KSCAA®

Karnataka State Chartered Accountants Association (R)

NEWS BULLETIN

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UNION BUDGET 2023

35th KSCAA ANNUAL CONFERENCE 2023

Friday, 17th March 2023 &
Saturday, 18th March 2023

Venue : White Petals, Palace Grounds, Bengaluru.

Create & Complement

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

From the President

Dear Readers,

The Nation was rocked with a report by Hindenburg on the company owned by the world's 3rd richest person. The report, among many things has casted serious allegation on its accounting and governance of the company. While India is moving slowly closer to being the super economic power, the scrutiny of large Indian companies and expectation on financial regulatory would steeper and increase. These are obvious when India integrates to the global new order and Indian companies are scrutinized and the reflects better on country for having strong regulators, healthy investor protection and superior corporate governance.

The union budget 2023 was presented by the Hon'ble Ministry of Finance, Nirmala Sitharaman and was the first budget after the Covid fiasco ended. It was also the first budget of Amrit kaal, this laid the map and vision of the government to move through the journey to become the worlds super economic power. One prominent intent of the government is to take advantage of technology, the use of words showed the intent of government to use technology in farming, agriculture, cooperative segment, fishery, education, health, eradicating anemia etc. The technology has been greatest boon to Indian government in better governance, the penetration of data and technology has made inroads for government to interiors of India. The announcements in the budget resonate with India's climate change policies and are aligned with the country's net zero goals, COP27 commitments and the updated Nationally Determined Contributions (NDCs). On the Income Tax front also, the government is moving towards new tax regime with no separate deduction on various savings / necessary expense but a blanket deduction/exemption is provided. While the administration of tax department would be easier and lesser but the saving habit of citizens, which constitute a great volume of savings can be impacted. The country which is majorly known for its saving habits would be changing to a gig economy and would perse impact the investment pattern and cost of capital for businesses aswell.

KSCAA recently conducted a program named 'Practice Development Clinic', to discuss and talk on management of Practice. KSCAA felt that there are very few materials available which discuss on the management of CA practice. Topics which were discussed include the problems and pain points which are faced by the practicing fraternity. Some of the topics like Human resource are problems deeper than what we can think and unless CAs address them rationally its inferno.

35th KSCAA Annual Conference is on 17th and 18th of March 2023 at White Petals, Palace grounds. The current year Theme is 'Order and Chaos'. Current year, we have broken the session into seven main sessions including four panel discussion with topics of various professional interest. Also, we have introduced a Pep talk on the topic 'Effective Way to use RTI in Taxation' and three CA – Talk by Chartered Accountants who succeeded exceedingly well and have raised the bar of professionalism. The captivating Speech of not more than quarter an hour is format designed to inspire and encourage CAs about the ability they have to change and influence the world around them. The whole team of KSCAA is excited to invite and welcome you all the event. We are also researching on members who have moved out of profession and worked extensively and would like to show case the same to you.

Order and Chaos is the theme of the conference and is made to resemble the chaos we deal on a daily basis and our effort to make it order. The order is something which is secured, clean, predictable, safe and relatable and on the other side, Chaos would mean which is complex, volatile, uncertain, ambiguous etc. The philosophy of order and chaos means that the world we stay is chaotic and there are no means to make it orderly, the reality of the laws, rules, technology, clients etc are all chaotic. Our pursuit among this is to make them orderly, the more we deal with chaos the more we realize that chaos is the only order. A good amount of Chaos gets us to be in order else excess order leads to complacency, relaxation and lazy.

Let me wish you happy Shivaratri and Happy reading!

Happy Reading !

Yours' faithfully,

CA. Pramod Srihari
President

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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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Union Budget 2023-24: Proposed Changes In GST Law

(Part - I of Budget Updates)

CA. Srikanth Acharya G B

CA. Vasanth Kumar J

Several amendments have been proposed under the GST Law in the Finance Bill, 2023 which is a part of the Union Budget 2022-23. The amendments have been made with regard to the provisions of filing GST returns, availing of input tax credit, GST refund, GST registration, decriminalization of offences, and compounding of offences. Following are some of the major amendments that are proposed.

1. E- COMMERCE SELLERS WILL NOW BE ELIGIBLE TO OPT FOR COMPOSITION SCHEME.

- **Brief Introduction:**

The e-commerce sector in India is thriving and growing immensely year over year. With a large amount of trade and commerce online, the Indian government has put in place special provisions that e-commerce sellers need to comply with under the Goods and Services Tax (GST) law.

Electronic Commerce Operator (ECO) has been defined in Sec. 2(45) of the CGST Act, 2017 to mean any person who owns, operates or manages a digital or electronic facility or platform for electronic commerce.

The E-Commerce seller is not defined in the GST Act but generally an E-Commerce Seller is a person who sells goods or services through an e-commerce portal or operator. These sellers may sell their goods or services through one or multiple e-commerce operators and could also be selling via their shops or offices together with the e-commerce platforms.

- **Background:**

- GST Registration for an E-Commerce Seller:

The E-Commerce sellers can be classified into two categories for the purpose of applicability of GST registration provisions. They are:

(i) Supplier of goods – The supplier who supplies goods through ECO, are required to get registered under GST as per Section 24(ix) even if their turnover is less than the threshold limit of Rs. 40/20/10 lakh. It means they are required to register before selling through the e-commerce platform irrespective of the turnover. All platforms like Flipkart, Amazon, Magicpin, etc. require GSTIN (Suppliers) at the time of registration as a seller on their platform.

(ii) Supplier of services-

a. **Supplier of Services other than services notified in Section 9(5):** Such sellers who supplies services through ECO, are required to register under GST even if their turnover is less than the threshold limit of 20/10 lakh as per Section 24(ix).

b. **Supplier of services notified in Section 9(5)** – As per Section 23(1), the person who is exclusively engaged in supplying services which are notified under section 9(5) of the act, is not required to get registered under GST law.

Therefore, as per the existing provisions, any person who is supplying goods/service through e-commerce operator debarred from taking registration under composition scheme. He needs to get registered under regular scheme only.

- **Consequences of earlier section:**

(i) The majority of sellers registered with market operators are small businesses.

(ii) The Government has launched a composition scheme in accordance with GST law. This scheme is mainly intended to reduce the burden of compliance on small and medium businesses.

(iii) Unfortunately, the GST reform explicitly excluded e-commerce sellers from this framework and GST law excluded e-commerce businesses from this scheme.

- **Amendment of Section 10 of the CGST Act, 2017**

Clause 128 of the Finance Bill 2023 proposes to amend Sections 10(2)(d) and 10(2A)(c) of the CGST Act, 2017 to remove the restriction on registered persons supplying goods through electronic commerce operators (ECOs) from opting to pay tax under the composition levy.

