

# KSCAA

Karnataka State Chartered Accountants Association (R)

## NEWS BULLETIN

August 2021

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Karnataka State  
Chartered Accountants Association



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# IBC AMENDMENT

## 2021



- Covid Financial Assistance
- Educational Devices - GST

- Privacy By Design
- Global Minimum Tax

- IPR
- RERA



Dear Professional Friends,

This is the last communication as a president for the present term of Executive committee. I occupied the chair as the President amidst peak of pandemic and have seen the committee responding favorably to the changed demands of members. Rather, even when I write this message, the fear of third wave is lingering in the minds of many and I only good hope that business, profession and livelihood would not unsettle.

I wish all the members a very Happy Independence Day. The country saw a spectacular performance from the India contingent, Tokyo Olympics 2021 has too much to cheer for us as a nation and it is nice that India as a country participated in many events resulting in some extra ordinary finishes and few near misses. I hope that in coming years, we maintain the dominant posture even in medal ranking.

#### News Roundup

##### Direct Tax

1. Introduction of the Taxation Laws (Amendment) Bill 2021 in the Lok Sabha seeking to remove the retrospective application of explanation 3A to Section 9(1)(i).
2. The CBDT extended the due dates for filing of various forms electronically vide Circular No. 15/2021.
3. Intermediate extensions for filing of Form 15CA/15CB due to the technical glitches that still plague the new income tax portal.
4. Notification of Rule 8AC with respect to computation of short-term capital gains and written down value of block of assets, where goodwill is a part of such block and depreciation has been obtained.
5. The extension of the timeline to process refunds for non-scrutiny cases to 30 September 2021, for AY 2017-18.
6. Apart from the above, KSCAA had made a representation to the Ministry of Finance seeking to extend the transfer pricing assessment timelines that were falling due by 31 July 2021.

##### Indirect Tax

Covid and GST have had inversely proportional relationship, this was clearly visible in the month of July, 2021 where the Gross GST Collections reached 1.16 lakh crores and Covid cases were only 10% of the peak cases. Let us ensure that we maintain Covid Complaint and GST Compliant behaviour. There has been double digit growth in terms of number of e-way bills being raised which only points out to the fact that the economy is on the growth trajectory. Not to forget, the latest notifications issued has made effective the Budget Amendments relating to GST Annual returns and GST Audits, it is no longer required for a CA/CMA to sign, this may lead to more litigation than ease of business.

#### Corporate Law

MCA, in continuation of its General Circular No. 10/2020 dated March 23, 2020, has clarified that spending of CSR funds for COVID-19 vaccination for persons other than the employees and their families, is an eligible CSR activity under item no. (i) of Schedule VII of the Companies Act, 2013 relating to promotion of health care including preventive health care and item no. (xii) of the aforesaid Schedule, relating to disaster management.

The Rajya Sabha cleared the 'Limited Liability Partnership Amendment Bill' that aims to accelerate the 'Ease of Doing Business' campaign of the government and brings regulations for this segment at par with other large companies. The new amended legislation has decriminalised 12 offences for LLPs, and three sections of earlier laws have been omitted.

Further, to support growth of the LLP a new definition of small LLP has been introduced that has raised individual or partner contribution levels from present Rs 25 lakh to Rs 5 crore and turnover limit from Rs 40 lakh to Rs 50 crore.

#### Conclusion

I read somewhere what Aesop wrote "Gentle persuasion where force fails", the logic of persuasion is what Aristotle determined that it comprises a combination of three appeals: logos, pathos, and ethos. This he wrote 2,000 years ago to mean, logos to mean a logical appeal to reason, Pathos is emotional appeal and persuasion cannot occur in the absence of emotion and Ethos to mean the part of a speech or presentation when your audience gains some insight into your credibility. With logos and pathos and missing ethos, we fail to persuade the point which we tend to implore at a larger level. The fraternity must retain the ethos to main the dominant and credible position.

The current theme conceived the idea of evolve empower and excel, we hope that the engagement with members have lead them in those lines which we perceive to have succeeded in out humblest attempt. I must thank all who held, corrected, guided and mentored me in my journey as a president so as to get the best out of me. I'm confident that my successors in the committee would engage you all in equally meaningful fashion and scale this Association to higher level.

I thank my fellow members in the Executive Committee, mentors, past presidents and all members once again for your love, affection and respect and for giving me the opportunity to serve you to the best of my ability.

#### Happy Reading!

Yours' faithfully,  
**CA. Kumar S Jigajinni,**  
President

# KSCAA

## NEWS BULLETIN

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## KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)

### VISION

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

### MISSION

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

### MOTTO: KNOWLEDGE IS STRENGTH

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

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# INCOME TAX EXEMPTION ON FINANCIAL ASSISTANCE FOR TREATMENT OF COVID OR ON DEMISE DUE TO COVID



■ CA. Prakash Hegde

## Background

Due to COVID-19, the world is tremulous, which was not witnessed by the present generation. More than 4 million people have lost their breath globally in the last 18 months on account of this disease. India accounts for about 10% of this death count.

Lakhs of families have lost their loved ones and thousands have lost their breadwinners. Some families have literally come to the streets. In some cases, though the individuals affected by the virus survived, they are undergoing severe financial distress. In India alone, almost 31 million people got infected by the virus and many more millions are directly affected due to economic crisis.

In this situation, the soothing fact is that many employers are generously contributing towards their employees' medical expenses to mitigate the hardship faced by those families. Where the employees have lost their lives, their families have received financial assistance from the employers. Furthermore, friends and relatives of the deceased and even the general public have been contributing voluntarily from their pockets.

Now, the question is whether such financial assistance received in the form of contributions / gifts from employers, friends, relatives or the general public are taxable in the hands of the recipients.

In this regard, we need to note that the Central Board of Direct Taxes ('CBDT') issued a Press Release on 25<sup>th</sup> June 2021 granting some exemptions. Let us have a look at the scenario before the issue of the Press Release and that after the issue of the same.

## Scenario before the issue of the Press Release

Under Section 56(2)(x) of the Indian Income Tax Act, 1961 ('the Act'), when money or property (whether moveable or immovable) is received by a person, the same will be considered taxable subject to an exemption of an aggregate amount of Rs 50,000 per year. If money or the value of the property received is more than Rs 50,000 for the given financial year, the entire amount is taxable. However, if money or property is received from a relative or a local authority<sup>1</sup>, fund or foundation<sup>2</sup>, any trust or institution<sup>3</sup> etc., the same is not taxable.

The definition of the term 'relative', for this purpose, in the case of an individual, is provided below:

- (i) Spouse of the individual
- (ii) Brother or sister of the individual
- (iii) Brother or sister of the spouse of the individual
- (iv) Brother or sister of either of the parents of the individual
- (v) Any lineal ascendant or descendant of the individual
- (vi) Any lineal ascendant or descendant of the spouse of the individual
- (vii) Spouse of the person referred to in items (ii) to (vi) above

Therefore, any money or property received from a person **other than** a relative or a local authority, fund or foundation, any trust or institution etc. is considered taxable in the recipient's hands (of course, subject to the exemption up to Rs 50,000).

<sup>1</sup>Local authority as defined in Explanation to Section 10(20) of the Act

<sup>2</sup>Fund or foundation referred to in Section 10(23C) of the Act

<sup>3</sup>Trust or institution referred to in Section 10(23C) or registered under Section 12A or Section 12AA or Section 12AB of the Act

The definition of the term 'property' is also given in the section. It means,

- (i) Immovable property being land or building or both
- (ii) Shares and securities
- (iii) Jewellery
- (iv) Archaeological collections
- (v) Drawings
- (vi) Paintings
- (vii) Sculptures
- (viii) Any work of art
- (ix) Bullion<sup>4</sup>

Therefore, if an article (other than money) that does not get covered under the term 'property' is gifted, the same cannot be considered taxable under Section 56 of the Act as 'Income from Other Sources'.

In the context of employment relationship, the entire amount of financial assistance received by an employee from his employer shall be considered an employment benefit and taxable under the head 'Income from Salary'. Exemption up to Rs 50,000 is not available here.

The next question is whether the financial assistance received from the employer by an employee's family upon the employee's death is taxable.

In this regard, we need to refer to Circular No. 573 dated 21<sup>st</sup> August 1990 issued by the CBDT in the context of gratuitous payments made to the employees' families. The Circular reads as under:

#### Quote

***Taxability of lump-sum payment made gratuitously or by way of compensation or otherwise to widow / other legal heirs of an employee***

1. Clarifications have been sought from the Central Board of Direct Taxes whether a lump sum payment made gratuitously or by way of compensation or otherwise, to the widow or other legal heirs of an employee, who dies while still in active service, is taxable as income under the Income-tax Act, 1961.

<sup>4</sup> i.e. gold or silver

2. The issue has been examined by the Board and it is clarified that any such lump sum payment will not be taxable as income under the aforesaid Act.

#### Unquote

Therefore, any gratuitous payment made by the employer to the widow or other legal heirs of an employee who passed away while still in active service (***irrespective of the reason of death***) is considered as not taxable.

Therefore, even before the issue of the above-referred Press Release dated 25<sup>th</sup> June 2021, it was possible for the family members of the deceased employee to avail exemption on the amount received from the employer upon his death. However, such exemption was not available if such financial help is received upon death, from anyone else (other than the employer). Similarly, no exemption was available for the financial assistance received by an individual from anyone (whether the employer or other person) for the medical treatment of COVID-19.

#### Scenario after the issue of the Press Release

The CBDT issued a Press Release on 25<sup>th</sup> June 2021 wherein it stated as below:

#### Quote

*Many taxpayers have received financial help from their employers and wellwishers for meeting their expenses incurred for treatment of Covid-19. In order to ensure that no income tax liability arises on this account, it has been decided to provide income-tax exemption to the amount received by a taxpayer for medical treatment from employer or from any person for treatment of Covid-19 during FY 2019-20 and subsequent years.*

*Unfortunately, certain taxpayers have lost their life due to Covid-19. Employers and well-wishers of such taxpayers had extended financial assistance to their family members so that they could cope with the difficulties arisen due to the sudden loss of the earning member of their family. In order to provide relief to the family members of such taxpayer, it has been decided to provide income-tax exemption to ex-gratia payment received by family members of a person from the*

employer of such person or from other person on the death of the person on account of Covid-19 during FY 2019-20 and subsequent years. The exemption shall be allowed without any limit for the amount received from the employer and the exemption shall be limited to Rs. 10 lakh in aggregate for the amount received from any other persons.

### Unquote

[The Press Release also stated that the necessary legislative amendments for the above decisions shall be proposed in due course of time.]

In summary, the above Press Release exempts the following:

Sl. No.	Amount Received	Ceiling
(i)	The amount received by the taxpayer from the employer for medical treatment of COVID-19	No ceiling
(ii)	The amount received by the taxpayer from any person for medical treatment of COVID-19	No ceiling
(iii)	Ex-gratia payment received by the family members from the employer upon the death of the employee due to COVID-19	No ceiling
(iv)	Ex-gratia payment received by the family members from any other person upon the death of a family member due to COVID -19	Rs 10 Lakh in aggregate

### Way Forward

The Press Release has been issued by the CBDT in June 2021 granting exemption for financial assistance received even during the Financial Year('FY') 2019-20. Therefore, it can cover a situation where financial assistance has been made by the employer during the FY 2019-20 subject to

Tax Deduction at Source ('TDS') and the beneficiary (i.e. the employee or the family member, as the case may be) has already filed the income tax return for that FY considering the financial assistance as taxable.

Such a return cannot be revised now, as the due date for filing the revised return was 31<sup>st</sup> May 2021. Therefore, the beneficiary can consider the following options:

- Approach the jurisdictional Assessing Officer seeking rectification of the intimation under Section 154 of the Act after the intimation is received<sup>5</sup> or
- Approach the jurisdictional Commissioner of Income Tax seeking Revision under Section 264 of the Act after the intimation is received<sup>6</sup>
- Approach the jurisdictional income tax authorities seeking condonation of delay for filing the revised return<sup>7</sup>

If the employer has made the payment during the FY 2020-21 or 2021-22 and the amount is subjected to TDS, the following options can be explored:

- Where the income tax return of the beneficiary is not yet filed
  - If the employer also has not yet filed the eTDS Return(s) for the relevant FY, he should consider the amount of ex-gratia as exempt and should show the TDS amount as refund due to the beneficiary
  - If the employer has already filed the eTDS Return(s), he may revise the eTDS Return(s) and issue the revised TDS Certificate to the beneficiary

If either of the above options is not feasible,

<sup>5</sup>Please refer to the decision of the Supreme Court in the case of Model Mills Nagapur Limited [1967] 64 ITR 67 wherein it was held that rectification of an order under section 154 was permissible for the tax levied under a statutory provision which is subsequently held by the Supreme Court to be inoperative and ineffective.

<sup>6</sup>Please refer to the decision of the Delhi High Court in the case of Vijay Gupta [2016] 238 Taxman 505 wherein it was held that intimation under section 143(1) is regarded as an order for purposes of section 264

<sup>7</sup>Please refer section 119(2)(b) and the circular no. 9/2015 dated 08<sup>th</sup> June 2015

the beneficiary should file his return claiming the ex-gratia amount as exempt and claiming the amount of TDS as refund

- (ii) Where the beneficiary's income tax return is already filed (i.e. in the case of FY 2020-21), he can file a revised return for the year in question claiming the amount of ex-gratia as exempt and claiming the amount of TDS as a refund. The due date for filing the revised return for the FY 2020-21 is 31<sup>st</sup> December 2021 or the completion of the assessment, whichever is earlier.

### Conclusion

In these challenging times, many countries have provided various types of benefits to their taxpayers through stimulus or tax cuts etc. Some developed countries like the USA have given many tax benefits retrospectively. Though a little late, the Indian Government, through the CBDT has taken a very appropriate measure by issuing the above-referred Press Release. This has been hailed to be a welcome move and a much-needed relief to the Lakhs of taxpayers who had suffered mentally, physically and financially, due to COVID.

From the Press Release, it is not clear whether the amount received from the employer / any other person for medical treatment of the taxpayer's family members is also exempt. It appears that the intention is to cover even such cases. Further, it appears that the exemption for expenses on medical treatment would be granted only to the extent of the actual expenditure incurred.

