

KSCAA

Karnataka State Chartered Accountants Association ®

NEWS BULLETIN

April 2021

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Karnataka State
Chartered Accountants Association



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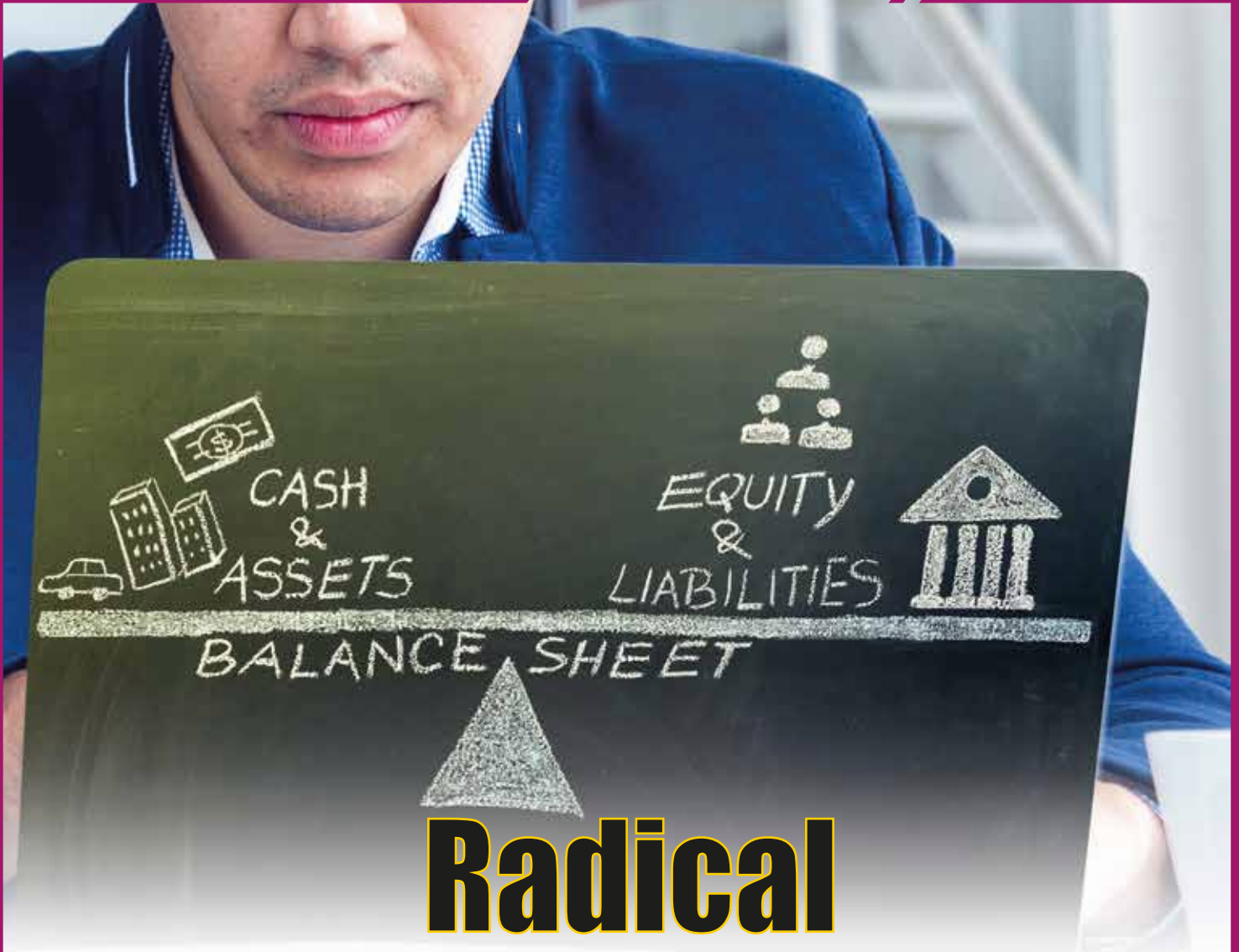


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Radical Amendments By MCA



■ Karasamadhana Scheme

■ IPR in India

■ Finance Bill Vs. Finance Act

■ Capital Gains of JDA

■ Recent Updates - GST

■ Financial Reporting &
Assurance



Dear Professional Friends,

Let me wish all the readers a happy Ugadi and let this year be filled with happiness, great health and prosperity! The word 'Ugadi' is a combination of two words: 'yug' meaning 'age' and 'adi' meaning 'a new beginning'. Thus, it celebrated the beginning of a new age. Interestingly for us professional accountants, Ugadi coincides the date of new financial year from when the new books are maintained to draw new profits / losses.

Surge in number of Corona cases in the country is a sign of worry to the health of individuals and business. The impact of second wave has already set in and the ambiguity of severe lockdown prevails amongst the business and professional community. Vaccination drive which is currently above 45 years would be soon to open to all above many, IMA has requested to vaccinate all over age of 18 years for free of cost. We only hope that these would enable to win over the virus soon. The first part of the April is spent tirelessly in Bank Audits by CA's in practice. This year is different with so many changes coming on its way related to reporting and COVID furthered by recent decision of Honorable Supreme Court on NPA classification.

KSCAA from past few years have been conducting residential leadership program and we would wish to continue the same in the future also albeit the uncertainty of severity of pandemic prevails during this year. KSCAA completed the registration of lease cum sale deed of KIADB Harohalli site, the land needs to be put to use within 3 years from the date of lease cum sale deed and association is looking at alternatives and options to monetize the asset, we call from members to put in their suggestion on this.

News Roundup

Direct Tax

The Finance Bill, 2021 was passed by Lok Sabha on 23rd March 2021 with more than 100 new amendments. It further receives assent of the President on 28th March 2021 and becomes FINANCE ACT, 2021.

Flurry of CBDT' notifications and circulars on the following:

- Notifies all ITR Forms 1 to 7 for the AY 2021-22;
- Inserts new clauses in Form 3CD (Tax Audit Report) and also notifies that Tax Audit Report can be revised if disallowance u/s 40 or 43B needs recalculation; Deferment of two clauses in 3CD to next year.
- Extends due dates for Aadhar-PAN linking from March 31 to June 30;
- Notifies procedures and forms for tax registrations by trusts/ institutions. Also notifies format for reporting of donations received and issuance of donation certificates to the donors;
- Introduces new rule for making an online application for lower withholding on payments to non-residents;
- Specifies the class of cases for faceless assessment effective from April 1.

Indirect Tax

Change in Financial Year is accompanied by changes in GST Law as well. E invoice has been made mandatory from 01st April 2021 for registered persons with aggregate turnover greater than 50 crores. Last month GST Collections has been the highest so far, amounting to more than 1.2 lakh crores signifying better compliances. This month entails us to file the GST Returns for the month of March 2021 and I suggest my fellow brethren do a thorough reconciliation for the entire FY 20-21 and make all necessary rectifications in this return itself. Let me also draw your attention to the last Karasamadhana Scheme launched by the Karnataka Government which provides for Karnataka dealers to end the legacy disputes, pay taxes, and claim waiver of entire interest and penalties. I encourage all our professionals to share the same with their clients and take benefit of the same.

Corporate Law

MCA had made it mandatory for all companies to use only such accounting softwares having audit trail w.e.f. 1st April 2021. Subsequently the requirement has been deferred to 1st April 2022. Also, MCA requires auditors' report for financial years commencing from 1st April 2022 onwards to include a declaration regarding the availability and fitness of such accounting software.

MCA has made amendments in Schedule III with effect from 1st April 2021. Through these amendments many new additional disclosures have been made mandatory.

MCA has notified the establishment of Central Scrutiny Centre (CSC), which shall function under the administrative control of the e-governance Cell of MCA, to scrutinize the STP e-forms, with effect from 23rd March 2021, filed under the Companies Act, 2013 and its Rules and forward its findings to the concerned jurisdictional Registrar of Companies for further necessary action under the said Act and its Rules.

MCA has notified the provision that non-executive director, including an independent director, can be remunerated by the Company in case of inadequate / nil profit, subject to the ceiling prescribed under Schedule V of the Companies Act, 2013 and its Rules.

Mahatma Gandhi once said "Live as if you were to die tomorrow. Learn as if you were to live forever". "Live as if you were to die tomorrow" pushes people to do things in life they always wanted to do because their life is almost up and "Learn as if you were to live forever" urges people to learn since knowledge is the greatest treasure one can possess. It also emphasizes the immortal nature of learning and knowledge and the learning which possess no time space or age. I hope that we all imbibe this saying in truest sense.

Happy Reading!

Yours' sincerely,

CA. Kumar S Jigajinni
President

KSCAA

NEWS BULLETIN

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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

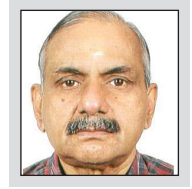
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UNDERSTANDING JOINT DEVELOPMENT AGREEMENT



■ CA. Krishnan S

Introductory Remarks

1. In this article the various facets of Joint Development of properties have been discussed from income-tax angle. This article starts with understanding the concept of Joint Development Agreement (JDA) and then the difference in tax treatment between exempted Sections 54 and 54F of the Income-tax Act (the Act) has been explained. The next para. explains the date on which capital gain tax liability arises followed by intricacies in calculation of tax liability in JDA transactions. The article concludes by making some suggestions / precautionary methods to be followed while entering into a JDA.

JDA explained

2. A JDA is an arrangement between a landowner and a builder / developer where the landowner contributes his land and the builder / developer takes the full responsibility of obtaining approvals, construction, launching and marketing the project with the help of financial resources. The term used for land contributed by the owner is usually referred to as "land ceded." The Land owner for the value of land ceded by him, gets the consideration from the builder / developer in the form of lump-sum or percentage of sales revenue or some specific percentage of constructed area in the project as it purely depends upon the terms and conditions as mutually agreed by the parties to this arrangement. There are also cases wherein the transfer consideration would consist of lump sum payment and a specified percentage of constructed area. The builder / developer would also provide rental compensation per month for the total period of agreement towards providing alternate accommodation for the landowner.

Note of caution

3. It should be stated at the outset that when a JDA is

entered into, the building should not be demolished by the landowner as otherwise the transfer would be treated as transfer of land only and the benefits available for transfer of land and building would not be available.

The Karnataka High Court in the case of **CIT vs. Ved Prakash Rakhra [2015] 370 ITR 762 (Kar)** held that where before entering into a JDA and handing over residential property, the assessee himself demolished the residential property, then he cannot claim benefit of deduction under Section 54 of the Act.

Basic Differences Between Sections 54 and 54F

4. What are the basic differences between capital gain arising on sale of a residential property and sale of a plot, shares etc?
 - (a) In the case of capital gain arising on transfer of a residential property it is sufficient if only capital gains are invested so as to claim exemption whereas in the case of sale of a capital asset other than a residential property (such as plot, shares etc) the entire transfer consideration (and not merely capital gains alone) has to be invested for the purpose of claiming exemption.
 - (b) There is no restriction with regard to holding any number of residential properties (houses) in the sense that any number of residential properties can be sold and reinvestment can be made in equal or less number of properties in a financial year covering the capital gain with the restriction of investing only up to Rs. 50 lakhs totally in a financial year in capital gain bonds. However, one to one principle is applicable in the sense that surplus (capital gain) arising on sale of one residential property cannot be adjusted against deficit (capital loss) arising on sale of other residential property -refer **Rajesh Keshav Pillai**

vs. ITO [2011] 44 SOT 617(Mum.) In the case of transfer of a capital asset other than a residential property the assessee can own only one more residential property other than the residential property which he / she proposes to purchase / construct on the date of transfer of such capital asset. However, there is no restriction on owning a commercial property by such person.

- (c) Further, such a person selling a capital asset other than a residential property should not buy within one year any other residential property or should not construct within three years any other residential property from the date of transfer of the original capital asset, other than the one for which exemption is claimed but there is no such restriction for a person transferring a residential property.
- (d) With effect from the Assessment Year 2020-21 the assessee is entitled to invest in 2 residential properties provided the capital gain is not more than Rs. 2 crores.

When does transfer take place in the case of JDA?