Clause 128. In the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Central Goods and Services Tax Act), in section 10,-

(a) in sub-section (2), in clause (d), the words "goods or" shall be omitted;

(b) in sub-section (2A), in clause (c), the words "goods or" shall be omitted.

Therefore, by bringing these amendments through the budget, now an e-commerce seller by complying with the applicable sections can opt for a composition scheme also. The above amendment which has been made through the Union Budget in GST has certain positive impacts since the majority of sellers registered under e-Commerce Operators are small and medium businesses, this will mainly reduce their burden of compliance.

INPUT TAX CREDIT (ITC) ON CSR SPENDING BY COMPANIES

- **Introduction:**

As per the provisions of Section 135 of the Companies Act, 2013 and rules framed thereunder ("the CSR Rules"), every company having a net worth of Rs. 500 crores or more, or turnover of Rs. 1,000 crores or more or a net profit of Rs.5 crore or more is required to spend in every FY, at least 2% of the average net profits made during the three immediately preceding FYs in pursuance of its Corporate Social Responsibility Policy. Excess spent can also be set off in the next financial year proviso to Sec 135(5). Considering the financial impact on account of compulsory CSR spending, it is equally important for such companies to know whether Input Tax Credit (ITC) on CSR spending is allowed under Goods and Services Tax (GST) or not. On a plain reading of the Central Goods and Services Tax Act 2017 (CGST Act 2017) and the rules framed thereunder there was no clear answer to this question.

Considering the importance, the Indian Union Budget 2023-24 has proposed amendments in the Goods and Services Tax (GST) Act and has made it clear that input tax credit cannot be claimed on goods and services used or intended to be used for Corporate Social Responsibility (CSR) activities by inserting a new clause in Section 17(5) dealing with Blocked credits. As per the proposed amendment, Input Tax Credit (ITC) on good/services used or intended to be used for Corporate Social Responsibility (CSR) activities shall be ineligible under the newly added provision i.e., section 17(5)(fa).

- **The Amendment made via clause 130(b) of Finance Act 2023**

(b) in sub-section (5), after clause (f) of Section 17 of CGST act, the following clause shall be inserted, namely: ––

"(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;".

Impact and Analysis:

The Budget 2023, proposed that section 17(5) of the CGST Act shall be amended to effect that input tax credit shall not be available in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013. Hence, in case of the company is subjected to the obligation of spending on CSR, the GST benefit will be denied to the company. The expression is clearly related to the obligation under CSR in terms of sec. 135 – therefore, this denial of ITC benefit will be applicable only in the case of the company.

It is important to understand that CSR expense may be done either by a company itself, or through one or more "implementation agencies" (IAs), or the expense may be done by the beneficiary, to whom the company may have contributed money. Since there is no question of any GST benefit in case of contribution of money - the question of any set off in case of expenses incurred by IAs or beneficiaries would not have arisen. The company could have claimed & set off only in case of goods or services acquired on the company's GSTIN, and therefore, that would now stand denied. It is important to note that there is no question of denying GST benefits in the case of either the IA or the end beneficiary. That is, if the company simply contributes the money, and it is the IA or the beneficiary who acquires the goods or services, the IA or the beneficiary, as the case may be, may claim a set-off against any of the output tax liabilities of the IA or the beneficiary.

To sum up, there is an adverse effect on companies that are spending on CSR activities, since, Govt. itself mandates social activities but on the other hand Govt removes the ITC benefit on CSR activities which results in a tax-cost burden.

3. SECTION 23 HAS BEEN GIVEN OVERRIDING EFFECT ON SECTION 24 RETROSPECTIVELY.

Introducing the most welcoming change in Union Budget 2023, i.e., Section 23 has been given overriding effect on section 24 retrospectively, which means that persons making only exempt supplies and agriculturists are now not liable to take registration even though required under section 24 and also it will resolve the question of levy of RCM in case of unregistered persons.

Before dwelling into this matter let us understand the related sections.

Section 23: Persons not liable for registration. -

(1) The following persons shall not be liable to registration, namely: -

(i) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

(ii) an agriculturist, to the extent of supply of produce out of cultivation of land…...

Section 24: Compulsory registration in certain cases. -

Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,-

(i) Persons making any inter-State taxable supply;

(ii) Casual taxable persons making taxable supply;

(iii) persons who are required to pay tax under reverse charge;

(iv) …………

.

.

.

(xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

Clause 131 of the Finance Bill seeks to substitute, with effect from the 1st day of July, 2017, section 23 of the Central Goods and Services Tax Act relating to persons not liable for registration so as to provide overriding effect to the said section over sub-section (1) of section 22 and section 24 of the said Act.

The Government has clarified that Section 23 has been made a non-obstante clause to have an overriding effect over Section 22 (Persons liable for registration) & Section 24 (Compulsory registration in certain cases).

Let us understand with the help of an illustration.

Mr. A, an unregistered person is supplying exempt goods and receiving goods or services on which tax is payable on a reverse charge mechanism basis.

In this case, as Mr. A supplies exclusively exempt goods, he is not liable to register under Sec 23(a). However, as he needs to pay tax under RCM, he is liable to register under sec 24(iii) which was creating a dilemma whether he has to take registration or not. Now the Government has put a full stop to this confusion by clear wording that if a person is required to get registered under either Section 22 or 24 but specifically exempted from taking registration under Section 23 then such a person is not required to take registration under GST laws by virtue of Section 23 of GST Act 2017. Therefore, Mr. A is not liable to register under GST Law and at the same time not liable for RCM too.

Even though this is a positive change for the taxpayer this seems to be a revenue loss to the exchequer, expecting some sort of notification soon, on neutralizing such revenue loss.

Overall, GST law is stabilizing and there has been a sharp increase in GST registrations and GST Collections. There is a great improvement in clarity in law and compliance from the introduction of GST to date.

A lot still needs to be done, but it appears that major changes or amendments, or clarifications will flow from GST Council meetings and not Union Budget. There is a great hope by the trade that there will be an overall simplification for GST Compliances to enable them to concentrate on the business.

As per the latest update, the GST Council will hold its 49th meeting in New Delhi on **February 18th, 2023** where several amendments proposed in the Union Budget will be discussed and notified soon.

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Solution to Sudoku - 29 January 2023

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

Indirect Tax updates


CA. Raghavendra C R
CA. Bhanu Murthy J S

1. **Godrej Sara Lee Ltd Vs. Excise and Taxation Officer-Cum Assessing Officer (2023) 3 Centax 49 (S.C.)**
   Background: The assessee had questioned before the High Court, the jurisdiction of the suo moto revisional power of the authority (under section 34 of Haryana Value Added Tax Act, 2003) on the ground that the assessment orders of the original authority suffered from illegality. The High Court dismissed the Writ Petition on the ground of availability of alternative remedy in the nature of appeal.

