KSCAA®

Karnataka State Chartered Accountants Association (R)

Since 1957

NEWS BULLETIN

▸ Direct Tax ▸ Indirect Tax ▸ RERA ▸ IPR
▸ Financial Reporting ▸ IT ▸ Economy

November 2022
Vol. 10, Issue 03
₹ 25/-

English Monthly
for Private Circulation only

Create & Complement

Karnataka State Chartered Accountants Association @karnatakacaassociation @kscaa_ca kscaa.com

From the President

Dear Readers,

I am delighted to write after a short break of the Deepawali holidays and completion of the annual audit work. Let me start by wishing everyone a 'Happy Kannada Rajyotsava'.

KSCAA conducted its first Intensive RRC on GST at Mysore on 4th, 5th and 6th of November 2022. The program was structured to delve deep into the law of GST and curate thinking which can be helpful in the professional journey of our members. The participants were segregated into different teams to a manageable size, the participative approach allowed them to work on the presentation and points for more than a month. The Teams were mentored to filter their thought process and percolate the understanding and thought process. RRC saw some of the best minds working throughout the night to get the best from the team. The overall experience was overwhelming to the association and as well as to the teams which were involved in making this programme a grand success.

The association is also coming up with 'Intensive Training program on Appeals before ITAT'. The course would have mentorship, working on case studies, live cases and grand final event with real moot court for the participants to showcase their preparation. The mentors would be providing their time and effort to train our participants and it would be a lifetime experience for many to encounter such accomplished professionals assisting in journey of learning. The course is specially designed for those who intend to upskill themselves and specialize into ITAT. The programs like the RRC and this coincide to our yearly theme of create, where the mentors are ready to share their experience in a nutshell to participants and the relative outcome would be that of complement.

The Sports and Talent meet as an Event has just got more interesting and larger. The association has seen intense competition amongst professionals in badminton, Cricket, and other sports, now the celebration is spread over three days with badminton being carved out into a separate event. The Gala event of sports on 11th December would have a family day event with celebration for the family.

The association had submitted a representation on registration of Trust under the new Regime, where few trusts could not submit the forms due to the prevailing technical glitch, to provide further time as a one-time window. This was also done to ease the numerous requests which were prevailing with CIT(E) office as condonation application, and to provide relief of Section 115TD which would come to effect due to the operation of law. We are glad to inform you that our representation was responded to favorably by the department through a circular. Aside to this, the SC ruling in the case of Noble Education society has far-reaching impact on education institutions where the word "Solely" is clarified that the same be interpreted narrowly to mean only the "Primary" purpose, not allied purposes or activities.

As a part of complementing our Practicing members, the association is discussing with some of the Insurance/Health subscription companies to provide with reasonable and attractive Health insurance packages to themselves, partners, articles, employees, and their families. The whole idea currently is to provide a tech-based login and make a monthly subscription to our members with options for members for subscribing themselves. We will be coming back soon with an update on these processes.

I am also sad to inform that KSCAA has lost one of its Hardened supporter and silent well-wisher, CA. M C Ramakrishnan. On behalf of all KSCAA members, I pray to God for sadhgati to his soul. I convey our heartfelt condolences to his bereaved family members.

There is a very Famous Quote "Tell me and I forget, teach me and I may remember, involve me and I learn", which is believed to have been said by Benjamin Franklin. It is first to have been said by Xunzi, a collection of Confucian philosophical writings "Not having heard something is not as good as having heard it; having heard it is not as good as having seen it; having seen it is not as good as knowing it; knowing it is not as good as putting it into practice". Edgar Dale further explained this through his theory called "Cone of Learning". This philosophy is very close to our profession in which we work in and, members wouldn't relate the learning of books without practical training and maturity of learning better each time it is applied and learnt, rather practice gets us into deep thinking. By learning how to think differently and deeply, we will find that it is not only creative thinking but our critical thinking skills that vastly improve. This leads to higher levels of thinking and powerful problem-solving skills that simply did not have before. The programs like that of RRC and the moot court allows participants to explore themselves with live case laws and practices, which otherwise is not available to them.

News Roundup

Direct Tax

- CBDT condones the delay in filing of Form 10A up to 25th November, 2022 as per notification no. 22/2022 dated 1st November, 2022.
- CBDT notifies for the public opinion on the proposed draft ITR which is a common ITR merging all the existing ITRs except ITR-7 as per F No 370133/16/2022-TPL dated 1st November, 2022.
- CBDT as per circular no.21/2022 dated 27/10/2022 extends the due date of filing of Form 26Q for the second quarter of financial year 2022-23 from 31st of October, 2022 to 30th of November, 2022.

Indirect Taxes

Due dates are not yet over! I know you may have completed the Income Tax and Company Audit filings but GST Annual Return due dates are just around the corner, let us start preparing for the same. Let me also remind my fellow professionals that any amendments/changes in GSTR-1/3B for FY 21-22 can now be made in any returns filed up to 30th November 2022 so let us ensure that we close all our reconciliations prior to this date and incorporate such changes in the October 2022 GSTR-1/3B returns. I also want to take this opportunity to let you know that KSCAA conducted one of a kind Intense GST Residential Course at Mysore from 4th November to 6th November 2022. 40 Participants were divided into 4 teams and live case studies and some important GST topics were given to them, the teams were expected to present the topic before a panel of GST experts, experts comprised of CA Jatin Christopher, CA Rajesh Kumar T R, and Adv CA Sai Prasad. The program was well received and involved a good amount of brainstorming and exchange of knowledge.

Let me once again wish you all 'Happy Kannada Rajyotsava'.

ಎಲ್ಲರಿಗೂ ಕನ್ನಡ ರಾಜ್ಯೋತ್ಸವದ ಹಾರ್ದಿಕ ಶುಭಾಶಯಗಳು.

Happy Reading!

Yours' faithfully,

CA. Pramod Srihari

President

Since 1957

KSCAA®
NEWS BULLETIN

November 2022
Vol. 10 Issue 03
No. of Pages : 32

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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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Disclaimer

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Prevention of Treaty Abuse and its Impact on Tax Withholding

CA. Abhishek

Introduction

In the wake of the world's governments facing loss of substantial corporate tax revenue because of aggressive international tax planning, 15 action points were put forth under the OECD's[1] base erosion and profit shifting ('BEPS') project. These 15 action points have been translated and absorbed by the Indian legislation through various measures like introduction of equalization levy, introduction of significant economic presence etc. Out of these action points, action point No 15 promulgated the idea of developing a Multilateral Instrument ('MLI') to modify the bilateral tax treaties.

BEPS Action Point 15

In order to prevent the effects of BEPS, unilateral measures by countries were not sufficient but the measures were needed to be multi-lateral in nature. To give an example, Indian government has introduced Significant Economic Presence ('SEP') concept, whereby a non-resident is deemed to constitute a business connection in India if a) the non-resident carries out transactions in any goods or services or property with any person in India and if the aggregate payments exceed Rs. 2 Crore in a year; or b) The non-resident engages in systematic and continuous soliciting of business or in interaction with a minimum of 3,00,000 users in India. However, the SEP provisions do not have any impact on the non-residents operating from countries having tax treaties with India, as SEP concept for deeming permanent establishment in the source country has not been enabled in the tax treaties between India and other countries. Therefore, any tax measures undertaken domestically doesn't impact cross border transactions unless the tax treaties are also amended.

There are about 2,600 double tax treaties in the world, some 500 among developed economies, approximately 800 among developing economies and about 1,300 between developed and developing economies. It will be a never-ending exercise if countries want to re-negotiate each tax treaty with the other county partner, to bring in intended changes within the existing bi-lateral treaty framework. Such measure will be inefficient and lack uniformity, besides being a slow and everlasting process. MLI acts as a master template (sort of a layer above the existing tax treaties) to bring in changes alongside existing bilateral treaties, at one go. MLI will also result in more certainty and predictability for businesses, and a better functioning international tax system for the benefit of society at large. Therefore, action point 15 is one of the most important BEPS action plans for implementing treaty measures to avoid tax treaty abuse.

On 25th June, 2019, India deposited the Instrument of Ratification to OECD along with its Final Position in terms of Covered Tax Agreements ('CTA's), Reservations, Options and Notifications under the MLI will enter into force for India on 1st October, 2019 and its provisions will have effect on India's DTAAs from FY 2020-21 onwards. MLI contains total of 39 articles. Out of these 39 articles, we will try to understand the impact of Article 7 of MLI i.e., Prevention of Treaty Abuse, on withholding taxes at source.

Article 7 of MLI i.e., Prevention of Treaty Abuse

Article 7 of the MLI is one of the important provisions adopted in MLI to tackle issues with tax treaty shopping and is one of the minimum standards recommended by BEPS Project. "Treaty shopping" is an arrangement or situation wherein the resident of one State (say S1) shops tax residency of second State (say S2) which was not otherwise available and enters into a transaction with the third State (say S3) via S2. There could be certain advantages for taking tax residency in S2 but when it comes to tax authorities, they are worried when significant purpose of shopping or taking tax residency in S2 is to exploit tax treaty advantage between S2 and S3, which is not available between S1 and S3. Broadly, article 7 of MLI provides the following measures to Prevent Treaty Abuse:

a. Principal Purpose Test ("PPT") - [Article 7(1)]

b. Competent Authority Test - [Article 7(4)]

c. Simplified Limitation on Benefits Clause ("SLOB") - [Article 7(6)]

India has chosen to apply PPT and SLOB test for all its tax treaties. However, most of the treaty partners have not agreed to apply the SLOB with PPT. Thus, only PPT would apply to the majority of the tax treaties with India. Accordingly, we will restrict our discussion to PPT Test provided in Article 7(1) and its impact on withholding tax requirements.

[1] *Organisation for Economic Co-operation and Development*

Article 7(1) of MLI i.e., Principal Purpose Test

Article 7(1) of MLI is re-produced below:

Notwithstanding any provisions of a Covered Tax Agreement, a benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement.

In order to understand the application of the PPT rule, we need to analyze two elements in the following manner:

(i) **Subjective test** – "obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit."

(ii) **Objective test** – "unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions".

Subjective test takes priority over the Objective test. Subjective test involves collecting facts and drawing conclusion whether the principal purposes of arrangement/ transaction was obtaining any treaty benefit. Subjective test would be applicable even if obtaining tax benefit is one of the principal purposes and may not be the sole purpose. However, if grant of certain benefit was specifically intended by the treaty, then the Subjective test would get overridden by the Objective test.

This can be understood through the following practical implication: India and UAE have a tax treaty wherein a resident of UAE is defined as an individual present in the UAE for a period or periods totaling in the aggregate for at least 183 days in the calendar year concerned, and a company which is incorporated in the UAE and which is managed and controlled wholly in UAE. Unlike other treaties, it is not required that the person should be taxable in UAE, being resident of the country. Thus, if an individual stays in Dubai for 183 days or more but is not taxed in Dubai, he shall also be considered as a resident in UAE. In such a case, non-taxation can arise since income would neither be taxed in Dubai nor in India under the provision of treaty. Nevertheless, that individual shall be allowed the treaty benefit even if granting treaty benefit creates non-taxation/low taxation of income in India since granting such benefit is the purpose and object of treaty at the time it was negotiated.

Let us understand the PPT Test in detail by understanding each of its requirements:

a. "Notwithstanding any provisions of a CTA…"

The PPT test begins with the words "Notwithstanding any provisions of a covered tax agreement (i.e., a tax treaty)". This means that Specific Anti Avoidance Regime ('SAAR') should not exclude the application of General Anti Avoidance Regime ('GAAR') i.e., the PPT applies irrespective of all other tax treaty provisions. For Example: India has introduced General Anti-Avoidance Rule (GAAR) under its domestic law under Chapter XA of the Income Tax Act of 1961 w.e.f., 1 April 2017. The provisions of PPT would override the provisions of GAAR.

b. "... a benefit under the CTA ..."

The concept of benefit is important for the establishment of abuse (i.e., the result of the taxpayer's action) and for determination of the consequence of PPT application (i.e., the result of application of a provision). Moreover, there should be a direct or indirect link between the arrangement or transaction undertaken and benefit obtained. It is important to note that the benefit need not actually be received, but the taxpayer has to have become entitled to it.

The term "benefit" refers to the securing of a more favorable tax treatment by a taxpayer as a result of the application of one or several tax treaty provisions. The examination of a benefit (more favorable tax position) is essential for understanding the subjective intention of a taxpayer. If there is no improvement in the economic tax conditions of a taxpayer through tax treaty, the principal purpose of obtaining a tax benefit is excluded and the PPT should not apply. The word "benefit" could cover the following instances:

- Reduced rate of taxation in treaty compared to taxes imposed by the source state.
- Tax exemption provided in the tax treaty compared to taxes imposed by the source state.
- Double taxation relief provided in the tax treaty.
- Limit on the right of source state to tax interest, dividend or royalties arising in Source State and paid to resident of the other State.