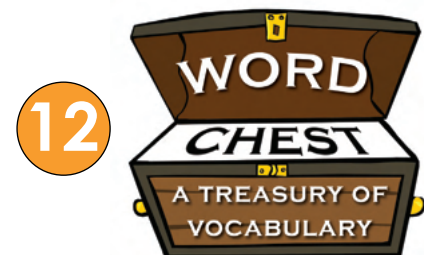
It is also not clear from the Press Release whether the cost of vaccine incurred by the employer for the employees and / or family members of the employee is exempt in the hands of the employee. Ideally, these expenses should also be exempt since the expenditure is towards precautionary medical treatment.

In the legislative amendment, the Government should make these aspects abundantly clear to avoid litigations between the tax payers and the tax authorities.

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### Solution to Sudoku -11 July 2021

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



### Word of the Month:

Veracity

### What is this?

The quality of being true, honest, or accurate

### Use instead of:

Honesty, Integrity

### How can I use it?

- ✓ **Veracity** is the strongest element of her character.
- ✓ The police detective expressed his doubts about the **veracity** of the suspect's story.



# GLOBAL MINIMUM TAX – WILL IT FUEL THE READY TO EXPLODE PILLAR TWO FIREBALL?



■ **CA. Nikhilesh Cacarla & CA. Sachin Deshpande**

In the modern era of digitalization, the rigors of taxation are taking a new twist at every turn wherein tax administrations grapple with a means to bring corporations under the tax net whereas corporations strive to optimize the Effective Tax Rate ('ETR'). In this context, it is noteworthy that digital transformation spurs innovation, generates efficiencies, and improves services while boosting more inclusive and sustainable growth and enhancing well-being. At the same time, the breadth and speed of this change introduces challenges in many policy areas, including taxation. Hence, the need of the hour for all stakeholders involved is a reform in the international tax system to address the tax challenges arising from the digitalization of the economy, restore stability to the international tax framework and prevent further uncoordinated unilateral tax measures that have plagued the global system for a substantial time period.

At the forefront, the Organisation for Economic Co-operation and Development ('OECD') had set out the roadmap for tackling the challenges that lay ahead by devising the path breaking Pillar One and Pillar Two proposals which aim to directly achieve a breakthrough in taxation of the modern era businesses. Pillar One sets out the nexus and profit allocation rules whereas Pillar Two deals with the global minimum tax. It is to be noted that Pillar Two does not entail measures to tackle digital economy taxation issues but is framed to provide a consensus to Global Anti Base Erosion ('GLoBE').

The recently concluded G7 summit in the United Kingdom had dished out a bold and ambitious outcome wherein the G7 members came to a consensus with respect to the taxing of MNEs in the era of digital economy and globalization. The meeting had resulted in two notable tax developments:

1. Under Pillar One, the corporations would be subject to reallocation of 20% profits beyond 10% margin, based on taxing rights to market jurisdiction, and
2. Under Pillar Two, the corporations would be taxed at a minimum rate of 15% in each operating jurisdiction to ensure fair and equitable treatment for all stakeholders.

In this article, focus is laid on the 15% minimum tax proposal that is put forth and how it would pan out against

the existing intricacies and roadblocks faced by the extant Pillar Two framework.

## Crux of Pillar Two

MNEs having business across many jurisdictions shall be subject to a minimum tax in each jurisdiction wherein services or goods are being sold without prejudice to its physical presence. This outcome fueled a probable impetus to the Pillar Two framework, which operates around the following key rules as provided below:

1. Income Inclusion Rule ('IIR') - Imposes top-up tax on a parent entity in respect of the low taxed income of a constituent entity.
2. Undertaxed Payment Rule - Denies deductions or requires an equivalent adjustment to the extent the low tax income of a constituent entity is not subject to tax under an IIR.
3. Subject to Tax Rule ('STTR') - Allows source jurisdictions to impose limited source taxation on certain related party payments subject to tax below a minimum rate. The STTR will be creditable as a covered tax under the GloBE rules.
4. Switch-over Rule - The Switch-over Rule would be a mechanism for enabling jurisdictions to overturn treaty obligations where they have committed to exempting amounts attributable to a foreign permanent establishment under a double tax treaty agreed with another state.

Before moving into the details of the above rules, the applicability of the Pillar Two framework is to MNEs having a consolidated turnover of more than 750 million Euros, similar to the existing Country by Country reporting threshold. Further, an 'MNE group' is defined as any Group that includes two or more enterprises the tax residence for which is in different jurisdictions or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction.

## Income Inclusion Rule

The Income Inclusion Rule adopts a top down approach whereby the jurisdiction in which the Ultimate Parent Entity is resident has the primary right to exercise taxing



rights over income in a low tax jurisdiction. In cases where the Ultimate Parent entity is resident in a jurisdiction that has not implemented the Income Inclusion Rule, the taxing rights are passed down to a resident entity of a jurisdiction belonging to the same group that has implemented IIR.

### Under Taxed Payment Rule

The Undertaxed Payment Rule aims at addressing the issue relating to under taxation of income in a low-tax jurisdiction and allocate the taxing rights over that income to other jurisdictions by:

- Firstly, assigning the top-up tax due to those group entities who make direct payments to the low-tax jurisdiction; and
- Secondly, if necessary, assigning any remaining top-up tax to those group entities who do not make a direct payment to the relevant low-tax jurisdiction but are in a net-intragroup deduction position.

### Switch-over Rule

The Switch-Over Rule deals with scenarios wherein there is no obligation of the Ultimate Parent entity to include the income of a foreign permanent establishment due to an exemption of income granted by way of a double tax treaty agreement. In other words, Switch-over Rule would act as an alternative to tax the income of branches that otherwise cannot be blended with higher-taxed income in the Head Office jurisdiction.

### Subject to Tax Rule

The Subject to Tax Rule only applies to particular 'Covered payments' made between related parties/ connected persons. Covered payments are those that carry heightened base erosion and profit shifting risk which are used as a common means to avoid taxes in a particular jurisdiction. Examples of covered payments are:

- Interest
- Royalties
- Franchise fees or other payments for the use of or right to use intangibles in combination with services
- Payments for services such as marketing, procurement, agency or other intermediary services where their value primarily derives from the use of an intangible asset

Where a payment is comprised of multiple elements (e.g. a royalty plus a payment for service), the rule would only apply to those payments that are within the scope laid above.

### Concept of Effective Tax Rate

As provided above, MNEs are in the race to ensure that

the ETR are rationalized across their jurisdictions in the world and yet ensure that they are within acceptable norms. Pillar Two aims at bringing about a radical approach to bring MNEs under its scanner based on ETR. Although the Pillar Two blueprint does not specify the cap of the ETR below which the framework would apply, an indicative rate of 10%-12% is adopted for academic purposes. In this scenario, one could take recourse to the outcome and the proposal of the G7 summit wherein the world's wealthiest economies agreed to a flat rate of 15%.

Pillar Two would be operative if there is a jurisdiction which taxes a constituent entity of an MNE group below the accepted ETR. In other words, if the entity is undertaxed in location A wherein Pillar Two framework is implemented, the differential rate between 15% and the existing rate in location A would be subject to Pillar Two rigors. In this context, Pillar Two has provided the definition of 'Covered taxes' which means any tax on an entity's income or profits, including tax on distributed profits, and includes any taxes imposed in lieu of a generally applicable income tax. Covered taxes also include taxes on retained earnings and corporate equity. The taxes that are excluded from the definition are consumption and sales taxes, Digital Services Tax, Excise tax, payroll tax and, property taxes that are distinguishable from the taxes arising due to an MNE's shareholding.

### Carve outs from the scope

While arriving at the income subject to tax under Pillar Two, a formula based carve out is provided to payroll costs and cost of tangible assets on the reasoning that such payments do not necessarily result in base erosion and therefore is excluded from the total. The components of cost that are excluded are eligible payroll costs for eligible employees at a fixed percentage of total payroll costs and tangible asset component which is equal to a certain percentage of depreciation and depletion of assets.

### Conclusion

The Pillar Two blueprints which is now publicly available is to be analyzed and assessed by MNEs. Although an attempt is made to simplify the overall framework of Pillar Two, the blueprint provides an extraordinary insight into the entire mechanism and also highlights the extensive analysis that needs to be made in order to have an understanding from an individual point of view. Hence, the above article acts merely as an enabler to get a flavor of the subject and further analysis and ideation would be made to delve deep into the topic.

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# SUPPLY OF DEVICES CONTAINING EDUCATIONAL INFORMATION SUCH AS RECORDED CLASSES - IS SUPPLY OF GOODS OR SUPPLY OF SERVICE UNDER GST FOR OTHER THAN EDUCATIONAL INSTITUTION?



▪ CA. G. B. Srikanth Acharya & Adv. Vasanth Kumar J

**Introduction:** - Education sector plays a vital role in shaping the future of nation. Taxing this sector has always been a complex issue. Not all educational transactions are exempt from tax under GST. However, core educational services are exempt from GST, whereas other commercial education services and coaching services are taxed at a standard rate.

The term “Education” is not defined under GST Law. However as per court’s dictum it can be understood as, the process and developing knowledge, skill and character of students by normal schooling.

Due to change in lifestyle, technology improvement and pandemic disease (present condition), “Digital Learning” through online / offline courses has become a new trend. The coaching classes are conducted in conventional classrooms by using communication technology platforms for virtual classrooms and / or through recorded classes stored in SD Cards / Pen Drives / CD etc., In this article author has tried to analyse as to when the transaction became supply of service and supply of goods.

## Why Classification?

Prior to GST regime the distinction was important because the levy was governed under different statutes. Whereas under GST “Supply” definition include both supply of service and supply of goods. Even though both the transactions fall under the definition of “Supply”, still it is necessary to classify the transaction as supply of goods or supply of service for the reasons of (a) Place of Supply; (b) Point of Taxation; and (c) Rate of Tax. The rate of tax may not be the same for all types of transactions. Separate

notifications have been issued for supply of goods and supply of service. Further there are certain transactions which are exempt from GST. In order to understand the same one should know the classification of supply as to whether the transaction falls under Supply of service or supply of goods. Further classification of supply varies based on the entries defined under the Act.

## Important Definitions & Entries under CGST & SGST Act, 2017

Section 2(52), “**Goods**” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract

Section 2(102), “**Service**” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form currency or denomination, to another form, currency or denomination for which a separate consideration is charged

## Relevant Entries

**Notification No.7/2017, Dated: 28-6-2017 - Schedule III (Sale of Goods) – Sl. No. 382 – HSN 8523 – Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37 - Taxable at 18%.**

**Sl.No. 22 of Not. No. 11/2017, Dated: 28-6-2017 (Supply of Service) – HSN 9984 - (i) Supply consisting only of e-book.**

**Explanation-** For the purposes of this notification, “ebooks” means an electronic version of a printed book (falling under tariff item 4901 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)) supplied online which can be read on a computer or a hand held devices – **Taxable at 5%**

**Schedule – II – Activities or Transactions to be treated as supply of goods or service of service**

**Entry No.1** - Any transfer of the title in goods is a **supply of goods**

**Entry No.2** - Any transfer of right in goods or undivided share in goods without the transfer of title thereof, is a **supply of service**

**Entry No.5(c)** – Temporary transfer of permitting the use of enjoyment of any intellectual property right is **supply of service**

**Entry No.5(f)** – Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuation consideration is **supply of service**

**Analysis:** - Combined reading of the above definitions and entries it infers that the term “service” has to be understood in contradiction to the word “goods”, for the reason that the term “service” has no definite meaning, hence it is important to know as to how the Courts have interpreted the term goods. Hon’ble SC in **Tata Consultancy Service (2004) 137 STC 620** held that, *proprieties which are capable of being abstracted, consumed and used and / or transmitted, transferred, delivered, stored or possessed etc., In the case of software, both canned and uncanned, all of these are possible. Intellectual property when it is put into media becomes goods. In Vikas Sales Corporation (1996) 102 STC 107 (SC) in deciding whether REP LICNESE / EXIM SCRIP are goods or not held that, things which has intrinsic value, traded within the commercial world as merchandise, as goods.* Thus the definition is wide enough to include all movable properties whether tangible or intangible.

**Transfer of Ownership:** - Ownership means bundle of rights such as, right of possession, right of enjoyment, right to use, right to dispose of etc., A transaction to become goods there should be transfer of “Ownership”. In simple words a transaction shall be treated as supply of goods when it involves transfer of all rights.

**Right to use goods is service:** - Transfer of right to use goods which was deemed sale (sale of goods) under the erstwhile VAT Law is now treated as supply of service by virtue of entry 1(b) and 5(c) of Schedule II to the CGST Act, 2017. However, it is important to note that as per Article 366(29-A) (d) right to use goods is still considered to be goods.

**Core Issue:** - Based on the above analysis the moot question to be answered is, sale of recorded lectures and other educational information to the students by institution or commercial coaching centers (other than educational institution referred in Notification No.11/2017) is supply of service or supply of goods?

Though the object and intention of the parties is for learning education when student physically attend lectures and such lectures are recorded and sold by institutions to the students. However, for the purpose of GST, it varies when student attend classes and when such lectures are recorded and sold through devices.

**Conclusion:** - The former can be treated as supply of service where the transaction does not involve any transfer of property in goods and does not involve transfer of ownership.

Whereas the later may be treated as supply of goods for the reason that such transaction involve transfer of physical object (i.e., recorded lectures and other educational information) from one person to another, except when transaction does not fall under the definition of composite supply but independent transaction.