   On appeal, the Supreme Court observed as below:

   A) **On the powers the High Court under Art. 226:** Dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without examining whether an exceptional case has been made out for such entertainment would not be proper. Since a jurisdictional issue was raised by the appellant / assessee in the writ petition questioning the very competence of the Revisional Authority to exercise suo motu power, being a pure question of law, the said plea did deserve a consideration on merits and writ petition ought not to have been thrown out at the threshold.

   B) **On the revisional powers:** The Court observed that a decision may be questioned as suffering from an illegality if the original authority fails to understand the law that regulates his decision making power correctly or if he fails to give effect to any law that holds the field and binds the parties. To take exception to a decision on the ground of lack of propriety of any proceedings or order passed in such proceedings, it essentially ought to relate to a procedural impropriety. It is incumbent for the accuser to show that the decision maker has failed to observe the standard procedures applicable in case of exercise of his power. Additionally, to impeach an order on the ground of moral impropriety, it has to be shown that the weight of facts together with the applicable law overwhelmingly points to one course of action but the decision has surprisingly gone the other way, giving reason to suspect misbehaviour or misconduct in the sphere of activity of the decision maker warranting a revision.

2. **Sri Raghavendra Industries Vs Deputy Commissioner(2023) 2 Centax 189 (Telangana):**
   Background: M/s. Midwest Alloys Pvt. Limited had availed financial assistance from Andhra Pradesh State Financial Corporation but for default in repayment, Corporation seized the entire assets of M/s. Midwest Alloys Pvt. Limited whereafter the said plot of land was allotted to the petitioner by duly executing conveyance deed. The Central Excise demand issued notice of recovery of Central Excise dues of M/s Midwest on the petitioner. In this background the petitioner approached the High Court.

   Held: The Court taking into account the facts of the case and also the decision of the Hon'ble Supreme Court in the case of Rana Girders Limited v. Union of India (2013) 10 Supreme Court Cases 746, held that the central excise dues cannot be recovered from the subsequent buyer of the plot.

3. **Premier Sales Promotion Pvt. Ltd. vs. Union of India, (2023) 3 Centax 64 (Kar.)**
   Background: Assessee is engaged in the transactions of procuring Pre-paid Payment Instruments of Gift Vouchers, Cash Back Vouchers and E-Vouchers from the issuers and supplying them to its clients for specified face value. Its clients issue such Vouchers to their employees in the form of incentive or to other beneficiaries under promotional schemes for use as consideration for purchase of goods or services or both as specified therein. The assessee sought Advance Ruling on the issue of taxability of such vouchers, whereof the AAR as well as AAAR observed took a view that supply of vouchers is taxable as goods and the time of supply in all the three cases would be governed by Section 12(5) of the Central Goods and Services Tax Act, 2017.

   Held: In this background, the High Court observed that vouchers are considered as instruments, and hence they would fall under the definition of 'money', defined under CGST Act. Further, the CGST Act excludes 'money' from the definition of goods and service and therefore not leviable to tax.

The transaction between the assessee and his clients is that of procurement of printed forms and their delivery, which are in the nature of currency. The value printed on the form can be transacted only at the time of redemption of the voucher and not at the time of delivery of vouchers to assessee's client. Therefore, it was observed that the issuance of vouchers is similar to pre-deposit and not supply of goods or services. Consequently, the Court held that, vouchers are neither goods nor services and therefore cannot be taxed.

4. **M/s Orient traders Vs Deputy commissioner of commercial taxes (audit)-3, 4, DGSTO-3 2023) 3 Centax 63 (Kar):**

Background: During the Financial Year (FY) 2017-18, the assessee claimed input tax credit of IGST paid on import of goods However, while reporting the same in the GSTR-3B, the assessee instead of reflecting the credit under heading '4A(1) Import of Goods', reported by mistake under heading '4A(5) All other ITC". Which essentially means reporting the credit as credit on local supply instead of import. This error in entering the figures in the wrong column resulted in a mismatch between the GSTR-3B and GSTR-2A forms, due to which, the DCCT observed in its audit report that the ITC which had accrued to the Petitioner was liable to be disallowed. Without considering the replies filed by the petitioner, show cause notice came to be issued proposing to deny the credit.

Held: In the background of the above facts, the Court observed that it is apparent that ITC, which is admittedly available to the petitioner has been entered under the wrong column; the material on record also discloses that the said errors are entirely bona fide and inadvertent and that a lenient view is required to be taken, particularly since the tax periods involved relate to the very first year of the GST regime. The Court directed that the petitioners be permitted to make necessary changes in the monthly returns to rectify the above bona fide errors. While allowing so, the Court also observed that the decision of the Apex Court in the case of Bharti Airtel is not applicable to the present case as the issue involved in the present case is not of postponing of the availment of credit but wrong reporting of the credit.

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Doctrine of Merger

CA. S Krishnan

1. Introductory Remarks

The provisions of section 263 of the Income-tax Act,1961 (the Act) dealing with revision of orders prejudicial to the Revenue have been in the statute book right from inception of 1st April,1962-inception of the Act- and have undergone changes and Section 263 of the Act, as on date, reads as under- (only relevant portions)

> *"(1) The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*
>
> *(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed."*

So, the question which often arises is with regard to limitation period for purpose of invoking revision jurisdiction under section 263 in respect of income assessed originally and remained untouched by reassessment.

In order to understand the concept of limitation period within which the revisionary authority mentioned in section 263 of the Act has to exercise his powers let us understand the doctrine of merger which has been engaging the attention of judicial authorities every now and then.

Issues pertaining to limitation period under section 154 of the Act have also been covered in this article.

2. Doctrine of Merger

The basic principle is that judgment of inferior Court, if subjected to an examination by the Superior Court, ceases to have existence in the eyes of law and is treated as being superseded by the judgment of the Superior Court. In other words, the judgment of the inferior Court loses its identity by its merger with the judgment of the superior court. The juristic justification of the doctrine of merger may be sought in principle that there cannot be, at one and the same time, more than one operative order governing the same subject-matter.