- 5. The ITAT Bangalore Bench in the case of **Armatic Engineering (P) Ltd. vs. Deputy CIT [2021] 61 CCH 0176 Bang.** Trib held that registered GPA executed by the assessee along with JDA in favour of Developer must be regarded as a transaction in eye of law, which allowed not only possession of the property, but also various rights and so it could be rightly considered as part performance of contract as per Section 53A of the Transfer of Property Act. In this case the assessee had entered into a JDA on 24th October, 2007 with a Developer for demolishing and constructing a commercial complex to be rented out jointly by the Developer as well as the assessee- company as a result of which the assessee-company was entitled to receive 50% of the super-built-up area along with certain other facilities in the schedule to the JDA. The said Developer got the plan approved for demolishing of old building and constructing commercial complex only during Sept. 2008. The developer registered a sale deed for one of its customers on 18th July 2011 and so the Assessing Officer taxed the capital gains in the assessment year 2012-13. It is to be stated that the assessee-company itself though offered capital

gains, mistakenly in the assessment year 2012-13, while arguing the case before the CIT (Appeals), at the time of first appeal, submitted that the capital gain arose during the assessment year 2008-09 when GPA was registered consequent to entering of JDA with the Developer. The CIT (Appeals) agreed with the views of the Assessing Officer and dismissed the appeal preferred by the assessee. The Tribunal, on second appeal filed by the assessee, referred to the judgment of the jurisdictional Karnataka High Court in the case of **CIT vs. Dr. T.K. Dayalu, 202 Taxman 531** wherein the High Court after referring to the judgment of the Bombay High Court in the case of **Chaturbhuj Dwarkadas Kapadia v. CIT (2003) 260 ITR 491 (Bom)** held as follows: -

"Having regard to the finding of fact that possession of the property has been handed over on 30th May, 1996, and cash part of the agreement also received on that date, appropriate assessment year in which the capital gain is to be taxed is 1997-98 and not in the year when the entire project was completed in 2003-04."

The Tribunal finally held that the capital gain was taxable in the assessment year 2008-09

How the tax liability arises in JDA?

- 6. In the case of JDA, transfer of property takes place when the property is given for development and if the flats allotted on developed property and handed over to the owner are sold, transfer of property (again) takes place with regard to such properties.

The ITAT Bangalore Bench in the case of **Asif Khaleel vs. ITO [2021] 85 ITR (Trib) 26 (ITAT[Bang])** has explained this concept lucidly by stating that liability arises at the time of entering into agreement and the sale consideration would be fair market value of constructed area that the assessee was to receive including any other consideration in terms of agreement and if the flats are sold subsequently then fair market value of constructed area becomes cost of acquisition and indexed cost to be deducted in order to arrive at capital gains. The Tribunal held that even if there had been any failure to declare capital gains on entering into joint development agreement, claim to deduction of cost of acquisition cannot not be denied when the constructed flats are sold resulting in capital gain second time.

To put it in simple terms in respect of flats that are sold within the stipulated period of 24 months after handing over is effected by the builder / developer the land on which the building stands would be subject to long-term capital gains, the period being counted from the original date of holding as such portion of that land had not been ceded to the developer. However, sale of buildings would result in short-term capital gains. In this regard reference may be made to the order passed by the ITAT Chennai in the case of **Asstt.CIT vs. V. Ram Mohan [2013] 24 ITR(Trib) 50** wherein this concept has been explained.

Concluding Remarks

7. (i) It is essential to take adequate care in drafting a JDA so that there is clarity with regard to date of transfer of the land and building. The Madras High Court in the case of **CIT vs. N.R. Bhusanraj [2002] 256 ITR 0340** has cautioned that in jurisprudence “intention” would be irrelevant and a transfer of a capital asset which is complete in itself cannot escape tax liability merely because the intention of the assessee was otherwise. In other words, if any action is done with contrary intention but it comes within the mischief of a taxing statute, it (such action) cannot escape tax liability for that year.
- (ii) The benefit of exemption available to 2 residential units can be taken advantage of by resorting to

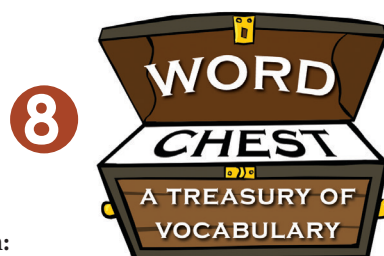
settling the required portion of the property in favour of ultimate beneficiaries in cases where the land proposed to be given is huge and substantial number of flats are allotted so that each of the beneficiaries joining together with the settlor can enter into a JDA and claim exemption for 2 residential units.

- (iii) The provisions of Section 56(2)(x) of the Act with regard to treating a benefit accruing to a person as income in the case of inadequate consideration arising out of transfer of a capital asset have to be kept in mind- refer **Prem Chand Jain vs. Asstt.CIT [2020] 82 ITR (Trib) 522 (ITAT[Jai])** and
- (iv) Basic facilities such as interior decor including wood work, fitting of air conditioners, electrical work modular kitchen etc. in the jointly developed property would form part of investment in residential property for the purpose of claiming exemption under Section 54 of the Act because when the Developer handovers the property there would only be completion of civil construction without these facilities which are required before the owner steps into the property or lets out to tenants i.e. to make the house habitable.-refer- **Fazelbhoy vs. Dy.CIT [2007] 106 ITD 167(Mum)**

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Solution to Sudoku -7 March 2021

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



Word of the Month:

Munificent

What is this?

Very liberal in giving or bestowing / characterized by great liberality or generosity

Use instead of: Bountiful, Generous

How can I use it?

- ✓ A **munificent** host who has presided over many charitable events at his mansion.
- ✓ He was also **munificent** in his donations to causes dear to him.

CHANGES BROUGHT OUT IN FINANCE ACT, 2021 VIS-À-VIS FINANCE BILL, 2021



■ CA. Krishna Upadhya S

Background

Both the houses of Parliament have passed the Finance Bill, 2021 and it has also received the President's assent and has become Finance Act, 2021. The Bill which was presented originally in the Lok Sabha on February 1, 2021 has been passed subsequently with more than 100 changes. New amendments have been proposed, some proposed amendments have been removed or altered.

A snippet of some important changes made in the Finance Act, 2021 vis-a-vis the originally presented Finance Bill, 2021 is presented hereunder:

1. Tax on transfer of money / property by a firm / AOP / BOI to its Partners / Members

Section 45(4) was proposed to be amended to include situations where assets or money are distributed to Partners when a reconstitution or dissolution happens. Such proposed amendment in Finance Bill, 2021 had deemed taxation in the hands of the Firm / AOP / BOI in such a situation. There are certain changes that are done in the Finance Act, 2021. They are as under:

1.1. Insertion of New Section 9B to cover transfer of property by the Firm to the Partner:

Section 9B provides that where a Partner receives during the Previous Year (PY) any Capital Asset / Stock-in-trade or both (hereafter referred to as "Assets") from a firm in connection with the **dissolution or reconstitution** of such firm:

- then the firm shall be deemed to have transferred such Assets to the Partner in the year in which such Assets are received by that Partner and it is deemed to be taxable in that year.
- Such taxation could be under the head 'Business or Profession' or 'Capital Gain'.
- The Fair Market Value (FMV) of the Assets on the date of its receipt by the Partner shall be deemed to be the full value of consideration while computing profit and gains arising from deemed transfer of such Assets by the firm.
- The expression "**reconstitution of specified entity**" has been defined to mean:

- One or more of its Partners or Members ceases to be Partners or Members;
- One or more new Partners or Members are admitted. However, at least one existing Partner or Member should continue to be Partner or Member of the specified entity after admission of the new Partner(s) or Member(s); or
- All the Partners or Members continue with change in their respective share or in share of some of them.

1.2. Section 45(4) covers transfer of rights by the Partner:

Section 45(4) now is applicable on **reconstitution of the firm**. Though the income on account of extinguishment / relinquishment of his right arises to Partner, but it is deemed as income of the firm. Thus, the firm would be assessed u/s 9B for its own income and u/s 45(4) for income arising to Partner thereof.

Finance Act, 2021 provides that where a Partner receives during the PY any capital asset or money from a firm in connection with the reconstitution, then any profit and gains arising from such receipt of money by Partner shall be deemed to be the income of the firm under the head "Capital Gains" of the PY in which such capital asset or money or both were received by the Partner. Further, it also prescribes the formula to compute the profit and gains arising to the partner from such receipt of money or capital asset from the firm.

$$A = B + C - D$$

A = Income of the firm under the head Capital Gains; (to be considered as 0, if A is a negative number)

B = Value of money received by Partner on the date of such receipt;

C = FMV of the capital asset received by the Partner on the date of such receipt;

D = Balance in the capital account of Partner in the books of the firm at the time of reconstitution. (except increase arising on revaluation)

1.3. Overlapping and relief

Particulars	Section 9B	Section 45(4)
Applicability of section	During dissolution or reconstitution of the firm	Only during reconstitution of the firm
Deals with taxability of	Income arising in the hands of the firm	Income arising in the hands of the partner
Tax to be paid by	Firm	Firm

In case of **reconstitution of the firm**, double taxation will arise once u/s 45(1) read with section 9B and second u/s 45(4). To remove the impact of such double taxation, Section 48 is amended to provide that, the amount of Capital Gain computed u/s 45(4) which is attributable to capital asset being transferred by the firm shall be deducted while computing Capital Gain in the hands of the firm in respect of such capital asset u/s 9B.

2. Goodwill – not a depreciable asset

Finance Bill 2021 had proposed that 'Goodwill of a Business or Profession' shall not be eligible for depreciation. However, to solve the ambiguity of what will happen to the goodwill which was already forming part of the existing block of asset, the Finance Act, 2021 makes certain amendments in section 43(6)(c).

2.1. Section 43(6)(c) of the Act:

Section 43(6)(c) provides that WDV of block of assets shall be reduced by the actual cost of goodwill falling within such block of assets. However, the actual cost of goodwill shall be first decreased by the:

- Amount of depreciation actually allowed to the assessee for such goodwill before the Assessment Year (AY) 1988-89, and
- Amount of depreciation that would have been allowable to the assessee from the AY 1988-89 as if the goodwill was the only asset in the relevant block of assets.

3. Slump Sale Amendments

The Finance Act, 2021 has amended Section 50B to provide that the FMV of the capital assets (being an undertaking or division transferred by way of slump sale) as on the date of transfer shall be deemed to be the consideration and it shall be calculated in the manner to be prescribed. It however, specifically provides that the value of capital asset being self-generated goodwill shall be taken as nil while computing net worth.

4. Interest earned on Provident Fund (PF) contribution.

The Finance Bill, 2021 had proposed that no exemption shall be available for the interest income accrued during the PY in the Recognised and Statutory PF to the extent it relates to the contribution made by the employees over Rs. 2,50,000 in the PF.

The Finance Act, 2021 now further provides that, there won't be any taxation in case, the employer is not contributing to such fund, subject to a maximum contribution of Rs.500,000. Amendment to Section 10(11) and 10(12) has been made.

5. Threshold limit for Tax Audit u/s 44AB

The threshold for Tax Audit was proposed to be increased to Rs.10 crores in Finance Bill, 2021 where the aggregate amounts received in cash does not exceed 5% of total sales / turnover / gross receipts and the aggregate of all payments made including amount incurred for expenditure does not exceed 5% of the said payment.

Finance Act, 2021 has made even non-account payee cheque or non-account payee bank draft on par with cash for computing the 5% threshold.

6. Fee for default in furnishing return of income – Section 234F

Since the due date available for filing belated return is reduced to 31st December in any relevant AY, the threshold of higher fee for default of Rs.10,000 has been removed. Going forward, the following will be the fees u/s 234F:

Total Income (Rs.)	Date of filing the return	Fees u/s 234F (Rs.)
Up to 5,00,000	After Due date	1000
Above 5,00,000	After due date but before 31 st December of relevant AY	5,000

7. Presumptive taxation – u/s 44ADA

Section 44ADA provides for presumptive taxation in the case of certain specified professional. Finance Bill, 2021 had proposed to restrict its benefit only to Individual, HUF and Partnership Firm (excluding LLP).

Finance Act, 2021 has further restricted it to Individual and Partnership Firm (excluding LLP) only.

8. Due date for linking Aadhaar and PAN

Due date for linking Aadhaar and PAN has been set as 30-06-2021. Further, a new section 234H has been inserted to levy a penalty of Rs.1,000, which needs to be paid if

the Aadhaar is not linked to PAN within due date. This is in addition to other consequences that could follow for non-linking the two.

9. New Scheme of Reassessment

The Finance Bill, 2021 had proposed a new re-assessment procedure for an income which has escaped the assessment and in search and seizure cases by substituting Section 147. A proviso in the new Section 147 had provided that procedures laid down under new Section 148A need not be followed in case an issue gets discovered subsequently.

Finance Act, 2021 has added the term re-computation along with assessment and reassessment. Thereby, enabling tax officer to also re-compute the income based on any issue that gets discovered subsequently without following the procedure laid down u/s 148A.

Section 148A provides for carrying out inquiry and giving an opportunity before issuing notice of reassessment u/s 148 of the Act.

Meaning of “Asset” representing the income escaping assessment:

The Finance Bill, 2021 proposes the following time-limit for issuance of notice u/s 148 for re-assessment u/s 147.

Particulars	Time Limit
In General	No notice shall be issued if 3 years have elapsed from the end of the relevant AY.
Where the AO has evidence in his possession which reveals that the income escaping assessment, represented in the form of asset, amounts to Rs. 50 lakhs/ more.	Notice can be issued beyond a period of 3 years but not beyond the period of 10 years from the end of the relevant AY.