Further, as per section 102(10) of the Income Tax Act, 1961 tax Benefit is defined to include a reduction or avoidance or deferral of tax / amount payable under the Act; or an increase in refund of tax / other amount under the Act; or a reduction or avoidance / deferral of tax / other amount that would be payable under the Act, as a result of tax treaty; or an increase in refund of tax / other amount that would be payable under the Act as a result of tax treaty or a reduction in total income or an increase in loss, in the relevant/ any other previous year.

c. *" ... if it is reasonable to conclude ... "*

Now, the burden of proof of compatibility of a subjective intention with the object and purpose of the respective provisions of the treaty is left with taxpayers. The burden of proof is now shifted on to the taxpayer and the threshold has been lowered under the PPT. As the threshold is lowered, there is a risk that the benefits that the treaty was intended to secure may be potentially challenged by excessive administrative discretion.

d. *" ... having regard to all relevant facts and circumstances ... "*

The existence (or the absence) of economic substance and of a business purpose other than obtaining treaty benefits may be seen as highly relevant facts and circumstances that can be used to determine whether the PPT should be applied.

e. " ... obtaining the benefit was one of the principal purposes ... "

Obtaining the benefit under a tax convention need not be the sole or dominant purpose of a particular arrangement or transaction. It is sufficient that at least one of the principal purposes was to obtain the benefit. The wording of the PPT delivers a clear message that, if there are two equally important reasons to establish an arrangement, one being a tax-related reason that manifests itself into a treaty benefit and the other being a commercial non-tax-related reason (such as expanding one's business into new markets where there is a high demand for the business's services), the treaty benefits under the PPT will be lost because, in this scenario, one of the two principal purposes is to obtain treaty benefits.

f. *" ... of any arrangement or transaction ... "*

The Action 6/2017 OECD Model provides the following with respect to the word arrangement/ transaction:

"The terms "arrangement or transaction" should be interpreted broadly and include any agreement, understanding, scheme, transaction or series of transactions, whether or not they are legally enforceable. In particular they include the creation, assignment, acquisition or transfer of the income itself, or of the property or right in respect of which the income accrues. These terms also encompass arrangements concerning the establishment, acquisition or maintenance of a person who derives the income, including the qualification of that person as a resident of one of the Contracting States, and include steps that persons may take themselves in order to establish residence...."

g. "... that resulted directly or indirectly – in that benefit ..."

The phrase "that resulted directly or indirectly in that benefit" is broad and is intended to include situations where a person should not claim treaty tax benefit as one of the principal purposes even indirectly. Let's take an example:

TCo, a company resident of State T, has acquired all the shares and debts of SCo, a company resident of State S, that were previously held by SCo's parent company. These include a loan made to SCo at 4 per cent interest payable on demand. State T does not have a tax convention with State S and, therefore, any interest paid by SCo to TCo is subject to a withholding tax on interest at a rate of 25 per cent in accordance with the domestic law of State S. Under the State R-State S tax convention, however, there is no withholding tax on interest paid by a company resident of a Contracting State and beneficially owned by a company resident of the other State. TCo decides to transfer the loan to RCo, a subsidiary resident of State R, in exchange for three promissory notes payable on demand on which interest is payable at 3.9 per cent. In this example, whilst RCo is claiming the benefits of the State R-State S treaty with respect to a loan that was entered into for valid commercial reasons, if the facts of the case show that one of the principal purposes of TCo in transferring its loan to RCo was for RCo to obtain the benefit of the State R-State S treaty, then the provision would apply to deny that benefit as it would result indirectly from the transfer of the loan.

h. "... be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement... "

When it is reasonably concluded that one of the principal purposes of a taxpayer's arrangement or transaction is to obtain treaty benefits, the taxpayer may still obtain treaty benefits if it is established that granting the benefit under such circumstances would be in accordance with the object and purpose of the relevant provisions of the tax treaty.

Discretionary relief from Principal Purpose Test

Where the treaty benefits after considering the subjective and objective tests are denied, the taxpayer can request a relief under mutual agreement procedure in the country of their residence.

Legal consequences

The PPT provides that "a benefit under the Covered Tax Agreement shall not be granted". The legal consequences of the PPT provision should ideally include two stages. At the first stage, the PPT rule provides that the benefit has to be denied. In the following stage, the rule would answer the question of what treatment is applicable instead of the denied benefit. However, the PPT is silent on this. Therefore considering non application of the treaty provisions, the domestic tax provisions would apply in place of the treaty provisions.

TDS Implication

The Tax Deducted at Source (TDS) for non-resident nationals of India is governed by section 195 of the Income Tax Act, 1961. This section focuses on the tax deductions

and rates that are involved in a non-resident citizen of India's day-to-day business dealings. As per the section any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being interest referred to in section 194LB or section 194LC or section 194LD) or any sum chargeable under this Act (other than salary) shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier deduct income tax thereon at the rates in force.

Further, "Rate or rates in force" or "rates in force", in relation to an assessment year or financial year, for the purposes of deduction of tax under section 195, mean:

- The rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year or
- The rate or rates of income-tax specified in an agreement entered into by the Central Government under section 90,

whichever is beneficial.

Therefore, there is a responsibility casting upon any person responsible for paying to a non-resident to ensure the proper taxes are withheld before remitting the funds to the non-resident. In case these responsibilities are not fulfilled, the following consequences may arise for the person responsible for paying to a non-resident:

- To be treated as 'an assessee-in-default' in terms of section 201 of the Income Tax Act, 1961
- Leading to prosecution being initiated under section 276B of the Income Tax Act, 1961
- Disallowance of expenses under section 40(a)(i) of the Income Tax Act, 1961

Hence the person paying to non-resident in light of the introduction of PPT test in the tax treaties should be cautious when granting tax treaty benefits. Further, similar responsibility is also cast upon the Chartered Accountants ('CA') while issuing Form 15CB's. Following measures can be taken by the person paying non-resident/CA to safeguard his interest:

- In addition to Tax Residency Certificate, payer can enquiry on payee structure, employee's assets, financials can be looked into. This additional documents/information can help the payer conclude whether the transaction lacks economic substance other than obtaining treaty benefits.
- Payer can obtain undertaking from the non-resident to the effect that they satisfy the conditions necessary for obtaining the tax benefit under treaty and if the undertaking/declaration provided is proven wrong, then the payee would indemnify the payer for the loss caused.
- Application under 195(2)/195(3)/197 of the Income Tax Act, 1961 can be made to the Assessing Officer seeking for certificate for deduction of tax at source.

Therefore, in conclusion the payer needs to adopt additional checks while paying non-resident in light of the introduction of PPT test through MLI.

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KSCAA Welcomes New Members October 2022

Sl.No	NAME	PLACE
1	Rakesh B Jain	BANGALORE
2	Virag Dilip Shah	MUMBAI
3	Jayasree Vinnakota	BANGALORE
4	Mohammed Tabish Hassan	PUTTUR
5	Pralhad Jagdish Mandhana	PUNE
6	Ashika Agrwal	BANGALORE
7	Nilesh Saboo	PUNE
8	Deepak Jain	BANGALORE
9	Yougendar Reddy C	ANANTAPUR
10	Aneesh B.U	BANGALORE
11	Sindu A M	BANGALORE
12	Ramnath D Hulekal	BANGALORE

Obituary

KSCAA deeply mourns the sad demise of our beloved

CA. M. C. Ramakrishna
Past President, KSCAA (1988-89)
Expired on 17.10.2022

We convey our condolences and prayerful support to his bereaved family

Changes And Compliances In GSTR 9 & 9C-FY 2021-22

CA. Madhukar N Hiregange
CA. Akshay M Hiregange

The department has started issuing notices and requesting for information by comparing data disclosed in GSTR 9/9C Vs GSTR 3B. Together with this, considering the various changes in the GST law in the recent past, this article aims to provide clarity on the filing of annual returns (Form GSTR 9) and reconciliation statement (Form GSTR 9C) along with required reconciliations, best practices, advanced issues & solutions and tips as applicable for financial year (FY) 2021-22.

Due date – 31st December 2022. *The due date although extended in the past years, is not expected to be extended for FY 2021-22.*

Changes in disclosure requirements:

Form GSTR 9 – Annual Returns

1. Table 4 - Amendments, credit notes and debit notes cannot be shown as net figures in B2B, B2C, etc. now. Table 4I to 4L to be disclosed separately FY 21-22 onwards
2. Table 5 - Exempted & Nil-rated can be consolidated in 'Exempted' column. Table 5F - Non-GST to be shown separately from FY 21-22 onwards.
3. Table 17 - HSN outward details mandated from FY 2021-22 onwards. (GSTR 1 consolidated data can be used for table 17)
4. HSN disclosures to be performed at 6-digit level (when T/o > Rs. 5 crore) and 4-digit level (when T/o < Rs. 5 crore for B2B only)
5. Clarification that disclosures in GSTR 1 tables 9A, 9B & 9C must be disclosed in table 10 & 11 of GSTR 9.

The relaxations that remain from the past are as follows:

1. Table 5 - Amendments, credit notes and debit notes can be shown as net figures in table 5.
2. Table 6 - ITC bifurcation into 'inputs'/'input services' not mandatory, total value can be consolidated under 'Inputs'. From FY 2019-20 - under 'Inputs' & 'Capital Goods'.
3. Table 6 - May consolidate ITC under RCM from registered and un-registered persons under registered persons' table.
4. Table 7 - All ITC reversals may be consolidated under Table 7H, although TRAN reversals to be shown separately.
6. Part V - Reversal/Availment of ITC in previous year may not be filled (T12 & T13)
7. Table 15, 16 & 18 - Refund details, Info on inward supplies & deemed supply, HSN inward details remain optional.

Important information:

- Taxpayers need not file annual return in FORM GSTR-9/9A for FY 2021-22 if their aggregate annual turnover is up to Rs. 2 crores. (If 9 not filed, 9C not required)
- Liability as per table 4 must be considered as final liability (as per books) irrespective of the liability disclosed in GSTR 3B + Form DRC-03 during the FY.
- Many places it has been mentioned 'April – September', although this must now be read as 'April-November' considering the recent extension of timelines vide Notification Number 18/2022-CT.
- Payments to be made through Form DRC-03. Utilization of ITC as per the CGST Rules is restricted, although, it can be disputed based on interpretation arising from section 49(4) r/w Rule 86(2). Additionally, the GST portal also allows such ITC utilization.

Form GSTR 9C – Reconciliation Statements *– No changes in the relaxations provided from past, i.e.,:*

1. Table 5B – 5N – Can consider all turnover related adjustments in Table 5O
2. Table 12B & 12C – Optional to fill such ITC details
3. Table 14 – Optional to fill expense wise ITC claim details

Note-1: Pre-requirement to 9&9C – all GSTR 1 & GSTR 3B for FY 2021-22 must be filed

Note-2: From FY 2020-21 GSTR 9C need not be signed by a

CA/CMA and is considered as a taxpayer filed form itself. Therefore, Part B (Auditor Certification) and Management Representation Letter is not required.

Note-3: Form GSTR 9 & Form GSTR 9C – once filed cannot be revised.

Reconciliations required:

1. Turnover - Audited Financial Statements (AFS/Books) vs Table 5A (consider all GSTINs)
2. Table 5N Vs Table 17 – As table 17 is now mandated, this reconciliation could be an internal check mechanism.
3. Outward taxes – Liability as per Books Vs Liability as per GSTR 3B + DRC-03 (if any) [ensure RCM liability is included]
4. Outward taxes – Rate wise liability as per workings Vs Rate-wise Liability as per books
5. GSTR 1 Vs GSTR 3B *(This will help update GSTR 9 easily)*
6. Inward taxes – Credit as per books Vs Credit as per GSTR 3B
7. Closing balance [Cash + Credit] – Books Vs GST portal (consider all GSTINs)
8. Verify and provide for Spill over transactions of previous FY and maintain tracker for next FY
9. Identify rectification and modifications done beyond 30th November timeline. (Revised from 20th September)

Note: Perform invoice level reconciliations - A very beneficial exercise to taxpayers, which will help not only in the process of filing the annual returns but also to identify the errors and provide information to the department in the future.

Best Practices & Tips:

1. Maintain 9 & 9C workings with links to all the relevant data. Avoid keyed-in workings.
2. Maintain separate details of ITC claimed, reversed, and re-claimed if the taxpayer fulfils the conditions mentioned under sec16.
3. In case of amendments, outward register to be maintained with original values, so that it will be helpful while preparing table 4 & 5 of GSTR 9.
4. Invoice level GSTR 2B Vs ITC as per books reconciliation is to be performed for Table 8 disclosure in GSTR-9.
5. Credits as per books – unclaimed due to non-matching with GSTR 2A/2B. Pass as expense in books of accounts of FY 2022-23 and verify option of recovery from continuing vendors.
6. Providing a "Annual GST - Management Report" which may consist of the following:
   - ❖ Folder with final workings and filed Form GSTR 1, 3B, GSTR 9 & 9C for the FY.
   - ❖ Reconciliations for the FY – Outward, Inward & RCM – bird's eye view
   - ❖ Reasons for variances and action taken (summarily)
   - ❖ Where additional liability was noticed – summary details + payment documentation
   - ❖ Suggestions on internal accounting/processes/ reporting going forward

Note: Fill both forms together, verify accuracy, make pending payments, then proceed to file.

Advanced Issues & Solutions

1. **Liability of past year paid in current year** – would be disclosed in table 10 of past year GSTR 9. In the current year GSTR 9, it should not be disclosed again, and reason for variance in tax payable vs paid in table 9 in the current year must be maintained for posterity.
2. **Credit Note disclosures** – The wordings in table 4 of GSTR 9 is confusing as the heading is transactions for the year, whereas, CN raised against invoices above leads to an interpretation where CNs raised in the next financial year (within timelines) could be considered. In our view, CNs raised in next financial years must be disclosed in such period as it is not a transaction of the previous financial year.
3. **Table 6 Mutility** – Table 6B & 6H are considered for auto-populating data in table 8 for GSTR 2B reconciliation. This may include ITC of tax periods relating to previous period. Therefore, table 6B can consider data for the year only, and table 6M can consider previous year related ITC claimed in current year for easy disclosure and also Table 8 reconciliations. This value can be matched with previous year table 13 figures.
4. **Table 8C Vs Table 13 in GSTR 9** - The reasons for differences would be: Table 13 consists of ITC on imports & inward supplies liable to reverse charge which must not be disclosed in 8C. Also, goods/services in transit would need to be disclosed in table 8C but not in table 13. (those invoiced earlier, but goods/services received in next tax period)
5. **Table 8D analysis** – Issues may arise where GSTR 2A/2B is low than ITC claimed in GSTR 3B. Rule 36(4) not having an authorizing section in the GST Act is a disputable view. Although from January 2022 onwards, GSTR 2B matching has been made mandatory. Taxpayers are suggested to ensure ITC claimed is in accordance with valid tax invoice, eligibility conditions and reflection in GSTR 2B going forward.