The principles of law that emerge from the decisions of the Supreme Court in the cases of CIT v. Amritlal Bhogilal and Co. [1958] 34 ITR 130 (S.C.), State of Madras v. Madurai Mills Co. Ltd. [1967] 19 STC 144 (SC) and Gojer Bros. (P) Ltd. v. Shri Ratan Lal Singh AIR1974 SC 1380 can be summed up as under-

> *"But the doctrine of merger is not a doctrine which applies universally in all cases where the orders of the subordinate authorities are subject to appellate or revisional jurisdiction of higher authorities or tribunals. Whether an order of the subordinate authority has merged partially or wholly with the orders of the superior appellate or revisional authority would have to be decided with reference to the provisions dealing with the appellate or revisional jurisdiction of the superior authority under the relevant enactment and only that part of the inferior authority merges or stands superseded by the order of the higher authority in respect of which the latter has exercised its appellate or revisional jurisdiction. The remaining part of the order would continue to be unaffected by the decision of such high authority and would have an independent existence unaffected by the appellate or revisional order."*

Let us refer to two leading cases decided by the Supreme Court in Hind Wire Industries Ltd. v. CIT [1995] 212 ITR 639 (SC) and CIT v. Alagendran Finance Ltd. [2007] 293 ITR 1 (SC) with regard to calculation of limitation period and also to 2 decisions of High Courts.

3. **Decision of the Supreme Court in the case of Hind Wire Industries Ltd.(supra)**

   The original assessment in the assessee's case was completed by the Assessing Officer vide assessment order dated 21st September,1979. The assessee filed rectification application under section 154 of the Act claiming extra shift allowance and rectification order was passed on 12th July,1982. Again, against this rectification order the assessee filed another application under section 154 of the Act on 4th July,1986 contending that as against 10 per cent of depreciation available to the assessee only 5 per cent was allowed. The Assessing Officer dismissed the application on the ground that the application made was beyond time and the same was confirmed by the First Appellate Authority. The Tribunal, however, allowed the application holding that the application was within four years of the fresh order of assessment, i.e., the first rectification order. The High Court held that the period of four years was to be calculated from the date of original order of assessment and not from the date of rectification order and, therefore, the application was barred by limitation.

   The assessee filed an appeal before the Supreme Court.

   The Supreme Court held that *"the word 'order' in the expression 'from the date of the order sought to be amended' in section 154(7) as it stood at the relevant assessment year had not been qualified in any way and it did not necessarily mean the original order. It could be any order including the amended or rectified order. Therefore, the Tribunal was correct in holding that the second rectification application was well within limitation."*

4. **Decision of the Supreme Court in the case of Alagendran Finance Ltd.(supra)**

   The assessments for the assessment years 1994-95, 1995-96 and 1996-97 on the assessee were completed on 27th February,1997,12th May,1997 and 30th March, 1998 respectively by the Assessing Officer. In the orders of assessment, the assessee's claim relating to "Lease Equalisation Fund" was accepted. Thereafter orders of reassessment were initiated in respect of three other items but not the item relating to "Lease Equalisation Fund" and reassessments were made. Thereafter, the Commissioner of Income-tax, by an order dated March 29, 2004, initiated revision proceedings only in relation to the item "Lease Equalisation Fund". The Tribunal held that the revision proceedings were barred by limitation as they were initiated more than four years after the original assessments were passed. The High Court dismissed the appeal therefrom.

   The Department filed an appeal before the Supreme Court.

   The Supreme Court, affirming the decision of the High Court, held that the Commissioner had sought to revise only that part of the order of assessment which related to Lease Equalisation Fund, but the proceedings for reassessment had nothing to do with that item of income. The doctrine of merger did not apply in a case of this nature and the period of limitation commenced from the dates of the original assessments and not from the reassessments since the latter had nothing to do with the Lease Equalisation Fund. This was not a case where the subject-matter of reassessment and the subject-matter of the assessment were the same.

   The Supreme Court made the following important observations at para.17 of its judgment-

   > *"There may not be any doubt or dispute that once an order of assessment is reopened, the previous order under assessment will be held to be set aside and the whole proceedings would start afresh, but that would not mean that even when the subject-matter of reassessment is distinct and different, the entire proceeding would be deemed to have been reopened."*

   The Supreme Court also observed that "Explanation (c) appended to sub-section (1) of section 263 of the Income-tax Act, 1961, which deals with the power of the Commissioner in revision, is clear and unambiguous, as in terms thereof the doctrine of merger applies only in respect of such items which were the subject-matter of appeal and not in respect of those which were not."

5. **Decision of the Calcutta High Court in the case of EIH Ltd. v. CIT [2015] 64 taxmann.com392 (Cal.)**

   The original assessment in the case of the assessee which was passed on 22nd March,1996 under section 143(3) of the Act allowing deduction under Chapter VI A without setting off unabsorbed deprecation, was amended on 27th December,1999 in order to give effect to appellate order arising out of appeal preferred by the assessee. This second order was rectified under section 154 by an order dated 9th September,2003.

   On appeal before the Tribunal, the assessee contended that the rectification order dated 9th September,2003 passed under section 154 of the Act was barred by limitation since the original order sought to be rectified was passed on 22nd March,1996. The Tribunal, relying on the Supreme Court judgment in the case of Hind Wire Industries Ltd.(supra) upheld rectification proceedings started by Assessing Officer on ground that same were within period of limitation as the order rectified on 9th September,2003 was the order dated 27th December,1999.

The High Court, on appeal by the assessee, held as under-

> *"Once the order dated 22nd March,1996 was amended in order to give effect to the appellate order, it is the order dated 27th December,1999 which became the operative order. The original order dated 22nd March,1996 lost its existence. The law well-settled is that two operative orders cannot co-exist in the same field. The order of assessment passed on 22nd March,1996 was admittedly amended on 27th December,1999 in order to give effect to the appellate order. The order dated 22nd March,1996 merged into the order dated 27th December,1999.*
>
> *For the aforesaid reasons, the proceedings under section 154 were within the prescribed time and the Tribunal took the correct view of the matter."*

With regard to reliance placed on behalf of the assessee on the judgment of the Supreme Court in the case of Alagendran Finance Ltd. (supra) with regard to non-applicability of theory of doctrine of merger when the issue of subject-matter being distinct and different this is what the High Court observed in para.6 of its order-

> *"The aforesaid discussion in the judgment cited by the learned advocate is with regard to interpretation of explanation (c) appended to sub-section (1) of Section 263 which merely means that the power of the Commissioner to revise an order does not extend to such matters which have been considered and decided in an appeal. The reason is very simple. An original order can be subjected to a revisional proceeding or to an appellate proceeding but an appellate order cannot be subjected to a revisional proceeding. This is what has been sought to be clarified by clause (c). The judgment cited has no manner of application to the facts and circumstances of this case before us."*

The following reasoning made by the High Court in para.9 of its order tilted the issue in favour of Revenue-