The Finance Act, 2021 has inserted an Explanation to new Section 149(1) to define the meaning of ‘Asset’. For this purpose, the asset shall include the following:

- (a) Immovable property, being land / building / both;
- (b) Shares and Securities;
- (c) Loans and Advances;
- (d) Deposits in Bank Account.

10. Liable to Tax – Definition

Finance Bill, 2021 had proposed to insert to definition of the term ‘Liable to tax’. Finance Act, 2021 has made some changes to the definition. Such changes are:

- a) the liability shall be with reference to a country, which was not clear in the earlier proposed definition
- b) there should be an income-tax liability, earlier it only said liability of tax.

11. Re-computation of past year’s book profits – MAT amendments

As per the Finance Bill 2021, the AO, on an application by the assessee, shall re-compute the book profit of the past years and tax payable thereon if assessee’s PY’s income has increased due to APA or secondary adjustment.

The Finance Act, 2021 has inserted two provisos.

- a) The first proviso provides that the benefit of re-computation of book profit u/s 115(2D) shall be available only if the assessee has not utilised the MAT credit in any subsequent AY.
- b) In the second proviso, it is provided that the assessee can make an application for re-computation of book profit only for the past years beginning on or before AY 2020-21. Further, the assessee shall not be eligible to claim the interest on the refund, if any, arising to him on account of reduction in tax payable due to re-computation of profit of past years.

12. No tax on income of ‘DFI’ and ‘Institution’ established for financing infrastructure and development.

Exemption u/s 10(48D) will be available for 10 consecutive AY’s for any income accruing / arising to an institution established for Financing infrastructure and development beginning from the AY in which the institution is set up under the Act of Parliament.

Exemption u/s 10(48E) will be available for 5 consecutive AY’s for any income accruing / arising to a Developmental Financing Institution (DFI) licensed by RBI, subject to fulfilment of some prescribed conditions.

13. No Equalisation levy on certain transactions

Finance Bill, 2021 had expanded the scope of Equalisation Levy to include consideration received by an e-Commerce Operator, irrespective of whether the goods or services were owned by such Operator. It has now been clarified in Finance Act, 2021 that in case such goods or services are owned by a resident in India or effectively connected to a PE in India (which are already taxable), equalisation levy is not attracted.

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KARASAMADHANA SCHEME 2021



■ CA. G B Srikanth Acharya

The Karnataka Government has notified the latest *Karasamadhana Scheme, 2021* with an object of completing the pre-GST legacy audit / assessments and to clear tax arrears expeditiously.

In this article we are going to summarize;

- ✓ Introduction and benefits
- ✓ Conditions for availing the scheme
- ✓ Procedure to avail the scheme
- ✓ Forms and declarations to be used
- ✓ Issues for open discussion

❖ Benefits of the Scheme

The scheme is relevant for all companies having arrears of penalty and interest under various Acts of Karnataka State. It provides for waiver of arrears of penalty and interest by a dealer under various state laws on fulfilling certain conditions. The procedures and Form to avail the benefits of the scheme are also mentioned in the order.

The scheme grants 100% waiver of arrears of penalty and interest payable by a dealer under the Karnataka Sales Tax Act, 1957 and Central Sales Tax Act, 1956 relating to the assessments / re-assessments / rectification orders already completed and as the case may be, to be completed on or before **July 31st, 2021** under the KST regime.

It also provides for a waiver of 100% of arrears of penalty and interest payable by a dealer under the Karnataka Value Added Tax Act, 2003 and The CST Act relating to the assessments / re-assessments / rectification orders already completed and to be completed on or before **July 31st, 2021**.

❖ The Scheme grants waiver of penalty

- Levied under Section 72(1)(a) or 72(1)(b) for failure to furnish return under the KVAT Act and consequential interest subject to the condition that admitted tax as per the return is paid in full
- Levied under Section 74(4) for failure to submit a copy of the audited statement of accounts

in FORM VAT 240 under the KVAT Act and consequential interest subject to the condition that admitted tax liability, if any, as per FORM VAT 240 is paid in full and;

- Levied by the Audit Officer under Section 72(3-B) for failure to submit a copy of the audited statement of accounts.

❖ The grant of waiver of penalty and interest is subject to the various conditions as listed below:

- 1) Any dealer or person or proprietor as the case may be, who makes full **payment of arrears of tax on or before October 31st, 2021** shall be granted a waiver of 100% of arrears of penalty and interest payable.

However, any penalty levied by the Registering Authority under Section 10-A of the CST Act shall not be eligible for the benefit of waiver under this Scheme.

- 2) Where the dealer has no arrears of tax but has arrears of penalty and interest only, relating to the assessments or re-assessments already completed and to be completed, as the case may be, on or before **July 31st, 2021**, such arrears of penalty and interest shall be eligible for a waiver.
- 3) Where a dealer has filed an appeal or any application against the order or proceedings relating to arrears of tax and arrears of penalty and interest before any Appellate Authority or Court and disposal of such application is still pending, the dealer shall withdraw such appeal or other application before availing the benefit of waiver of arrears of penalty and interest under this Scheme.

He shall file a **Declaration** in support of the withdrawal of appeal or other application in '**Annexure-II**' along with the application for waiver of arrears of penalty and interest in '**Annexure-I**'.

Such application and declaration shall be filed for each year separately.

- 4) After the appeal or other application is withdrawn, the amount of arrears of penalty and interest shall be considered for waiver under the Scheme. Any amount of penalty and interest paid at the time of filing an appeal or other application shall be eligible for adjustment towards arrears of tax outstanding for the assessment year for which the benefit of waiver is claimed.

However, the dealer shall not be eligible for a refund of any amount that may become excess as a result of such adjustment under this Scheme.

- 5) In respect of cases where any appeal or other application is not filed, the dealer shall not be eligible for refund of any penalty or interest already paid, either in full or partially, under this Scheme.
- 6) The dealer shall not file an appeal or other application before any Appellate Authority or Court or shall not seek rectification of orders / proceedings, after filing application for availing the benefits of this Scheme or after availing the benefits of this Scheme, for whatever reasons.
- 7) The dealer shall not be eligible to avail the benefits of this Scheme in relation to an order giving rise to arrears of tax, penalty and interest where the State has filed an appeal before the Karnataka Appellate Tribunal or the Central Sales Tax Appellate Authority; or the State has filed an appeal or revision or any kind of application before the High Court or the Supreme Court; or any Competent Authority has initiated suo motu revision proceedings as on the date of this Government Order; or any rectification is made after July 31st, 2021.

❖ **Procedure under this scheme**

- The dealer opting for this Scheme shall submit separate application in the format '**Annexure-I**' appended to the order under the KST and CST Acts for each year relating to the assessment electronically through the website <http://ctax.kar.nic.in> or <http://gst.kar.nic.in> on or before October 31st, 2021 in the manner as specified in the website. Duly signed copy of the said application downloaded shall be submitted to the concerned Assessing Authority / Recovery Officer as prescribed.
- The dealer opting for this Scheme shall submit separate application in the format '**Annexure-IA**' appended to the order under KVAT Act and CST

Acts relating to each assessment / reassessment order relating to the tax periods for the years commencing from 01.04.2005 which have been already completed and to be completed upto July 31st, 2021, electronically through the website <http://ctax.kar.nic.in> or <http://gst.kar.nic.in> on or before October 31st, 2021 in the manner as specified in the website. Duly signed copy of the said application downloaded shall be submitted to the concerned Assessing Authority / Prescribed Authority / Recovery Officer as prescribed.

- The dealer or person or proprietor as the case may be, opting for this Scheme shall submit separate application in the format '**Annexure-IB**' appended to the order under the KTEG Act / KTPTC & E Act / KTL Act / KAIT Act for each assessment year relating to the assessment years already completed and to be completed upto July 31st, 2021 electronically through the website <http://ctax.kar.nic.in> or <http://gst.kar.nic.in> on or before October 31st, 2021 in the manner as specified in the website, duly signed copy of the said application downloaded shall be submitted to the concerned Assessing Authority / Recovery Officer / Prescribed Authority as prescribed.
- The proprietor opting for this Scheme shall submit separate application in the format '**Annexure-IC**' appended to the order under the KET Act for each week or month as applicable relating to the assessment / reassessment for the years already completed and to be completed upto July 31st, 2021 electronically through the website <http://ctax.kar.nic.in> or <http://gst.kar.nic.in> on or before October 31st, 2021 in the manner as specified in the website. Duly signed copy of the said application downloaded shall be submitted to the concerned Assessing Authority / Recovery Officer as prescribed.
- The dealer opting for this Scheme shall submit separate application in format '**Annexure-ID**' appended to the order under KVAT Act relating to penalty levied under Sections 72(1)(a) / 72(1)(b) / 72(3-B) / 74(4) relating to the tax periods for the years commencing from 01.04.2005 to 30.06.2017, electronically through the web site <http://ctax.karnic.in> or <http://gst.karnic.in> on or before October 31st, 2021 in the manner as specified in the website. Duly signed copy of the said application downloaded shall be submitted to the prescribed authority.

- The concerned Assessing Authority / Recovery Officer / prescribed authority shall scrutinize the application and work out the actual arrears of tax, penalty and interest payable by the dealer or person or proprietor as the case may be upto the date of filing of application and if any discrepancies are found in the amount of 'arrears of tax' and 'arrears of penalty and interest' payable upto the date of application as declared by the dealer or person or proprietor in his application, then the concerned Assessing Authority / Recovery Officer / prescribed authority shall inform the dealer or person or proprietor within 15 days from the date of filing of application about the discrepancies.
- After receipt of information from the Assessing Authority / Recovery Officer / prescribed authority, the dealer or person or proprietor, as the case may be, at his option may pay the balance amount of tax to avail of the benefits of this Scheme. All payments should be made within fifteen days from the date of receipt of information or on or before November 15th, 2021 whichever is earlier in cases where information is received from Assessing Authority / Recovery Officer / prescribed authority. The applicant shall become ineligible to avail this Scheme if any partial amount is still outstanding, as arrears on the specified date,
- The dealer or person or proprietor, as the case may be, shall file a Declaration in support of withdrawal of appeal or other application as per 'Annexure-II' along with application for waiver of 'arrears of penalty and interest'. Such declaration shall be filed separately under relevant Act for each year relating to 'arrears of penalty and interest'.
- On satisfaction that the applicant-dealer or person or proprietor, as the case may be, is eligible for the benefits of this Scheme, the Assessing Authority / Recovery Officer / prescribed authority shall pass the order waiving the balance amount of arrears of penalty and interest payable by the dealer or person or proprietor, as the case may be, as per **Annexure-11.1** separately under relevant Act for each assessment year / each assessment or reassessment order relating to the relevant tax periods / week / month of the year.

❖ Other points from departmental procedure

- The order of waiver shall be passed within 30 days from the date of making payment as specified above.
- The order of waiver shall be served on the dealer or person or proprietor, as the case may be, within ten days from the date of such order.
- The Assessing Authority / Recovery Officer / prescribed authority shall help the dealer or person or proprietor, as the case may be, in correct quantification of the amount of interest and penalty
- ❖ In respect of assessments / re-assessments / rectification orders passed in the case of unregistered dealers / persons under any of the acts mentioned in the preamble are eligible to avail the benefits under this scheme subject to fulfilment of conditions specified therein.
- ❖ In the absence of RC Number or Tax Payer's Identification Number (TIN) or Enrolment Number, as the case may be, the four-digit number 2900 shall be entered in the applicable annexure so as to consider the case for waiver of penalty and interest under the relevant act, the Government notified.
- ❖ If the Assessment or Re-assessments or Rectification Orders or any other proceedings passed pursuant to remanding of the cases by First Appellate Authority or Karnataka Appellate Tribunal or Revisional Authority or High Court or Supreme Court, as the case may be, are eligible for availing the benefits under the Scheme

Summary of Forms to be used in this scheme

Type of Forms	Description of forms	Additional documents
Annexure-I (Separately for each year)	Application for waiver of arrears of penalty and interest under the <i>Karasamadhana Scheme, 2021</i>	Declaration for withdrawal
Annexure-IA	Application format for completed / to be assessments	
Annexure-IB	Application format for completed / to be assessments	

Annexure-ID (Separately for each year)	Application for waiver of arrears of penalty under Section 72(1) (a) / 72(1)(b) / 72(3-B) / 74(4) and interest under the KVAT Act, 2003 under <i>Karasamadhana Scheme, 2021</i> .	Declaration for withdrawal
Annexure-II (Separately for each year)	(Government Order No. FD 49 CSL 2021, dated 29.03.2021)	Declaration
Annexure-III (Separately for each year)	(Government Order No. FD 49 CSL2021, dated 29.03.2021)	Order of Waiver

❖ Issues for Open discussion

Issue 1. Where a dealer has opted and availed the benefit of the said scheme, whether the already concluded Karasamadhana Scheme would become

ineligible for the cases where suo motu revision is initiated after availing the scheme?