6. **Table 8K analysis** – ITC to be lapsed does not specifically mean that such ITC will be reduced from electronic credit ledger directly. This is only an indication to the Department of the extent of ITC available on record to assessee but unclaimed.

7. **Negative ITC in table 4C of GSTR 3B** – The negative ITC (meaning tax liability) in table 4C of Form GSTR 3B will ensure in table 9-GSTR 9 such amount is considered in tax paid although such values would not reflect automatically and therefore, it may need to be added in table 7H and also in table 9 (tax payable) to ensure reconciliation. This would also impact similar disclosures in table 9 of GSTR 9C.

8. **Table 7E vs Table 9 of GSTR 9C** – Although this is not a mandated reconciliation, this check ensures that the taxable value as per books (considered rate wise) matches to the taxable value as reconciled in the previous tables. Ensure that table 9 of GSTR 9C is filled only as per books irrespective of disclosure in GSTR 3B or GSTR 9.

9. **Interest computation** – After 5 years we have now obtained clarity on applicability of interest which applies on delay in payment of tax liability all effective retrospectively from 1st July 2017, i.e.,:

   a. Output liability - @ 18% p.a. – For liability of the month is shown in the month – net liability, if not gross liability irrespective of ITC balance availability (disputable view)

   b. RCM liability – @18% p.a. – Always gross basis as payable in cash.

   c. ITC - @18% p.a. – Only when ITC 'wrongly availed and utilized' exceeds the balance remaining s in electronic credit ledger.

   d. Note, in GST there is no interest on interest. The interest clock freezes once relevant taxes are discharged.

Conclusion

The activity of filing Form GSTR 9 & 9C now has more importance as it is expected to show the final values (with corrections if any) for a financial year. The department is also using this as a document for scrutiny. Therefore, putting in place procedures to ensure accurate data capture and reporting is imperative.

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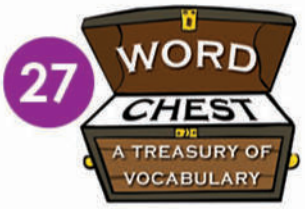

Finance Tech Term of the Month:

Decentralised Autonomous Organization (DAO)

What is this?

*A **decentralised autonomous organization (DAO)** is an new form of legal structure where decisions are made by tokenholders based on their voting power without the need for a central governing body.Voting rules are embedded into blockchain via smart contracts. This is most popular used in decentralized public treasury management and automation of open source softwares. This structure eliminates reliance on central governing body(ex: Directors/members), increases voting transparency and paves way for global collaboration among people with common vision. The limitations of DAO are reduced efficiency due to delayed decision making process and education of voting/entity activity among all tokenholders.*

Recent Clarifications Under GST Law

CA. Annapurna Kabra

The Government has notified certain decisions taken in GST Council meetings and several issues were addressed through notifications, circulars, instructions, press release in relatively short time to remove disparity under the GST law.

1. **Filing of GSTR-1 to file GSTR 3B effective from October 2022 Vide Notification 18/2022 dated 28.9.2022.**

   Section 37(4) of CGST Act specifies that the taxpayers shall not be allowed to file GSTR-1 if previous GSTR-1 is not filed. Section 39(10) state that taxpayer shall not be allowed to file GSTR-3B if GSTR-1 for the same tax period is not filed. These changes will be implemented prospectively and will be operational on GST portal from 1st November 2022. From October 2022 period onwards, filing of Previous period GSTR-1 will be mandatory before filing current period GSTR-1. From October 2022 tax period onwards filing of GSTR-1 will also be mandatory before filing GSTR 3B.

2. **Utilisation of amount available in electronic credit ledger/Electronic Cash ledger**

   It clarifies the issue on utilization of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities. It is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person. It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of any tax which is payable under reverse charge mechanism. Therefore, the amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act. Electronic credit ledger can be used for payment of any self-assessed liability arising because of any proceeding. Electronic credit ledger cannot be used for payment of any RCM liability, any erroneous refund sanctioned by cash and payment of any interest / penalty / late fee etc. Under the erstwhile law, the Circular No 962/05/2012 dated 28.3.2012 allows the payment of arrears from CENVAT Credit earned at later date. The CENVAT Credit should be allowed to be used is what was in balance on the last date of that month or quarter and not what has accrued thereafter. The restriction on the utilisation of the CENVAT Credit accruing after the last date of the month or quarter in which the arrears arise is not applicable for the demands confirmed under section 11A of Central Excise Act 1944. In case of Jyothi Construction Vs Deputy Commissioner of Central Tax & GST Jaipur 2021 (54) GSTL 279 (Ori), the output tax as defined under GST cannot be equated with pre deposit under section 107(6) of CGST Act 2017. The pre deposit while filing appeals cannot be made by debiting electronic credit ledger. The appeals were rightly rejected as defective by Orissa HC. In case of Roma Builders Pvt Ltd Vs State of Maharashtra (Writ Petition No 23507 of 2022) contends that section 107 (6)(b) state that unless the appellant has paid (not deposited) a sum equal to 10% of the remaining amount of tax in dispute. Basically, 10% of tax must be paid as a pre-condition. The tax can be IGST/CGST/SGST. Therefore, the amount of ITC available in electronic credit ledger can be utilised towards payment of IGST/SGST/CGST respectively. The CBIC has clarified that any amount towards output tax payable because of any proceedings instituted under the provisions of GST laws can be paid by utilisation of the amount available in the electronic credit ledger of a registered person.The Orissa High Court had held contrary for utilisation of credit ledger for payment of pre-deposit, but the Bombay High Court has pointed to the issue of circular by CBIC subsequently whereby it was clarified that credit ledger can be used for payment of tax arising out of proceedings. Therefore, the credit ledger can be utilised for payment of pre deposit even during the Appeal proceedings.

3. **Applicable Prospectively: Amendment in Inverted Duty Structure**

   The Notification 14/2022 – Central Tax dated 05.07.2022 as amended prescribes the revised formula for Inverted Duty structure for claiming refund of unutilized input tax credit on account of inverted rate structure under Rule 89(5) of CGST Rules 2017. The revised formula will lead into increase in refund and is notified is as follows

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC Adjusted Total Turnover} - [{tax payable on such inverted rated supply of goods and services x **(Net ITC ÷ ITC availed on inputs and input services)**}].

- The issue was whether the revised formula will be applicable for applications which are pertaining to pre amendment period or will be applicable from 5th July 2022 respectively. The issue was whether such amendment will result into substantive change in law or prospective change in law under the GST law. There are different school of thoughts on the application of formula as one school of thought state that such formula should be made retrospectively considering the relevant date and to bring uniformity in the quantum of refund, the formula should be applicable even for the applications which were filed prior to the amendment and opportunity of filing revised computation should be given. Some school of thought states that GSTN Portal is not designed to accept the application with original formula and revised formula at separate point of time. Therefore, vide circular no 181/13/2022 dated 10th Nov 2022, it has been clarified that said amended formula for calculation of refund of input tax credit on account of inverted duty structure would be applicable in respect of refund applications filed on or after 5.7.2022. The refund applications filed before 5.7.2022 will be dealt as per the formula as it existed before the amendment made vide Notification No 14/2022 central tax dated 5.7.2022.
- Vide Notification No 9/2022 dated 13.7.2022 certain goods falling under chapter 15 and 27 have been specified in respect of which no refund of unutilised input tax credit shall be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies of such specified goods (other than nil rated or fully exempted supplies). The restrictions imposed by the notifications would be applicable for all the refund applications filed after 18.7.2022 and not applicable to the applications which are filed prior to the amendment date.
- **Payments for Erstwhile law**

  Payments through DRC-03 under GST Regime is not a valid mode of payment for making payment pre deposits under Central Excise or Service Tax law. There exists a dedicated CBIC-GST Integrated portal https://cbic-gst-gov.in (Board Circular 1070/3/2019-CX dated 24th June 2019) which should only be utilized for making pre deposits under the Central Excise Act 1944 and Finance Act 1944 while making payments under the erstwhile law.

4. Extension of timelines:

Vide Notification 18/2022 CT dated 28.9.2022 certain compliances have been extended to 30th November 2022 in lieu of due date of September Return like claiming of input tax credit in respect of any invoice or debit note in the return (Section 16(4)), declaration of the details of credit notes in the return (Section 34(2)), Rectification of particulars in details of outward supplies (Section 37(3)), Rectification of particulars furnished in Return (Section 39(9) and Rectification of particulars in the statement furnished by a TCS Operator(Section 52(6)). The issue arose as whether the extended timelines are applicable for the financial year 2021-2022. It has been clarified vide press release 4th October 2022 that such extensions are applicable even for the financial year 2021-2022. The registered person can avail the missed credit or can issue credit note if any pertaining to financial year 2021-2022 while filing the October 2022 Return under GST law.

5. Transitional Credit- Additional clarifications

With reference to previous article on transitional credit, wherein it was concluded that the department should issue further clarifications considering various practical instances, scenarios and the glitches in the GSTN portal to avoid further litigations and proceedings. The Government has issued the circular vide no 182/14/2022- GST dated 10/11/2022 to clarify certain aspects relating to verification of transitional credit by tax officers, checklist for verification of entries in Tran-1, co-ordination and adjudication proceedings by central authorities and state authorities etc. The last date of filing of transitional credit application in the GSTN portal is by 30th November 2022 and the applicant should file the transitional credit application at the earliest to avail the missed opportunity for claiming transitional credits.

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KSCAA REPRESENTATION

For full text of below representation, please visit: www.kscaa.com

1. Representation on suggestions and request to simplify the confusion created in the new registration regime for charitable organizations.

Financial Reporting And Assurance

CA. Vinayak Pai V

KEY UPDATES

A. AS| Ind AS

1. ICAI PUBLICATION – STUDY ON COMPLIANCE OF FINANCIAL REPORTING REQUIREMENTS (Ind AS FRAMEWORK), VOLUME II

On 20th September 2022, the Institute of Chartered Accountants of India (ICAI) released the second volume of the publication **Study On Compliance Of Financial Reporting Requirements (Ind AS Framework).**

The publication covers **instances of non-compliances with respect to financial reporting** requirements like Ind AS, Standards on Auditing (SAs), Schedule III to the Companies Act and CARO observed by the Financial Reporting Review Board (FRRB) during the course of its review of general-purpose financial statements of various enterprises.

Link to the Publication -

https://resource.cdn.icai.org/71889frrb57849.pdf

2. EAC OPINION – FAIR VALUATION TECHNIQUE

The November 2022 edition of the ICAI Journal includes an Expert Advisory Committee (EAC) opinion on 'Adoption of Net Book Value method as one of the valuation technique to measure the fair value of investments in equity instruments that do not have a quoted market price in an active market'.

The querist sought the opinion of the EAC by presenting the facts of its case, as to **whether the adoption of 'Net Book Value' method** as one of the **valuation techniques** to **measure** the **fair value of investments in equity instruments** that **do not have a quoted market price** in an active market **is in order** or should be measured at cost.

Key takeaways from the EACs opinion are:

a) The **net book value**/carrying amount of net assets **could be used as the beginning point** or **as one of the inputs,** which may require further adjustments as per the valuation technique(s) considering the requirements of Ind AS 113- *Fair Value Measurement,* but the **same itself cannot be directly considered as substitute of fair value.**

b) According to **Ind AS 109**-*Financial Instruments,* **all investments in equity instruments are to be measured at fair value** irrespective of whether these are quoted or not quoted in an active market **except in limited circumstances,** where cost may be an appropriate estimate of fair value.

Link to the EACs opinion -

https://resource.cdn.icai.org/71967cajounal-nov2022-34.pdf

B. ASSURANCE

3. IFAC – ADDITIONAL SUPPORT FOR SMALL FIRMS ON IAASB's QUALITY MANAGEMENT STANDARDS

On 31st October 2022, the International Federation of Accountants (IFAC) released the first installment in a 3-part publication series **to help small-and medium-sized Audit Firms implement** the International Auditing and Assurance Standards Board's **(IAASB) new quality management standards.** The IAASB's suite of quality management standards were issued in December 2020 and come into effect on 15th December, 2022.

The first installment in the series namely, ***Installment One: It is Time to Get Ready for the New Quality Management Standards*** addresses the mindset change. The new standards require and the shift in focus from **quality *control*** to **quality *management.*** It also includes developing a project implementation plan, introduction to quality objectives, risk assessment process, and assigning roles and responsibilities. Helpful meeting agenda templates practitioners can use with their colleagues are also included.

Link to the publication –

https://www.ifac.org/system/files/publications/files/IFAC-quality-management-small-firm-implementation-installment-one.pdf

4. IAASB – PROPOSED CHANGES TO ISA 500, AUDIT EVIDENCE

On 24th October 2022, the International Auditing and Assurance Standards Board (IAASB) issued an **Exposure Draft** (ED) proposing changes to **International Standard**

on Auditing (ISA) 500, *Audit Evidence.*

The ED clarifies ISA 500's purpose and scope and explain its relationship with other standards; provides a **principles-based approach** to considering and making judgments about information intended to be used as audit evidence and evaluating whether sufficient appropriate audit evidence has been obtained; **modernizes ISA 500** to be adaptable to the current business and audit environment, while considering scalability for different circumstances, including the entity and the auditor's use of technology, such as automated tools and techniques; and **emphasize the role of professional skepticism** when making judgments about information intended to be used as audit evidence and evaluating the audit evidence obtained.