> *"The Income Tax Act is a special legislation. Therefore, questions arising out of the aforesaid Act have to be answered taking recourse to the provisions contained therein. But in case of doubt or difficulty assistance can be taken from the general law of the land. The cause of action for rectification is evidently a mistake. It is the mistake, which is sought to be rectified. A cause of action to rectify a mistake, in the general law of the land, does not arise until the mistake has been discovered. Therefore, Section 17 of the Limitation Act provides that the period of limitation in a suit or an application governed by the Limitation Act shall commence from the date of discovery of the mistake. The revenue in this case is however armed with the judgment of the Apex Court in the case of Hind Wire Industries Ltd. (supra)."*

6. Decision of the Madras High Court in the case of CIT v. Lakshmi Vilas Bank Ltd. [2023] 146 taxmann.com 227 (Madras)

The assessee, a banking company, filed its Return of Income for the assessment years 1999-2000, 2001-2002 and 2002-2003 on 28th March,2002, 29th October,2001 and 28th October,2002 respectively. The case was selected for scrutiny and notice under section 143(2) of the Act was issued for the assessment years in question. Thereafter, assessment was completed under section 143(3) read with section 147 of the Act for the assessment years in question on 28th March,2002, 30th March,2004 and 27th August,2004 respectively. Subsequently, the Assessing Officer reopened the assessment for the assessment years in question and passed orders under section 143(3) read with 147 of the Act on 26th December 2006, 31st December,2007 and 31st December,2007 respectively.

Thereafter the Commissioner of Income-tax issued show cause notices under section 263 of the Act on the issue of lease equalisation fund not touched in the second assessment order and set aside the second assessment order passed for the assessment years in question vide orders dated 27th March,2009.

The assessee in its appeals before the Tribunal raised the question of limitation by contending that that the principle of merger of original assessment with the reassessment order, did not apply, when the issues settled in the original assessment order remained untouched in the reassessment order. The Tribunal, agreeing with the contentions raised on behalf of the assessee, and relying on the decision of the Supreme Court in the case of Alagendran Finance Ltd.(supra) held that the orders passed by the Commissioner of Income-tax were barred by limitation.

The High Court, on appeal filed by the Revenue, held that "the order of the Tribunal holding that the exercise of power under section 263 of the Act by the Commissioner of Income-tax is barred by limitation in terms of the judgment of the Hon'ble Supreme Court in the case of Alagendran Finance Ltd. (supra), does not warrant any interference."

Direct Tax

7. Concluding Remarks

The Income-tax Department is clothed with enormous powers to initiate proceedings by way of issue of notice under sections 148 read with 148A, 154 or 263 of the Act in appropriate cases even though these sections are not mutually exclusive. Though the requirements of each section such as escapement of income for section 148 read with Section 148A of the Act, mistake apparent on the face of the record under section 154 of the Act and correcting an order prejudicial to revenue under section 263 of the Act may appear to be different, these sections are overlapping in the sense that action can be taken under any one of these sections provided requirements for reassessment are fulfilled and time limit for issue of notice has not expired.

Each case has to be studied in detail by analysing facts first before finding out whether the facts fit into any of the decided case laws.

It is most appropriate to conclude this article with the following proposition laid down by the Supreme Court in the case of Kunhayammed v. State of Kerala [2000] 245 ITR 360 (SC) with regard to doctrine of merger (only the relevant portions)

> *"(i) Where an appeal or revision is provided against an order passed by a Court, Tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.*
>
> *(ii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it."*

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ariyurkrish@gmail.com

SUDOKU-30

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30 WORD CHEST
A TREASURY OF VOCABULARY

Decentralized Exchanges.

Decentralized exchanges *rely on smart contracts to allow traders to execute orders without an intermediary. They are peer-to-peer marketplaces where traders make transactions directly without handing over management/custody of their assets to an intermediary or custodian. These transactions are facilitated through the use of self-executing agreements written in code called smart contracts. An Innovation of Automated market makers automated the market making industry by creating liquidity from asset holders through liquidity mining. The advantages of this innovation are, more secure, global access to create liquidity for assets, self-custody removes the counterparty risks of intermediaries.*

Financial Reporting And Assurance

CA. Vinayak Pai V

KEY UPDATES

A. AS | Ind AS

1. EAC Opinion – Disclosure of changes in inventory of scrap in the Statement of Profit and Loss

The February 2023 edition of the ICAI Journal has carried an **Expert Advisory Committee's (EAC) opinion** – *Disclosure of changes in inventory of scrap in the Statement of Profit and Loss (Ind AS)*. A summary of generic key takeaways from the opinion is summarised herein below:

- During a production process, more than one product may be produced simultaneously which, for example, may either be joint products or a main product and a by-product. Although Ind AS 2, *Inventories***,** does not mention about the **scrap or waste products; the EAC notes that scrap or waste products are also the result of production process and if these could be sold or used/consumed internally, these can be considered as inventories.**
- Materials/items generated in the manufacturing process which would be further used as input in the production process of melting can be considered to be 'in the process of production for sale' and accordingly, can be considered as 'inventories' as per paragraph 6(b) of Ind AS 2. Thus, **the disclosure requirements of Schedule III to the Companies Act, 2013 are equally applicable to items/products classified as 'scrap' as to the inventories of raw materials, finished goods, work-in-progress, etc.**
- **Internally generated items/products (classified as 'scrap'),** used in the production process and transferred from one department to another within the Company should not be presented as 'cost of materials consumed'; rather **should be considered as work-in-progress and presented under 'Changes in inventories of finished goods, work-in-progress and stock-in- trade' under 'Expenses'** in the Statement of Profit and Loss as per the requirements of Schedule III to the Companies Act, 2013 with appropriate disclosures to explain the nature of inventory.

Link to the EAC Opinion -

https://resource.cdn.icai.org/72811cajournal-feb2023-8.pdf

B. NPO Accounting

2. International Non-Profit Accounting Guidance (INPAG) – Part 1

Recently, the first Exposure Draft (ED) of ***International Non-Profit Accounting Guidance (INPAG)*** has been issued by Chartered Institute of Public Finance and Accountancy (CIPFA) for public comments to be received by 31st March, 2023 **to create specific financial reporting guidance for NPOs.** After considering the feedback on this Exposure Draft, two more Exposure Drafts will be issued which collectively comprise INPAG.

With the view to contribute to standard setting at international level, the Exposure Draft of (INPAG)- Part 1 has been hosted on the website of ICAI for public comments.

The ED covers: NPOs; Concepts and pervasive principles; Financial Statement Presentation; Statement of Financial Position; Statement of Income and Expenses; Statement of Changes in Net Assets; Statement of Cash Flows; Notes to the Financial Statements; Consolidated and Separate Financial Statements; Accounting Policies, Estimates and Errors; and Narrative Reporting.