Issue 2. In case the dealer has partly paid penalty, interest and tax, whether on applying for the said scheme, can he adjust the interest and penalty already paid against the balance tax payable?

Issue 3. In case the Appeal Order is disposed of in total dismissal by the Appellate Authority / KAT / Courts before due date of the Scheme but the original order is issued before due date of the Scheme, is the same eligible for application under the said Scheme?

Issue 4. As per User Manual, which instructs to pay a single payment, whether multiple payments can be made for availing the scheme?

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I, CA. Kumar S Jigajinni, President on behalf of Karnataka State Chartered Accountants Association, hereby declare that the particulars given above are true to the best of my knowledge and belief.

Date: 12.04.2021
Bengaluru

CA. Kumar S Jigajinni
Signature of Chief Editor

INDIRECT TAX UPDATES



■ CA. Raghavendra C R & CA. Bhanu Murthy J S

Important decisions under GST, VAT and Service Tax

1. Canon India Pvt Ltd Vs Commissioner of Customs (2021)125 taxmann.com 188 (SC).

Canon imported Digital Cameras and claimed exemption from payment of duties of Customs, which was allowed at the time of clearance of goods. However, Directorate of Revenue Intelligence (DRI) issued show cause notices alleging that the exemption was not applicable. The show cause notice was contested on merits, limitation as well as on the issue of jurisdiction of the DRI to adjudicate the matter. One of the issues before the Hon'ble Supreme Court was whether the officers of the Directorate of Revenue Intelligence (DRI), had authority in law to issue a show cause notice under Section 28(4) of the Act for re-assessment of the already assessed bills of entry and recovery of duties from the importer.

The Hon'ble Supreme Court held that in terms of Section 28(4) of the Customs Act, 1962 'the proper officer' is empowered to recovery of duty not paid, part paid or erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts and confers the power of recovery on "the proper officer". The obvious intention is to confer the power to recover such duties not on any proper officer but only on "the proper officer". The Supreme Court held that the nature of the power conferred by Section 28(4) to recover duties which have escaped assessment is in the nature of an administrative review of an act and the provision is to be construed as conferring the power of such review on the same officer or his successor or any other officer who has been assigned the function of assessment. Accordingly, it was held that the Additional Director General of DRI was not "the" proper officer to exercise the power under Section 28(4) and the initiation of the recovery proceedings initiated by the officers of DRI is without any jurisdiction and is liable to

be set aside.

2. DMR Constructions Vs. Assistant Commissioner, [2021] 125 taxmann.com 252 (Madras)

The issue before the High Court was whether accumulated credit of Tax Deducted at Source (TDS) under the provisions of TN VAT Act, 2006 shall be allowed transition to the GST regime. The Court held that "The amount, once deducted, is deposited by the depositor/contractor/payer to the account of the petitioner in the Government exchequer and gets auto populated in the contractor's return. The Court taking view that any deduction made towards anticipated tax liability would assume the character of tax and will not change or fluctuate depending on whether it is held as credit or whether it is an adjustment against tax liability, held that amount of TDS credit available shall be allowed to be transitioned to the GST."

3. Sanjiv Kumar Mittal Vs. Deputy Commissioner (TRC), CGST, Delhi South, 2021(44) GSTRL14(Delhi)

The Petitioner challenged the action of the respondent, attaching bank account of the petitioner, who was additional director of the company, towards recovery of service tax dues to the Government from the said company. The Court taking in to account the provisions of Section 87 of the Finance Act, 1994 held that no recovery could be made from the earlier director and also observed that the provisions of Section 89 of CGST Act, 2017 cannot be invoked to recover the dues under other statutes.

4. Kiran Gems Pvt. Ltd. Vs Union of India, 2021(46) G.S.T.L. 14(Bom)

The High Court was addressing an issue as to whether C&AG could conduct the audit of the records of the assessee. After considering the provisions of section 72A of the Finance Act,

1994 and also the provisions of Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971, the High Court observed that C&AG cannot call for records of private party (assessee) to conduct audit.

The Court observed that in terms of the provisions of Rule 5A of Service Tax Rules, 1994, in case of private assessee, the Commissioner or officer authorized by the Commissioner or by auditor himself but audit shall have to be conducted by a Chartered Accountant only.

5. NMDC Vs AAR, 2021-TIOL-748-HC-KAR-GST

Advance Ruling Authority under GST (AAR) passed order 21.09.2019. Assessee filed application for rectification before the AAR and said rectification application was disposed by AAR on 23.03.2020, wherein the rectification was rejected. The assessee preferred an appeal before Appellate Authority for Advance Ruling (AAAR) on 22.06.2020. The appeal was rejected on the ground that the appeal was preferred beyond the time period of 30 days + 30 days in terms of Section 100 of the CGST /KGST Act, 2017.

In this background, the High Court held that AAAR was justified in rejecting the appeal on the ground of limitation as it was not having power to condone the delay beyond 30 days. Further, the Court observed that the law of limitation is found upon maxims such as *"Interest Reipublicae Ut Sit Finis Litium"* which means that litigation must come to an end in the interest of society as a

whole, and *"vigilantibus non dormientibus Jura subveniunt"* which means that the law assists those that are vigilant with their rights, and not those that sleep thereupon. The law of limitation in India identifies the need for limiting litigation by striking a balance between the interests of the state and the litigant.

6. Unisys India Pvt Ltd Vs Pr.CCT, 2021-TIOL-664-HC-KAR-ST

Assessee company filed appeal before the CESTAT on 8th January 2021 and also remitted pre-deposit of 10% of the disputed as required under the Central Excise provisions. However, the department issued recovery notices to the bankers of the assessee and recovered the tax dues. In this background, the Court held that where an appeal is preferred and the same is admitted by the appellate tribunal, the recovery initiated by the respondent department is illegal and the said amounts recovered needs to be refunded.

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KSCAA Welcomes New Members March 2021

Sl.No.	Name	Place
1	Narasimha Nayak	Udupi
2	Kailash	Udupi
3	Pankaj Baid	Bengaluru
4	Prakash Somnath Hakki	Bengaluru
5	K Surendra Nayak	Udupi
6	Sachin M Upadhy	Bengaluru
7	Vinay Kumar B N	Bengaluru
8	Vignesh K	Bengaluru
9	Manjunath N	Bengaluru
10	Ganesh G	Mysuru
11	Umesh Rao B	Bengaluru
12	Srinivas K	Mysuru

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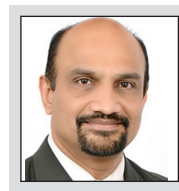
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AMENDMENTS TO PROVISIONS OF ACCOUNTS, AUDIT & FINANCIAL STATEMENTS UNDER COMPANIES ACT, 2013



■ CA. K Gururaj Acharya

Ministry of Corporate Affairs vide Notification dated 24.03.2021 has brought in revolutionary changes with respect to maintenance of books of accounts, disclosure in the Auditor's report & Board's Report and Schedule III.

I. Changes required in maintenance of Books of Accounts

What:

In Rule 3 Sub rule (1), the following proviso has been inserted:

"Provided that for the financial year commencing on or after the 1st day of April 2022 ^(#) every company which uses accounting software for maintaining its books of account, shall

- *use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and*
- *ensuring that the audit trail cannot be disabled."*

Keeping in mind the difficulties in implementing the software within a short span of time, the original compliance date has been extended from 1st of April 2021 to 1st of April 2022.

Why:

This amendment is brought in to strengthen the internal controls and to prevent companies from playing mischief through their accounting books. It calls for a security feature in the accounting software that does not allow any modification/deletion of accounting entries. Any change will have to be done only through rectification entries that create a proper audit log. This also requires real-time accounting which some of the smaller companies may be negligent about.

Results:

1. No backdated entries
2. Avoiding Teeming and Lading

3. No entry to be deleted
4. Changes made are evident in the audit log.

Action Point

Companies which do not have this feature must upgrade the software being used for maintenance of their books of accounts to enable the audit trail. If the software being used already has this option, the same needs to be activated.

II. Changes (Additional reporting) required in the Auditor's Report

What:

In the Companies (Audit and Auditors) Rules, 2014, in rule 11, -

- (1) clause (d) w.r.t reporting of "Specified Bank Notes" has been omitted.
- (2) after clause (d), the following clauses has been inserted:

"(e) (i) Whether the management has represented that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

(ii) Whether the management has represented, that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall,

whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and

(iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material misstatement.

(f) Whether the dividend declared or paid during the year by the company is in compliance with Section 123 of the Companies Act, 2013.

(g) Whether the company, in respect of financial years commencing on or after the 1st April, 2022, (replaced from original 2021), has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention."

Considering the above amendments, a comprehensive snapshot of items covered in the Auditor's Report has been provided below:

Comprehensive snapshot of Auditor's Report Format as per SA 700-705-706, including the present amendments-

I. Report on Financial Statement –

1. Opinion (Qualified opinion / Adverse opinion / Disclaimer of opinion)
2. Basis of opinion (Basis for Qualified opinion / Adverse opinion / Disclaimer of opinion)
(Audited as per SA - Refer to Auditor's Responsibility para - Refer Auditor's independent- Ethical- COE - SAAE obtained)
3. Material uncertainty related to Going Concern, If needed.
4. EOM (To differentiate from KAM – 'EOM – Subsequent event' type heading can be used)
5. KAM (May be placed before EOM, if KAM is very important)
6. Other information (Info other than the FS & Auditor's report thereon)

7. Management responsibility
8. Auditor's responsibility + Annexure 'A' description of assertions.
9. Other Matter – OM (could be placed after report on other legal and regulatory requirement para)

II. Report on other legal & Regulatory Requirements -

1. CARO Report under S. 143(11).
2. S. 143(3) Auditor's Report - incl. IFC Report
3. Other matters to be included in Auditors report as per Rule 11 of the Companies (Audit and Auditors) Rules, 2014

Whether the Co has -

- a) pending litigations impacting its financial position.
- b) provided for material foreseeable losses on long term contracts.
- c) delayed in transferring amounts to the IEPF
- d) Reporting of SBN – Omitted now.

New Requirement now introduced-

- e)
 - i. Advanced / loaned / invested any funds to any Intermediaries with the understanding that such amount shall be lent / invested / used to provide guarantee / security to other persons in a manner that the company becomes the ultimate beneficiaries (other than as disclosed in the notes to the accounts) - Based on Management representation. [Disclosure reg. this item is to be also done in the FS]
 - ii. Received any funds from any funding parties with the understanding that the amount advanced to it is for the benefit of the ultimate beneficiaries. (other than as disclosed in the notes to the accounts) - Based on Management representation. [Disclosure reg. this item is to be also done in the FS]
 - iii. Materially misstated w.r.t management representations under sub-clause (i) & (ii) above - Based on reasonable & appropriate independent audit procedures.
- f) Complied with provisions U/s.123 reg. dividend declaration / payment.
- g) Audit trail (Edit log) features (wrt the

accounting software used for maintenance of its books of account) which has been operated throughout the year for all transactions recorded without tampering and preserved by the company as per the statutory requirements for record retention.

Why:

Point no (e) above is introduced to **overcome Benami Transactions** using Black money / Red money by fraudulent entities which record entries in the books seemingly to an 'unrelated' party but would have arrangements with the investee company to indirectly lend such money on behalf of the company or provide guarantees. Similar is the case with receipt of funds which may carry a different character altogether.

Auditors will find this requirement very tough to report, especially to comment based on independent audit procedures. They will have to conduct a detailed investigation (beyond the scope of normal audit) of the nature of transaction to identify whether they are in fact benami transactions.

III. Changes (Additional reporting) required in the Board's Report:

What:

In Rule 8, sub rule (5), after clause (x), the following has been inserted:

"(xi) the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along with their status as at the end of the financial year.

(xii) the details of difference between amount of the valuation done at the time of one-time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof."

Note: Rule 8 of the Companies (Accounts) Rules, 2014 is not applicable to Small and OPCs.

Why:

Rule (xi) has been brought in to sensitize all Stakeholders about the IBC proceedings.

Rule (xii) has been brought in to alert the stakeholders about the character of the company. In some of the cases, it has been noticed that borrowers show higher valuation of assets given as securities at the time of borrowing but during the OTS the valuation of the very same securities are drastically reduced. These events would be known only to the borrowing company and the lender. Now

since it is being reported in the Board's Report, the Stakeholders at large will come to know the character of the company.

IV. Changes (Additional reporting) required in the Financial Statements (Schedule III)

Issue: The notification mentions the effective date as 1st day of April 2021. However, it is not clear whether this is w.e.f Financial Statements commencing from 01/04/2021 (FY 2021-22) or Financial Statements signed after 01/04/2021 (FY 2020-21), although the former seems to be the correct interpretation

Schedule III deals with 3 divisions – Division III with FS for NBFC, Division II with FS to whom Ind AS is applicable and Division I with FS for all other companies.