This classification is based on the principle laid down by Hon’ble Apex Court at para 42 of *Tata Consultancy Case (supra)* that, *a compact disc recording of an orchestral rendition. The music is produced by the artistry of musicians and in itself is not a ‘good’, but when transferred to a laser readable disc becomes a readily merchantable commodity. Similarly, when a professor delivers a lecture, it is not a good, but, when transcribed as a book, it becomes a good.*

Further authors are of the view that, lectures and other educational information involve intellectuals of the creator. When such intellectuals are transferred temporarily for use of enjoyment, the transaction shall be treated as **supply of service** in terms of Entry No.5(c) of Schedule II i.e., *temporary transfer of permitting the use of enjoyment of any intellectual property right is supply of service*

The attention is also drawn on the clarification issued by the Tamil Nadu Advance Ruling Authority in the case of **Venbakkam Commandur Janardhanan Proprietor, Law Weekly Journal – Order No. 13/AAR/2020, Dt: 27-2-2020**, wherein it was clarified that, supply of DVDs/CDs with ‘The Law Weekly Desktop’ software along with end user license and the supply of access to the on-line database on the applicant’s website are not eligible to avail the benefit of entry at SI. No. 22 of Notification No. 13/2018-C.T. (Rate) dated 26-07-2018.

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# INDIRECT TAX UPDATES



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

### Important decisions under GST, VAT and Service Tax

1. **Monthly contributions of members of RWA is exempt upto Rs. 7,500/- and balance if any above Rs. 7,500/- is liable to tax**

**Greenwood Owners Association Vs UoI, 2021-TIOL-1505-HC-MAD-GST**

**Background:** Entry 77(c) of the Notification No. 12/2017-CT(Rate) dt. 28.06.2017 provides for exemption upto Rs. 7,500/- per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

**Issue:** Issue before the High Court was, in case where per month contribution exceeds Rs. 7,500/-, whether GST shall be paid on entire contribution or only on the amount of contribution exceeding Rs. 7,500/-

**Held:** The High Court held that from the plain reading of the exemption entry in the Notification No. 12/2017-CT(Rate) dt. 28.06.2017 it is clear that the intention is to exempt contribution upto an amount of Rs.7,500/- and only amount received in excess of the said limit would be liable to tax. It was observed that the plain words employed in Entry 77 being, 'upto' an amount of Rs.7,500/-can thus only be interpreted to state that any contribution in excess of the same would be liable to tax. Further, the High Court also quashed the Circular 109/28/2019-GST dt. 22.07.2019 which clarified that any contribution above Rs. 7,500/- would disentitle the RWA to exemption, being contrary to the express language of the Entry in question.

2. **Transport of personal effects / household effects- no E-way bill is required**

**Asstt. STO Vs VST and Sons Pvt Ltd, 2021-TIOL-1588-HC-KERALA-GST**

**Background:** Motor car was purchased in Coimbatore and after obtaining temporary registration and paying vehicle insurance, the same was transported in a truck to Thiruvananthapuram. The truck was detained enroute for the reason of non-generation of e-way bill. The said detention was challenged before the High Court. The Single Judge allowed the petition against which the department preferred an appeal.

**Held :** Dismissing the appeal the division bench of the High Court observed that goods that are classifiable as used personal and household effect falls under Rule 138(14)(a) of the Kerala Goods and Services Tax Rules, 2017 and are exempted from the requirement of e-way bill. The High Court observed that used vehicles, even if it has run only for few Kms, shall qualify as personal or household effects.

3. **Rule 31A(3) of CGST Rules- prescribing valuation of horse race collections- quashed.**

**Bangalore Turf Club Ltd Vs State of Karnataka 2021-TIOL-1271-HC-KAR-GST**

**Background:** The petitioners conducted horse racing and facilitated betting by the punters. The petitioners by themselves did not bet, but only facilitated punters in their betting activity. It is the punter who placed the bet either with a totalizator run by the petitioners or a book-maker licensed by the petitioners. The price money was then distributed by the petitioners to the winning punter and out of the amount of commission was set apart to be taken by the petitioner club.

Rule 31A(3) was inserted into the CGST Rules vide amendment dated 25-01-2018 whereby, the petitioner-race club was made liable to pay GST on the entire bet amount received by the totalizator (i.e, 100% of the face value of the bet rather than only the commission received by it). The said rule was challenged before the High Court.



**Held:** The High Court while striking down Rule 31A(3) observed that making the entire bet amount that is received by the totalisator liable for payment of GST would take away the principle that a tax can be only on the basis of consideration for the supplies under GST. The consideration that the petitioners receive is by way of commission for planting a totalisator. This commission can be nothing different from that of commission earned by a stockbroker or a travel agent who are liable to pay GST on the commission earned and not on entire amount of the amount they receive.

**4. Adjudication of Show Cause Notice after 17 years from the date of issue of SCN is not permissible**

**Maxcare Laboratories Ltd Vs Joint CCGST, CE & C, 2021-TIOL-1405-HC-ORISSA-CX**

**Background:** Show Cause Notice was issued in March 2000, alleging suppression of production and short payment of duty. The petitioner-assessee replied to the said notice on 27.04.2000. However, thereafter there was no communication from the department on the said issue. More than 17 years later on 28th December 2017, the assessee-petitioner received a notice stating that a personal hearing was fixed on 9th January 2018. The adjudication proceedings were challenged before the High Court.

The respondent contended that subject case file was transferred to 'call book' on 29.09.2000 and the case was retrieved from call book on 30.06.2016, basing on Board's Circular No.1023/11/2016 dated 8 April, 2016. In order to comply with the rules of natural justice, a personal hearing was fixed for which the impugned notices were issued to the petitioner. The respondent contended that even at this juncture the petitioner could avail of that opportunity of hearing and then challenge the order if it is adverse to them, in accordance with law.

**Held:** The High Court while quashing the adjudication process as well as the Show Cause Notice, observed that there was no valid reasons on the part of the department to transfer the case to call book. The Court observed that in effect, the attempt to revive the proceeding after 18 years appears to be contrary

to the circulars issued generally by the Department for expeditious disposal of the SCNs. No convincing explanation is offered as to why the Department sat over the matter for 18 years.

**5. Show Cause Notice proceedings initiated by DRI is without jurisdiction**

**Givaudan India Pvt Ltd Vs Pr.CC, 2021-TIOL-1614-HC-KAR-CUS**

**Background:** Directorate of Revenue Intelligence (DRI) issued Show Cause Notice demanding differential duties in the year 2008. The SCN was adjudicated, and the matter was carried to the CESTAT. The Tribunal allowing the appeal remanded the matter back to the original authority. On remand proceedings the adjudicating authority rejected the contentions of the importer and confirmed the demand of duty. The remand order was challenged before the High Court in writ proceedings on the ground that the DRI cannot initiate proceedings.

**Held:** Relying on the decision of the Supreme Court in the case of **M/s. Canon India Private Limited reported in 2021-TIOL-123-SC-CUS-LB**, the High Court held that Order-in-Original dated 27.02.2017 which was culmination of the proceedings starting with the Show - Cause Notice dated 07.01.2008 issued by an incompetent authority viz. Additional Director General, Directorate of Revenue Intelligence, Bengaluru is liable to be set aside. The Court observed that point of jurisdiction which goes to the root of the matter could be raised at any stage of the proceedings, which is a settled position of law. In fact, absence of jurisdiction to issue a Show-Cause Notice if raised even after an assessment order is passed, such an objection regarding jurisdiction of the authority if found in the affirmative would vitiate the whole proceedings including the assessment orders or orders passed on an appeal and other orders of the superior authorities.

**6. Input tax credit on capital goods used in expansion project - could be utilised before commencement of production of such expansion project.**

**Mangalore Refinery and Petrochemicals Ltd Vs State of Karnataka, 2021-TIOL-1542-HC-KAR-VAT**

**Background:** The Assessee, a public sector undertaking engaged in the business of manufacture of petroleum products, expanded its production facility in the year 2009-10. For this purpose, it acquired capital goods and availed input tax credit of the KVAT paid on such goods. The said input tax credit was availed in the month in which the capital goods are received, and the said credit was also utilised for payment of output taxes. On re-assessment proceedings, the credit was denied on the ground that in terms of Section 12(2) of the KVAT Act, 2003, the credit could be utilised only upon commencement of commercial production of the present phase of expansion.

**Held:** On appeal, the High Court allowing the appeal observed that Section 12(2) uses the expression 'OR' between the phrases, 'commencement of commercial production', 'sale of taxable goods', 'sale of taxable goods in the course of exports outside India'. The expression 'or' is not a conjunctive but is disjunctive. The finding recorded by the Joint Commissioner of Commercial Taxes as well as by the Tribunal that the petitioner, after expansion of Phase III, was eligible to claim input tax credit only after commencing of production or sale of goods from the expansion Unit III of the petitioner, cannot be sustained in the eye of law as the expression 'or' used in Section 12(2) of the Act is not conjunctive but is disjunctive. Since the petitioner had fulfilled the conditions prescribed in Section 12(2) of the Act, therefore, the petitioner was eligible to avail of the benefit of input tax credit on the capital goods.

**7. Intermediary services - provision of services on principal to principal basis -would not get covered under intermediary services**

**CSG Systems International India Pvt Ltd Vs CCT, 2021-TIOL-422-CESTAT-BANG**

**Background:** The appellant herein filed a refund claim of unutilized CENVAT credit of service tax availed on input services used for providing output services in terms of provisions of Rule 5 of CCR, 2004. The refund was rejected on the ground that the appellant is providing intermediary services, which

does not qualify as export of services. On appeal, the CESTAT allowed the appeal on the following grounds:

- a) Order in Original as well as Order in Appeal travelled beyond the show cause notice as there was no allegation in the show cause notice regarding intermediary services.
  - b) In terms of the Master Service Agreement, the services provided by the appellant are that of the sales marketing and support services to its group companies. These services qualify as export of service because the said services have been provided on principal to principal basis and there is no element of principal-agent relationship.
- 8. Certificate of a Chartered Accountant is valid evidence for the purpose of discharging the burden of unjust enrichment**

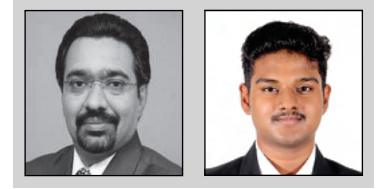
**Automotive Marketing Pvt Ltd Vs CCT & CE 2021-TIOL-398-CESTAT-BANG**

The appellant preferred a claim for refund of the service tax wrongly paid during the period from 01.04.2008 to 31.03.2009 in respect of the reimbursements from principal manufacturers towards the service. The refund was rejected on the ground that Chartered Accountant certificate alone is not sufficient evidence to prove that the taxes are not passed on.

On appeal, the Tribunal held that certificate issued by Chartered Accountant has an evidentiary value and should not be rejected lightly, because the said certificate has been issued after the verification of the accounts of appellant. Further, besides the Chartered Accountant certificate, the appellant has also produced audited statements of accounts as well as the certificate from the manufacturer which should be sufficient to hold that the appellant has not passed the incidence of tax to any other person and hence entitled to claim refund.

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# KEY POINTS ON THE INSOLVENCY AND BANKRUPTCY CODE AMENDMENTS IN 2021



▪ **Adv. B. Ramana Kumar & Adv. Subha Mohan S**

## Introduction

The Insolvency and Bankruptcy Code, 2016 is an enactment to reorganise and insolvency resolution of Corporate Persons, Partnership Firms, and individuals in a time bound manner. As in the Preamble to the code, the primary aim of the code is to maximise of value of assets, to promote entrepreneurship, credit availability and balance the interests of all the stake holders. The amendments have been amending the code at regular intervals to keep the same relevant and necessary. The various amendments in 2021 the changes in code and the regulations. The Insolvency and Bankruptcy Code Amendment Ordinance 2021 was promulgated by the President of India on 04<sup>th</sup> April 2021. This was done as a measure to mitigate the distress caused by the pandemic and considered necessary to urgently address the specific requirements of Micro, Small and Medium Enterprises (MSME) relating to the resolution of their insolvency, due to the unique nature of their businesses and simpler corporate structures<sup>1</sup>.

The Insolvency and Bankruptcy Board of India (IBBI) is active and takes utmost diligence towards amending Insolvency Laws and Regulations in India. As Insolvency Laws are major criteria in deciding a Countries rank in “Ease of Doing Business Index”, as provided by the World Bank every Year. Though India Ranks “63” in Ease of Doing Business, it ranks “13” in protecting minority investors and “52” in resolving Insolvency. The efforts by IBBI with its amendments in Regulations and Insolvency Laws, would propel India’s Ranking in Ease of Doing Business in the near future.

## IBBI AMENDMENTS ON IBBI REGULATIONS

The Insolvency and Bankruptcy Board of India (IBBI) notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2016 on 14<sup>th</sup> July 2021. The amendment includes;

- The amendment directs the Insolvency Professional conducting CIRP to disclose all the former names and addresses of the Corporate Debtor (CD) two years preceding the commencement of CIRP. In addition with the current name and registered office address of the CD, two years preceding the commencement. This is for the convenience of Stake Holders, who may find it difficult to relate with new name or registered office address.
- The amendment provides that the IRP / RP may appoint a professional, other than registered valuers, if he is of the opinion that the services of such professional are required and such services are not available with the CD to assist him in discharge of his duties in conduct of the CIRP.
- The amendment requires the RP to file Form CIRP 8 on the electronic platform of the Board, intimating details of his opinion and determination in respect of avoidance transactions, for the effective monitoring of CDs Transactions. This Form needs to be filed in respect of every CIRP ongoing or commencing on or after 14<sup>th</sup> July, 2021.

Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2021 on 22<sup>nd</sup> July, 2021. The amendment includes;

- The amendment adds the qualifications for Registration of Insolvency professional, If an individual,
  - possess ten years Professional experience in Law field; or
  - Possess ten year Managerial experience in management, after receiving a Master’s degree in Management or two-year full time Post Graduate Diploma in Management.

<sup>1</sup>Insolvency and Bankruptcy Code Amendment Ordinance 2021.

- The amendment includes that, Board within thirty Days of receipt of explanation of the Applicant, the Board shall grant a Certificate of Recognition of the Applicant for Insolvency Professional Entity.

### Insolvency and Bankruptcy Code Amendments

The Insolvency and Bankruptcy Code, 2016 is an instrument to reorganise and Insolvency Resolution of Corporate Persons, Partnership Firms and individuals in a time bound manner. It aims in maximisation of value of assets of such persons, to promote entrepreneurship, credit availability and balance the interests of all the stake holders. The Insolvency and Bankruptcy Code Amendment Ordinance 2021, was promulgated by the President of India on 04<sup>th</sup> April 2021 as a measure to mitigate the distress caused by the pandemic and considered necessary to urgently address the specific requirements of Micro, Small and Medium Enterprises relating to the resolution of their insolvency, due to the unique nature of their businesses and simpler corporate structures<sup>2</sup>.