Link to the Exposure Draft -

https://www.icai.org/post/ed-inpag-part-1

C. NFRA

3. Proposed Annual Transparency Report (ATR) by Audit Firms

On 16th January, 2023, the National Financial Reporting Authority (NFRA) published **draft requirements** related to the preparation and publication of **Annual Transparency Report (ATR) by auditors / audit firms** in line with international best practices aimed at enhancing transparency about management and governance of audit firms to ensure high-quality audits.

The ATR requirements are **proposed to be implemented** gradually for Public Interest Entities (PIEs), starting with **Statutory Auditors of the Top 1,000 Listed Companies** (by market capitalisation) **w.e.f. F.Y ending 31st March, 2023**. It is proposed that the ATR be published on the website of the Statutory Auditor within three months from the end of the relevant financial year.

The contents of the ATR, inter alia, include:

- Description of the Statutory Auditor's legal structure, ownership, management & governance structure,
- Details about the network, if the Statutory Auditor is a member of any Indian or overseas network,
- Details about working alliances, collaborations, licensing arrangements, knowledge/ resource sharing arrangements of the Statutory Auditor with any third party/organisation, in India or Internationally.
- Details and descriptions of the Statutory Auditor's policy and procedures in specified areas, including overall internal quality control system, audit methodology, etc, and
- Specified information about the total revenue of the Statutory Auditor and its network firms.

Link to the Invitation for Comment -

https://nfra.gov.in/sites/default/files/Annual%20Transparency%20Report%20by%20Statutory%20Auditors%20of%20PIEs-Invitation%20for%20public%20comment_0.pdf

D. MCA|SEBI

4. Companies (Accounts) Amendment Rules, 2023 – Form No. AOC-5 substituted

The MCA vide notification No. G.S.R. 40(E) dated 20th January, 2023 has amended the Companies (Accounts) Rules, 2014. Accordingly, Form No. AOC-5 has been substituted. The amended rule comes into force w.e.f. 23rd January, 2023.

Link to the Notification –

https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjM4ODA2Njgx&docCategory=Notifications&type=open

5. Relaxation related to dispatch of physical copies of financial statements to debenture holders

SEBI, vide a Circular dated 13th May, 2022 had extended the relaxation related to the dispatch of hard copies of the Annual Report to debenture holders by issuers to 31st December, 2022. On 28th December, 2022, the Ministry of Corporate Affairs (MCA) extended the relaxations from dispatching physical copies of financial statements due in 2023 till 30th September, 2023.

In view of the above, **SEBI has now issued Circular** No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/001 dated 5th January, 2023 **relaxing up to 30th September, 2023, the requirements of Regulation 58(1)(b) of the Listing Regulations,** which prescribes that entities with **listed non-convertible securities** shall send a **hard copy** of statement containing the salient features of all the **documents specified in Section 136** of the Companies Act, 2013 to those holders of non-convertible securities **who have not registered their e-mail addresses** either with the listed entity or any depository. The Circular comes into force with immediate effect.

Link to the Circular -

https://www.sebi.gov.in/legal/circulars/jan-2023/limited-relaxation-dispatch-of-physical-copies-of-financial-statements-etc-regulation-58-of-sebi-listing-obligations-and-disclosure-requirements-regulations-2015_67033.html

6. Relaxation from compliance with certain provisions of SEBI (LODR) Regulations

SEBI, vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/79 dated 12th May, 2020, had inter alia relaxed the requirements specified in Regulation 36(1)(b) of the SEBI (LODR) Regulations relating to dispatching hard copy of the statement containing salient features of all the documents prescribed in **Section 136** of the Companies Act, 2013 (financial statements, Board's report, Auditor's report, etc.), to those **shareholders who have not registered their email addresses.** The said relaxation was initially extended till 31st December, 2021 and was subsequently extended up to 31st December, 2022, vide Circular No. SEBI/HO/CFD/CMD2/CIR/P/2022/62 dated 13th May, 2022.

The MCA, vide General Circular No. 10/2022 dated 28th December, 2022, has provided similar relaxations for the Annual General Meetings conducted till 30th September, 2023.

Considering the above, SEBI has vide Circular No. SEBI/HO/CFD/PoD-2/P/CIR/2023/4 dated 5th January, 2023 decided to **extend the relaxations provided in para 2 and 4 of the 13th May, 2022 Circular till September 30th, 2023.**

Link to the Circular -

https://www.sebi.gov.in/legal/circulars/jan-2023/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015_67041.html

D. ASSURANCE

7. ICAI – Exposure Draft: Guidance Note on Audit of Charitable Institutions under Section 12A of the Income-tax Act, 1961

On 10th January, 2023, the Institute of Chartered Accountants of India (ICAI) issued an Exposure Draft, ***Guidance Note on Audit of Charitable Institutions under Section 12A of the Income-tax Act, 1961.***

The object of the Technical Guide is to guide the auditors for the conduct of related audits and also provide useful reference for those in charge of the governance of charitable institutions to discharge their respective responsibilities towards the audit of accounts of charitable institutions u/s 12A(1)(b)(ii) of the Act.

Link to the Exposure Draft -

https://resource.cdn.icai.org/72629dtc58541.pdf

8. ICAI – Exposure Draft of Guidance Note on Audit of Banks (2023 Edition)

On 13th January, 2023, the ICAI issued an Exposure Draft, Guidance Note on Audit of Banks (2023 Edition).

The Exposure Draft of the updated Guidance Note that has been brought up to speed since the publication of the previous edition is open for comments till 12th February, 2023.

Link to the Exposure Draft –

https://resource.cdn.icai.org/72655aasb58571.pdf

9. PCAOB – Proposed new standard for the 'Auditor's Use of Confirmation'

On 14th January, 2023, the ICAI released a ***Technical Guide on Digital Assurance*** to assist members to adopt enhanced use of technology in an audit by using digitally available audit evidence and information.

The Guide **focuses on sources of external audit evidence available and how members can utilise it in their audit procedures.** It also highlights the importance of reliability and relevance of the source from which the information is being obtained. The Technical Guide also provides various **illustrations of available sources of external audit evidence and how they can be used.**

Link to the Technical Guide -

https://resource.cdn.icai.org/72659aasb58574.pdf

10. IAASB - Proposed Part 10, Audits of Group Financial Statements of proposed ISA for audits of financial statements of Less Complex Entities

On 24th January, 2023, the International Auditing and Assurance Standards Board (IAASB) issued an Exposure Draft, ***Proposed Part 10, Audits of Group Financial Statements of the Proposed International Standard on Auditing for Audits of Financial Statements of Less Complex Entities (ISA for LCE)*** The proposed section, Part 10, is intended to form part of the proposed *International Standard on Auditing for Audits of Financial Statements of Less Complex Entities* (ISA for LCE) when finalized.

