finance - Smt.Nirmala Sitharaman, Government of India.
4) Representation requesting to extend various time limits under section 54 to 54GB of the Income-tax Act, 1961 (the Act) dated 26th November, 2020 to Hon'ble Minister of Finance - Smt.Nirmala Sitharaman, Government of India.

JOINT REPRESENTATION:

1) Representation requesting extension of various due dates under Income-tax Act, 1961 for AY 2020-21 and for filing the Annual Reconciliation Statement (GSTR9C) along with the annual return (GSTR9) for financial years 2018-2019 & 2019-2020 dated 15th December, 2020 to Hon'ble Minister of Finance - Smt.Nirmala Sitharaman, Government of India.

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

Ayurveda - Not An Alternate System

■ Dr. Amritha T T

When the first human was born, he might have taken such an effort to understand his body and to know what is normal and what is abnormal. It would have been a great deal to compare himself with the nature and to establish the relationship between the two. He might have observed the animals, taking care of their health by eating some plants. May be that was the time when Ayurveda came into existence. May be after many decades when he was ready to document his findings it was officially named as Ayurveda, which we declare it is as five thousand years old.

After observing nature for hundreds of years and relating the body to the environment and documenting it in a detailed way, saying how exactly nature helps us to cure our disease is not less than a miracle. These well documented scriptures are called treatises, where we find detailed explanation of anatomy, physiology, diseases, treatment and even surgery. This time tested medicine cannot be compared with lab tested contemporary medicine.

When world was in its peak of modernization, when contemporary medicine was said to be the best, suddenly people started talking about Ayurveda. All thanks to corona, it did not take much time for people to analyze why we are going through such a tough time in controlling virus, how an invisible small virus caused havoc. All one could aspire was to increase their immunity and the wellness of their near and dear ones. This was the time everything related to immunity was discussed and Ayurveda said be the best choice. The drugs that are used to improve the immunity not only are easily available but also are easily affordable. All started thinking that grandma recipes are far better than chemical substitutes which may even lead to side effects.

When it comes to Ayurveda, the perception is entirely different from allopathic science. Here every person is considered to be different and so as his disease. The concept is based on vata, pitta, kapha which are said to be three doshas of human body. Different combinations of these three doshas result in different constitution, thus making each person different from other. The unique concept which says each person is different from other and how he responds to the disease is also different is explained only by Ayurveda.

This does not mean that allopathic science is not at all useful. Each and every system of medicine has its own positive impact on health care. Emergency medicine and surgical interventions are best managed by allopathic science, whereas, preventive and palliative treatment can be better handled by Ayurveda. There are different health pro concept in Ayurveda for preventing the disease as well to cure it.

The distinctive idea of detoxification in the form of panchakarma is the well matched treatment for the present world, where, everything we intake are increasing the toxins in our body. Pancha means five and karma means treatment. The five purificatory treatment which are known as detoxification therapies are Vamana, Virechana, Basti, Nasya and Raktamokshana.

Vamana – also called emesis therapy, where, medicine is given to induce vomitting to remove the toxins from upper part of the body, this procedure is done in diseases like sinusitis, pimple, upper respiratory diseases, psychological problems and many other.

Virechana- also known as purgation therapy, where medicine is given to expel out the toxins from lower route. This is adopted in diseases like gastritis, skin diseases, diseases of genito urinary system etc.

Basti(vasti)- medicated enema therapy which is used in pain dominant diseases.

Nasya- instilling medicated oils or juices through the nostril is called nasya. This is done in diseases of the head and upper respiratory tract.

Raktamokshana- blood purification therapy. Commonly seen types in this are cupping and leech therapy. Done in localised or generalised skin diseases, joint pains, non healing ulcer etc. these five detox therapies will be adopted depending on the disease and the diseased. One has to consult their physician before undergoing any of this procedure. Even the healthy person can take these treatment to maintain his health and keep his body away from toxins.

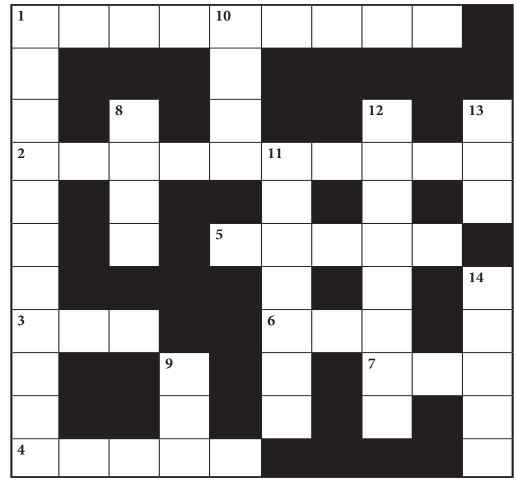
When the whole thing that is explained in one science is so compatible and convincible to the diseases of modern world, then Ayurveda is not an alternate system of medicine, but the main stream medicine.