### Amendments on Insolvency and Bankruptcy Code 2016:

The amendments on Insolvency and Bankruptcy Code, 2016 through the Insolvency and Bankruptcy Code (Amendment) Act, 2021, includes;

#### Base Resolution Plan:

- Base Resolution Plan means a resolution plan provided by the Corporate Debtor in conformity to the requirements of the Resolution Professional, who presents before the Committee of Creditors<sup>3</sup>. The Committee of Creditors shall evaluate the resolution plans presented by the resolution professional and select a resolution plan from amongst them<sup>4</sup>.
- Committee of Creditors holds the power to approve the Base Resolution Plan for submission to the Adjudicating Authority if it does not impair any claims owed by the Corporate Debtor to the Operational Creditors as provided under Section 54K(4)<sup>5</sup>.

- If the base resolution plan impairs any claims owed by the Corporate Debtor to the Operational Creditor, the resolution professional shall invite the prospective resolution applicants to submit a resolution plan, to compete with the base resolution plan<sup>6</sup>.

### Pre- Packaged Insolvency Resolution Process (PPIRP):

The Insolvency and Bankruptcy Code (Amendment) Act, 2021 introduces and alters its provisions for an alternative resolution practice for corporate persons classified as Micro Small and Medium Enterprises, known as Pre-Packaged Insolvency Resolution Process (PPIRP) under Chapter III A. Even though the same has been part of the publication in the previous month, the same is listed issue wise consolidating it as a summary of the amendment.

#### Eligibility of Corporate Debtor for PPIRP:

The eligibility of the Corporate Debtor is provided under Section 54(A) of the Insolvency and Bankruptcy Amendment Ordinance, 2021.

1. Corporate persons classified as MSMEs, under 7(1) of the Micro, Small and Medium Enterprises Development Act, 2006.
2. Corporate Debtor, who made a default of minimum one lakh Rupees (1 Lakh).
3. Corporate Debtor, is not undergoing a Corporate Insolvency Resolution Process and not received any order of Liquidation.

Corporate Debtor, who is not a wilful defaulter, not classified as Non - Performing Asset in accordance with the RBI Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification<sup>7</sup>.

#### Procedure for pre-packaged insolvency resolution process:

Application to Initiate Pre-Packaged Insolvency Resolution Process (PPIRP) (Section 54C):

1. An eligible Corporate Debtor may file an application with the Adjudicating Authority for initiating PPIRP.

<sup>2</sup>Insolvency and Bankruptcy Code Amendment Ordinance 2021.

<sup>3</sup>Section 5(2A), 54A(4)(c) of the Amendment Ordinance 2021.

<sup>4</sup>Section 54K(9) of the Amendment Ordinance 2021.

<sup>5</sup>Insolvency and Bankruptcy Code Amendment Ordinance 2021.

<sup>6</sup>Section 54K(5)(b) of the Insolvency and Bankruptcy Code Amendment Act, 2021.

<sup>7</sup>Section 29A of the Insolvency and Bankruptcy Act 2016.



2. The prescribed Fee shall be paid as an Application Fee for PPIRP.
3. The Corporate Applicant has to furnish the Declaration, special resolution or resolution and the approval of Financial Creditors for initiating PPIRP.
4. Time period for PPIRP:
  - a. The PPIRP shall commence from the date of admission of the application, by the Adjudicating authority, who shall pass an order within fourteen days of the receipt of the application<sup>8</sup>.
  - b. The PPIRP shall be completed within a period of one hundred and twenty days from the commencement date<sup>9</sup>.
  - c. The Resolution Professional is bound to submit the approved Resolution Plan by the COC to the Adjudicating Authority within the period of ninety days from the PPIRP commencement<sup>10</sup> and if the Resolution Professional has failed to submit the approved Resolution Plan within ninety days of the commencement, then, the Resolution Professional is bound to file a PPIRP termination application with the Adjudicating Authority<sup>11</sup>.
  - d. The Corporate Debtor is bound to submit the List of Claims and Preliminary Information Memorandum within two days of the PPIRP Commencement Date.

### **Resolution Plan for PPIRP:**

#### Requirements for resolution plan for PPIRP:

The Corporate Debtor is bound to submit the following to the Resolution Professional within two days of the PPIRP Commencement Date.

1. a list of claims,
2. details of the respective Creditors,

<sup>8</sup>Section 54C(5) of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

<sup>9</sup>Section 54D(1) of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

<sup>10</sup>Section 54D(2) of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

<sup>11</sup>Section 54D(3) of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

3. their security interests and
4. guarantees, if any; and
5. Preliminary information Memorandum containing information relevant for formulating a resolution plan<sup>12</sup>.

#### Consideration and Approval of Resolution Plan:

1. The Corporate Debtor is bound to submit the base resolution plan, to the Resolution Professional within two days of the Commencement of PPIRP<sup>13</sup>.
2. The Committee of Creditors are entitled to provide an opportunity to the Resolution Professional for revising the Base Resolution Plan prior to the approval of the Base Resolution Plan<sup>14</sup>.
3. The Committee of Creditors may approve the base resolution plan for submission to the Adjudicating Authority if it does not impair any claims owed by the Corporate Debtor to the Operational Creditors<sup>15</sup>.
4. The Resolution Professional may lay criteria for the resolution plans for invited resolution applicants, after the approval of the Committee of Creditors.
5. The Adjudicating Authority, if satisfied with the resolution plan as approved by the Committee of Creditors with not less than sixty six per cent of vote, then the Adjudicating Authority shall approve the resolution plan by order within thirty days of receipt of such resolution plan.

### **Duties and Powers of Resolution Professional in PPIRP:**

The duties of Insolvency Professional, proposed to be appointed as the resolution professional are,

1. The Insolvency Professional is obliged to prepare and file reports and other documents in the prescribed form: with the Board<sup>16</sup>.

<sup>12</sup>Section 54G(1) of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

<sup>13</sup>Ibid.,

<sup>14</sup>Section 54K(2) of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

<sup>15</sup>Section 54K(4) of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

<sup>16</sup>Section 54B of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

2. The Resolution Professional shall conduct PPIRP of a Corporate Debtor during the PPIRP period<sup>17</sup>.
3. The Resolution Professional constitute the committee of creditors and convene and attend all its meetings.
4. The Resolution Professional shall confirm the list of claims submitted by the Corporate Debtor and shall inform creditors regarding their confirmed claims.
5. The Resolution Professional has to maintain an updated list of claims.
6. The Resolution Professional shall monitor the management of affairs of the Corporate Debtor, which also includes, informing the COC in the event of breach of any obligations of the Board of Directors or Partners.
7. The Resolution Professional shall prepare the information memorandum on the basis of the Preliminary Information Memorandum submitted by the Corporate Debtor.

The Powers of the Resolution Professional are,

1. The Resolution Professional shall access all books of accounts, records (includes, electronic) and information available with the Corporate Debtor<sup>18</sup>.
2. The Resolution Professional shall access the books of accounts, records and other information available with the Government Authorities, Statutory Auditors, accountants and such other persons.
3. The Resolution Professional shall attend meetings of members, Board of Directors and Committee of directors or partners.
4. The Resolution Professional shall appoint Accountants, Legal or other professionals.

#### Costs for PPIRP:

Section 5(23C) of the Amendment Ordinance 2021, provides the "Pre- Packaged Insolvency Resolution Cost" includes,

<sup>17</sup>Section 54F of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

<sup>18</sup>Section 54J (3) (a) of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

1. The amount of any interim Finance and the costs incurred in raising such finance.
2. The Fees payable to any person acting as a resolution professional and any expenses incurred by him for conducting the PPIRP during PPIRP period.
3. Any Costs incurred by the resolution professional in running the business of the Corporate Debtor.
4. Any Costs incurred at the Expense of the Government to facilitate the PPIRP; and
5. Any other costs may be specified<sup>19</sup>.

#### Management of Corporate Debtor:

During the Pre- Packaged Insolvency Resolution Process period,

1. The Board of Directors or Partners shall continue to manage the affairs of the Corporate Debtor, if they make every endeavour to protect and preserve the value of the property of the Corporate Debtor and manage its operations as going concerns; and
2. The Promoters, members, personnel and partners of the Corporate Debtor, shall exercise and discharge their contractual or statutory rights and obligation in relation to the Corporate Debtor.
3. The Committee of Creditors shall resolve to vest the management of the Corporate Debtor with the Resolution Professional by not less than sixty six per cent vote, shall make an application to the Adjudicating Authority<sup>20</sup>.

#### Termination of PRE- PACKAGED INSOLVENCY RESOLUTION PROCESS:

The Pre- Packaged Insolvency Resolution Process, shall be terminated by the following:

1. When the Resolution Professional files an application with the Adjudicating Authority, then, the Adjudicating Authority shall pass an order of termination of PPIRP within thirty days of such application<sup>21</sup>.

<sup>19</sup>Section 5(23C) of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

<sup>20</sup>Section 54J(1) of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

<sup>21</sup>Section 54N of the Insolvency and Bankruptcy Code Amendment

2. When the Committee of Creditors decides to terminate PPIRP with the vote not less than sixty six percent, before the approval of resolution plan and after the commencement of the process, then, the Resolution professional shall intimate to the Adjudicating Authority of the decision of the Committee of Creditors<sup>22</sup>.
3. When the Committee of Creditors decides to initiate Corporate Insolvency Resolution Process (CIRP) with the vote not less than sixty six percent, before the approval of resolution plan and after the commencement of the process, then, the Resolution professional shall intimate to the Adjudicating Authority of the decision of the Committee of Creditors under Chapter II (CIRP) of the IBC Act 2016.

#### Other Amendments:

4. Provisions against Fraudulent Activities in IBC:
5. An appeal against a liquidation order passed under the statute, may be filed on the grounds of material irregularity or fraud committed in relation to such an order<sup>23</sup>.
6. If any person fraudulently or with malicious intent to defraud any person initiates PPIRP, then the Adjudicating authority may impose a fine of one lakh to one crore Rupees<sup>24</sup>.
7. If any officer of the Corporate Debtor intends to defraud creditors of Corporate Debtor or for any fraudulent purpose on and after PPIRP date of commencement, then the Adjudicating Authority may, on an application by the resolution professional, pass an order of imposing penalty of one lakh to one crore Rupees upon any such officer<sup>25</sup>.
8. A Corporate Debtor shall be punishable for a term of imprisonment from three years to five

years or with fine of one lakh to one crore Rupees, when he provides any false information in the

- a. Application for PPIRP, or
- b. List of claims, or
- c. Preliminary Information Memorandum.

The other amendments are made as an alteration to the provisions in including the Pre- Packaged Insolvency Resolution Process.

#### Conclusion:

The Code being a new kid on the block, is undergoing transformation as and when required with the experience gathered over the 5 years of its existence. The amendments thus far in 2021 seeks to revamp the regulations and also introduce a new concept in PPIRP, as a tool to have quick resolution of the Indian Businesses in the MSME sector and go forward, leaving the baggage behind. This seems to be a good step from the business points of view; however, it is to be seen as to how the banks, financial institutions and the other creditors including the operational creditors would view this.

With the pandemic playing a havoc on the MSMEs, this seems to be a good move from the government to preserve the sector, which is already fragile yet contribute to a great extent to the Indian GDP. The MSMEs are an important framework of the society and needs to be protected during this global calamity.

The amendments in the regulations opens new opportunity to professionals and streamline the processes and ironing out the difficulties faced by the stakeholders

The new provisions from the Insolvency and Bankruptcy Code Amendment Ordinance 2021, are strictly adhered to the time period and penalties for any malicious act carried by the persons involving in Insolvency Process. The major amendments are the introduction of base resolution plan, Pre- Packaged Insolvency Resolution Process. This Ordinance, thus, provides a healthy environment for Creditors and Debtors (MSMEs).

Ordinance 2021.

<sup>22</sup>Section 54N(2) of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

<sup>23</sup>Section 61(4) of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

<sup>24</sup>Section 65(3) of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

<sup>25</sup>Section 67A of the Insolvency and Bankruptcy Code Amendment Ordinance 2021.

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# PRIVACY BY DESIGN



## ■ CA. Vikas Kamath

### Introduction

Privacy by Design is directly to do with Privacy features. It needs to ensure that privacy features are designed into the system even before the start of implementation. It needs to be a holistic approach that applies to the architecture of information technology, networked infrastructure, business practices, and business processes.

These are system requirements that have privacy relevance. Privacy requirements from the system perspective need to define the protection capabilities provided within the system, the performance and behavioral characteristics exhibited by the system. The experts must ensure that the system is able to capture proper audit trail to outlay the evidence, used to determine that the privacy requirements implemented in the system are satisfactory. The implementation of the Privacy requirements is derived from various sources – both internal and external like laws of land, regulations, standards, and internal and external stakeholder expectations.

### Privacy Regulations

#### European Union

One of the most comprehensive initiatives is the European Union (EU) General Data Protection Regulation (GDPR), approved by the EU Parliament in 2016, with an effective enforcement date of May 2018. The GDPR is designed to harmonize data privacy laws across Europe, to protect and empower the data privacy of all EU citizens, and to reshape the way organizations, both public and private, across the region approach data privacy.

#### U.S. Privacy Laws and Regulations

There is no single law or regulation covering privacy in the United States. Rather, a collection of federal privacy laws covers various aspects of privacy. Some U.S. privacy laws apply only to federal agencies and contractor companies working under federal contract. Others impose mandates on private organizations as well as government agencies

and departments. These include – The Privacy Act of 1974, FACTA, HIPPA, GLBA, COPPA

### Privacy Standards

The management, design, and implementation of privacy safeguards in information systems is complex and slightly difficult than they appear. There are a wide variety of systems, technologies and business process that are involved. Getting a stock and compiling of these data points can be a good starting point to understand the overall implementation strategy. At a high level, these can include cybersecurity mechanisms, such as cryptography, network security protocols, operating system mechanisms, database security schemes, and malware identification to name a few. Because managing an effective information privacy is difficult at times, an attempt to develop an ad-hoc, implement-your-own approach to cybersecurity may be a grave act to invite potential failure. Traditionally, a good amount of exercise, in the form of thought, experimentation, and implementation experience, has gone into the development of policies, procedures, and overall guidance to the information privacy management team. The most important source of guidance to organizations are internationally recognized standards. The dominant sources for such standards are the International Organization for Standardization (ISO) and the U.S. National Institute of Standards and Technology (NIST). Although NIST is a national organization, its standards and guidance documents have worldwide influence.