Link to the Exposure Draft -

https://www.ifac.org/system/files/publications/files/IAASB-Exposure-Draft-ISA-500-Audit-Evidence.pdf

5. ICAI's GUIDANCE NOTE ON REPORT UNDER SECTION 92E OF THE INCOME-TAX ACT, 1961 (TRANSFER PRICING), REVISED 2022 EDITION

On 25th October 2022, the Institute of Chartered Accountants of India (ICAI) released the ninth edition of the ***Guidance Note on Report under Section 92E of the Income-tax Act, 1961*** in which all the **amendments made upto Finance Act, 2022,** have been incorporated.

Link to the Guidance Note -

https://resource.cdn.icai.org/71914citax251022.pdf

C. MCA

6. MCA CLARIFICATION – ABSOLUTE FIGURES IN E-FORM AOC-4

On 26th September 2022, the Ministry of Corporate Affairs (MCA) issued a clarification related to amendment to Schedule III to the Companies Act, 2013 (vide MCA Notification GSR. 207(E) dated 24th March 2021) that mandated companies to round off the figures appearing in the Financial Statements depending upon their total income. The Clarification states that **if the companies provide absolute figures in e-forms i.e., AOC-4, the same shall not be treated as incorrect certification by the Professionals.**

Link to the Clarification -

https://www.mca.gov.in/content/mca/global/en/notifications-tender/news-updates/updates.html

D. NFRA

7. NFRA CIRCULAR ON NON-ACCRUAL OF INTEREST ON BORROWINGS UNDER Ind AS

On 20th October 2022, the National Financial Reporting Authority (NFRA) issued a Circular (No. NF-25011/5/2022-O/o Secy-NFRA) addressed to all listed and unlisted companies (specified in Rule 3 of NFRA Rules, 2018, *Classes of companies and bodies corporate governed by the Authority)* and their auditors regarding non-accrual of interest costs on borrowings by companies in violation of Ind AS.

The Circular **advises all companies (Ind AS)** and their audit committees **not to discontinue recognition of the principal amount or interest** merely because the **borrowings have been declared as Non-Performing Assets (NPAs)** by the lending banks or **management's expectation of a likely settlement** with or without concessions from banks.

The NFRA has **directed auditors to ensure strict compliance with this Circular while performing audits.**

It may be noted that the NFRA in a recent disciplinary action, against the statutory auditor of a listed company, had observed that the company under audit had discontinued accrual/recognition of interest expense on its bank borrowings, which had been reportedly classified as NPA by the lender banks and for which the company was negotiating a One-Time Settlement with the banks. Such accounting treatment **contravened the provisions of Ind AS 109, *Financial Instruments*** since such borrowings and interest payable thereon continued to be financial liabilities, requiring accounting under the amortized cost method. The NFRA has stated that it has observed similar violations in respect of several other companies too.

Link to the Circular –

https://nfra.gov.in/sites/default/files/Non-Accrual%20of%20interest%20on%20borrowings%20by%20the%20companies%20in%20violation%20of%20Indian%20Accounting%20Standards.pdf

E. RBI

8. MONETARY PENALTY IMPOSED ON CO-OPERATIVE BANKS

On 31st October, 2022, the Reserve Bank of India (RBI) reported that it imposed monetary penalties of ₹ 5 lakh on The Mysore Merchants Co-operative Bank Ltd., Mysore (Press Release No. 2022-2023/1124) and ₹2.00 lakh on The City Co-operative Bank Ltd., Mysore (Press Release No. 2022-2023/1125) for non-adherence / violation of directions issued under *Management of Advances-UCBs* based on inspection reports of the banks (financial position as on 31st March 2020), that revealed, *inter alia*, instances of **sanction of gold loans in breach of the cap under bullet repayment scheme.**

Links to the Press Releases –

https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR112497E14A78C1F44F9EA4DE2FC0060D93BA.PDF

and

https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR11257689B818480E4F2794BDC9DB07E14253.PDF

9. REVIEW OF PRUDENTIAL NORMS – RISK WEIGHTS FOR EXPOSURES TO CORPORATES AND NBFCs

In terms of paragraph 6.8.1 (i) of *Master Circular on Basel III Capital Regulations* (1st April, 2022) banks are permitted to derive risk weights for their unrated exposures based on the ratings available for a specific rated debt subject to the conditions specified that the bank's facility ranks *pari passu* or senior to the specific rated debt in all respects and the maturity of the unassessed claim is not later than the maturity of the rated claim. In this connection, reference also needs to be made to paragraph 6.2.5 of the Master Circular ibid regarding publication of bank loan ratings by **External Credit Assessment Institutions (ECAIs).**

The RBI had **advised ECAIs** (vide letter dated 4th June, 2021) **to disclose** the name of the banks and the corresponding credit facilities rated by them in the Press Releases (PRs) issued on rating actions by 31st August, 2021, after obtaining requisite consent from the borrowers.

However, on a review, the RBI has observed that the above disclosures are not available in many PRs issued by ECAIs owing to the absence of requisite consent by the borrowers to the ECAIs.

Now, on 10th October 2022, the RBI vide Notification No. RBI/2022-23/125 DOR.STR.REC.71/21.06.201/2022-23 **has advised that a bank loan rating without the above disclosure by the ECAI shall not be eligible for being reckoned for capital computation by banks. Banks shall treat such exposures as unrated and assign applicable risk weights** in terms of paragraph 5.8.1 of *Master Circular – Basel III Capital Regulations.*

Link to the Notification –

https://rbidocs.rbi.org.in/rdocs/notification/PDFs/REVIEWRWS3DEF38B18F3F4D45860F92C8F81432FA.PDF

10. RBI (FINANCIAL STATEMENTS – PRESENTATION AND DISCLOSURES) DIRECTIONS, 2021 – DISCLOSURE OF DIVERGENCE IN ASSET CLASSIFICATION AND PROVISIONING

Annexure III (paragraph C.4(e)) to the Reserve Bank of India (Financial Statements-Presentation and Disclosures) Directions, 2021 requires commercial banks (excluding Regional Rural Banks (RRBs)) to disclose details of divergence in asset classification and provisioning where such divergence assessed by RBI exceeds certain specified thresholds.

Now, on 11th October 2022, the RBI (vide Notification No. RBI/2022-23/130 DOR.ACC.REC.No.74/21.04.018/2022-23), in order to strengthen compliance with Income Recognition, Asset Classification and Provisioning (IRACP) norms, has **introduced similar disclosure requirements for Primary (Urban) Co-operative Banks (UCBs) and revised the specified thresholds for commercial banks.**

Accordingly, for the financial statements for **Y.E. 31st March 2023,** banks shall make suitable disclosures in the manner specified in paragraph C.4(e) of Annex III to the afore-mentioned Directions, if **either or both of the following conditions** are satisfied:

a) the additional provisioning for NPAs assessed by RBI exceeds 10 per cent of the reported profit before provisions and contingencies for the reference period; and

b) the additional Gross NPAs identified by the RBI exceed 10 per cent of the reported incremental Gross NPAs for the reference period.

Link to the Notification –

https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI130D54317FD9BE84CEF95FE968AA883887E.PDF

F. IFRS

11. AMENDMENT TO IAS 1 – LIABILITIES WITH COVENANTS

On 31st October 2022, the International Accounting Standards Board (IASB) **amended IAS *1, Presentation of Financial Statements*** by issuing *Amendment to IAS 1 -Non-current Liabilities with Covenants.*

IAS 1 requires a company to classify debt as non-current only if the company can avoid settling the debt in the 12 months after the reporting date. However, a company's ability to do so is often subject to complying with covenants. For example, a company might have long-term debt that could become repayable within 12 months if the company fails to comply with covenants in that 12-month period.

The amendments specify that covenants to be complied with after the reporting date do not affect the classification of debt as current or non-current at the reporting date. Instead, **the amendments require a company to disclose information about these covenants in the notes to the financial statements.**

The amendments are effective for annual reporting periods commencing on or after **1st January 2024,** and permits early adoption.

Link to the Announcement -

https://www.ifrs.org/news-and-events/news/2022/10/iasb-amends-accounting-standard-to-improve-information-about-long-term-debt-with-covenants/

G. USGAAP

12. FASB - PROPOSED AMENDMENTS TO SEGMENT REPORTING STANDARD

On 6th October, 2022, the Financial Accounting Standards Board issued Exposure Draft (ED) of **Proposed Accounting Standards Update – *Segment Reporting (Topic 280), Improvements to Reportable Segment Disclosures*** to improve the disclosures about a public entity's reportable segments and address requests from investors for additional, more detailed information about a reportable segment's expenses.

The amendments proposed include, *inter alia,* requiring public entities to **disclose**, on an annual and interim basis, significant segment expenses that are regularly provided to the Chief Operating Decision Maker (CODM) and included within each reported measure of segment profit or loss (collectively referred to as the **"significant expense principle").**

Link to the Exposure Draft –

https://www.fasb.org/document/blob?fileName=Prop%20ASU—Segment%20Reporting%20(Topic%20280)—Improvements%20to%20Reportable%20Segment%20Disclosures.pdf

13. FASB - PROPOSED NEW CHAPTER IN CONCEPTUAL FRAMEWORK : THE REPORTING ENTITY

On 18th October 2022, the FASB issued an Exposure Draft (ED) of ***Proposed Statement of Financial Accounting Concepts – Concepts Statement No. 8, Conceptual Framework for Financial Reporting, Chapter 2: The Reporting Entity.***

The ED describes a reporting entity as a "circumscribed area of economic activities that can be represented by general purpose financial reports that are useful to existing and potential investors, lenders, and other resource providers in making decisions about providing resources to the entity."

The ED covers the **proposed description and features** of a reporting entity; **Consolidated Financial Statements; Parent-Only Financial Statements; Portion of an Entity** and **Combined Financial Statements.**

Link to the Exposure Draft –

https://www.fasb.org/document/blob?fileName=ED—CON%208—Conceptual%20Framework%20for%20Financial%20Reporting—Chap%202,%20Reporting%20Entity.pdf

14. FASB - PROPOSED IMPROVEMENTS TO ACCOUNTING FOR JOINT VENTURE FORMATIONS

Extant USGAAP does not provide specific authoritative guidance on how a joint venture, at its formation, should recognize and initially measure assets contributed and liabilities assumed, including the assets and liabilities of businesses contributed.

On 27th October 2022, the FASB issued an Exposure Draft of ***Proposed Accounting Standards Update: Business Combinations – Joint Venture Formations (Subtopic 805-60), Recognition and Initial Measurement.***

In order to reduce diversity in practice and provide decision-useful information to a joint venture's investors, the FASB has proposed amendments to USGAAP requiring that a **joint venture apply a new basis of accounting upon formation.** By applying a new basis of accounting, a joint venture, upon formation, would **recognize and initially measure its assets and liabilities at fair value** (with certain exceptions that are consistent with the business combinations guidance).

Link to the Exposure Draft –

https://www.fasb.org/document/blob?fileName=Prop%20ASU—Business%20Combinations—Joint%20Venture%20Formations%20(Subtopic%20805-60)—Recognition%20and%20Initial%20Measurement.pdf

H. SUSTAINABILITY STANDARDS

15. ISSB CONFIRMS Scope 3 GHG EMISSIONS DISCLOSURE REQUIREMENTS WITH STRONG APPLICATION SUPPORT

The IFRS Foundation's International Sustainability Standards Board (ISSB) announced on 21st October 2022 that it has made significant progress refining its first two proposed sustainability-related disclosure standards (IFRS S1, *General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2, Climate-related Disclosures).*

The ISSB has voted unanimously to require company disclosures on Scope 1, Scope 2 and Scope 3 greenhouse gas (GHG) emissions, applying the current version of the *GHG Protocol Corporate Standard.* The ISSB will develop relief provisions to help companies apply the Scope 3 requirements. This relief will be decided at a future meeting and could include giving companies more time to provide Scope 3 disclosures and working with jurisdictions on so-called 'safe harbour' provisions.

It may be noted that **Scope 1 covers direct emissions** from a company, **scope 2 covers indirect emissions** from electricity purchased and used and **scope 3 covers all other indirect emissions** from the value chain.

Link to the announcement -

https://www.ifrs.org/news-and-events/news/2022/10/issb-unanimously-confirms-scope-3-ghg-emissions-disclosure-requirements-with-strong-application-support-among-key-decisions/

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Online Module For Submission of Form 7 – Annual Report On Statement of Accounts

(Part - xviii of RERA Series)

CA. Vinay Thyagaraj

This article is in continuation to the September and October 2022 articles published in KSCAA Journal titled RERA Audit 2022 and Form 7 – New Format for Annual Report on Statement of Accounts as notified by Karnataka RERA. Request the reader to consider and read the September and October 2022 articles while reading this month's article.

The Karnataka RERA Authorities have introduced an online module to report, submit the information, documents, certificates, audited financial statements through the RERA portal. The contents of the Circular dated 13th Oct 2022 are as follows –

1. Due date for filing the Annual Report in Form 7 for the financial year 2021-22 is 15th November 2022.
2. Such Annual Audit report along with the documents shall be uploaded online
3. Documents include –
   a. Audited Profit and Loss Account, Balance Sheet along with schedules
   b. Cash flow statement
   c. Income Tax Returns
   d. Auditors Report
   e. RERA Designated Bank Account Statement during Financial Year 2021-22
   f. List of Agents engaged by the promoter with their registration details
   g. Form 7 duly certified by a Chartered Accountant in practice.

Refer to Karnataka RERA's new format FORM 7 during September 2022 wherein the detailed information with respect to the RERA registered project shall be certified a Chartered Accountant holding certificate of practice.

As Karnataka RERA notified the new **format Format for the Annual Report on Statement of Accounts,** it has become necessary to deliberate on the contents of the new format for the benefit of the industry and members.

Professional Approach and preparedness to upload and submit the RERA Annual Report online –

1. Click here to start uploading the Annual Audit Report for the Financial Year 2021-22 – https://rera.karnataka.gov.in/apply ForAnnualReport.