This article deals with only changes required in FS of companies covered under Division I, as shown below:

A. Changes in General Instructions:

Rounding off made mandatory (like in FS to whom Ind AS applies)

Depending upon the **Total Income** of the company, the figures appearing in the FS **shall** be rounded off as given below:

Total Income	Rounding off
less than Rs. 100 crore	To the nearest hundreds, thousands, lakhs or millions, or decimals thereof.
Rs. 100 crore or more	To the nearest lakhs, millions or crores, or decimals thereof.

Why: Brings about materiality in amounts which would aid in quick understanding of FS and better decision making.

B. Changes in Balance Sheet – BS

(specific tabular formats have been prescribed for some of the disclosures)

B1. BS details which could aid in Financial Analysis

1. Ageing of TRADE PAYABLES
2. Ageing of TRADE RECEIVABLE (Both under non-current & Current)
3. CWIP - Ageing Analysis & Completion Schedule
4. Intangible Assets under Development – Ageing Analysis & Completion Schedule
5. Following 11 Ratios to be disclosed explaining the Numerators & denominators used for computation:

(a) Ratio	(b) Current Year	(c) Preceding Year	d = (b-c)/c Change in %	Explanation if (d) is > 25%
1. Current Ratio,	CA/CL			
2. Debt-Equity Ratio,	LT Debt / Equity			
3. Debt Service Coverage Ratio,	PAT+ Depn / TL principal repayment			
4. Return on Equity Ratio,	PAT / Equity			
5. Inventory turnover ratio,	TO / Inventory			
6. Trade Receivables turnover ratio,	TO / TR			
7. Trade payables turnover ratio,	Purchases / TP			
8. Net capital turnover ratio,	TO / CE			
9. Net profit ratio,	NP / TO			
10. Return on Capital employed,	ROCE = ROI as CE=Investment = All Assets – Current liability or Equity+ Long term debt.			
11. Return on investment.				

B2. BS details in Companies having dealings with Banks & Financial Institutions (BFI)

6. Disclose whether QIS (if applicable) are in agreement with books, if not provide reconciliation with reasons for material discrepancies.
7. Where the company has **not used the borrowings from BFIs for the specific purpose** for which it was taken at the balance sheet date, disclose the details of where they have been used.
8. **Wilful Defaulter**

Where a company is a declared wilful defaulter by any BFI or other lender, following details shall be

given:

- a) Date of declaration as wilful defaulter,
- b) Details of defaults (amount and nature of defaults),

9. Details of CHARGES / Satisfaction, pending beyond statutory period with reason.

B3. BS details pertaining to Benami Transactions:

10. Details of Benami property held:

Where any proceedings have been initiated or pending against the company for holding any benami property under the Benami Transactions (Prohibition) Act, 1988 and the rules made thereunder, the company shall disclose the following:-

- a) Details of such property, including year of acquisition,
- b) Amount thereof,
- c) Details of Beneficiaries,
- d) If property is in the books, then reference to the item in the Balance Sheet,
- e) If property is not in the books, then the fact shall be stated with reasons,
- f) Where there are proceedings against the company under this law as an abetter of the transaction or as the transferor then the details shall be provided,
- g) Nature of proceedings, status of same and company's view on same.

11. Utilization of Borrowed Funds and Share Premium

- (i) If Company has - advanced / loaned / invested any funds to any Intermediaries with the understanding that such amount shall be lent / invested / used to provide guarantee / security to other persons in a manner that the company becomes the ultimate beneficiaries- Disclose the following: [Disclosure reg. this item is to be also done in the Audit Report]
 - a. date & amount of fund advanced or loaned or invested in Intermediaries with complete details of each Intermediary.
 - b. date & amount of fund further advanced or loaned or invested by such Intermediaries to other intermediaries or Ultimate Beneficiaries along with complete details of the ultimate beneficiaries.
 - c. date & amount of guarantee, security or the like provided to or on behalf of the Ultimate

Beneficiaries

- d. declaration that relevant provisions of FEMA, 1999 & Companies Act has been complied with for such transactions and the transactions are not violative of the PMLA, 2002;

(ii) If Company has - received any funds from any funding parties with the understanding that the amount advanced to it is for the benefit of the ultimate beneficiaries – Disclose the following [Disclosure reg. this item is to be also done in the Audit Report]

- a. date & amount of fund received from Funding parties with complete details of each Funding party.
- b. date & amount of fund further advanced or loaned or invested (in) other intermediaries or Ultimate Beneficiaries alongwith complete details of the other intermediaries or ultimate beneficiaries.
- c. date & amount of guarantee, security or the like provided to or on behalf of the Ultimate Beneficiaries
- d. declaration that relevant provisions of the FEMA, 1999 and Companies Act has been complied with for such transactions and the transactions are not violative of the PMLA, 2002;

12. Details of title deeds of Immovable property not held in company's name:

13. Compliance with number of layers of Companies

Where the company has not complied with the number of layers[#] prescribed S.2 (87) of the Act read with Companies (Restriction on number of Layers) Rules, 2017, the name and CIN of the companies beyond the specified layers and the relationship / extent of holding of the company in such downstream companies shall be disclosed.

[#] Presently Companies cannot have more than 2 layers of subsidiaries, s.t certain exceptions.

B4. BS details pertaining to other Disclosure Requirements:

14. **Basis of revaluation of PPE**, if any (By Registered value or otherwise)

15. **Disclosure of Loans or Advance in nature of loans that are granted to Promoters / Directors / KMPs and Related Parties-**

- a) Repayable on demand

- b) Without specifying terms of repayment.

16. Promoter's Shareholding details

17. **Current maturity of Long-Term Borrowing** to be shown under 'short term borrowing' instead of 'Other Current Liability'.

18. **Security Deposits** to be shown under 'Other Non – Current Assets' instead of 'Long term Loans & Advances'.

19. Under Non-Current Assets –

- After the words "Property, Plant and Equipment", the words "and Intangible assets" shall be added.
- For the words "Tangible Assets", the words "Property, Plant and Equipment" shall be replaced.

20. Under the heading "Property, Plant and Equipment" for item (iii) and "Intangible Assets" for item (ii) the following shall be substituted:

reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations, **amount of change due to revaluation (if change is 10% or more in the aggregate of the net carrying value of each class of Property, Plant and Equipment / Intangible Assets)** and other adjustments and the related depreciation and impairment losses/reversals shall be disclosed separately.”;

21. Heading W, the underlined words shall be inserted:

If, in the opinion of the Board, any of the assets other than Property, Plant and Equipment, **Intangible assets** and non-current investments do not have a value on realisation in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Board is of that opinion, shall be stated.

22. Relationship with struck off Companies

Name of struck off Company	Nature of transactions with struck-off Company	Balance outstanding	Relationship with the Struck off company, if any, to be disclosed
	Investments in securities		
	Receivables		
	Payables		

Name of struck off Company	Nature of transactions with struck-off Company	Balance outstanding	Relationship with the Struck off company, if any, to be disclosed
	Shares held by struck off Company		
	Other outstanding balances (to be specified)		

Companies need to keep track of each of the counter party with whom it is dealing as to whether they are struck off or not. It is quite onerous responsibility to check the status of every company being suppliers / customers.

23. Compliance with approved Scheme(s) of Arrangements

Where any Scheme of Arrangements has been approved by the Competent Authority in terms of S. 230 to 237 of the Companies Act, 2013, the Company shall disclose that the effect of such Scheme of Arrangements have been accounted for in the books of account of the Company 'in accordance with the Scheme' and 'in accordance with accounting standards' and deviation in this regard shall be explained.

24. Disclosure reg. Specified Bank Notes (SBN) omitted.

C. Changes in Statement of P&L

1. Replace item III heading – "Total Income" instead of "Total Revenue".

A wider terminology used now as "Total Income" includes other income (such as Interest,) apart from revenue.

2. Section 8 companies to disclose 'Grants or donations received' separately.

3. Undisclosed income

The Company shall give details of any transaction not recorded in the books of accounts that has been surrendered or disclosed as income during the year in the tax assessments under the Income Tax Act, 1961 (such as, search or survey or any other relevant provisions of the Income Tax Act, 1961), unless there is immunity for disclosure under any scheme and also shall state whether the previously unrecorded income and related assets have been properly recorded in the books of account during the year.;

4. CSR disclosures

Where the company covered U/s. 135 of the companies Act, the following shall be disclosed with regard to CSR activities:-

- a. amount required to be spent by the company during the year,
- b. amount of expenditure incurred,
- c. shortfall at the end of the year,
- d. total of previous years shortfall,
- e. reason for shortfall,
- f. nature of CSR activities,
- g. details of related party transactions, e.g., contribution to a trust controlled by the company in relation to CSR expenditure as per relevant AS,
- h. where a provision is made with respect to a liability incurred by entering into a contractual obligation, the movements in the provision during the year should be shown separately.

5. Details of Crypto Currency or Virtual Currency

Where the Company has traded or invested in Crypto currency or Virtual Currency during the financial year, the following shall be disclosed:-

- a. profit or loss on transactions involving Crypto currency or Virtual Currency
- b. amount of currency held as at the reporting date,
- c. deposits or advances from any person for the purpose of trading or investing in Crypto Currency / virtual currency.

Conclusion:

Companies Act is moving towards ACT viz., A – Accountability, C – Corporate Governance and T – Transparency in the most profound manner.

There have been a host of notifications released by CBDT, MCA and GST Council. It seems like a competition between the regulators as to who will release the greatest number of notifications!

Professionals must be on their toes and keep themselves updated. Darwin's Theory of Survival of the fittest applies in the current scenario and each one of us should keep up with the changing needs to meet the requirements of the ACT.

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LABOUR CODES – TEETERING AT THE EDGE OF A NEW BEGINNING



■ CA. Sandeep Jhunjunwala & CA. Arshita Ketan

India, a premier destination for investment and growth has been subject to hawk eyed scrutiny from global business houses. The Government has been working tirelessly to improve India's ranking on the Ease of Doing Business Index and a crucial area of concern was the mosaic of Indian labour laws which were considered archaic. The decades old socio-economic milieu justified the laws formed then, but are now mostly inapt, rigid and unnecessarily complicated, hurting both, organisations and their workforce. New technology re-defined how businesses are conducted and management of workforce. A new segment of workforce such as gig and platform workers, fixed term employees, etc has also emerged and is widely popular. It is also well-known fact that over 80 percent of India's labour force works in unorganised sectors. Considering an immediate need for holistic labour law reforms to spur growth and competitiveness, the Government notified 4 new codes – 'Code on Wages 2019', 'Industrial Relations Code 2020', 'Code on Social Security 2020' and 'Occupational Safety, Health and Working Conditions Code 2020', subsuming 29 central labour laws, which included laws that were enacted almost a century ago. These 4 codes are applicable to all establishments (employers) including contractors and legal representatives of deceased employer, and covers all employees irrespective of their salary, role, nature of work performed, etc, unless specifically exempt. These new labour codes reflect a significant transference for the working population of the country and the economy at large as it is expected to boost India's ranking in the Ease of Doing Business index and attract higher inflows of foreign direct investment.

The new labour codes consolidate the existing statutes which were separate acts by including them as chapters under the respective codes. As an icing on the cake, the definition of 'wages' is standardised across all the 4 codes resulting in a significant changes in the employees' compensations and employers' cost. The comprehensive definition of 'wages' excludes specific components, subject to a threshold of 50 percent which shall be used as the base to calculate other contributions and benefits. Consequentially, this would require the

employers to recalculate employee benefits such as gratuity, retrenchment compensation, contribution to ESI and maternity benefits. While this may result in higher employee benefit pay outs, it may have a negative impact on the net take home salary of the employees. Harmonisation of wage definition has also raised questions and ambiguities as there is no clarity on certain issues such as treatment of other non-statutory bonuses like performance linked bonus and whether benefits in kind needs to be valued in accordance with income tax act or a separate mechanism would be provided under the code.

The Code on Wages ('Wage Code') has been conscripted with an aim to integrate and streamline the relevant provisions of 4 existing central labour laws relating to wages and bonus. Highly paid, managerial and supervisory employees are also regulated under the Wage Code since 'worker' is defined as a subset of 'employee' in the Wage Code. Employers are obligated to pay overtime wages of at least twice the normal rate of wages to employees whose minimum wage is fixed under the Wage Code, therefore mystifying the status quo on eligibility of overtime wages to managerial and supervisory employees. In contrast to the existing law, the wage ceiling limit for eligibility of bonus would be prescribed by the States. What remains a concern is whether there could be a variation in eligibility for bonus across different states causing hardship to enterprises having pan-India operations. The Wage Code also restricts the amounts that can be withheld by employers and thereby demands employers to relook at new age arrangements like clawback, etc. On the other hand, the mandatory requirement to disburse the full and final settlement within 2 working days of removal, retrenchment or resignation could disturb the working capital of the employers and poses a challenge for the HR/ payroll team.