### Privacy impact assessment

The NIST Computer Security Glossary (<https://csrc.nist.gov/glossary>) defines a PIA as an analysis of how information is handled:

- (i) to ensure handling conforms to applicable legal, regulatory, and policy requirements regarding privacy.
- (ii) to determine the risks and effects of collecting, maintaining, and disseminating information in



identifiable form in an electronic information system; and

- (iii) to examine and evaluate protections and alternative processes for handling information to mitigate potential privacy risks. In essence, PIA consists of privacy risk assessment followed by a selection of privacy and security controls to reduce the risk.

### Drafting a Privacy Policy

The first stage of privacy by design deals with privacy planning and the policy. This should be adequately supported by Standards, guidelines and procedures associated to it. An essential element of planning for information privacy is the definition of the privacy requirements. The specific requirements for privacy features and protections drive the planning, design, and implementation of these features and protections. Key sources of requirements include regulations, standards, and the organization's contractual commitments.

### Privacy Risk Assessment

By and large the Privacy risk assessment should be an independent exercise than that from the Security perspective. The ultimate objective of a privacy risk assessment must be to enable the executives to determine an appropriate budget for privacy and, within that the allocated budget, implement the privacy controls that optimize the level of protection. This objective is met by providing an estimate of the potential cost to the organization of privacy violations, coupled with an estimation of the likelihood of such potential breaches.

Four elements are involved in the Privacy Risk assessment viz.,

**Privacy-related asset:** Anything that has a value to the organization and hence need to be protected. With respect to privacy, the primary asset is PII of employees, customers, patients, business partners, and so on. This category also includes non-financial assets such as reputation, goodwill, IP&S.

**Privacy threat:** A threat is a possible danger that might exploit a vulnerability. A threat action, when a threat materializes i.e., an occurrence in which a vulnerability is exploited because of either an accidental event or a deliberate act.

**Privacy vulnerability:** A flaw or weakness in a system's design, implementation, or operation and management

that could be exploited by a threat action to violate the system's privacy policy and compromise an individual's PII.

**Privacy controls:** The management, operational, and technical controls (i.e., countermeasures) prescribed for an information system to protect PII and ensure that the organization's privacy policy is enforced.

Using the above mentioned four elements, a privacy risk assessment consists of the following three steps:

1. Impact assessment. Determine the impact or harm to a user and the organization in case of a privacy violation. For each privacy-related asset, determine the possible threats to that asset. In case of any violation of the privacy right, determine the impact to individuals and to the organization, in monetary terms or lost value, should the threat materialize
2. Likelihood of the incident. Determine the likelihood of the **privacy incident**, where a privacy incident is defined as an occurrence that actually or potentially violates the privacy of PII or that constitutes a violation or an imminent threat of violation of privacy policies, privacy procedures, or the company's acceptable usage policies. For each privacy asset, three factors determine the likelihood: the relevant threats to the asset, the vulnerability of the asset to each threat, and the privacy controls currently in place that reduce the likelihood that each threat will cause harm.
3. Level of Risk. Determine the level of risk as the combination of the cost if the privacy incident occurs and the likelihood that that incident occurs.

### Privacy and Security Control Selection

The privacy protection of PII involves the use of both controls that are specific to privacy and the use of controls developed for information security requirements. This section discusses both.

### Privacy Controls

Implementing any type of Privacy controls can be from the administrative or physical or technical measures and can be deployed within an organization to ensure privacy requirements are complied with. Implementing adequate Privacy controls will result in:

- Eliminate the threat source
- Shifting the likelihood that the threat can exploit a vulnerability by reducing or eliminating the vulnerability or by changing the amount of PII collected or the way it is being processed
- Changing the consequences of a privacy event

There are Two valuable sources of information on privacy controls can be used as guidance in control selection.

- NIST SP 800-53 (Security and Privacy Controls for Information Systems and Organizations) is an invaluable and extraordinarily detailed discussion of controls and should be consulted in the development of any risk treatment plan. This document provides plenty of guidance on the overall development of a treatment plan and includes an extensive catalog of security controls and privacy controls.
- ISO 29151 (Code of Practice for Personally Identifiable Information Protection) offers guidance on a broad range of privacy controls that are commonly applied in many different organizations that deal with protection of PII.

### Security Controls

Security controls are countermeasures as prescribed in the information system of an organization that are designed to protect the principles of Information security viz., confidentiality, integrity, and availability of its information and to meet a set of defined security policies. There is an overlap in the areas of concern of information security and information privacy. Security controls, when selected and implemented for information systems that create, collect, use, process, store, maintain, disseminate, disclose, or dispose of PII, address both security and privacy concerns. For instance, different types of access control mechanisms can be revisited to limit the access to employees, suppliers PII stored in a database.

As a thumb-rule, individual privacy cannot be achieved solely through securing personally identifiable information. Hence, both security and privacy controls are needed.

From Security controls perspective, there are two valuable sources of information that can be used as guiding principle during the implementation of controls or during the selection process.

- SP 800-53 is an excellent source of security controls.
- ISO 27002 (Code of Practice for Information Security Controls) is another good source.

To a certain extent, the organization's already implemented information security control measures can protect privacy. For instance, a malicious perpetrator allegedly trying to break into the organization's system to compromise a user's sensitive information (e.g., access to medical records, call records, personal / professional emails or personal snaps) may be blocked by good cybersecurity measures. Additionally, the implementation of strong security control measures can provide assurance on protection of both integrity of an individual's PII and the availability of PII. But the National Research Council Paper at the Nexus of Cybersecurity and Public Policy: Some Basic Concepts and Issues points out that certain measures taken to enhance cybersecurity can also violate privacy. For instance, some firewalls use technical measures to block Internet traffic containing malware before it reaches its destination. To identify malware-containing traffic, the content of all in-bound network traffic must be inspected. But some regard inspection of traffic by any party other than its intended recipient as a violation of privacy because most traffic will in fact be malware free. Under many circumstances, inspection of traffic in this manner is also a violation of law.

### Conclusion:

During the privacy implementation stage, the pool of team members ponders over the design, build and implementation strategies, right from the configure stage to its enablement in the system privacy features to meeting the compliance and other regulatory requirements. Implementation includes alignment and integration of privacy controls with system security and related functional controls. As part of the implementation, the organization should perform developmental testing of the technical and privacy features/functions to ensure that they perform as intended prior to launching the integration phase. The end-to-end testing should encapsulate systems, process, for data at source, in-transit and at rest.

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# RERA - IMPORTANT DATES UNDER RERA AND INTERESTING Q&A

(Part IV of RERA Series)



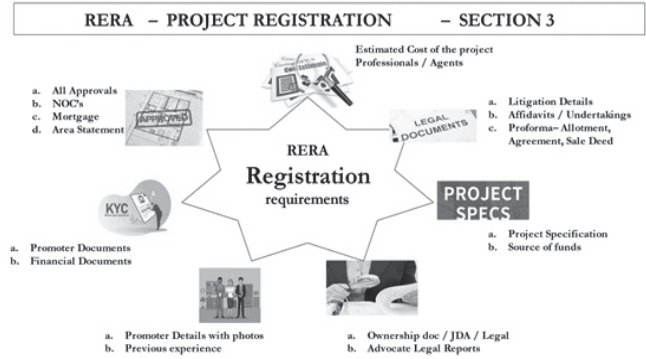
■ CA. Vinay Thyagaraj

## Important Dates under RERA –

Sl No	Provision of the RERA Act	Details	Section
1	Prior Registration of Real Estate Project	Obtain the RERA registration on receipt of the Sanctioned plan (may be postponed if the intention is not to sell immediately)	Sec 3 / Sec 4
2	First time Update / Post Registration	On registration of the Project	Sec 11
3	Quarterly Updates	Within 15 days from the end of each Quarter	Sec 11 read with Rules
4	Annual Audit of Accounts	Within 6 months from the end of financial year	Sec 4(2)(L) (D)
5	Obtaining Professional Certificates – α) Architect, β) Engineer, and χ) Chartered Accountant	Architect, Engineer, and Chartered Accountant in Practice certificates shall be obtained for each withdrawal of funds from the RERA Designated bank account.	Sec 4(2)(L) (D)

Sl No	Provision of the RERA Act	Details	Section
6	Reporting of Completion	On completion of 100% development (internal and development) works in the project.  Report within the same quarter of completion	Circular
7	Application for Extension of End date for the project	Within 3 months before the end date of registration	Sec 6 read with Rule
8	Modification of Application	Prior / post-approval of the authority for any modification in the Registration Application depending on the modification/ amendment.	Sec14
9	Formation of Association of Allottees	shall be formed within three months of the majority of allottees having booked the plot/ apartment	Sec 11

Sl No	Provision of the RERA Act	Details	Section
10	Transfer of Title	Within three months from date of issue of occupancy certificate.	Sec 17
11	Refund/Return of amount on Cancellation	Within 30/60 days of Such Cancellation	Sec 18 read with Rule
12	Conveyance of plot/apartment	Conveyance deed after receipt of Occupancy certificate	Sec 17
13	Hand- over a. the necessary documents b. plans c. including common areas to the association of the allottees	within thirty days after obtaining the occupancy certificate	Sec 17
14	Structural Defect warranty by the Promoter	Five years from the date of handing over to the allottee	Sec 14
15	Attend to Structural Defect by the Promoter	Promoter to rectify such defects without further charge, within thirty days from the date of notice	Sec 14
16	Grant of Registration by the authority for the real estate project	Within 30 days from the date of application	Sec 5



### Important aspects, provisions under Real Estate (Regulation & Development) Act 2016 – RERA Act -

#### 1. What are various aspects covered under RERA?

- a. The RERA Act 2016 covers various aspects of the Real Estate business
  - (i) Separate Authority to Regulate the Real Estate Industry
  - (ii) Activities regulated under the Act
    - a. Sales and Marketing,
    - b. Advertisement,
    - c. Agents and Channel Partners
    - d. Financial Management,
    - e. Legal,
    - f. Quality and Defect Liability,
    - g. Insurance,
    - h. Guarantee of Title of Land,
    - i. Construction and development,
    - j. Delivery timelines,
    - k. Compensation in case of delay,
    - l. Modification of plan or specification
    - m. takeover/transfer of project
    - n. Allottees/Customers duties

(iii) Adjudication mechanism

(iv) Appellate Tribunal

(v) Dispute redressal mechanism

2. The promoter does not intend to sell the units (apartments, plots, shops) in the Real Estate Project.



Does the promoter need RERA Registration?

- a. If the promoter does not intend to sell in perpetuity, then RERA Registration is not required (like lease, rent or own use).
  - b. However, if the intent is to sell even 1 unit out of many, RERA Registration is mandatory.
3. Can the promoter (builder, developer, landowner) advertise market / sell / units in a Real Estate Project before RERA Registration?
- a. No
  - b. Sec 3(1) of the Act mandates the prior registration of the Real Estate Project.
  - c. Hence RERA Registration is mandatory before advertising, sell, market, collect advances from prospective customers.
4. Is there a difference between Completion Certificate and Occupancy Certificate under RERA?
- a. Yes,

RERA Act defines U/s. 2(q) Completion certificate and U/s.2(zf) occupancy certificate.

Sec 2(q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

Sec 2(zf) "occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;

5. Does RERA mandate a Separate Bank account for each project?
- a. Yes,
  - b. Mandatory and Separate RERA Designated Bank Account
  - c. Shall be opened for each project and those details

shall be provided while applying for grant of registration.

- d. Refer RERA Bank Account Direction 2020, Notification issued by the Karnataka RERA Authority.
6. How much money shall be required to deposit into RERA Designated Bank Account?
- a. 70 % (Minimum ) of the amount realised from the Allottees shall be deposited into RERA designated project bank account.
7. I received Occupancy Certificate for the project. Can I stop deposit money into RERA Designated Account?
- a. Yes / No
  - b. Such deposit shall continue till 100 % completion of development in the Real Estate Project (Mere receipt of OC or CC does not mean the completion of development)
  - c. Money shall continue to deposit, withdraw and shall be utilised for the specific project
8. Promoter already mentioned in the customer agreement (agreement for sale) that promoter has right to modify plans without obtaining prior consent / communication, is this permitted under RERA?
- a. No,
  - b. Prior written and informed consent / Approval Required for modification in the project Sanctioned plan or Specification – Refer Sec 14
9. I received Completion Certificate, do the promoter need RERA Registration?

RERA Registration is mandatory even if the promoter has received the occupancy certificate and completed the project's development.

However, if such completion certificate is received on or before 1.5.2017, the RERA Registration is not required for that project.

10. The promoter uses their funds to develop the Real Estate Project. Is it necessary to obtain registration of a Project when the promoter has completed the construction and obtain an occupancy certificate?
- a. The above question is an often repeated question

from time to time that the Promoters, professionals, stakeholders ask to which the answers were discussed in several sessions or forums. However, the question remains in the minds of the Promoters, professionals.

- b. The answer to the said question is "YES"
- c. It is necessary to register a Real Estate Project even when the promoter himself has invested all the funds to complete the development works in the project and wants to sell only after obtaining a completion certificate.
- d. Under the Act, there is no distinction between when the promoter proposes to sell and when the new project must be registered.
- e. Section 3 of the RERA Act is clear that a Promoter shall not advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area without first registering the real estate project with the Authorities.
- f. From the above, it can be made out that on and from the date of commencement of the RERA Act, it has become mandatory for a promoter to register the real estate Project before doing any of the activities described above in relation to the project.
- g. The RERA Act does not stipulate whether the project has to be registered immediately after the plan sanction or when the promoter proposes to carry out the activities above in relation to the project.
- h. From our experience in dealing with the matters relating to registration of Projects and the method in which the Real Estate Regulatory Authorities are dealing with the registration of the Projects, it can be said that the promoter should register the project immediately after obtaining plan sanction, failing which the authority may take action for non-registration of the project.
- i. The authorities are taking the stand since it would not be possible for them to monitor whether the Promoters of the Projects for which the registration is not obtained is being advertised or marketed or sold.