2. Once the RERA Registration number is entered, the OTP will be sent to the registered mail ID and mobile number of the promoter.
3. Few Excel formats are available at respective sections on login into the Annual Audit module. Following are the headers of the excel that professionals or promoters need to be ready with to upload.

   a. Agent details

Sl No.	Name of the Agent	RERA Registration No of the Agent	Validity of the Agent Registration

   b. AOS details

Sl. No	Unit Number	Date of Agreement	Total Consideration	Amount received in excess of 10% till registered AOS executed

RERA

c. Bank details

Sl No.	Bank Name	Branch Name	Account Name	Account No	Type of Account	IFSC Code	Date of Registration with K-RERA	Date of Account Opening	Opening Balance (as on 1/4/2021)	Deposit during the period 2021-22	Withdrawals during the period 2021-22	Closing Balance (as on 31st March 2022)

d. Form 4 details

Sl No.	Certifying Professional	Date of Certificate

e. loan details

Sl No.	Name & Type of Lender	Amount of Loan Sanction (in INR)	Sanction Date	Loan Outstanding as on 31st March 2022 (in INR)	Collateral / Mortgage details

f. quarter Form details

Sl No.	Form 4/5/6	Certifying Professional	Date of Issuance	Details of Discrepancy/ qualification

g. withdrawl details

Sl No.	Name & Type of Lender	Amount of Loan Sanction (in INR)	Sanction Date	Loan Outstanding as on 31st March 2022 (in INR)	Collateral / Mortgage details

Once the Details and documents are ready, professionals or promoters can start uploading and submit online

The newly notified form 7 is exhaustive and covers the entire project financials, cash flow, various compliances mandated under the RERA Act. The certifying professional shall understand each provision before certifying the Annual Report on Statement of accounts and its annexure thereon.

Non-compliance / non-furnishing of Form 7 (Annual Audit of Accounts Reports) shall attract penal provisions under RERA Act 2016. The Authority is having the power to impose penalties in accordance with Sec 60 of the RERA Act. Such penalty may extend upto 5 % of the estimated cost of the real estate project as determined by the Authority.

The summary of the new form 7 is as follows –

Report on Statement of Accounts on project fund utilisation and withdrawal -

Annexure A –

a. Table A – amount collected from the allottees of the project – points to be considered while filling and certification.

b. Table B – Amount incurred by the Promoter (the details are similar to the Form 4, Quarterly update CA Certificate format)

c. Table C – summary of total collections and realisation since the inception of the project –

d. Table D – Liabilities towards the Project development

e. Table E – Liabilities towards Bank Borrowings –

f. Table F – Liability based on the orders of RERA authority, Appellate

Annexure B

Further the professional shall certify various provisions under RERA. The brief of the compliances is as under –

i. Compliance with respect to the RERA bank account

ii. Details of all quarterly update certificates and details of filings quarter on quarter.

iii. RERA Bank account directions 2020 contents shall be read, understand before certifying this Form 7.

iv. Section 13 compliance - Section 13 mandates the registration of agreement of sale, if the promoter wishes to collect in excess of 10 % of the project cost and report non-compliances

v. Details of borrowing by mortgaging the project land etc

vi. Details of forms 4,5 and 6

vii. List of Agents engaged.

The new Form 7 is in pdf and available at https://rera.karnataka.gov.in/downloadPage -

Further, the Authority has sent the mail to all the promoters, the extract is as follows -

Dear Promoter,

As per section 4(2)(l)(D) of the RERA act 2016 promoter should upload the annual audited accounts within six months after the end of the financial year by a chartered accountant in practice, Hence authority facilitates the annual audit module to upload the annual audit report (Form-07) with extended date upto nov 15th 2022. Further,

RERA

even if any promoter has already uploaded the annual audit report (Form-07) in the quarterly updates module, please upload the annual audit report (Form-07) in the annual audit module only.

Link to Submit the Annual Audit report https://rera.karnataka.gov.in/applyForAnnualReport

Circular RERA/Accounts/129/2021-22 link https://rera.karnataka.gov.in/reraDocument?DOC=s5xz54dYBUE1XB6nm5TzWA%3D%3D

Form-07 format available in downloads section https://rera.karnataka.gov.in/downloadPage

Best Regards,

Karnataka Real Estate Regulatory Authority.

Conclusion – The online submission of details of the Audit of Accounts under RERA is based on the duly certified Form 7. Collect and retain the soft copy of Excel or Word format of form 7 (finalized), so that the contents can be copied and pasted in the online module instead of making manual entries. As the due date is approaching (15th Nov 2022, unless the extension of the date is permitted), it is recommended to the promoters to obtain and submit within the due date to avoid penal provisions under the Act.

Author can be reached at :
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Solution to Sudoku - 26 October 2022

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

Income Tax Savings Schemes

54EC — आरईसी REC Capital Gains Bonds
5 years, 5% Annual Interest

80C — ELSS, PPF, Life Insurance

80CCD — National Pension Scheme

Fixed Income

Trust u/s 11(5) — Trust Deposits Eligible u/s 11(5)
HDFC · LIC HFL · pnb Housing · ICICI Home Finance · Sundaram Home

RBI — Reserve Bank of India Bonds
7 years, Floating rate 7.15% Half-yearly Interest

FD NBFC — Bajaj Finserv · Mahindra Finance

Sovereign Gold Bonds
8 years, 2.50% Half-yearly Interest, Maturity 'Tax-free'

Growth Option

Mutual Funds
Large Cap / Mid Cap / Small Cap / Flexi Cap / ELSS Funds
Axis Mutual Fund · HDFC Mutual Fund · ICICI Prudential Mutual Fund · kotak Mutual Fund · Mirae Asset Mutual Fund · PPFAS Mutual Fund · SBI Mutual Fund A Partner For Life

For further information, please contact
CA Kiran Boal 98803 93743 · wecare@wealthlab.co.in

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WEALTH LAB

Intellectual Property Rights and Protection in India Remedies and Enforcement
(Part - XXVII of IPR series)

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

Creation of IP - Utilise Schemes Available

In the last 26 parts of the series, we have learnt about various IPRs available in India, which can be used by all business and other stake holders to establish and evolve themselves into profitable ventures. These rights are more important for survival of enterprises in MSME sector and the total focus in the series has been to enable such entities to realise the potential of these intangible rights in their business environment. If these rights are suitably employed will help them flourish their activities in India and to create a strong base for the Indian economy.

As stated, the IPRs are to be identified, applied for registration from the appropriate authorities to seek these rights. Such rights once granted are to be suitably commercialised to realise the profits. There are several initiatives/ schemes taken up by Union Government and all state Governments to strengthen the Indian IPR environment. These have been narrated in the previous parts. The efforts taken by **Patent Information Centre** of the Karnataka State Council for Science and Technology (KSCST) at IISC Campus, in creating a vibrant IP ecosystem in Karnataka have been narrated in the part- XV, which may be utilised by start-ups, Entrepreneurs and MSMEs for furthering their cause. It is heartening to mention here that the KSCST received a special citation from DPIIT, GOI for its work in Karnataka during National IP awards 2022 held on 15/10/2022 at Delhi from the honourable Minister of Commerce and Industry Sri Piyush Goyalji. Mr. H Hemanth Kumar, Executive Secretary, KSCST received the coveted citation.

IP and legal rights

Intellectual property rights provide certain exclusive rights to the owner of IP, namely the right to use and exploit the relevant intellectual property rights. When someone infringes on these exclusive rights, certain remedies are available in law to protect his/her property. As deliberated in the parts, the Intellectual Property covers within its ambit a wide array of laws relating to Trademarks, Designs, Geographical Indications, Copyright, Patents etc., There is widespread perception that protection of one's Intellectual Property is not as much important as that of tangible property. Such assumption and beliefs, however, are not true. As deliberated, the IP is a valuable asset for the enterprise. IP is not a mere creation of one's intellect as it provides more advantages through the goodwill, reputation, and the identity- attached. Therefore, it is important to know, in case of infringements, the essential avenues (in brief) of the remedy and enforcement mechanism in law available to the owner against the violators. Before examining the remedies, it is pertinent to list out the legal rights vested with the owner in respect of each of the IP.

Registered Trademark

A registered trademark is 'infringed' when a person other than registered proprietor or a person using by way of permitted use, uses in course of trade, in following cases –

(i) use deceptively similar mark - Use of a mark which is identical with or deceptively similar to trademark in relation to goods or services in respect of which the trademark is registered and in such a manner as to render the use of the mark likely to be taken as being used as a trademark.[1]

(ii) likely to cause confusion because of identity / similarity - Use which, because of identity or similarity with registered trade mark and identity or similarity of goods or services covered by registered

[1] *Section 29 of Trademark Act, 1999*

IPR

trade mark, is likely to cause confusion on the part of public.

(iii) use even on dissimilar goods - Use of identical or similar registered trademark on goods which are not similar, if the mark has reputation in India and use of the mark without due cause is taking undue advantage or is detrimental to the distinctive character or repute of the registered trademark.

(iv) use as trade name - Use of registered trade mark as a trade name or name of business concern or part of name of his business concern dealing in goods or services in respect of which the trade mark is registered.

(v) applying trade name on labels or packing goods - Unauthorised use the trademark on material intended to be used for labeling or packing of goods, as a business paper or for advertising goods or services.

(vi) use in advertising - Use in advertisement, taking unfair advantage or is detrimental to its distinctive character or is against reputation of the trademark.

Designs

The exclusive rights conferred under Designs Act, 2000 on a design are termed as **"Copyright in Design".** Infringement of a copyright in design is termed as "Piracy of a registered Design". The following acts amount to piracy,

(i) to publish or to have it published or expose for sale any article of the class in question on which either the design or any fraudulent or obvious imitation has been applied.

(ii) to either apply or cause to apply the design that is registered to any class of goods covered by the registration, the design or any imitation of it

(iii) to import for the purpose of sale any article belonging to the class in which the design has been registered and to which the design or a fraudulent or obvious imitation thereon has been applied.

Geographical Indication

The Geographical Indication of Goods (Registration and Protection) Act, 1999 enacted with a view to provide adequate protection to geographical indications of goods in the country has altogether a different purpose as it is granted to an association and not to an individual. Geographical indication is an indication for goods originating from a definite geographical territory and used to identify agricultural, natural or manufactured goods. The goods should be manufactured or produced or processed or prepared in that territory. It should have a special quality or reputation or other characteristics. GI's when registered confers legal protection in India, prevents unauthorised use of registered GI, and promotes the economic prosperity of the producers of goods produced in a geographical territory which in turn boosts exports. Any association of persons, producers, organisations or authority established by or under the law, representing the interests of the producers can apply for registration of GI to the Registrar of GI. A producer of goods can apply for registration as an authorised user of that registered GI. A registered GI is a public property belonging to the producers of the concerned goods and hence it cannot be assigned or transmitted or licenced or pledged or mortgaged. When an unauthorised user uses a GI that indicates or suggests that such goods originate in geographical area other than the true place of origin of such goods in a manner which mislead the public as to the geographical origin of such goods; or, when the use of a GI result in an unfair competition including passing off in respect of registered GI; or When the use of another GI results in false representation to the public that goods originate in a territory in respect of which a registered GI relates, it constitutes infringement. The registered proprietor or authorised users of a registered GI can initiate infringement Action against any infringements.

Copyright Act

The rights conferred under Copyright Act, 1957 are different depending upon the nature and purpose for which the IP is created.

(a) A copyright holder in **literary, dramatic, or musical work** has the following rights protected-

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means

(ii) to issue copies of work to the public - this clause does not apply to copies which are already in circulation

(iii) to perform work in public or communicate to public

(iv) to make any cinematograph film or sound recording

(v) to make translation

(vi) to make adaptation of work

(vii) to do, in relation to translation or an adaptation of work, any of the aforesaid acts mentioned in clause (i) to clause (vi).

(b) In respect of **artistic works** rights protected are

(i) to reproduce in any material form including depiction in two dimensions from three dimensions or vice versa

(ii) to communicate work to public

(iii) to issue copies of work to the public which are not already in circulation

(iv) to include the work in any cinematograph film

(v) to make any adaptation of the work

(vi) to do in relation to an adaptation of the work, any of the acts specified in clause (i) to (iv) above.

(c) In respect of **cinematograph film** rights protected are –

(i) to make a copy of the film, including a photograph of any image forming part thereof

(ii) to sell or give on hire or offer for sale or hire, any copy of the film. It does not matter whether or not such copy was sold or given on hire on earlier occasions.

(iii) to communicate the work to public.

(d) In respect of **sound recording rights** protected are –

(i) to make any other sound recording embodying it

(ii) to sell or give on hire of offer for sale or hire, any copy of the film. It does not matter whether or not such copy was sold or given on hire on earlier occasions

(iii) to communicate the sound recording to public.

(e) In respect of **computer programme** rights protected are –

(i) to do any of the acts specified above in relation to literary work

(ii) to sell or give on commercial rental or offer to sale or for commercial rental any copy of the computer programme. However, such 'commercial rental' does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

(f) In addition to the above the following **moral rights** are available to a copyright holder:

(i) the right to decide whether to publish or not to publish the work.

(ii) the right to claim authorship of a published or exhibited work.

(iii) the right to prevent alteration and other actions that may damage the author's honour or reputation – the right of integrity.

(iv) to restrain or claim damages.

Patent Act

A Patent holder whose new inventions and useful process or products are protected has the following rights vested in him.

(i) Where the patent is for a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India;

(ii) Where the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product directly obtained from that process, in India.

The rights conferred by the above statutes, for each type of Intellectual Property, are different as the purpose for which each of IP is created are different.

Remedies and Enforcement Measures

In this part, the various remedies and enforcement measures in place for protection of IPRs are deliberated. The nature of legal remedies in "intellectual property law" as explained earlier parts, derive character from the word, 'Property'. Any Property signifies the right to exclude others from use unless permitted by the owner. Therefore, the remedies granted provide the right to exclude, and strengthen the exclusivity conferred by law on the owner of the intellectual property.