The Code on Social Security ('SS Code') consolidates 9 central laws and aims to extend social security to all employees and workers in all sectors, including unorganised sectors and nextgen workforces such as gig workers, platform workers and fixed term employees. The SS Code broadly covers all the establishments meeting

the threshold limits. This code also provides flexibility for smaller organisations below the threshold limit to voluntarily opt for Provident Fund and Employees' State Insurance Fund and also a safety net to later opt out of such voluntary coverage. Interestingly, the SS Code is the first legislation in India to officially recognize the gig economy by extending social security coverage to them. Aggregators providing ride-sharing services, food and grocery delivery services, logistic services, e-market place, professional services provider, healthcare, travel and hospitality, content and media services and any other goods and services provider platform are mandated to contribute 1 to 2 percent of its annual turnover to a social security fund with a contribution cap at 5 percent of amount paid or payable by an aggregator to them. Remarkably, gratuity benefit is extended to fixed-term employees and contract labourers. Although fixed-term employees are entitled to receive gratuity on pro-rata basis even when the services were rendered for less than 5 years, Industrial Relations Code mandates a minimum service period of 1 year for such fixed-term employees to be eligible for gratuity. A question that left hanging is whether the employee who works for more than 1 year but resigns before completion of the fixed term contract would be entitled to gratuity. Along with these, employers can now obtain insurance from any insurance company for their gratuity liability.

The Occupational Safety, Health and Working Conditions Code ('OSH Code') regulates the working environment provided to employees by subsuming 13 existing laws. To do away with the impediment of cumbersome and prolonged process under the current regime, where an establishment is required to obtain multiple registrations related to occupational safety, this Code provides for one registration for one establishment. OSH Code mandates free annual health check-up for certain workers and also prohibits contract labourers in core activities with specific exceptions. Noteworthy, now workers are entitled to encash the unutilized leave on dismissal, discharge, quitting of employment, superannuation or death or at the end of calendar year for other workers. The Code also mandates employers to obtain consent of women employees working before 6 am or after 7 pm and provide necessary safeguards, wherever prescribed.

The objective of the Industrial Relations Code ('IR Code') is to rationalise the laws regulating industrial disputes and trade unions in India by subsuming 3 central laws. IR Code adopts a business-friendly approach and promotes industrial harmony by prescribing a single negotiating trade union and enhancing the threshold from 100 workers to 300 workers for implementing

standing orders, obtaining prior permissions for closure, lay-off or retrenchment of workers. By the same token, a new concept of 're-skilling fund' has been introduced in place of retrenchment compensation for retrenched employees. In addition, arbitrary strikes and lockouts can be organized after giving a 60 days' advance notice as against 42 days in the current law.

Strict and enhanced penal consequences are outlined in all the 4 codes for non-compliances and other contraventions, which may be compounded subject to certain conditions. The new codes also focus on digitalization of records and returns to support easier exchange of information among various constituents and schemes set up by the Government. Organizations should also be mindful of existing laws in relation to prevention of sexual harassment at workplace, child labour, state labour welfare fund, etc that will continue to apply and have not been subsumed by the new labour codes.

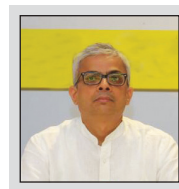
The Government has head on faced the challenge of overhauling traditional practices and realigning

labour laws as per the current socio-economic setup, making them more relevant and effective. While at it, the Government has also modified the rules to tax interest income earned on employee's yearly contribution to a provident fund exceeding INR 2.5 lakhs (INR 5 lakhs where there is no employer contribution to such fund). This change is applicable only for contributions made from April 1, 2021. Post implementation of the new labour codes, the compensation structure including the contribution to PF may be revised and therefore, it may have a substantial impact on some of the employees in higher income brackets.

Although the central and state rules are yet to be notified, it is vital for organisations thoroughly analyse their employee compensation structures and HR and payroll policies to identify and re-align with various requirements under the new labour codes. It is equally important to have a process ownership structure in place and align internal departments, management and other stakeholders to ensure smooth transition as we wait for the Central Government and State Governments to notify rules, schemes, etc and set up specified funds and other bodies such as tribunals, boards, etc. The ongoing pandemic already requires organizations to review their employee policies which can now be aligned to the requirements under the new labour codes.

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FINANCIAL REPORTING AND ASSURANCE - REFERENCER



■ CA. Vinayak Pai V

1. UPDATES: Monthly Roundup¹

AS/Ind AS	<ul style="list-style-type: none"> ICAI Announcement - Temporary Exceptions to Hedge Accounting prescribed under Guidance Note on Accounting for Derivative Contracts due to Interest Rate Benchmark Reform [Applicable to Non-Ind AS Entities] ICAI Announcement – Revised Criteria for classification of Non-Company Entities for Applicability of Accounting Standards [AS]
Assurance	<ul style="list-style-type: none"> ICAI Publications: <ul style="list-style-type: none"> Technical Guide on Audit of Internal Financial Controls in case of Public Sector Banks Guidance Note on Audit of Banks [2021 Edition] Technical Guide on Revised Formats of Long Form Audit Report IAASB's Non-authoritative Support Material related to Technology: <ul style="list-style-type: none"> FAQs Addressing the Risk of Over-reliance on Technology – Use of ATT and Use of Information produced by the Entity's Systems Companies (Audit and Auditors) Amendment Rules, 2021 – MCA Notification dated 24th March, 2021 (Also refer related MCA Notification dated 1st April, 2021)
Company Law/ SEBI	<ul style="list-style-type: none"> Amendment to Schedule III to the Companies Act, 2013 Division I (AS), Division II (Ind AS) and Division III (Ind AS, NBFCs) – MCA Notification dated 24th March, 2021 Companies (Accounts) Amendment Rules, 2021 – MCA Notification dated 24th March 2021 (Also refer related MCA Notification dated 1st April, 2021)
RBI	<ul style="list-style-type: none"> RBI Notification <ul style="list-style-type: none"> Guidelines on Regulation of Payment Aggregators and Payment Gateways
IFRS	<ul style="list-style-type: none"> Amendment to IFRS 16, Leases <ul style="list-style-type: none"> Covid-19 - Related Rent Concessions beyond 30th June 2021 IASB Exposure Draft No. ED/2021/3 <ul style="list-style-type: none"> Disclosure Requirements in IFRS Standards - A Pilot Approach [Proposed Amendments to IFRS 13 and IAS 19] IFRIC Tentative Agenda Decisions <ul style="list-style-type: none"> Non-refundable Value Added Tax on Lease Payments (IFRS 16, Leases) Accounting for Warrants that are Classified as Financial Liabilities on Initial Recognition (IAS 32, Financial Instruments: Presentation)
USGAAP	<ul style="list-style-type: none"> FASB Accounting Standards Update No. 2021-03 <ul style="list-style-type: none"> Amendment to Topic 350 of USGAAP: Intangibles – Goodwill and Other <ul style="list-style-type: none"> Accounting Alternative for Evaluating Triggering Events

¹Updates for the month of March 2021.

2. Revised Criteria: Classification of Non-Company Entities for Applicability of Accounting Standards (AS)

On 31st March, 2021, our Institute issued an Announcement revising the criteria for classification of **Non-Company Entities** for **applicability of AS**. The same is effective for accounting periods commencing on or after **1st April, 2020**.

As per the Announcement, Non-Company Entities will now be classified into one of four categories for applicability of AS, salient aspects of which are summarized herein below (table below highlights only the turnover and borrowing criteria that are not cumulative conditions):

Entities	Turnover ² criteria	Borrowing ³ criteria
Level I [Large size entities]	Exceeds Rs. 250 crore in the immediately preceding accounting year	Exceeds Rs. 50 crore at any time during the immediately preceding accounting year
Level II [Medium size entities]	Exceeds Rs. 50 crore but does not exceed Rs 250 crore in the immediately preceding accounting year	Exceeds Rs. 10 crore but does not exceed Rs. 50 crore at any time during the immediately preceding accounting year
Level III [Small size entities]	Exceeds Rs. 10 crore but does not exceed Rs 50 crore in the immediately preceding accounting year	Exceeds Rs. 2 crore but does not exceed Rs. 10 crore at any time during the immediately preceding accounting year
Level IV [Micro entities]	All other entities.	All other entities.

²Excluding other income

³Including Public Deposits

Level I entities are required to comply in full with all Accounting Standards (AS 1 to AS 29). Certain exemptions / relaxations have been provided to Level II, Level III and Level IV Non-Company Entities. [Refer: <https://resource.cdn.icai.org/64269asb51535.pdf>]

3. Changes: Amendment to Schedule III of Companies Act, 2013

The Ministry of Corporate Affairs has amended Schedule III to the Companies Act vide a Notification dated 24th March, 2021. The amendments notified are effective **1st April, 2021**.

The amendments to Schedule III cover all the Divisions viz. Division I (applicable to companies preparing and presenting Financial Statements applying the AS Framework), Division II (applicable to companies preparing and presenting Financial Statements applying the Ind AS Framework) and Division III (applicable to NBFCs preparing and presenting Financial Statements applying the Ind AS Framework).

Key **incremental disclosures** in the Financial Statements effected by the amendment notification related to **Division I (AS)** include:

- Disclosure of **Shareholdings of Promoters**,
- Separate disclosure of **current maturities of Long-Term Borrowings**,
- Ageing analysis** of **Trade Payables**, **Trade Receivables** and **Capital work-in-progress (CWIP)**,
- Specified Additional Regulatory Information that includes:
 - Title deeds** of Immovable Property **not held in the name** of the Company,
 - Additional disclosures related to **Loans and Advances** granted to Promoters, Directors, KMPs and Related Parties,
 - Ageing schedule of **Intangible Assets under development**,
 - Details of **Benami Property** held,
 - Disclosure of whether **Quarterly Returns or Statements** of current assets **filed** by the Company with **Banks or Financial Institutions are in agreement** with the books of accounts,
 - Specified disclosures to be provided where a Company is declared a **Wilful Defaulter**

by any Bank / Financial institution / Other Lender.

- g. Specified details to be provided where the Company has any **transactions with Companies Struck Off u/s 248**,
- h. Details and reasons to be disclosed where any **Charges or Satisfaction** thereof are yet to be registered beyond the prescribed statutory period,
- i. Disclosure of specified **Financial Ratios**,
- j. **Utilisation of Borrowed Funds and Share Premium**,
- k. Specified particulars of **‘Undisclosed Income’**,
- l. Specified disclosures related to **Corporate Social Responsibility**, and
- m. Specified **disclosures** to be made where a Company has traded or invested in **Crypto Currency** or Virtual Currency during the Financial Year.

4. IFRS: Covid-19-Related Rent Concessions beyond 30th June 2021

Paragraph 46A of extant IFRS Standard on Leases (IFRS 16) provides for a practical expedient whereby a lessee may elect not to assess whether a rent concession that meets the conditions in Paragraph 46B (rent concessions occurring as a direct consequence of the Covid-19 pandemic) is a lease modification. Accordingly, a lessee that makes this practical expedient election accounts for any change in lease payments resulting from the **rent concession** (e.g. rent holidays and temporary rent reductions) the same way it would **account** for the change applying IFRS 16 **as if the change were not a lease modification**.

Now, on 31st March, 2021, the International Accounting Standards Board (IASB) issued an amendment to IFRS 16, Leases: **Covid-19-Related Rent Concessions beyond 30th June 2021** extending by one year the application period of the practical expedient to cover rent concessions that reduce only lease payments due on or before **30th June 2022** (the same was 30th June, 2021 under the prevalent version of the standard).

Consequent changes to the Ind AS counterpart standard can be expected shortly.

5. Financial Statements Extracts: IFRS Foundation Annual Report for YE 31st December, 2020

Extracts from the financial statements related to **Revenue Recognition**:

- Revenues are generated from the sale of printed publications, subscription services, various licensing contracts and conferences and speaking engagements. The Foundation **recognises revenue when it satisfies its performance obligations** to customers. Revenue is **measured based on the consideration specified** in the contracts.
- Revenue from printed publications is recognised when control of the publication is transferred to the customer, which occurs upon shipment.
- Revenue from subscription services is recognised over the subscription period on a time-apportioned basis because the services provide ongoing access to updated versions of IFRS Standards and other related content.
- The Foundation enters into non-exclusive licensing contracts granting third parties rights to use IFRS Standards and related content to provide various products and services. Consideration for these contracts is in the form of fixed fees payable in advance or arrears or variable fees that are based on customer's sales and payable quarterly in arrears. Around 80% of contracts are for fixed fee contracts. Revenues for fixed fee contracts are recognised on a time-apportioned basis over the term of the license because the contracts provide ongoing access to updated versions of IFRS standards and other related content. Revenue for variable fee contracts are recognised as the customers' sales occur.
- Revenues from conferences and speaking engagements are recognised when the conference or other event occurs.