We have a notion that Ayurveda acts slowly and it can be used only in joint pain, paralysis and such other chronic illness. From common cold to corona we get medicines in Ayurveda, and it doesn't act slowly but we approach Ayurveda after doing all possible doctors shopping. One more reason to hinder the acceptance is the taste of the medicine. Everyone thinks that medicines are bitter and non-palatable. Incredible development in the field has given medicines in all varieties just like in allopathic science, syrups, tablets; capsules are available to make the medicine more palatable.

Old thought of one doctor all diseases has gone and Ayurveda has specialized doctors in different field just like in modern medicine. Hence, solution can be sought by the specialist depending on the problem we have. Starting from eye diseases to gynecological problems, specialist will find you the remedy. Even with all this positive development our own system of medicine is considered to be the alternate one in our own country, where as all other countries is looking towards India to imbibe this ancient knowledge. If we do not wake up now, then time will come when foreigners teach us Ayurveda.

The Author is Senior Consultant, Sharada Ayurveda Hospital, Mangalore and can be reached at : raviamritha2008@gmail.com

CROSS WORD 5



DOWN	
1	This multipurpose ………form of ICAI is an online application, which is meant for allotment of Bank/ Branch Audits to the ICAI Members/ CA Firms (11)
8	Enterprises registered under this are eligible for various benefits from the Government of India, Reserve Bank of India (RBI) (abbreviation) (4)
9	An initiative by Income Tax Department of India (ITD) for the modernization of the current system for collection, processing, monitoring and accounting of direct taxes using information technology. (3)
10	A form of depreciation which is a damage that naturally and inevitably occurs (part of the term) (4)
11	A part or division of a larger unit, as of an asset pool or investment. (a French word meaning 'slice') (7)
12	Type of audit relating to examination and evaluation of a firm's or individual's financial records to derive evidence that can be used in a court of law or legal proceeding (8)
13	A certificate that can be presented electronically to prove one's identity, to access information or services on the Internet or to sign certain documents digitally (abbreviation) (3)
14	…...selling is an investment or trading strategy that speculates on the decline in a stock or other securities price (5)

ACROSS	
1	These funds are typically funded by donations that are deductible for the donors and are used for specific purposes (9)
2	Audit ……….. are the implicit or explicit claims and representations made by the management responsible for the preparation of financial statements (10)
3	This tax was launched to reduce the gap between the tax accountability as per income calculation and book profits (abbreviation) (3)
4	The overall direction of a market or an asset's price (5)
5	A Committee on Banking Supervision which is the primary global standard setter for the prudential regulation of banks and provides a forum for regular cooperation on banking supervisory matters (5)
6	This refers to a centralized system established by a bank which allows its customers to conduct their business irrespective of the bank's branch (abbreviation) (3)
7	A type of public offering in which shares of a company are sold to institutional investors and usually also retail investors (abbreviation) (3)

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

sudoku-5

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Answers to "Cross Word 4" (December 2020)

Across

1. Option, 2. Lien, 3. Fintech, 4. CPE, 5. BI, 6. EBIT, 7. CAPM, 8. Scope

Down

6. Ethics, 9. Qualified, 10. Governance, 11. Merger, 12. QIP, 13. IGST, 14. Sample

Credits: CA. Archana Sridhar

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080-29552155 or write to us at **info@kscaa.com**

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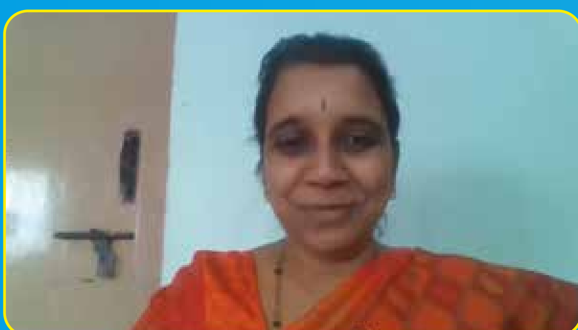
Photo Gallery

Webinar on Igniting minds - Positivity by Neelima Chakara and Learning in Depth - Company Fresh Start Scheme 2020 by CA. Devika S and Audit and Annual Filing under Companies Act by CA. Pracheta Manchali held on 10th December, 2020



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