The Infringement of Intellectual Property means encroachment upon an owner /an authorized user's property by an outsider without the owner's prior approval. In general, an intellectual property right infringement is the breach of any intellectual property right (IPR). IPR infringements include counterfeiting (means imitating genuine goods, often at a lower quality) and piracy (means the unauthorised copying, use, reproduction and / or distribution of materials protected by intellectual property, for example, the pirating of a film). It is the duty of the owner to protect his property from being abused by others without authorisation. Necessary check and cautions should be followed by the owner to find out whether pirated or counterfeited goods are in the market. Take suitable care to find out the source etc., so that legal action could be taken up against such violators.

The acquisition of IP rights is of little economic value if these rights cannot be enforced effectively. If such incident takes place, he/she should imitate the legal measures to protect his IP rights. The remedies against infringement provided in IP laws include both civil and criminal channels for the IP rights enforcement. These civil and criminal remedies are distinct and independent. Also, they can be availed simultaneously. The courts in India have the power to grant reliefs in cases pertaining to the violation and/or infringement of intellectual property rights. The judiciary not only does the adjudication of the intellectual property

matters but it also interprets several IP statutes for better understanding. Some of the important remedies are deliberated below.

1. Cease and desist letter

If someone uses the IP without permission, the owner or authorised person can send them an intellectual property 'Cease and desist' letter/ notice. This letter/ notice informs the person using your IP that they are using the subject IP without permission and directs them to refrain from using it in future. Sending a cease-and-desist letter is the first step in dealing with the illegal use of your IPR. Using this may help avoid unnecessary costs and delays associated with bringing formal proceedings for IP infringement.

2. Coming to an agreement

Rather than going to a court over an IP infringement, consider coming to an agreement with the infringing party. One can consider even licensing the IP to them, by allowing the infringer to benefit from some of your rights in return for a fee. A Licence agreement enables an IPR owner to authorise another party to exercise some of the owner's rights in the IP while retaining ownership and control of the intellectual property.

3. Mediation

If one cannot come to an agreement with the infringing party, using mediation to solve the issue be considered. Mediation is a form of alternative dispute resolution which involves an independent trained mediator who facilitates communication between the two parties having the dispute, with the aim of achieving a settlement or resolution. Mediation can be used for most intellectual property disputes, including infringements on trademarks, patents, copyright, and designs.

Bringing a claim

Upon IP infringement civil remedies can be enforced by filing a suit for infringement and/or passing off (in case of unregistered trademarks) in the competent court. Following reliefs of civil nature can be granted:

1. Injunction
2. Anton Pillar orders or Ex-parte orders
3. Orders for deliver up/surrender or seize and destroy
4. An award of costs and damages
5. Tracing orders

The courts may award a variety of different remedies where you claim for intellectual property infringement is successful. The remedies and relief available depend on the type of IPR that was infringed and the specifics of the situation.

Injunctions

An injunction is the prohibition of an action by a party to a lawsuit. If the plaintiff establishes that the prima facie case is in his favour, an injunction is granted. An injunction is the most common remedy for all IPR infringements. Injunctions are court orders that require named individuals to refrain from doing certain specified acts (e.g. using the IPR owner's intellectual property). Injunctions can take the form of 'perpetual' injunctions or 'interim' injunctions. Interim injunctions are emergency measures granted prior to commencement of or during proceedings, to prevent a party from carrying out infringing acts while the case is being decided. Perpetual injunctions are typically granted as a final relief by the court, prohibiting the unauthorised use of the IPR. Failure to adhere to an injunction can result in fines and even imprisonment.

Anton Pillar orders permit the plaintiff's counsel to enter the infringer's premises and seize evidence of infringement. This order is passed when there is a serious danger of removal/destruction of the infringing articles. Such an order is granted on an ex-parte application. Infringing goods are delivered to the plaintiff or destroyed if the orders of delivery-up and destruction are passed.

Damages or account of profits

Where a profit has been made as a result of the IPR infringement, the IPR owner may be entitled to compensation. The courts can award such compensation in the form of damages or an account of profits. Note that the IPR owner is typically given the choice between either remedy, but they can only choose one. Damages usually cover the value of the damage done to the IPR owner, while an account of profits covers the profits that the infringing party has made as a result of their infringement.

Where damages are awarded to the IPR owner, a calculation is carried out as to the amount of profit the IPR owner (or exclusive licensee, i.e., someone who was granted the exclusive licence to exploit the relevant intellectual property rights) has lost because of the infringement.

An account of profits aims to compensate the IPR owner for the loss they have suffered as a result of the infringement. Where an account of profits is awarded, a calculation is carried out as to the profits made by the infringing party as a result of their infringement. The sum awarded under an account of profits aims to put the IPR owner back in the position they would have been in had the infringement not happened (insofar as practicable).

Award of costs

An award of costs is a court order stating that one party has to pay to another party the costs incurred in issuing legal proceedings. An award of costs can either be for the full

amount or for a proportion of the costs incurred.

An award of cost and damages are two mutually exclusive remedies. Damages are granted to compensate the losses incurred by the plaintiff on account of the defendant's infringing act, whereas actual amounts of profits are handed over to the plaintiff as the second measure.

Delivery and / or destruction of infringing items

While there is no automatic entitlement to the delivery up or destruction of infringing items (or materials) and items used to make such infringing items, the courts may make such an order when infringement is shown. This relief is typically granted by the courts in addition to an injunction.

Where an order for the delivery of such items is made, this means that the infringing party needs to deliver to the IPR owner all infringing items and, where deemed necessary, the items used to make the infringing items.

Where an order for the destruction of such items is made, this means that the infringing party needs to destroy all infringing items and, where deemed necessary, the items used to make the infringing items.

These steps ensure that the infringing party cannot continue to use the infringing items.

Tracing orders

The courts may also make tracing orders which order the infringing party to provide information on where they acquired the infringing items. This is generally used where the infringing party did not create the infringing items themselves. Failure to comply with a tracing order can amount to contempt of court, which can result in fines and / or up to 2 years imprisonment.

Criminal Remedies

Chapter XII of the Trademarks Act, 1999 deals with offences, penalties and procedures pertaining to trademark infringement. Here on account of trademark infringement, the punishment can go as high as imprisonment up to 3 years with or without fine. The fine ranges from 50,000 to 2 lakh rupees. This term and fine can be increased as per the provisions of the Section 105 of the Trademarks Act, 1999.

Section 63 of the Copyright Act, 1957 deals with 'Offences of Infringement of copyright or other rights conferred by the act'. It mentions about imprisonment for a term not less than 6 months which may extend up to 3 years and fine not less than 50,000 rupees which may extend up to 2 lakh rupees, as punishment if found guilty in a copyright infringement case. This term and fine can be increased according to the provisions of Section 63A of the Copyright Act, 1957.

Indian Patent Act, 1970 also considers falsification of entries in register, claiming patent rights in an unauthorized way etc. to be punishable criminal offences. Such penalties are mentioned under Chapter XX of the Indian Patents Act, 1970.

In the coming part, the Impact of Digital environment on IP rights will be deliberated.

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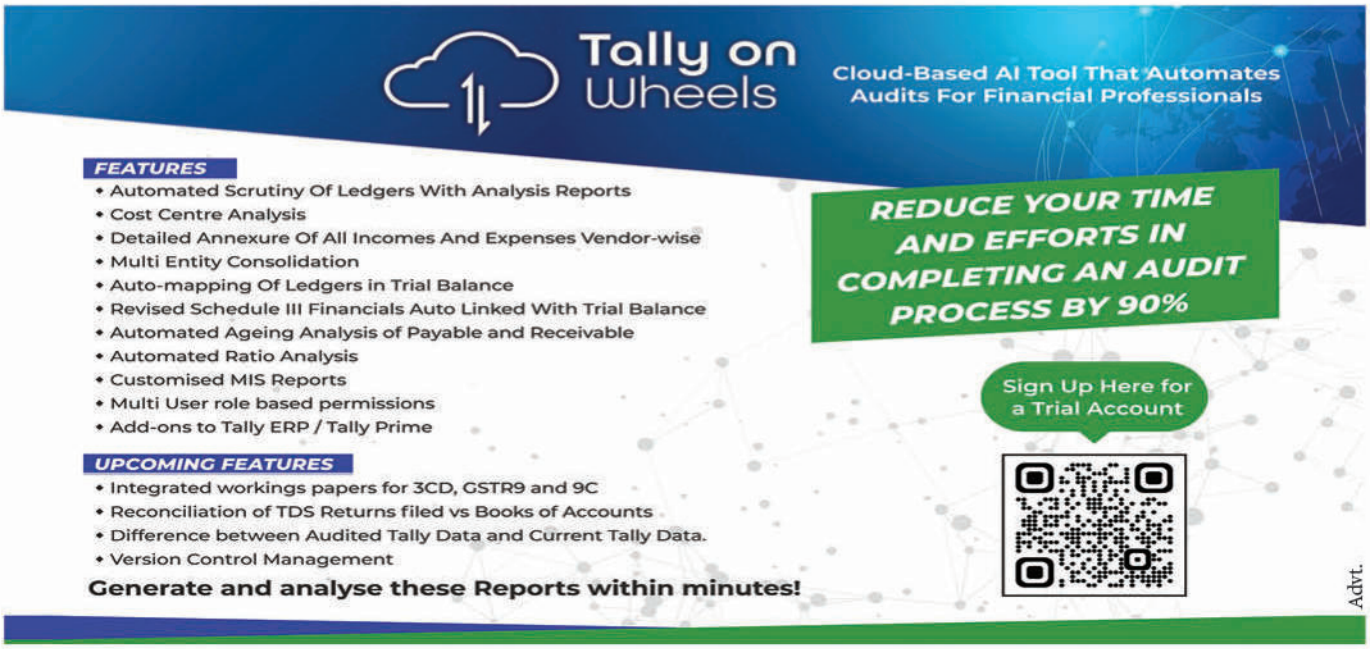

e-India's Central Bank Digital Currency (CBDC)

CA. Narasimhan Elangovan

Introduction

With the developments in the economy and the evolution of the payments system, the form and functions of money has changed over time, and it will continue to influence the future course of currency. The concept of money has experienced evolution from Commodity to Metallic Currency to Paper Currency to Digital Currency. Further, with the advent of cutting-edge technologies, digitalization of money is the next milestone in the monetary history. Advancement in technology has made it possible for the development of new form of money viz. Central Bank Digital Currencies (CBDCs).

Central Bank Digital Currency (CBDC) is a digital form of currency notes issued by a central bank. These are digital versions of a country's physical currency – for example, a digital dollar, euro, pound or yuan. While most central banks across the globe are exploring the issuance of CBDC, the key motivations for its issuance are specific to each country's unique requirements. It is to be noted that CBDC will continue to have the same value as that of physical currency, meaning a `100 of digital currency will continue to have the same value of a `100 note.

In India, RBI has been exploring the pros and cons of introduction of CBDCs for some time and has recently begun the pilot of this initiative by launching its own CBDC (Digital Rupee (e₹)), with minimal or no disruption to the financial system.

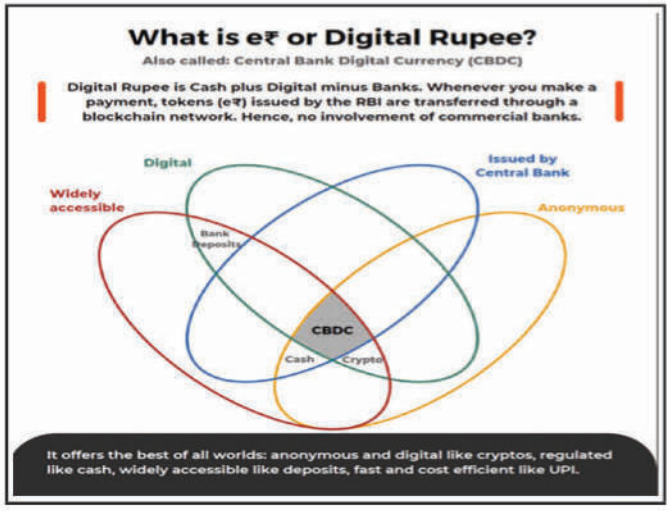

Fig 1 – Overview of Digital Rupee

Key Motivations

CBDC, being a sovereign currency, holds unique advantages of central bank money viz. trust, safety, liquidity, settlement finality and integrity. The key motivations for exploring the issuance of CBDC in India among others include reduction in operational costs involved in physical cash management, fostering financial inclusion, bringing resilience, efficiency, and innovation in payments system, adding efficiency to the settlement system, boosting innovation in cross-border payments space and providing public with uses that any private virtual currencies can provide, without the associated risks. The use of offline feature in CBDC would also be beneficial in remote locations and offer availability and resilience benefits when electrical power or mobile network is not available.

Fig 2 – India is among the costliest countries for cash transactions. (Source: HBR Research)

It is to be noted that it is the responsibility of central bank to provide its citizens with a risk-free central bank digital money which will provide the users the same experience of dealing in currency in digital form, without any risks associated with private cryptocurrencies. Therefore, CBDCs will provide the public with benefits of virtual currencies while ensuring consumer protection by avoiding the damaging social and economic consequences of private virtual currencies such as Bitcoin etc.

Type of CBDCs

CBDC can be classified into two broad types viz. general purpose or retail ***(CBDC-R)*** and wholesale ***(CBDC-W).***

IT

Retail CBDC would be potentially available for use by all viz. private sector, non-financial consumers and businesses while wholesale CBDC is designed for restricted access to select financial institutions. Wholesale CBDC is intended for the settlement of interbank transfers and related wholesale transactions. Retail CBDC is an electronic version of cash primarily meant for retail transactions.