With the inclusion of group audits, the IAASB has **proposed changes to the Authority of the proposed ISA for LCE.** For example, it has removed the prohibition on using the Standard when the audit is a group audit unless component auditors are involved, other than in limited circumstances in which a physical presence is needed for a specific audit procedure for the group audit (e.g., for attending a physical inventory count or inspecting physical assets).

Link to the Exposure Draft -

https://www.ifac.org/system/files/publications/files/IAASB-less-complex-entity-group-audits-exposure-draft.pdf

F. FINANCE BILL, 2023

11. Union Budget 2023 proposals with bearing on financial reporting and assurance

The Hon. Finance Minister presented the Union Budget in parliament on 1st February, 2023. The budget contains provisions relating to Direct Taxes that seek to amend the Income-tax Act, 1961. Several such provisions have a bearing on financial reporting and assurance. Such key provisions, as articulated in the ***Memorandum Explaining the Provisions in The Finance Bill, 2023***, *inter alia,* include the following:

- Promoting timely ***payments to Micro and Small Enterprises,***
- Relief to ***start-ups in carrying forward and setting off of losses,***
- Ease in *claiming deduction on* ***amortization of preliminary expenditure,***
- *Preventing* ***permanent deferral of taxes*** *through* ***undervaluation of inventory,*** and
- ***Penalty*** for furnishing inaccurate statement of financial transaction or reportable account.

Link to the Document-

https://www.indiabudget.gov.in/doc/memo.pdf

G. SUSTAINABILITY RELATED STANDARDS

12. ICAI – Social Audit Standards 100 to 1600

On 14th January, 2023, the ICAI issued ***Social Audit Standards SAS*** 100 to 1600 that relate to the thematic area of **'eradicating hunger, poverty, malnutrition and inequality'.** The Standard **aims to provide the Social Auditor with the necessary guidance in relation to independent impact assessment engagement of Social Enterprises** engaged in eradicating hunger, poverty, malnutrition and inequality and **the audit steps and procedures that should be applied while conducting the social impact assessment.** The Standard sets out the minimum requirements to be followed while conducting an impact assessment. Laws or regulations may establish additional requirements which should be followed, as applicable.

Each Standard comprises four sections, namely i) Introduction, ii) Process of Social Audit, iii) Assessment of Challenges and Limitations, and iv) Appendix.

The listing of the 16 standards is provided herein below.

(i) **SAS 100,** *Eradicating Hunger, Poverty, Malnutrition and Inequality.*

(ii) **SAS 200,** *Promoting Health Care Including Mental Healthcare, Sanitation and Making Available Safe Drinking Water.*

(iii) **SAS 300,** *Promoting Education, Employability and Livelihoods.*

(iv) **SAS 400,** *Promoting Gender Equality, Empowerment of Women And LGBTQIA+ Communities.*

(v) **SAS 500,** *Ensuring Environmental Sustainability, Addressing Climate Change Including Mitigation and Adaptation, Forest and Wildlife Conservation.*

(vi) **SAS 600,** *Protection of National Heritage, Art and Culture.*

(vii) **SAS 700,** *Training to Promote Rural Sports, Nationally Recognised Sports, Paralympic Sports and Olympic Sports.*

(viii) **SAS 800,** *Supporting Incubators of Social Enterprises.*

(ix) **SAS 900,** *Supporting Other Platforms that Strengthen the Non-Profit Ecosystem in Fundraising and Capacity Building.*

(x) **SAS 1000,** *Promoting Livelihoods for Rural and Urban Poor Including Enhancing Income of Small and Marginal Farmers and Workers in the Non-Farm Sector.*

(xi) **SAS 1100,** *Slum Area Development, Affordable Housing and Other Interventions to Build Sustainable and Resilient Cities.*

(xii) **SAS 1200,** *Disaster Management, Including Relief, Rehabilitation and Reconstruction Activities.*

(xiii) **SAS 1300,** *Promotion of Financial Inclusion.*

(xiv) **SAS 1400,** *Facilitating Access to Land and Property Assets for Disadvantaged Communities.*

(xv) **SAS 1500,** *Bridging the Digital Divide in Internet and Mobile Phone Access, Addressing Issues of Misinformation and Data Protection.*

(xvi) **SAS 1600,** *Promoting Welfare of Migrants and Displaced Persons.*

Link to the Standards -

https://resource.cdn.icai.org/72658srsb58573.pdf

13. ICAI – SSAE 3000, Assurance Engagements on Sustainability Information

On 10th January, 2023, the ICAI issued ***Standard on Sustainability Assurance Engagements (SSAE) 3000, Assurance Engagements on Sustainability Information.*** The Standard draws reference from International Standard on Assurance Engagements (ISAE) 3000 (Revised), *Assurance Engagements* Other than Audits or Reviews of Historical Financial Information, issued by the International Auditing and Assurance Standards Board (IAASB).

SSAE 3000 deals with **assurance engagements on an entity's sustainability information.** It is an **umbrella standard** applicable to all assurance engagements on sustainability information. In case there is subject matter information to which a specific assurance standard applies (e.g., GHG emissions), SSAE 3000 will apply in addition to the subject matter specific standard (e.g., SAE 3410).

The effective date of application of SSAE 3000 is a) voluntarily for assurance reports covering periods ending on 31st March, 2023; and b) on a mandatory basis for assurance reports covering periods ending on or after 31st March, 2024.

Link to the Standard-

https://resource.cdn.icai.org/72628aasb58538.pdf

14. IAASB - Global standards for ESG Assurance

On 16th January, 2023, ***the IAASB published a Consultation Paper, The IAASB's Proposed Strategy and Work Plan for 2024–2027,*** that inter alia **seeks to develop an overarching standard for assurance on sustainability reporting.**

The IAASB has decided to apply a phased approach to address the need for assurance standards on sustainability reporting, which comprises: (1) immediate action to develop an overarching standard for sustainability assurance engagements; and (2) future actions to align with the evolving maturity over time of the needs of intended users of sustainability information, sustainability reporting standards, entities' reporting in accordance with such standards, and assurance practice.