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INTELLECTUAL PROPERTY RIGHTS AND PROTECTION IN INDIA

Traditional Knowledge and IP

(Part-VIII of IPR series)

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

With intent to energize and motivate the MSMEs and to move towards strong IP regime, this series on IPRs has been initiated. The issues relating to 'trademark' and 'designs' as strong IP tools for increased presence of products and services in the market by business entities have been deliberated in the earlier parts of the series, together with a comprehensive 'overview on IPRs in India'. The essence of Traditional Knowledge (TK) as a source of Indian ethos and the need for its protection from abuse, and the means to develop the 'ancient wisdom' as effective IPRs are deliberated in the coming parts.

Indian Traditional Knowledge

Traditional Knowledge (TK) is said to be antique but it is a proven wisdom which has come to the aid of the mankind. It is being held by indigenous community world over for generations. Originated from natural resources and by unknown inventors, these have been silently flowing through the community by word of mouth and practices within certain societal groups. This TK are mostly used for the benefit and welfare of the public at large. In modern terminology these could be termed as an 'open source of knowledge' for common use, for the benefit of the mankind. The subject matter of these knowledge systems could be relating to natural environment like Agriculture, applications in technical, ecological, medicinal, cultural or social practices, or scriptures (oral or written) with abundant information, knowledge or methods of moral and ethical living, art, culture and various skills, being in practice for ages. The identifiable characteristics of these TK are such systems are preserved and transmitted from generation to generation; they are pertaining to a particular traditional or indigenous people or community; these systems are never static, but rather evolved as communities respond to new challenges and needs; and are both collective and individual in nature. It is the aggregation of practical

common sense based on teachings and experiences of culturally developed age old societies.

It is recorded that about 370 million indigenous and tribal people all around the globe are the real custodians of this traditional knowledge. It is facts that up to 80% of the world's population depend upon traditional medicine for their primary health care, popularly labelled as 'grandmother's remedies'. This knowledge is indispensable tool as it is used as a cure by all and more so, by the poorest segments of the society. This has been proven remedy as it is practiced by them since ages. Similarly certain tribal groups possess TK about prevention of land and soil degradation, fisheries depletion, biodiversity erosion and deforestation. These practices have also been effective and have protected the environment from degradation.

India is biologically, culturally and territorially a rich and diverse country. With just 2.4 per cent of the world's land area, it harbors 7-8 percent of all reported species including more than 45,000 plant species and 91,000 animal species it is rich in bio-diversity. Of the 34 global biodiversity hotspots, four of them, namely the Himalayas, the Western Ghats, the Northeastern Ghats and the Nicobar Islands are present in our country. In addition to the above, India is the largest producer of medicinal plants. The traditional medicinal systems like the Ayurveda, the Siddha and the Unani schools, said to have been established in India between 2500 and 500 BC are in use by the residents even today to a very large extent. The different diverse resources, especially the medicinal system, make us an affluent TK Nation. As it is a valuable asset, the preservation and protection of this knowledge becomes of much importance for future use. Therefore efforts to record these knowledge systems in a legal and logical way for posterity are of utmost significance. These efforts in turn put an end to their

application in an illicit manner by the fraudsters to meet their unjustified commercial gains.

TK as defined by WIPO

TK generally means the knowledge, innovations and practices of local and indigenous communities Worldwide. The WIPO defines the TK as the 'knowledge, know-how, skills and practices' that are 'developed, sustained and passed on' from generation to generation within a community, often forming part of its cultural or spiritual identity. Further WIPO observes that, 'there is not yet an accepted definition of TK at the international level, it can be said that in a general sense embraces the content of knowledge itself as well as traditional cultural expressions, including distinctive signs and symbols associated with it.' The TK in the narrow sense refers to knowledge as such, resulting from intellectual activity and includes 'know-how, practices, skills, and innovations'. TK can be found in a wide variety of contexts, including the agricultural, scientific, technical, ecological and medicinal streams as well as biodiversity-related acquaintances.

The Innovations based on TK may possibly benefit from patent, trademark, and geographical indication protection, or be protected as a trade secret or confidential information. However, the TK i.e. knowledge that has ancient origins, often preserved as an oral practices, are not capable of being protected by the conventional intellectual property (IP) systems. TK has always been an easily accessible prey, susceptible to misappropriation as it is un-documented. Further it may not be possible to do so unless the community and the society concerned takes it forward in a proactive manner, so that the rights continue to remain with the practiced community for their benefit.

Exploitation of TK as an IP

The technologically advanced Nations have always been engaged and in the forefront of exploiting the TK for their personal commercial gains. This is more rampant in respect of traditional knowledge used in treatment of various diseases by use of medicinal plants. Such application in communities has provided valuable leads for the development of biologically active molecules from the source plants by these interlopers. These have been patented as their own creations by dubious inventors thereby exploiting the knowledge existing with the traditional users. The TK are being misappropriated as it is generally assumed that communities have given

up all claims over it as the system is in Public knowledge and domain. TK includes the documented as well as non-documented, meaning, orally transmitted information.

Bio-piracy of Indian TK has been rampant as these are normally not documented or are generally exist in regional languages, and there is barrier in the form of language, due to which the granting offices are unable to search this information to track it as a prior art. Formulations used for the treatment of human ailments from TK are time-tested as they have been in practice for centuries. The reliability of the traditional medicine systems coupled with the absence of such information with IP offices, provides an easy opportunity for interlopers to obtain patent rights on these formulations derived from traditional medicine systems. This is one such example in one stream of knowledge, which illustrates that the public rights are being stolen to form private and monopolistic rights by intruders to meet their own commercial gains.

The grant of patents on non-patentable matters, based on the existing TK of the developing world, or a minor variation thereof, has been causing a great concern to the developing world. The following instances indicate the bio-piracy of TK by fraudsters in different parts of the world, which should drive attention of Indian society so that we can plan to put an end to such malpractices. Further the Indian TK could be suitably utilized by Indians for heralding their presence in global commercial environment and this will be deliberated in the coming part of the series.

The case of Neem Patent

A neem tree has been in use as a bio-pesticide and medicine in India for ages. The Ancient Ayurvedic texts of India describe the medicinal healing properties of the products made out of neem as far back as 5000BC. Neem extracts can be used against hundreds of pests and fungal diseases that attack food crops. Hydrophobic extracts of the neem seeds were used to cure skin diseases and fungal infections in plants. The oil extracted from its seeds can be used to cure disease like cold and flu. Neem twigs have been in use as toothbrush for centuries. In some places it is mixed in soap to provide relief from malaria, skin diseases and even meningitis.

The European patent office (EPO) had granted patent number 436257 to the USA and the multinational corporation W.R. Grace for a fungicide derived from seed of the Neem tree. An opposition was filed against the said grant by India. It is a fact that the neem plant contains

a number of compounds and is used as astringent and antiseptic in many cases including from diabetes to skin diseases. All the parts of the plants have been used to cure various types of diseases from ages. After prolonged litigation and citing of literature regarding Neem's ancient usage as a fungicide, the EPO found the invention to be not a novel or innovative idea as prior art exists in public domain. Thus, the EU revoked the patent in its entirety. In this regard we should remember the efforts of Dr. Shiva, of International Federation of Organic Agriculture Movement and the Green Party in European Parliament, who opposed it.

The Turmeric Patent saga

Turmeric, an Indian herb of tropical region, has been in use in variety of ways like food, medicines, etc. The rhizomes of turmeric are used as a spice for flavouring Indian cooking. It also has properties that make it an effective ingredient in medicines, cosmetics and dyes. Turmeric has many benefits like, acts as blood purifier, treats cold and skin diseases. As a medicine, it has been traditionally used for centuries to heal wounds and rashes in India.

As it did not find place in public documents, in 1993-95, the US PTO granted the University of Mississippi Medical Center patent rights over 'healing a wound by administering turmeric to a patient afflicted with a wound'. Objection was raised by India on grant of patent on turmeric and evidences were provided with references, in various languages, namely Hindi, Sanskrit and Urdu, stating that turmeric was used for healing wound since centuries. Thus, the patent rights granted were revoked by USPTO as the claim was proved to be obvious and known prior art. The patent was eventually cancelled in 1998 after re-examination proceedings.

The tale of Basmati Rice

The Rice Tec. Inc. had applied for registration of a mark "Texmati" before the UK Trade Mark Registry as the US PTO had granted the patent to Rice Tec in 1997. The said patent covered 20 claims covering not only the novel rice plant but also various rice lines, resulting plants and grains, seed deposit claims, method for selecting a rice plant for breeding and propagation. Its claims 15-17 were for a rice grain having characteristics similar to those from Indian Basmati rice lines. The said claims 15-17 would have come in the way of Indian exports to US, if legally enforced.

The Agricultural and Processed Food Exports Development Authority (APEDA) successfully lead the

group who opposed the process of granting the patent with a request for re-examination of this patent during 2000. Soon after filling the re-examination request, Rice Tec chose to withdraw claims 15-17 along with claim, which could pave way for smooth exports from India.

Balancing act of Yoga

An US-based Non Resident Indian, Mr. Bikram Choudhary applied to USPTO to obtain copyright for his method of teaching yoga and for patent of yoga. As we all are aware that yoga has been a way of living followed by Indians from time immemorial. The 'Yoga Sūtra of Patañjali' is a collection of Sanskrit sutras on the theory and practice of yoga which is said to have been compiled sometime between 500 BC and 400 AD by the sage Sri Yogi Patanjali. Yoga is the organized knowledge from much older traditions and it was the most translated ancient Indian text in the medieval period. These facts were brought to the knowledge of the concerned authorities by many Yoga enthusiasts and gurus. They expressed their views publicly emphasizing that it is unfair as yoga belongs to the entire human race.

It is also a shocking matter that the USPTO has issued over 150 yoga-related copyrights, 134 trademarks on yoga accessories and 2,315 yoga trademarks. India has taken a strong view against the granting of copyrights and patents to Yoga postures by the USPTO and is preparing to oppose patents. But we have a long way to go for freeing the yoga from the clutches of these fraudsters.

Recently I had an occasion to visit a great Yoga institution, namely 'Sri Vivekananda Yoga Anusandhana Samsthana' (SVYASA), a registered charitable institution formed in 1986. This institution ably lead by Dr. Nagendra Guruji, is working sincerely towards making Yoga as a socially relevant Science. The mission of SVYASA is to combine the best of the East (Yoga and Spiritual lore) with that of the West (modern scientific research). This illustrious institution has evolved itself into a unique Yoga University, translating the vision and teachings of Swami Vivekananda to action, through the academic higher education programs. It is the First ISO 2001:2008 Certified Yoga University.

The SVYASA has, over the years, standardized certain Advanced Yoga techniques such as CM (Cyclic Meditation), PET (Pranic Energisation Technique), MSRT (Mind Sound Resonance Technique), MEMT (Mastering the Emotions Technique), MIRT (Mind Imagery Technique), VISAK (Vijnana Sadhana Kausala) and ANAMS (Anandamrita Sincana) which involve both the eastern knowledge and modern scientific technology

to evolve newer techniques in yoga as a remedy for ailments in human beings. As these are novel improved standardized techniques, scientifically proven, could be processed for appropriate IP protection. If earnest efforts are not made to protect the 'yoga kriyas' under IP rights and commercialize, these could be exploited by interlopers by mis-declaring the same as their inventions and also by misleading their claims.

It may be difficult to oppose the grant of IP rights in various jurisdictions by such educational groups. As these are published innovations, the owners could initiate action to document it in public space for search by IP authorities as well as to seek IP rights and commercialize the same to benefit themselves and the mankind. Similar efforts from various such institutions are needed to be taken up on priority to prevent being exploited by fraudsters. A united effort in this regard needs to be made by yoga practitioners.

The Colgate whitewash narrative

The Colgate, a multinational entity was accused of stealing ancient Indian toothpaste recipe. In this case Colgate obtained a US patent for a tooth powder composition comprising rust-like red iron oxide, clove oil, camphor, black pepper and spearmint. The Indian activists are accusing Colgate of 'biopiracy' for allegedly stealing and patenting an age old-year-old folk recipe for toothpaste. The ingredients declared by the entity date back to antiquity and have been used by the common Indian for thousands of years. When you wake up tomorrow be aware that you may find it difficult to use the famous 'Nanjangudu tooth powder' product created by well known Sri B.V.Panditji. Therefore it is time for all of to wake up and to take the call for protection of the tradition knowledge in a sincere mode.

India's valuable TK heritage and similar TKs across the world by indigenous communities spans over diverse and wide streams such as medicines, food, cosmetics, agriculture, mathematics, astronomy, architecture, astrology, chemical and physical sciences, art, culture and many more. The TK, being an ancient heritage is common asset that belong to humanity and no single individual or entity can claim ownership and importantly, and in the process prevent others from using these gifts from our ancestors. Unfortunately in the spree to popularize IPRs, in the mid-1990s, patents were granted on various products from TK. As stated above the turmeric's wound healing properties, basmati rice lines and grains, and the fungicidal activity of neem, have been awarded

or considered for patenting which is astonishing and deplorable. To reiterate, these 'inventions' were by no way were either novel or inventive. By way of IPRs granted to the applicants from other countries, such developing countries including India stood to lose its rights on its own TK and practices.