It is believed that Retail CBDC can provide access to safe money for payment and settlement as it is a direct liability of the Central Bank. Wholesale CBDC has the potential to transform the settlement systems for financial transactions and make them more efficient and secure. Going by the potential offered by each of them, there may be merit in introducing both CBDC-W and CBDC-R and hence RBI has piloted the launch.

Forms of CBDC

CBDC can be structured as 'token-based' or 'account-based'. A token-based CBDC is a bearer-instrument like banknotes, meaning whosoever holds the tokens at a given point in time would be presumed to own them. In contrast, an account-based system would require maintenance of record of balances and transactions of all holders of the CBDC and indicate the ownership of the monetary balances. Also, in a token-based CBDC, the person receiving a token will verify that his ownership of the token is genuine, whereas in an account-based CBDC, an intermediary verifies the identity of an account holder. Considering the features offered by both the forms of CBDCs, *a token-based CBDC is viewed as a preferred mode for CBDC-R as it would be closer to physical cash, while account-based CBDC may be considered for CBDC-W.*

Technology choice

CBDCs being digital in nature, technological consideration will always remain at its core. The infrastructure of CBDCs can be on a ***conventional centrally controlled database or on Distributed Ledger Technology.*** The two technologies differ in terms of efficiency and degree of protection from single point of failure. The technology considerations underlying the deployment of CBDC needs to be forward looking and must have strong cybersecurity, technical stability, resilience and sound technical governance standards. While crystallizing the design choices in the initial stages, the technological considerations may be kept flexible and open-ended in order to incorporate the changing needs based on the evolution of the technological aspects of CBDCs.

Degree of Anonymity

For CBDC to play the role as a medium of exchange, it needs to incorporate all the features that physical currency represents including anonymity, universality, and finality. Ensuring anonymity for a digital currency particularly represents a challenge, as all digital transactions would leave some trail. Clearly, the degree of anonymity would be a key design decision for any CBDC. In this regard, reasonable anonymity for small value transactions akin to anonymity associated with physical cash may be a desirable option for CBDC-R.

Central Bank Digital Currency – The Pilot Project

The first pilot in the Digital Rupee - Wholesale segment (e₹-W) has commenced from November 1, 2022.

The use case for this pilot is settlement of secondary market transactions in government securities. Use of e₹-W is expected to make the inter-bank market more efficient. Settlement in central bank money would reduce transaction costs by preempting the need for settlement guarantee infrastructure or for collateral to mitigate settlement risk. Going forward, other wholesale transactions, and cross-border payments will be the focus of future pilots, based on the learnings from this pilot. 9 Banks have been identified for participation in the pilot.

The first pilot in Digital Rupee - Retail segment (e₹-R) is planned for launch within a month in select locations in closed user groups comprising customers and merchants. The details regarding operationalisation of e₹-R pilot shall be communicated in due course.

Concluding Thoughts

While the intent of CBDC and the expected benefits are well understood, it is important that the issuance of CBDC needs to follow a calibrated and nuanced approach with adequate safeguards to address potential difficulties and risks in order to build a system which is inclusive, competitive and responsive to innovation and technological changes. CBDC, across the world, is mostly in conceptual, developmental, or at pilot stages. Therefore, in the absence of a precedence, extensive stakeholder consultation along with iterative technology design may be the requirement, to develop a solution that meets the requirements of all stakeholders. CBDC is aimed to complement, rather than replace, current forms of money and is envisaged to provide an additional payment avenue to users, not to replace the existing payment systems.

In the next article let us explore more on operational and technology model of CBDCs.

Reference:

This article is compiled from the Concept Note on Central Bank Digital Currency hosted at the RBI website

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IT

India's tryst with Destiny for $10 trillion economy

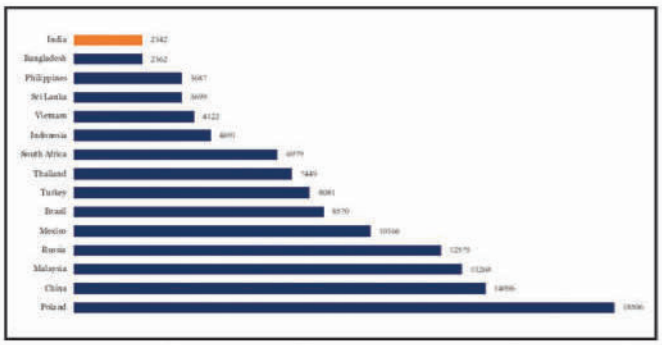
CA. Lalit Rathi

Introduction

A small size place in the region of Gujarat named 'Halol' with a population of just 46,000 people is a major manufacturing hub of India and home to numerous domestic & multinational companies like MG Motor India, Siemens Gamesa, JCB India, Hero Motocorp, Sun Pharma, TOTO India, CEAT Tyres, LM Wind Power, Polycab India etc. Similar is the story for places like Sri City, Aurangabad, Bhiwandi, Vadodara, Sanand. They represent India which desires on one hand to be Top 3 economies in the world in next 5 yrs growing at a blistering pace of 8% per annum and the other, move the aspirational population to upper middle group income.

The economy is all about production & distribution of goods, services & economic value addition, which is basically measured by GDP. The value of GDP translates to income from households, profits for capital and taxes for government. Therefore, all income and wealth flows from GDP. If GDP grows, income, profits and taxes also grow. Even though the Nominal GDP has increased 40x in the last five decades even after the rupee depreciation, the per capita GDP is still at $2300 (143rd Rank in the world) and if we have to do better as an economy, we need to push this lower segment of society to the middle income bracket. Despite strong growth since 2000, India's share in World GDP is at same level as 1960's at 3.2%. There are only 4 countries in the world bigger GDP than India – USA, China, Japan, Germany.

Per Capita GDP (US Dollar, 2022)

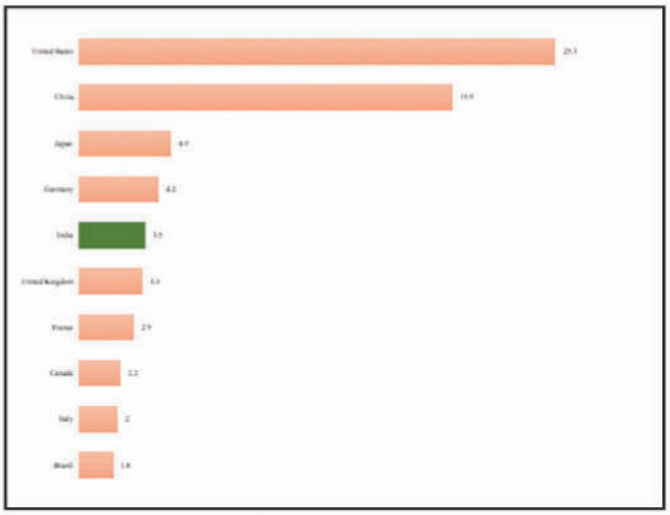


We are presently a $3.5 trillion economy and let us analyse if India has to reach $10 trillion by 2030, which sectors will have to lead the baton.

Economy in a nutshell:

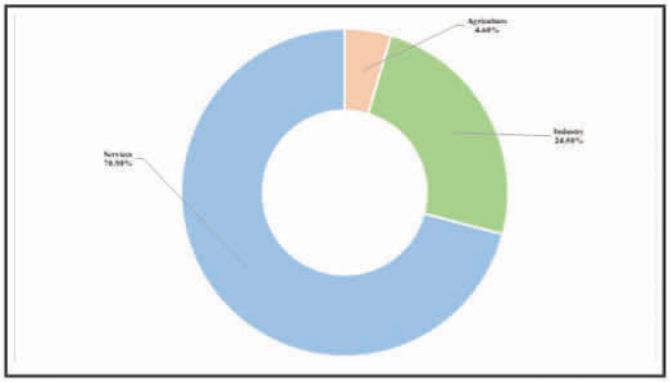
India is the 4th largest consumption market in the world. In 2019, the year before pandemic, household consumption in India totalled almost $1.7trillion. The aggregate household consumption has gone up 6x in last 15 years with food & beverages making up almost 1/3rd of consumption in the country. The share of private consumption in final expenditure is at 57%. It is pertinent to note that Gross Capital Formation (GCF) share which was at 24.9% in 2000 is now at 35.7%. So over time, capex has actually grown faster than consumption. Likewise, we have seen transport, health, household equipments grow at 8 to 9% CAGR in the last decade. This trend is essentially the crux of India's growth story. As income levels continue to rise, the share of incomes being spent on items like food will grow less than proportionately allowing a relatively higher part of the consumer's wallet to be spent on discretionary items – be it mobile phones or automobiles or housing or movies. The savings rate which increased steadily from 20% in 1990's to 35% in 2010 is now down to 27% post covid. Interestingly, the trend is seen on composition of savings moving from physical savings to financial savings with allocation in capital markets increasing over last few years.

NOMINAL GDP (US$ TRILLION, 2022)



Services share in new formal business at 70% is even higher than its share in GDP - Sector composition of new formal business in last 5 years (2017 – 2021)

Economy



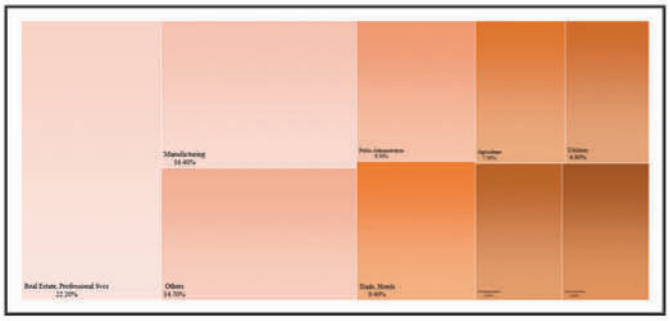
Infrastructure Sector – A major thrust for this dream -

India's investment in Infrastructure was barely 4-5% of GDP since 1999 to 2005. As GDP was small, this translated into Infra investment of 1-2 lac crore per annum. But since the private investment growth took off since 2006 along with uptick in credit cycle, the infra investment is now well above 11 lakh crore. With a huge push given in the Budget towards capex investment by Government, we should see over the next 5 years the infra investment reaches 20 lakh crore. Alas, let's not forget the National Infrastructure Pipeline of Rs 100 Trillion which Govt intends to complete in next 3 yrs. The average turnaround time for ships at the major ports has more than halved to just over 2 days in the last decade.

India's future as an economy is critically linked with the telecom infrastructure. Indians love visual content on their mobiles is clearly seen from fact that, we consumed 12 GB data per person per month in 2019, highest in the world. In 2020, this reached 13.5 GB (growing at 20%). With 5G in place, this consumption is likely to go up to 30GB per person per month by 2025.

Real estate is the biggest component of Capex in the economy followed by Manufacturing yet, a third of the urban households do not own a house.

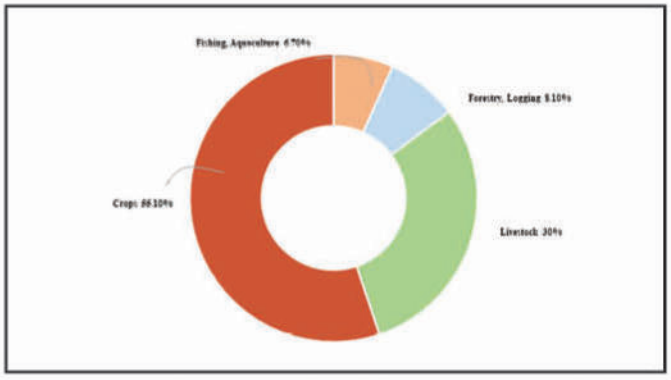
Composition of gross Capital Formation (FY20, Nominal)



Agriculture & Social Sector – India's underlying base story

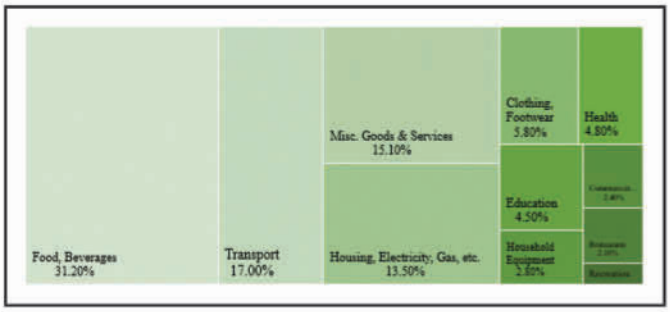
India is the 2nd largest Agriculture player globally in terms of Gross Value added of $ 482bn after China ($ 1020 Bn). While the Agriculture share in the GDP has declined from 35% in 1990 to 17% currently, within the Emerging markets, India has amongst the highest share of employment in agriculture at 43%. The allied activities like Livestock, Forestry, Fishing contribute 45.2% share in GVA from Agriculture & Allied Activities. The gross cropped area has almost remained the same at 190-200 million hectares since 2005. In fact, we produce 1/5th of Global Milk output and the Policymakers support has always been there towards this sector. We have seen how Direct Institutional credit to Agriculture sector has moved from Rs 3000 Billion to 15,000 Billion in last 15 yrs. There is also a replacement of informal credit with cheaper institutional credit happening, thanks again to JAM Trinity. On balance India has been a large net exporter of Agricultural goods.

Composition of Gross Value Added from Agriculture & Allied Activities (FY21, Real terms)



If we aspire to become a self sufficient economy, the basic needs of the people in terms of Electricity, Drinking water, access to Toilet, clean cooking fuel, living in pucca house, healthcare access, higher education etc all have to improve significantly. It is hard to imagine that just a few decades back, almost every one out of every eight children born in India, would die before they could reach the age of one. Today 99% households have access to electricity as compared to 67% in 2005. We now have 83% households having access to toilet as compared to 44% in 2005 and 30% in 1992. Almost 60% of households live in pucca house as compared to 32% in 1998. We now have 98.3% of the households having access to banking facilities for first time ever. The JAM trinity indeed has done wonders for India inthe last decade. Even though the Gross Enrolment ratio (GER %) in Elementary & Secondary schools are at 99% & 80%, when it comes to Higher Education it is just at 27%. With the Government thrust towards Higher education in National Education Policy (NEP), we should see this bracket move to 40%.