- j. As there are no sales, no collections, there will not be many compliances required to be fulfilled by the promoter under the RERA Act.
- k. In a case where the promoter is investing all the funds required to complete the development works in the project and does not market or sell the units in the project, the only formality for the promoter to comply would be to obtain registration for the Project, Post Registration and Quarterly updates and no other compliances would be required to be fulfilled including the compliance concerning the financial management of the project being depositing of 70% of the amounts collected in the project in such account and upon every withdrawal obtain certificates from the Chartered Accountants, Architects and Engineers, when such compliances would not be required when the promoter is investing all the funds.
- l. With the above note, we are of the opinion that the promoter should obtain registration for the real estate project to avoid any complications.

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#### **KSCAA REPRESENTATIONS:**

- 1) Representation on Anomaly in Limitation date for completion of Transfer Pricing Assessment Proceedings for AY 2018-19 dated 13<sup>th</sup> July, 2021 to Smt. Nirmala Sitharaman, Hon'ble Union Minister for Finance and Corporate Affairs.
- 2) Representation Seeking Rationalisation of Provisions Relating to Revocation of Cancellation of Registration under Amnesty Scheme dated 31<sup>st</sup> July, 2021 to Smt. Nirmala Sitharaman, Hon'ble Chairperson, GST Council.
- 3) Follow-up Representation on extension of last date for submission of statutory audit report for FY 2020-21 dated 12<sup>th</sup> August, 2021 to Shri. S T Somashekar, Hon'ble Minister of State for Co-operation of Karnataka.
- 4) Representation on examination of UDIN mentioned in statutory audit report of various Co-operative Societies and Associations dated 12<sup>th</sup> August, 2021 to Hon'ble Director, Registrar of Cooperative Societies in Karnataka.

**For full text of above representation,  
please visit: [www.kscaa.com](http://www.kscaa.com)**

# FINANCIAL REPORTING AND ASSURANCE



■ CA. Vinayak Pai V

## 1. UPDATES: Monthly Roundup<sup>1</sup>

AS   Ind AS	<ul style="list-style-type: none"> <li>ICAI <b>Guidance Note on Accounting for Derivative Contracts</b> (Revised 2021). [Applicable to the AS accounting framework.]</li> </ul>
	<ul style="list-style-type: none"> <li>ICAI <b>Exposure Draft</b> <ol style="list-style-type: none"> <li><b>AS 102</b>, Share-based Payments.</li> <li>Amendments to <b>Ind AS 1</b>, Presentation of Financial Statements – Disclosures of Accounting Policies.</li> </ol> </li> </ul>
Assurance	<ul style="list-style-type: none"> <li>ICAI's <b>Audit Quality Maturity Model Version 1.0 (AQMM v1.0)</b></li> <li>ICAI <b>Announcement</b>: <ol style="list-style-type: none"> <li><b>Further Extensions</b> regarding the <b>validity of Peer Review Certificates (PRC)</b> in the wake of the Covid-19 spurt – PRCs having original expiry date falling between 1st to 31st July, 2021 extended till 31st August, 2021.</li> <li><b>Deferred provisions</b> (Responding to Non-Compliance with Laws and Regulations; Fees – Relative Size and Tax Services to Audit Clients) of Volume -I of Revised <b>Code of Ethics, 2019</b> is <b>effective from 1st April, 2022</b>.</li> </ol> </li> </ul>
	<ul style="list-style-type: none"> <li><b>COSO Guidance : Enterprise Risk Management (ERM) for Cloud Computing.</b></li> </ul>
MCA   SEBI	<ul style="list-style-type: none"> <li>SEBI <b>Discussion Paper : Review of SEBI (Share Based Employee Benefit) Regulations, 2014 and SEBI (Issue of Sweat Equity) Regulations, 2002.</b> [8th July, 2021.]</li> </ul>
RBI	<ul style="list-style-type: none"> <li>Notifications: <ol style="list-style-type: none"> <li>Review of Instructions on <b>Interest on Overdue Domestic Deposits</b>.</li> <li>Roadmap for <b>LIBOR Transition</b>.</li> <li>Loans and Advances – <b>Regulatory Restrictions</b>.</li> </ol> </li> </ul>
IFRS	<ul style="list-style-type: none"> <li>IASB <b>Exposure Drafts</b>: <ol style="list-style-type: none"> <li><b>Subsidiaries without Public Accountability</b>: Disclosures (ED/2021/7.)</li> <li><b>Initial Application of IFRS 17 and IFRS 9 - Comparative Information</b> (ED/2021/8.)</li> </ol> </li> </ul>
USGAAP	<ul style="list-style-type: none"> <li>FASB's Accounting Standards Update (ASU) No. 2021-05 (<b>Topic 842, Leases</b>): Lessors – <b>Certain Leases with Variable Lease Payments</b>.</li> </ul>

<sup>1</sup>Updates for the month of July 2021.

## 2. SA 701 – Unlisted Entities | Case Studies | Pitfall to Avoid based on a Recent Regulatory Action

*This section provides: an overview of KAMs; applicability of SA 701 to the statutory audits of unlisted entities; provides a couple of case studies based on information in the public domain; and highlights a pitfall to avoid in its implementation by looking at learnings from a recent regulatory action against an audit firm, albeit international.*

### a) Key Audit Matters

Key audit matters are those matters that, in the auditor's professional judgment, were of most significance in the audit of the financial statements of the current period. Key audit matters are selected from matters communicated with those charged with governance. [SA 701.8.]

The statutory auditor determines Key Audit Matters from among the matters communicated with those charged with governance that required significant auditor attention in performing the audit. In such determination, the following need to be taken into consideration: areas of higher assessed risk of material misstatement; financial statement areas that involved significant management judgement including estimations with high uncertainty levels; and the effect of significant events or transactions on the audit.

### b) Applicability to the Audits of Unlisted Entities

SA 701, Communicating Key Audit Matters in the Independent Auditor's Report<sup>1</sup> mandatorily applies to the audits of financial statements of listed entities. A question addressed in the ICAI's Implementation Guide to SA 701, Communicating Key Audit Matters in the Independent Auditor's Report<sup>2</sup> is whether it also applies to the audits of unlisted entities. Extracted hereinbelow is Response 3 to the FAQs therein. Readers may also refer Paragraph 5 of SA 701 in this context.

*SA 701 is applicable for audit of unlisted entities under the following circumstances:*

- When the auditor decides to communicate key audit matters in the auditor's report, or
- When the auditor is required by law or regulation to communicate key audit matters in the auditor's report.

For example, it can be given by the auditors on voluntary basis when communication of KAM will:

- promote consistency and comparability in auditor's reporting; and
- assist intended users of the financial statements in understanding those matters that, in the auditor's professional judgment, were of most significance in the audit of the financial statements of the current period.

When an auditor is not mandatorily required to communicate key audit matters under SA 701, the discussions with those charged with governance for such entities may highlight interest or value in the communication of matters to the intended users of the financial statements. The auditor's report is a deliverable by the auditors and hence the decision to communicate key audit matters is to be taken by the auditors only.

### c) Contextual Case Studies

#### a) Case 1 - Provision for Non-Saleable returns

**The Balance Sheet Exposure:** The management of Company A has determined provision for sales returns amounting to Rs. 159 crores which have been recorded at March 31, 2021 (including reimbursable sales return amounting to Rs. 51 crores)

**Facts of the Case:** The Company makes sales to stockiest who further sells products in the market. Stockiest have a right of return in case goods expiring, while in supply chain till end consumers. Return of these expired goods, results in deductions to gross amounts invoiced in arriving at revenue and creation of obligations for the Company to give credit for sales returns. The amounts pertaining to such sales return are estimated at the time of sale and deducted from gross sales and recorded as provisions for sales returns. These estimates are based on analysis of

<sup>1</sup> <https://resource.cdn.icai.org/44095aasb33841-sa701.pdf>

<sup>2</sup> <https://resource.cdn.icai.org/48820aasb-icai-igsa701.pdf>



historical trends of sales return and shelf life of the products.

**The Basis for regarding the audit area as a Key Audit Matter:** *The Auditors focused on this area and regarded it as a Key Audit Matter because establishing an appropriate year-end position requires significant judgement and estimation by the management. The assumptions required for estimating provisions for sales returns are complex in nature, the estimates may not be appropriate and, as a result, provisions and revenue may be incorrectly recorded.*

#### b) Case 2 - Evaluation of uncertain tax positions

The Balance Sheet Exposure: Company B has disclosed Rs. 79 crores as Contingent liability (including uncertain tax positions for open assessment orders) in accordance with Ind AS 37 Provisions, Contingent Liabilities and Contingent Assets, based on management's assessment in consultation with professional advice from the external legal counsel.

Facts of the Case: The Company has litigations involving question of law and certain disallowances made by Income tax authorities in assessment orders that the Company has appealed against before the relevant appellate authorities. The eventual outcome of the legal proceedings is dependent on the outcome of future events and unexpected adverse outcomes could significantly impact the Company's reported profits and Balance Sheet position. Key judgments are also made by the management in estimating the amount of contingent liabilities related to afore mentioned litigations.

**The basis for regarding the audit area as a Key Audit Matter:** *Considering the degree of judgment, significance of the amounts involved, inherent high estimation uncertainty and reliance on external legal counsel, this matter was identified as a key audit matter by the statutory auditors.*

#### c) A Pitfall to Avoid – Learnings from a Recent Related Regulatory Action by an International Regulator

The UK Financial Reporting Council (FRC) recently hauled up an audit firm for non-complying with the corresponding international standard viz. ISA, 701. Extracts from the order are provided herein below:

- ISA 701 (Communicating Key Audit Matters ["KAM(s)"] in the Auditor's Report), by virtue of its paragraphs 9, 10, 13 and 18(a), requires the auditor:

to determine, from the matters communicated to those charged with governance, those matters that required significant attention in performing the audit; then

to determine which of those matters were of most significance in the audit and therefore formed the KAMs; and

to record within the audit documentation the significant matters and, in respect of each of them, the rationale for the auditor's determination as to whether or not the matter is a KAM, including (in respect of each matter determined to be a KAM):

a reference to any disclosure(s) in the financial statements related to the matter; and information as to:

- (a) why the matter was determined to be a KAM; and
- (b) how the matter was addressed in the audit.

5.16. **The Respondents' audit work in the area of revenue recognition and recoverability of debtors did not comply with the above requirements of ISA 701.** *That area was identified, both in the audit file and the auditor's report, as a KAM. However, the reasoning behind that identification was lacking; the audit team's assessment of the risks in relation to revenue recognition had in fact led them to a contrary conclusion; and the identification of this matter as a KAM was an error.*

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# INTELLECTUAL PROPERTY RIGHTS AND PROTECTION IN INDIA

## GEOGRAPHICAL INDICATION – PROCEDURE FOR MAKING AN APPLICATION (Part-X of IPR series)

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

### Traditional Knowledge and GI

In the previous part, the salient features of the Geographical Indications (GI) of Goods (Registration and Protection) Act, 1999 and the procedure to be followed for registering the GI have been elaborately discussed. It must be noted that the availability of registration and grant of IP rights under GI has more ground work to be carried out, before applying for the same by the Association/ Authority and by the users concerned, of that locality/ geographical area. In this article, the process of selection, the nature of documents/ evidences of necessary information to be collected for making an application seeking GI protection for the traditional activity / knowledge are deliberated through case study, as published in the journals of the GI Registry, Chennai.

### Coorg Arabica Coffee

The G.I. Application bearing number 604 dated 01-01-2018, seeking GI rights for 'Coorg Arabica Coffee' has been filed by the Coffee Board, with headquarters in Bangalore, Karnataka. The said application has been circulated in the Government of India GIs Journal NO. 111 dated October 29, 2018 published by the GI Registry. The Registry of GI, as already stated, is maintained in two parts. Part 'A' consists of particulars relating to registered GIs and Part 'B' the details pertaining to the registered authorized users. The form of application to be used and the fee to be paid could be accessed <https://ipindia.gov.in/forms-gi.htm> & [https://ipindia.gov.in/writereaddata/Portal/Images/pdf/GIR\\_Fees-August\\_26\\_2020.pdf](https://ipindia.gov.in/writereaddata/Portal/Images/pdf/GIR_Fees-August_26_2020.pdf)

The subject application is in respect of registration of GI in respect of the "Coorg Arabica Coffee", being grown specifically in the region of Kodagu district (district name

under British rule was Coorg) that lies on the eastern and western slopes of the Western Ghats in the State of Karnataka (75°25'-76°14'E, 12°15'-12°45'N) at an Elevation of 900-1100 m MSL. The locality is heavily intercropped with spices like black pepper and ginger and fruit trees such as jackfruit and mandarins. The subject GI is sought in relation to Coffee, an indication which identifies such goods as agricultural goods, originating in the territory of a country, where a given quality, reputation or other characteristics of such goods is essentially attributable to its geographical origin.

The perusal of the examination clearly indicates the parameters that are to be indicated for claiming the stated rights by the particular area and other important aspects required to be furnished are reiterated. For more details to make similar applications, the page 7 of the cited journal may be referred.

*"Coorg Arabica" [type of goods - Class 30 - Coffee] can be described as coffee from Kodagu region at an elevation of 750- 1100 m MSL in the state of Karnataka. There are two types of coffee grown in Kodagu region namely Arabica and Robusta. The word "coffee" entered the English language in 1582 via the Dutch koffie, borrowed from the Turkish kahve, in turn borrowed from the Arabic qahwah. The botanical name of Arabica Coffee is Coffea Arabica and that of Robusta is Coffea canephora Pierre ex Froehner Coffea arabica is a species of Coffea originally indigenous to the forests of the southwestern highlands of Ethiopia. It is also known as the "coffee shrub of Arabia", "mountain coffee", or "arabica coffee".*

*"The special characteristics of washed Arabica coffee (parchment coffee) from Coorg are pleasant aroma, balanced cup with mild acidity, strong body with a hint of floral note and a dark chocolate after taste. The special*

characteristics of un-washed Arabica Coffee (cherry/unwashed/natural) from Coorg are strong fruity, cherry characters". The application further provides the details in the following headings: 'G) Geographical area of Production and Map; H) Proof of Origin (Historical records); I) Method of Production: Description of the coffee plant Arabica, Native mode of cultivation, Soils, Shade, Planting from nursery, Weeding, Description of native plant, Pulping, Manuring, Pruning, Modern method of cultivation in Coorg; J) Uniqueness; K) Inspection Body; L) Others: Culture of Coorg and Coffee; M) geographical Map indicating the tehsils for GI protection.'