Taking up the issues with regard to IP law violations by numerous entities by misappropriating the Indian TK in various jurisdictions across the globe is not a feasible proposition, as it involves huge costs and time which cannot be met through the public exchequer. Instead the better option would be to document all such ancient texts and knowledge systems and provide the same as a search facility to IP authorities around the world so that it could be used as a prior art to deny IP rights to such illicit exploiters. Therefore the author feels that an immediate need to create more easily accessible non-patent literature databases on TK of India.

Ways to protect the TK from abusers

For patents to be granted, an invention should meet the criteria of novelty, inventive step and industrial applicability/utility. The Patent applications are examined by the authorities for these matters from literatures, both patent and non-patent sources, to find out whether such inventions are available or known and published in public domain. (Called prior-art search). Patents are granted when prior-art does not exist and therefore it is pertinent to publish the Indian TK and make available to the authorities as a tool for prior-art search.

When faced with grave situations, the Visionaries, Dr. Raghunath A. Mashelkar, the then DG, CSIR and Mrs. Shailaja Chandra, the then Secretary, Ministry of Health and Family Welfare, Government of India spearheaded the efforts to tackle the challenges of misappropriation of Indian traditional knowledge. Traditional Knowledge Digital Library (TKDL) took its birth to address a grave situation - the misappropriation of Indian TK. The task force formed for this purpose recommended that the Indian TK to be transcribed in languages understandable to the patent examiners, and in a digital form that is accessible to patent offices across the world. The World Intellectual Property Organization (WIPO), the European Patent Office (EPO) and the United States Patent and Trademark Office (USPTO) played an important facilitative role.

The Traditional Knowledge Digital Library, the first of its kind globally - an unprecedented intervention -

was thus jointly established by the Council of Scientific and Industrial Research (CSIR) and the Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha, Sowa Rigpa and Homoeopathy (AYUSH) in 2001. The TKDL was set up as a prior-art database of Indian traditional knowledge, which can be referenced by patent examiners while assessing the patentability of inventions claimed in patent applications. Moving forward, CSIR aspires to create a valuable repository of Indian traditional knowledge systems through the TKDL. But is one such effort sufficient to protect such valuable and voluminous Indian TK is the larger issue that needs the attention of Indians.

The way forward

Recently the Indian Prime Minister declared that "Yoga is India's gift to the world". The Ministry of Science and Technology are said to have been attempting to protect yoga as a TK of the country from international piracy. Around 1,500 yoga poses have been shortlisted and 250 of them are video-graphed to add to the Traditional Knowledge Digital Library (TKDL), which is India's

online repository which aims at protecting India's assortment of traditional knowledge (such as Ayurveda, Unani and Sidha systems) as its national heritage. TKDL is proving to be an effective deterrent against bio-piracy and is being recognized as a global leader in the area of TK protection. TKDL has made waves around the world, particularly in TK-rich countries by demonstrating the advantages of proactive action and the power of strong deterrence. The idea is not to restrict the use of traditional knowledge, but to ensure that wrong patents are not granted due to lack of access to the prior art for Patent examiners.

In the coming part we will deliberate on strengthening efforts similar to TKDL by Indian society so as to strengthen the movement of protection of Indian tk. Also how these TK can be used as a source to create Indian IPRs and conquer the global market.

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COVID -19 VACCINATION



■ Prof. Dr. Shreepad Hegde



The world is in the midst of a COVID-19 pandemic. As WHO and partners work together on the response -- tracking the pandemic, advising on critical interventions, distributing vital medical supplies to those in need--- they are racing to develop and deploy safe and effective vaccines.

Vaccines save millions of lives each year. Vaccines work by training and preparing the body's natural defences – the immune system – to recognize and fight off the viruses and bacteria they target. After vaccination, if the body is later exposed to those disease-causing germs, the body is immediately ready to destroy them, preventing illness.

As of 18th February 2021, at least seven different vaccines across three platforms have been rolled out in different countries. Vulnerable populations in all countries are the highest priority for vaccination. At the same time, more than 200 additional vaccine candidates are in development, of which more than 60 are in clinical development. COVAX is part of the ACT Accelerator, which WHO launched with

partners in 2020. COVAX, the vaccines pillar of ACT Accelerator, convened by CEPI, Gavi and WHO, aims to end the acute phase of the COVID-19 pandemic.

Vaccines are a critical new tool in the battle against



COVID-19 and it is hugely encouraging to see so many vaccines proving successful and going into development. Working as quickly as they can, scientists from across the world are collaborating and innovating to bring us tests, treatments and vaccines that will collectively save lives and end this pandemic. Safe and effective vaccines will be a game changer: but for the foreseeable future we must continue wearing masks, physically distancing and avoiding crowds

India had granted emergency use authorisation to two COVID-19 vaccines — Pune-based Serum

Institute of India's 'Covishield' and Hyderabad-based Bharat Biotech International Limited's 'Covaxin' which are being used in the government's vaccination drive.

COVAXIN, India's indigenous **COVID-19** vaccine by Bharat Biotech is developed in collaboration with the Indian Council of Medical Research (ICMR) - National Institute of Virology (NIV). The indigenous, inactivated vaccine is developed and manufactured in Bharat Biotech's BSL-3 (Bio-Safety Level 3) **high containment facility**. The vaccine is developed using **Whole-Virion Inactivated Vero Cell** derived platform technology. Inactivated vaccines do not replicate and are therefore unlikely to revert and cause pathological effects. They contain dead virus, incapable of infecting people but still able to instruct the immune system to mount a defensive reaction against an infection.

Why develop Inactivated Vaccine?

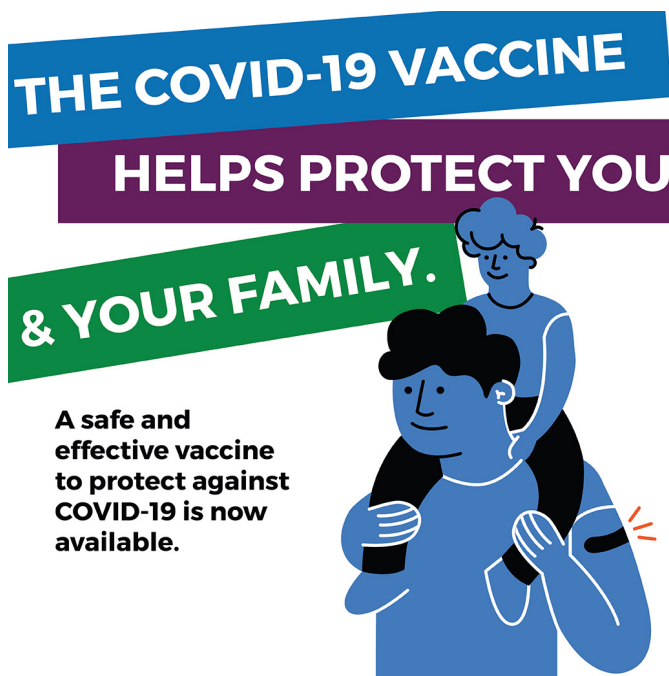
Conventionally, inactivated vaccines have been around for decades. Numerous vaccines for diseases such as Seasonal Influenza, Polio, Pertussis, Rabies, and Japanese Encephalitis use the same technology to develop inactivated vaccines with a safe track record of >300 million doses of supplies to date. It is the **well-established**, and **time-tested** platform in the

world of vaccine technology.

In the homoeopathic system of medicine, we treat the patient by enhancing their vital energy, to develop natural resistance against any disease. Founder of homoeopathy Dr. S. F. Hahnemann says **"Treat the patient not the disease,"** Each patient has different signs and symptoms, depending on their constitution, though the causative factor is same. Thus in homoeopathy medicine also differ in each patient according to their manifestation. I believe strongly that one who is on homeopathic treatment can ask their family consultant about the vaccination. A million-dollar question is every now and then, new virus or disease erupts, then how many vaccines we have to take? Instead of taking many vaccines, take medicine of natural origin i.e Homoeopathy, keep high your immune system to combat the disease.

Being vaccinated does not mean that we can throw caution to the wind and put ourselves and others at risk, particularly because it is still not clear the degree to which the vaccines can protect not only against disease but also against infection and transmission. Data has shown that you can still get coronavirus even after you're fully vaccinated, which means if you do get an infection, you could still spread it.

Wish you all happy, healthy and safe life, take care.



THE COVID-19 VACCINE
HELPS PROTECT YOU
& YOUR FAMILY.

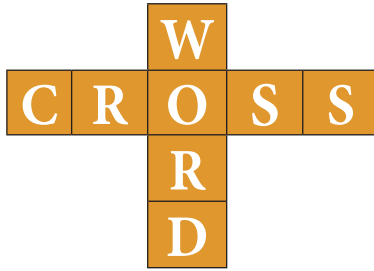
A safe and effective vaccine to protect against COVID-19 is now available.



HOW TO STAY SAFE WHILE PROTESTING

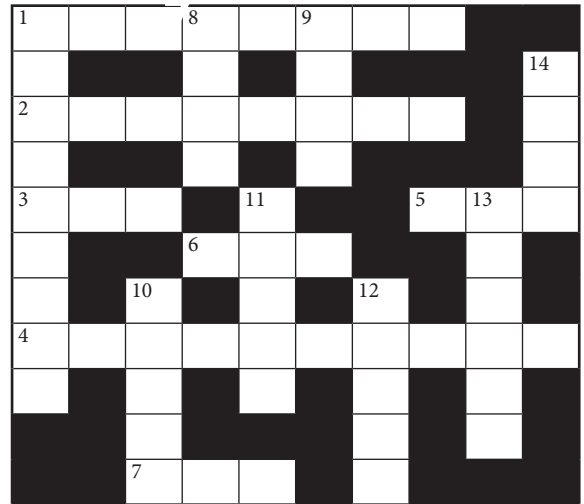
- GET TESTED FOR COVID
- WEAR A MASK
- BE AWARE OF THE COVID SITUATION IN YOUR AREA
- STAY 6ft SIX FEET AWAY
- WASH HANDS FREQUENTLY USE HAND SANITIZER

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DOWN

1. A collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, as well as their fund counterparts (9)
8. The rate is the price quoted for immediate settlement on an interest rate, commodity, a security, or a currency (4)
9. A set common rules so that financial statements can be consistent, transparent, and comparable around the world (abbreviation) (4)
10. A form of security that indicates the holder has proportionate ownership in the issuing corporation (5)
11. The difference between the highest and lowest prices traded for a defined period, such as a day, month, or year (5)
12. A party in an exchange of goods and services who receives payment (5)
13. A technique used for business decision making based on the 80/20 rule (6)
14. A financial industry classification to denote an individual with liquid assets above a certain figure (abbreviation) (4)



ACROSS

1. A cybercrime in which a target or targets are contacted by email or text message by someone posing as a legitimate institution to lure individuals into providing sensitive data (8)
2. A lender's legal right to collect the borrower's pledged collateral if the borrower does not pay their debt obligation (8)
3. An investment made by a firm or individual in one country into business interests located in another country (abbreviation)(3)
4. An report presents relevant financial and non-financial information in a holistic manner that aids providers of financial capital in making sound decisions, engagement and voting practices (10)
5. A measure that examines the weighted average of prices of a basket of consumer goods and services, such as transportation, food, and medical care (abbreviation)(3)
6. The Apex Authority responsible for external and internal audits of the expenses of the National and State Governments (abbreviation)(3)
7. The process of verifying the identity of your customers, either before or during the time that they start doing business with you (abbreviation) (3)

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

Answers to "Cross Word 7" (March 2021)

Across

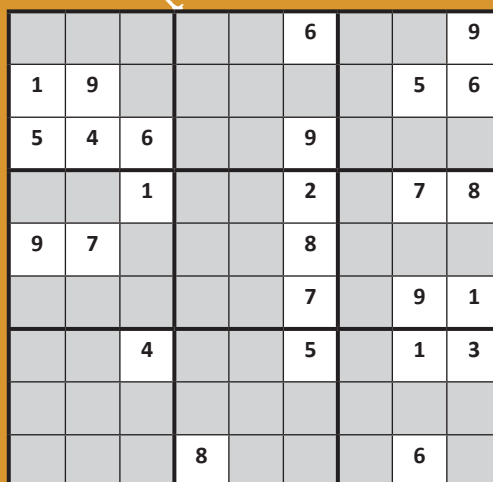
1. Factoring, 2. Dilution, 3. EV, 4. LFAR, 5. Crowd, 6. Rider, 7. Search

Down

1. Fringe, 8. Plan, 9. RPA, 10. Timing, 11. Surcharge, 12. FIFO, 13. GRN, 14. EPC

Credits: CA. Archana Sridhar

sudoku-8



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