Food and Transport make up almost half of the consumption in the country - Composition of India's Household Consumption (FY20, Nominal)



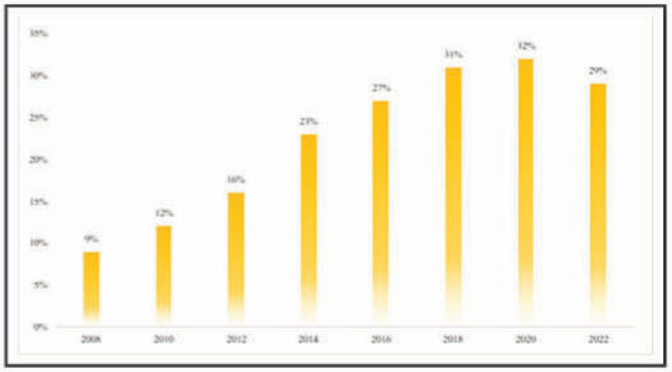
Energy – Seizing global opportunities

India's primary energy consumption has doubled in last 15 years from 16.5 exajoules to 32 exajoules. Even as the demand for petroleum products in India has increased, domestic crude oil production is declining thereby increasing India's import dependency. We are the 4th largest refiner of oil in world but our share in global petrol consumption is less than 3%. We have seen petroleum sector contribute significantly to Govt revenues with Excise duty contribution at 47% & Sales tax at 33%. The bottom line is petroleum is a big source of revenue for the Government and hence we have seen the sector has been kept out of ambit of the GST. The coal imports have risen to all time high in FY22 with $32bn from just under $5bn in 2005. On other side, as of 2020, just over 8% of India's power generation is from renewable sources, a number not very different from the global average which is 12%. We have already seen in past few years major power sector reforms on DISCOMS, SEBs and now moving towards sustainable renewable energy. One can expect (in terms of capacity installed) that renewables including hydro, will cross thermal power generation capacity by 2030.

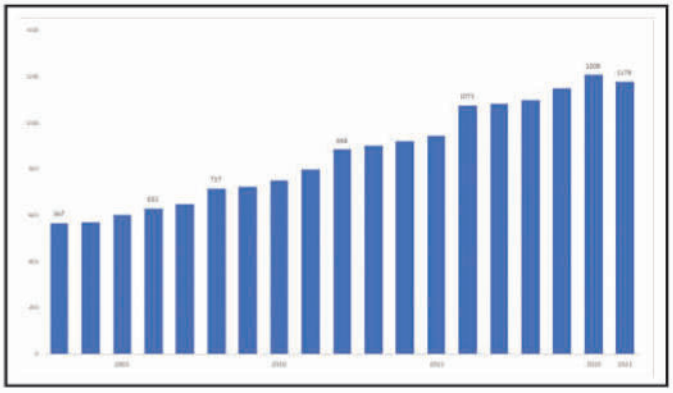
India's Primary Energy Consumption – Share in World (%)

(y/e December)	2000	2005	2010	2015	2020
Total	5	3.6	4.4	5.3	5.7
Oil	2.9	3.0	3.8	4.4	5.1
Coal	6.9	6.7	8.0	10.4	11.5
Natural Gas	1.0	1.2	1.8	1.3	1.5
Hydro Electricity	2.9	3.3	3.1	3.4	3.8
Renewable Electricity	1.2	2.9	3.7	3.5	4.5
Nuclear Energy	0.6	0.6	0.8	1.4	1.6

Private Sector's Share in Power Generation has more than tripled in the last 15 years - Share of Private Sector in Conventional Power Generation (excluding captives)



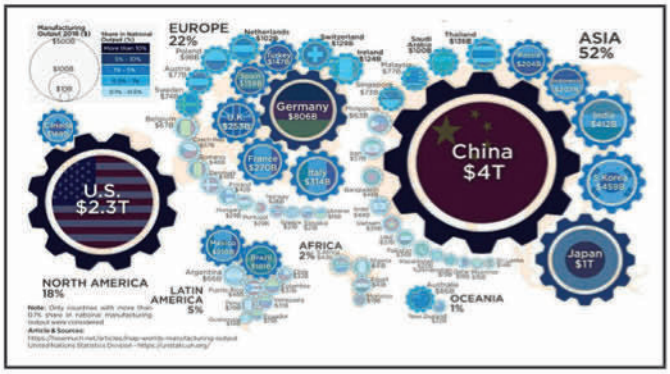
Per Capita Power Consumption (kwh) has more than doubled in last 2 decades –



India has come a long way in meeting household energy consumption. From frequent power cuts to unreliable power supply, in last 10 years we have managed to fall from peak power deficit of 17% in FY08 to less than 1% in FY22. At the Glasgow climate summit in 2021, India pledged to meet 50% of its energy capacity through renewable power and achieve the target of net neutral emissions by 2070.

Manufacturing – Need to fire bigtime!

For first time ever, you would notice that India is leading on several manufacturing measures in Defence, Mobile production, Drone, Semi conductors etc. Our share in Manufacturing exports in Merchandise exports is at 70.5% as compared to 93.4% of China & 88.7% of Korea. The real kicker came in with Production linked Incentive (PLI) which is directly linked to the production (be it for domestic or export consumption). It covers 14 sectors and envisages an outlay of over $25bn over the next few years. This should generate 6 million jobs and produce an output of almost USD 400 bn. Despite this we have just 2,50,000 factories in the manufacturing sector. For us to become a Rs 10 trillion economy, this number has to go up manifolds and give equivalent hand to IT services.



External Sector:

In large, India's growth can directly be linked to the Foreign Direct Investment (FDI) we have had in last 15 yrs. We are now the 5th largest FDI recipient in the world receiving investments worth $56.2 bn in FY22 (from $6 bn in 2005). Even though the current account has always been deficit, we have significantly improved in last few years to be at 1.2-1.5% of GDP. After having stagnated in the last decade, India's share in World Goods Exports has risen sharply and is at an all-time high of 1.7% in 2021. Likewise, India's share in World Services exports has reached close to 4% and is more than twice the share in goods exports. The foreign exchange reserves at $575bn provides us a comfortable cushion to aim for further reduction in external debt (even though we have one of the lowest external debt to GDP % among global economies).

India's share in world exports is already higher than that of several comparable emerging and developing countries

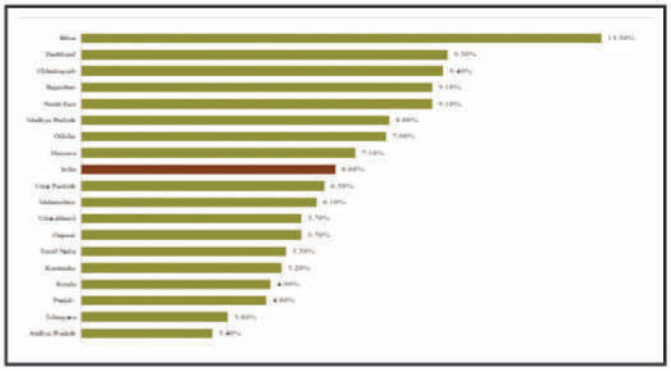
Share in World Merchandise Exports (2019-21 avg)

The government also embarked on the ambitious Make in India policy to incentivise manufacturing in India & reduce the imbalance in goods trade. We have seen relaxations on FDI limits, Ease of doing business significantly jumped up, improved IP framework, industrial corridors been set, focus on startup India, skill development as some of the key policies to boost FDI investment.

Banking & Capital Markets – Next big trigger for growth

We have seen how Financial inclusion has brought households to aspire for higher per capita income. At a broad level, not alone have they entered into formal financial system for borrowing but the accessibility for savings & further investments have increased rapidly. The number of Demat accounts in the country has more than doubled to 90m in just the last two years. The credit uptick in last 2 decades has made sure that we have achieved near universal access to basic bank account. This can be seen from fact that total credit advances has tripled in last 15 yrs. After an entire clean up of banking NPA ecosystem in last few years, we are now on track of a new credit cycle uptick. With world economy facing a liquidity crunch and bearing the brunt of high inflation followed by higher interest rates, our Reserve bank has managed the banking credit cycle very well.

Growth in Deposit Accounts (Mar15 – Mar21, CAGR)



The broad money supply (M3) has become 10x in last 15 yrs in the system. The spectacular rise of UPI where every 3rd transaction is a digital transaction and has increased 90x since 2010 along with easy credit cards access, would give an edge to India globally for further penetration in carrying out real time cross border transactions.

Conclusion:

Over the last decade, we have moved from been an unorganised to formally organised economy. This would further gain traction with business moving further into tech driven solutions. India's share in global GDP can go up pointedly if manufacturing picks up pace in next few years. Today, Mumbai & Delhi account for 31% of the new businesses. Our focus should also be to formalise lesser and smaller industrialised states. We have already seen Government intention of higher capex investment into economy with public private partnerships binding the role with self reliance and sustainability coming in from "Make in India" drive. Economic reforms is all about right economic policy framework to create value by producing goods & services that are expected to have demand in times to come with quality to make them competitive both domestically & internationally. The 4 key pillars – Digital Economy, Infrastructure, Manufacturing & Energy will play a key role in our aim to become a $10trn economy by 2035.

Source : CSO, RBI, Ministry of Finance, CEA, IEA, World Bank, The Data book by India data hub

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lalit@lkradvisors.com

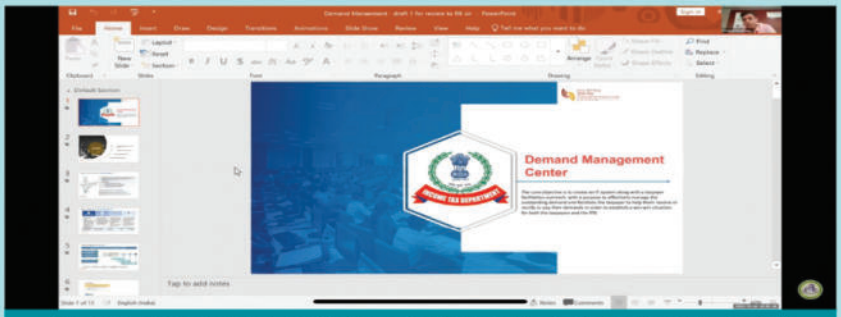
Economy

PHOTO GALLERY

Intensive GST residential Course on 4th, 5th and 6th November 2022 at Mysore organised by Indirect Tax Committee of KSCAA

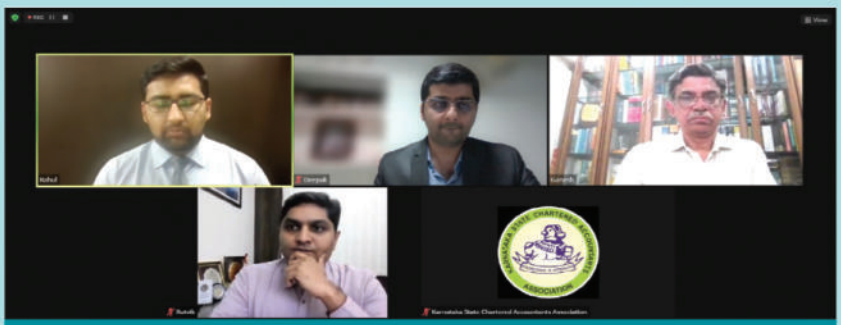
Bike ride to KSCAA Harohalli Plot on 16th October 2022 organised by Leadership and Skill Development Committee of KSCAA

Meeting with CBDT member Ms. Sangeeta Singh, IRS and Ms. Renu Jauhri. IRS. PCIT (E) Delhi on 10th November 2022



Outreach programme on recent Demand Drive of Income Tax Department and redressal of Outstanding IT Demands organised by Representation Committee and Direct Tax Committee of KSCAA.
addressed by CIT (OSD) Shri, B Guruprasad, IRS

Eating with elegance programme conducted by Women Empowerment Committee of KSCAA on 14th October 2022



Webinar on Demystifying Income Tax provisions on payment to Non residents organised by Direct Tax Committee of KSCAA.
Speakers : CA Ganesh Rajgopalan, Mumbai, CA Rutvik Sanghvi, Mumbai

UPCOMING EVENTS

KSCAA Sports & Cultural Meet & Rajyotsava Celebration 2022.

Intensive Training Programme on Appeals before ITAT by Direct Tax Committee of KSCAA, More details awaited

"Registered" News Bulletin for India vide No.KA/BGGPO/2542/2021-2023
RNI Regn. No. KARENG/2013/51293
Licensed to post without prepayment License No. PMG/BG/WPP-309/2021-2023

Total No. of Pages Printed : 32
Date of Publishing : 13th of Every Month
Date of Posting : 14th & 15th of Every Month
Place of Posting at Bangalore PSO, Mysore Road, Bangalore - 560026

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KSCAA NEWS BULLETIN English Monthly Printed, Published & Edited by **CA. Pramod Srihari,** President on behalf of **Karnataka State Chartered Accountants Association,**
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Printed at **POORNIMA PRINTERS** # 3 & 4, Sy. No. 51 / 14, Chowdeshwarinagar, Pipe Line Road, Laggere, Bengaluru - 560 058- **Ph : 080 - 23359588, E-mail.: info@poornimaoffset.com**
Published at No 67, 1st Floor, 2nd Stage, West of Chord Road, Mahalaxmipuram, Below Rajaji Nagar Metro Station, Bengaluru - 560 086. Editor : **CA. Pramod Srihari.**