### The Sirsi Supari

The application bearing number – 464 dated 10-12-2013 has been made by 'The Totgars' Co-operative Sale Society Limited, Market Yard, Sirsi- 581402, District: Uttara Kannada, Karnataka, India for Registration in Part A of the GI Register. The application describes the goods as '**Sirsi Supari**' a Horticultural Produce namely the Areca nut [Class –31]. The application has been advertised as accepted in the GI Journal which may be perused for further learning of selection and making of GI application for a horticulture product.(refer page 14 of Geographical Indications Journal NO. 112 dated October 31, 2018 published by the GI Registry[ page – 14]). The Specification detailed in the application reads: '*Sirsi Supari is described as Arecanut cultivated in Sirsi, Siddapur and Yellapur Taluk regions of Uttara Kannada District located in the Western Ghat region of Karnataka State. Sirsi Supari is medium sized, somewhat flat rounded in shaped, somewhat ash coloured, hard seed. The fruit of Areca catechu turns a yellow to scarlet color as it ripens and then consists of a thick fibrous pericarp, the so-called husk, which encloses this seed*'.

Other details as furnished in the stated application include: 'D) Composition of Sirsi Supari; E) Name of the GI: SIRSI SUPARI; F) Description of the Goods; G) Geographical area of Production and Map; H) Proof of Origin (Historical records); I) Method of Production: Climate, Soil, Raising of Seedlings: a) Selection of mother palm, b) Selection of seed nut, Primary and secondary nurseries, Selection of seedlings, Selection of site and layout, Spacing, Depth of planting, Season of planting, Drainage, Shading, Nutrient Requirement, Organic matter recycling,

Cultural operations, Irrigation, Fertigation, Arecanut based cropping systems, Weed Management, Harvesting and Yield, Yield, Storage; J) Uniqueness; K) Inspection Body; L) Others: Medicinal Uses'.

### Information required for making a proper application

As per the form prescribed, the following information need to be furnished for making the application seeking GI protection.

"1. Application is hereby made by for the registration in Part A of the Register of the accompanying geographical indication furnishing the following particulars: - Name of the Applicant; Address; List of association of persons / producers / organization / authority; Type of goods; Specification; Name of the geographical indication [and particulars]; Description of the goods; Geographical area of production and map; Proof of origin [Historical records]; Method of Production; Uniqueness; Inspection Body; Other:

The information like, (i) the class of goods to which the GI shall apply;(ii) A statement of how the GI serves to designate the goods as originating from the concerned territory in respect of the quality, reputation or other characteristics which are due exclusively or essentially to the geographical environment, with its inherent natural, and human factors and the production or processing or preparation of which takes place in such territory or region or locality;(iii) the geographical map of the territory of the country or region or locality in the country in which the goods originate or are being manufactured;(iv) The particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figurative elements or both; (v) A statement containing such particulars of the producers of the concerned goods, if any, proposed to be initially registered with the registration of the GI as may be prescribed;'

The preparation of an application under GI Act require a lot of efforts and research by the applicant, which may be difficult for the TK owners to gather and narrate with conclusive evidences. The data to be gathered requires specialized efforts, which are normally not available in the region. Therefore the educational institutions and the industrial bodies, who notice such a TK, should actively collaborate, participate and contribute towards making a



valid application seeking protection to such traditional agricultural goods. Then alone the GI could be registered and protected by due commercialization.

### Producers of GI

A producer of goods can apply for registration as an authorized user, with respect to a registered Geographical Indication. A person dealing with the Agricultural Goods including the production, processing, trading or dealing can seek registration as a producer of such product. In the stated examples, producers located in the geographical area in the application and associated with coorg Arabica Coffee with Coffee board and the growers of Sirsi Supari, covered in that geographical area, in association and as per quality declared are treated as producer eligible for making application seeking GI protection as a producer. Such a producer should apply in writing in the prescribed form along with prescribed fee. Sample Application made (sample) of two such application are herein given for easy understanding.

#### Sample -1 - Authorised User of Coorg Arabica Coffee.

G.I. Authorised User Application No. 6986 in respect of Coorg Arabica Coffee Registered GI Application No. 604 [refer page 280 / Journal No. 146 dated July 08, 2021]

Application is made by, Director of Finance, Coffee Board at Coffee Research Sub Section, Coffee Board, Chettalli, Taluk: Somvarpet, North Kodagu – 571 248, Karnataka, India dated December 08, 2020 for Registration in Part-B for Authorised User in respect of Registered Geographical Indication Coorg Arabica Coffee under Application No - 604 in respect of Coffee falling in Class 30 is hereby advertised as accepted under Section 13 (1) of GI of Goods (Registration and Protection) Act, 1999.

- (A) Applicant: Director of Finance, Coffee Board ;
- (B) Address: Director of Finance, Coffee Board, Coffee Research Sub Section, Coffee Board, Chettalli, Taluk: Somvarpet, North Kodagu – 571 248, Karnataka, India;
- (C) Date of Authorized User Application: December 08, 2020;
- (D) Registered Geographical Indication: Coorg Arabica Coffee;

- (E) Registered Proprietor: Coffee Board;
- (F) Address: Coffee Board, Bengaluru – 560 001, Karnataka, India;
- (G) Class: 30;
- (H) Goods: Class 30 – Coffee.

#### Sample -2 - G.I. Authorised User of Tirur Betel Leaf (Tirur Vettilla)

G.I. Authorised User Application No. 7078 in respect of Tirur Betel Leaf (Tirur Vettilla) Registered GI Application No. 641 [ refer page 355 / Journal No. 145 dated July 08, 2021]

Application is made by, Shri. Gopalan Nair at Cheriyalathazhathethil, ..District: Malappuram – 676 301, Kerala, India dated February 01, 2021 for Registration in Part-B for Authorised User in respect of Registered GI Tirur Betel Leaf (Tirur Vettilla) under Application No 641 in respect of Betel Leaf (Vettilla) falling in Class 31 is hereby advertised as accepted under Section 13 (1) of GI of Goods (Registration and Protection) Act, 1999.

- (A) Applicant: Shri. Gopalan Nair
- (B) Address: Shri. Gopalan Nair, District: Malappuram, Kerala, India.
- (C) Date of Authorized User Application: February 01, 2021
- (D) Registered Geographical Indication: Tirur Betel Leaf (Tirur Vettilla)
- (E) Registered Proprietor: Tirur Vettilla Ulpadaka Sangam,
- (F) Address : Tirur Vettilla Ulpadaka Sangam, Tirur – District: Malappuram – 676 108, Kerala, India
- (G) Class: 31
- (H) Goods: Class 31 – Betel Leaf (Vettilla)

The authorized producer among others must enclose the statement of case and evidence of due service of copy of his application to the registered proprietor for the particular goods registered as a Geographical Indication.



## Mobilization of Authorized users

As per section 7 of the GI Act, The register referred to in section 6 shall be divided into two Parts called respectively Part A and Part B. The particulars relating to the registration of the GI shall be incorporated and form Part A of the register in the prescribed manner. The particulars relating to the registration of the authorised users shall be incorporated and form part of Part B of the register in the prescribed manner.

As per the Ministry of Commerce & Industry (GOI) press release dated 31.12.2018 the Government has undertaken several steps for the promotion of Indian products registered as GIs like (i) participation in trade fairs and other events to promote and create awareness on GIs and increase the sales of GI products, (ii) promotion of GIs through social media, (iii) involving State governments and Union Territory administration and other relevant organizations for facilitation of GI producers. Till 30.11.2018, the GI Registry, Chennai has received 4850 GI authorized user applications, out of which 3607 GI authorized users have been registered. The remaining 1243 pending applications have already been examined and report issued to the applicants to remedy deficiencies, which include providing supporting documents and complete applicant details. In order to spread awareness for registration of GI authorised users, awareness programmes are conducted for concerned stakeholders at various places in the country. But more such users' registration to be encouraged so as to exploit the registered GI to a better extent.

## Classification of GI goods

As per Section 8 of the Act, A geographical indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar and in respect of a definite territory of a country, or a region or locality in that territory, and in accordance with the International classification of goods for the purposes of registration of GIs.

As per the fourth schedule, the Classification of GI goods are to be carried out in 34 classes as prescribed. Some important classes are as follows:

**Class 1.** Chemical used in industry, science, photography, agriculture, horticulture and forestry; unprocessed

artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesive used in industry

**Class 15.** Musical instruments

**Class 24.** Textiles and textile goods, not included in other classes; bed and table covers.

**Class 25.** Clothing, footwear, headgear

**Class 30.** Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces, (condiments); spices; ice

**Class 31.** Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt

## Processing at the office

As already stated only an association of persons, producers, organization or authority established by or under the law can apply for registration of GIs. The applicant must represent the interest of the producers. Producers are persons dealing with the categories of goods:

- Agricultural Goods includes the production, processing, trading or dealing;
- Natural Goods includes exploiting, trading or dealing; and
- Handicrafts or Industrial goods include making, manufacturing, trading or dealing.

Once the Application for Registration of GI is filed at the GI Registry, the Registrar will have the Application examined and may consult an expert group to verify the technical details. Thereafter the Examination report is issued, approximately after 3 months, to which the Applicant replies. On satisfaction, the Registrar accepts the Application which will then be published in the GI journal. If the Applicant does not reply within 2 months, the Application is deemed to have been rejected. The Applicant may appeal within 1 month against decision of the registrar on the reply.

Any person can oppose the registration of GI by giving a notice in writing of opposition to the Registrar within a period of three months from the date of advertisement of the application in the Journal. The Applicant has to send a counter statement to the Registrar within two months from the date of receipt, stating the grounds that he relies on for making the application. Within a period of two months (extendible to three months) from the date of receipt of the counterstatement, the opponent shall submit the evidence in support of his application. Ordinarily, within three months from the date of completion of the evidence, the registrar shall give both the parties one-month notice of hearing. After hearing the parties and considering the evidence the registrar shall consider whether or subject to what limitations the registration shall be granted.

The Registration of a GI confers the following rights on the registered proprietor and the authorised users: (i) the Right to obtain relief in respect of infringement of GI; (ii) the exclusive right to use of the GI in relation to the goods in respect of which GI is registered. The registration of GI is valid for a period of ten years, and may be renewed thereafter from time to time.

### Prohibition of registration of certain GIs

As per Section 9 of the GI Act, a GI (a) the use of which would be likely to deceive or cause confusion; or (b) the use of which would be contrary to any law for the time being in force; or (c) which comprises or contains scandalous or obscene matter; or (d) which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; or (e) which would otherwise be disentitled to protection in a court; or (f) which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country; or (g) which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be, shall not be registered as a geographical indication.

The analysis of the financial year-wise GIs granted based on the data of about the 370 GI registrations as available

in the official website reveals the stages at which GI has treaded.

Financial year	No. of GIs registered	Financial year	No. of GIs registered
2004-05	3	2013-14	22
2005-06	24	2014-15	20
2006-07	3	2015-16	26
2007-08	31	2016-17	33
2008-09	45	2017-18	26
2009-10	14	2018-19	23
2010-11	29	2019-2020	22
2011-12	23	2020-2021 (till date)	5
2012-13	21	<b>Total</b>	<b>370</b>

From the above data, for the period from the year 2013-14 onwards, it is evident that except for the financial year 2016-17, the number of GI registered is at average of 25 only which is not at all encouraging. As already stated, glancing into Bio-diversity and culture India possesses, there is definitely a huge scope for identifying huge number of products, for enabling protection under GI and this has to be undertaken on war foot, before they are diluted. The efforts to popularise the registered GI have picked up only in the last four years. It is a long way to go before one could convert the TK into protectable and valuable GIs. There is immediate need of greater concentrated joint effort to be undertaken by all the stake holders in this direction. In the coming part, the opportunity and the way forward for exploration and commercializing GI as an IP together with the efforts in progress by the union Government and various state Governments including Karnataka state to strengthen the GI, will be deliberated.

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# CHOOSE RIGHT FOOD TO AVOID CHOICELESS ILL - HEALTH



▪ Dr. Suvarnini Konale

‘Health is wealth’ is an old saying that holds its value high even today. But most often people fail to realise the importance of maintaining good health and end up losing the most valuable and God given wealth. We should understand the fact that health is not mere absence of disease but is a state of complete wellness. When we say complete, it includes physical, emotional, intellectual, social and spiritual aspects of an individual. A man is healthy only if he is free of all kind of problems in all of these dimensions. To achieve that state of health one has to work equally on all these aspects. Most of the health problems that current generation is facing are due to the inappropriate lifestyle. Which has its roots in wrong understanding of the system, wrong approach towards correcting the lifestyle. Unfortunately, we don’t see a holistic approach in correcting these lifestyle errors.

We can list out more than hundred problems with single root cause – wrong lifestyle. Constipation, hyperacidity, indigestion, diabetes, arthritis, obesity, PCOD, other menstrual problems, male infertility, insomnia, stress, cardiac diseases, hypertension, lower back and neck pain, headaches, fibromyalgia, asthma, cancer and so on. Aren’t these examples serious enough to make healthy lifestyle a priority?

## What is lifestyle?

Lifestyle is a collective word for how a man lives his life. Apparently, anything and everything a man does in 24 hours is his lifestyle. Major part on which we should concentrate is food habit. As it is the main cause for most of the diseases. Not to forget that rest and activities too are important.

## Food

‘You are what you eat’. This is a statement which is true to the core. What one eats, constructs his physical body and also his mind. One should always have food that builds his health positively, not diminish it.

Choice of food should be made considering the health condition of the person, his digestive power, type of work he does, time of the day and season. Should never follow a food plan which is common for everyone and common for all the season.

## Balanced diet

A balanced diet, in modern terms means a platter consisting of a portion of carbohydrates, a portion of protein and fat each. And all the minerals, vitamins and other micro nutrients as per dietary recommendation that is common for all individuals of same age, sex and doing similar activities. But Ayurveda defines it in a different but holistic way. It defines food on the basis of Shadrasa, tridosha and triguna.

## Shadrasa

**Madhura:** It can be correlated to sweetness. It builds and stabilises the body. It is the source of energy. Helps in growth, production of blood, and building muscles. Enhances senses. Pacifies the mind. It enhances happiness, compassion and love in an individual. Gives stability to body and mind. Increases breastmilk in nursing mothers. Includes rice, wheat, other cereals, milk, honey etc.

**Amla:** is the sour taste. It helps in digestion, clears excess mucus, good for cardiac health. Helps in relieving pain. Lemon, fruits, fermented food, pickles etc are good examples.

**Lavana:** Lavana is salty taste. Maintains electrolyte balance, helps in digestion, excretion and other metabolic activities. May increase enthusiasm in people. Source is mainly all kinds of salts.

**Katu:** Is pungent or hot. It ignites digestion, clears channels, clears blockage, helps in increasing attention. Black pepper, ginger, garlic etc contain this rasa.

**Tikta:** is bitter. This has antimicrobial property, helps in controlling of the senses and intelligence. Bitter gourd, some herbs are good examples.

**Kashaya:** Astringent can be related to this taste. This taste has the property of purification, anti-inflammatory. Many unripe fruits or vegetable contain this property.

## Triguna

Food is also differentiated based on their guna or properties. Saattvika, Raajasika and Taamasika. Every food substance has any all of these in different proportions. It also depends on the method of preparation, combination in which food



is prepared. Food changes its property when it is kept for long time or reheated again and again. These characteristics of food have impact on physical and mental health of an individual.

**Saattvika** food includes, freshly prepared food, rice, wheat, greengram, milk, ghee, freshly prepared buttermilk, fresh fruits etc. consumption of Saattvika food leads to good physical body, calms down the mind, helps in growth.

**Raajasika** food include meat, pickles, deep fried items, alcohol, coffee & tea, spicy and sour food. These enhance the enthusiasm, excess consumption may lead to toxicity and diseases.

**Taamasika** food includes cold, reheated, excess oily, curds, old spoiled food. These definitely cause different conditions like obesity, diabetes, mental illness, etc in long run.

### Season and food

In India we have six seasons. And according to the season the digestive capacity of man varies. Also, the requirement changes along with these seasons.

### Hemanta –December and January

During this period hunger is more and person has more digestive fire. Hence food that are heavy for digestion is considered good during this season. New rice, wheat, millets, deep fried items, milk and milk products, meat, all types of seed and pulses can be consumed.

Body needs more fat during this time, hence consumption of sesame (ellu or til) good.

### Shishira – February and March

This season is more like Hemanta and most of the practices remain same even during this season. But towards the end of the season some slight changes may be done. More of ghee, leafy vegetables, greengram should be consumed.

### Vasanta – April and May

This season demands Tikta i.e. bitter taste which helps in increasing digestion and reducing kapha that blocks the channels. More of watery substances like panaka, kosambari, fruits, buttermilk etc are good in this season as they give more water to the body and are easy to digest. Consumption of jaggery is good as they provide instant energy.

### Greeshma – June and July

Digestive power is low during this time. Hence one must eat simple food to avoid indigestion and other complications. One must consume liquid food, fruits, green leaves, soups etc during this period. Rice and wheat can be consumed but millets are not advised if it is not the staple.

### Varsha – August and September

Body is weak compared to other seasons; hence one must eat food that boosts immunity and health. Should consume food that has more Madhura, lavana and amla rasa. Hot soups, rice or wheat, greengram, horsegram, pulses etc can be consumed. One must drink water that is boiled.

### Sharad – October and November

During this season body slowly gains more digestive power. Madhura, tikta and Kashaya rasa are good during this period. Gooseberries are in season and one must include them in food. Should avoid excess of salt, sour and hot.

Based on the above details one must have a balanced diet that suits his digestive power, his body constitution, and food that will produce positive outcome at the end of digestion process. Mainly, food that doesn't produce or remain in the body as toxin causing diseases. One should always take guidance of an expert to know what suits his body and what not. But a general advice on right food can be given as follows.

- Freshly prepared food.
- Vegetables and fruits that are grown locally.
- Should consume seasonal food. And also according to the season.
- Should eat only when hungry. Eating food when not hungry may lead to toxicity and cause problems like obesity, PCOD, diabetes, arthritis etc.
- Eat in a clean place.
- Eat with calm mind. Not to use any gadgets during meals.
- Eat the right portion size. Neither more nor less.
- Consume water only when you are thirsty. Do not force yourself to drink litres of water because somebody said it!
- Do not consume excess coffee or tea which may lead to physical and mental health issues.
- Must include milk, ghee, oil etc in meals to avoid problems caused by deficiency.
- Avoid old, spoiled and reheated food.

Eat healthy to stay healthy.

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## KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)

### KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION

### ELECTION 2021-2022

#### FINAL LIST OF CANDIDATES CONTESTING FOR ELECTION TO THE EXECUTIVE COMMITTEE OF THE ASSOCIATION FOR THE YEAR 2021-2022

S.NO	CANDIDATE NAME	M.NO	PLACE
1	CHANDAN KUMAR HEGDE A.	LC-067	BENGALURU
2	DEEPABALI DAS	LD-065	TUMKUR
3	MOHAMMED YUSUF	LM-204	BENGALURU
4	PANKAJ S. KASAT	LP-151	BAGALKOT
5	PRAMOD SRIHARI	LP-152	BENGALURU
6	PRABHAVA P. HEGDE	LP-205	BENGALURU
7	PRAVEEN S. SHETTAR	LP-157	MASUR
8	SATHISH M	LS-630	BENGALURU
9	SHIVAPRAKASH VIRAKTAMATH	LS-521	BENGALURU
10	SUNIL BHANDARY	LS-556	BENGALURU
11	SUBRAMANYA B.L.	LS-579	BENGALURU
12	SUJATHA G.	LS-449	BENGALURU
13	VIJAYKUMAR M. PATEL	LV-234	BENGALURU



CA. RAVEENDRA S.KORE  
Chief Election Officer

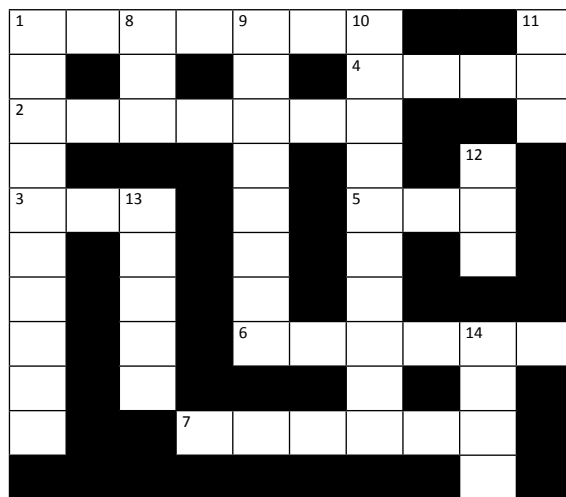
DATE : 12.08.2021  
PLACE : BENGALURU  
TIME : 6.00 PM

# CROSSWORD

12

## ACROSS

1. A graphical representation of data in two-dimension, using colors to demonstrate different factors. It is a helpful visual aid for a viewer, enabling the quick dissemination of statistical or data-driven information (7)
2. A person or firm whose name is titled on securities or other property to facilitate certain transactions or transfers while leaving the original customer as the actual or legal owner. In this way (serving as a custodian) (7)
3. A business document that announces a project, describes it, and solicits bids from qualified contractors to complete it (3) (abbreviation)
4. A measure of financial performance calculated as net profit divided by the sum of fixed assets and net working capital (abbreviation)(4)
5. A costing methodology, used to get a better grasp on costs, allowing companies to form a more appropriate pricing strategy (abbreviation)(3)
6. Any income earned which is not subject to income tax is called ..... Income (6)
7. This represent a large grouping of companies with similar business activities, such as the extraction of natural resources and agriculture etc (6)



## DOWN

1. A voluntary payment that is given to a person for services for which fees are not legally or traditionally required (10)
8. A practice used by financial institutions to mitigate financial risks resulting from a mismatch of assets and liabilities (3) (abbreviation)
9. Refers to the process of turning a non-revenue-generating item into cash (8)
10. An accounting term for the settlement of a debt or installment loan in advance of its official due date (10)
11. Older accounting standards. They were replaced in 2001 by International Financial Reporting Standards (IFRS) (abbreviation)(3)
12. The management of the flow of goods and services and includes all processes that transform raw materials into final products (abbreviation)(3)
13. One of the largest digital payments platforms, allows you to transfer cash instantly to anyone (5)
14. A statistical tool used in project management, which was designed to analyze and represent the tasks involved in completing a given project (abbreviation)(4)

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

## Answers to "Cross Word 11" (July 2021)

### Across

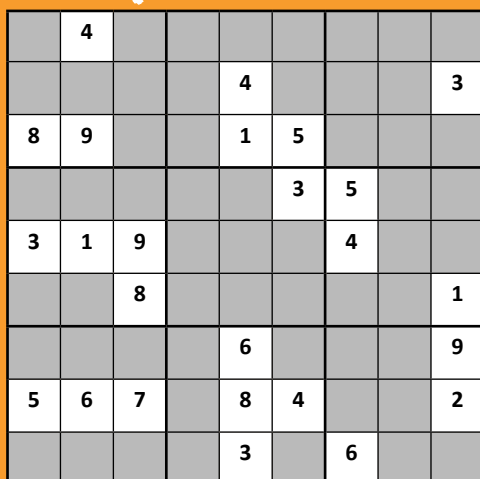
1. Monopoly, 2. Refinance, 3. GDR, 4. ECS, 5. ETF, 6. REIT, 7. CSR, 8. Predictive

### Down

1. Mortgage, 7. CII, 9. Free, 10. Pension, 11. Lender, 12. BU, 13. Decree

Credits: CA. Archana Sridhar

## sudoku-12



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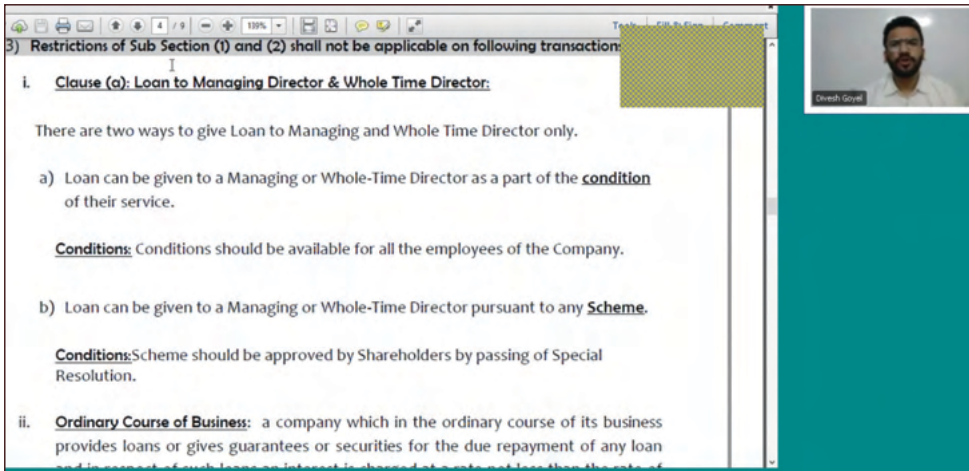
Full page ₹ 12,000/-\*

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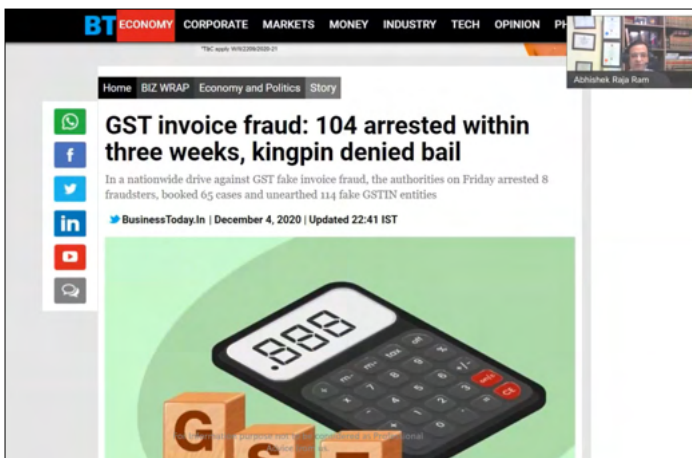
Quarter page ₹ 4,000/-\*

**For More Enquiries Contact**  
**080-29552155** or write to us at **info@kscaa.com**





KSCAA Short<sup>2</sup> webinar on  
Compilation of Important Issues  
which a CA should know at the  
time of Audit assignment by CS.  
Divesh Goyal held on 26<sup>th</sup> and 27<sup>th</sup>  
July, 2021.



KSCAA Short webinar on Fake invoice and bail  
provisions by CA. Abhishek Raja Ram  
(Revolutionary Raja) held on 20th July, 2021



KSCAA Short webinar on TDS Rates and Common  
Issues in Section 195 and Form 15CA / 15CB by CA.  
Cotha S Srinivas held on 17th July, 2021



Unique webinar on Confluence of tax laws with the  
General Clauses Act and the Indian Evidence Act by  
Adv S Sriram & Adv Amar Gahlot, Joint Partners,  
Lakshmikumaran & Sridharan, which was honoured  
by presence of V. Sridharan, Co-founder of LKS &  
Senior Advocate, Mumbai held on 24th July, 2021.



KSCAA and various branches of ICAI in  
Karnataka along with the support of  
Southern India Regional Council of ICAI  
(SIRC of ICAI) submitted a representation to  
Minister of State for Co Operation Sri S.T.  
Somasheshkar for extension of submission of  
the Statutory Audit reports on 12th August,  
2021.