Link to the Consultation Paper -

https://www.ifac.org/system/files/publications/files/IAASB-Consultation-Strategy-2024-2027.pdf

H. OTHER USEFUL PUBLICATION/(S)

15. IAASB - Digital Technology Market Scan: Robotic Process Automation. [12th January, 2023 - *https://www.iaasb.org/news-events/2023-01/iaasb-digital-technology-market-scan-robotic-process-automation*]

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Financial Reporting

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Intensive Training Programme on appeals before ITAT - Moot ITAT
organized by Direct Tax Committee of KSCAA

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Friday, 17th March 2023

Inaugural address by the Chief Guest*

Guest of Honour
Dr. Vijay Sankeshwar, MD, VRL Group.
Shri. Prashanth Prakash, Partner Accel

Panel Discussion - Business Fraud & Extent of Accountability for Auditors

Moderator
CA. Sandeep Shah, Mumbai
Panelists
Adv. Chidananda Urs B G
CA. Amarjit Chopra, New Delhi
CA. Sharath Kumar, Hyderabad

PEP TALK : Effective ways to use RTI in Taxation

CA. Manish Sachdeva, Faridabad

Panel Discussion on Co-operative Society by Eminent Speakers*

Session on the Science & Art of Negotiation

Prof. S. Raghunath, IIMB

CA TALK : Sharing an Inward Transformational Experience

CA. Vittal Rangan, Renowned Carnatic Violinist

Panel Discussion on Direct Taxes

Moderator
CA Abhishek Goenka
Panelists
CA. H. Padamchand Khincha
CA. P. V. Srinivasan
Shri. K. K. Chythanya, Senior Advocate

Saturday, 18th March 2023

Navigating the Intersection of Money, Professionalism and Ethics in Profession: A Dharma Based Approach

Shri. N. Venkataraman
Additional Solicitor General, GOI

CA TALK : Sharing an Inward Transformational Experience

CA. Padmavathy S, Member ITAT, Bangalore

Panel Discussion on FinTech Revolution : Opportunities and Challenges in the Changing Landscape

Moderator
CA. Sarthak Ahuja, New Delhi
Panelists
Prof. Pulak Ghosh, IIMB
CA. Yogesh Agarwal, Founder Onsurity
Shri. Srinivas Jain, Mumbai

CA TALK : Sharing an Inward Transformational Experience

CA. Sanjay Dhariwal

Panel Discussion on the Good, Better & Best? - Road ahead for GST

Moderator
CA. Venkataramani S
Panelists
Shri. D. P. Nagendra Kumar,
Former Member CBIC & Special Secretary, GOI
CA. Adv. Bimal Jain, New Delhi
Shri. Vikram Huilgol, Senior Advocate
Shri. G. Shivadass, Senior Advocate

Valedictory & Family Entertainment

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	21.02.2023 to 28.02.2023	3,000
	On or After 1.03.2023	3,500
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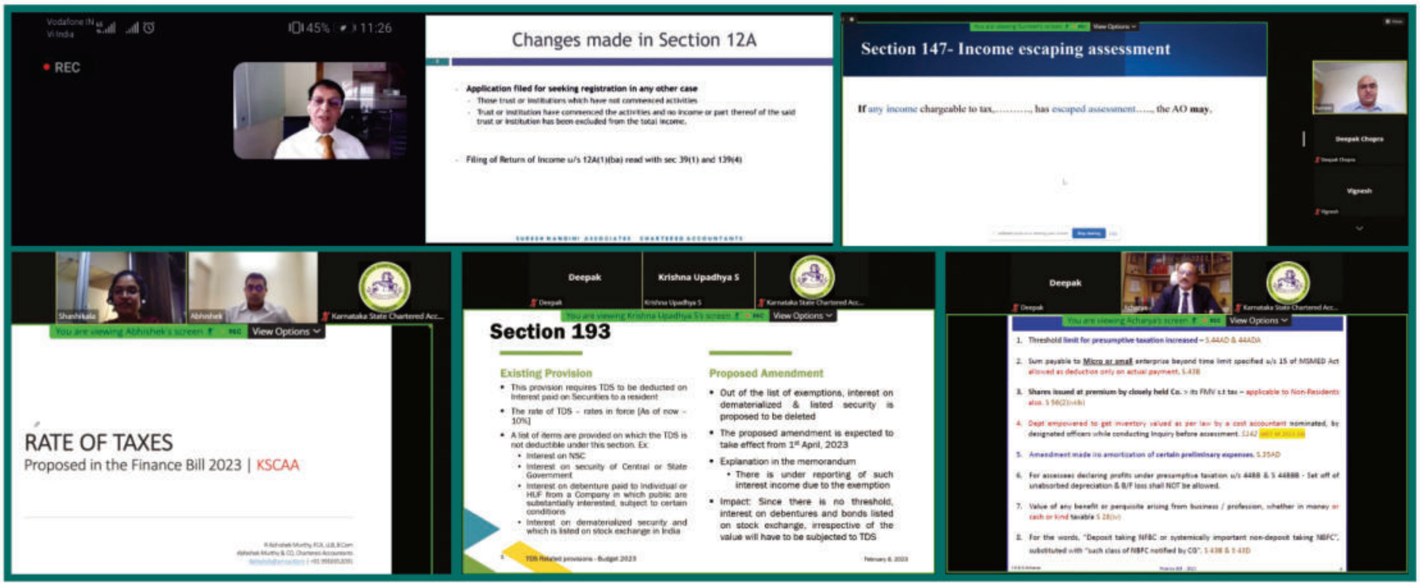
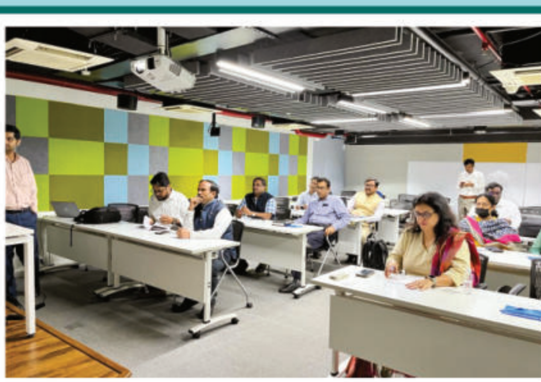
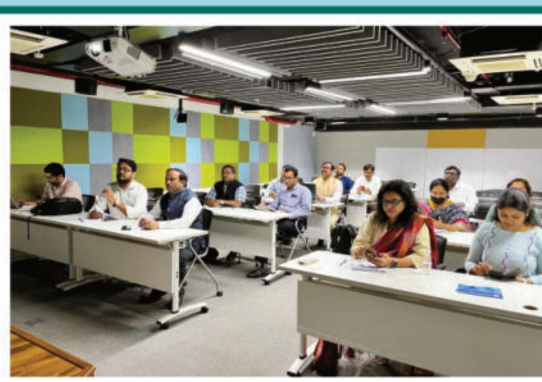


Union Budget - series held through webinars during first week of February 2022 organised by Direct tax committee of KSCAA.

Inauguration of Bagalkot District Chartered Accountants Association® Building, Bagalkot - on 31st January 2023





"Watch Union Budget 2023 with KSCAA on 1st February 2023 at Quest Office, Raheja Towers, Bangalore.

Means of Finance / Source of Funds under Real Estate Regulation and Development Act (RERA) 2016

CA. Vinay Thyagaraj

The Real Estate (Regulation and Development) Act 2016 (RERA) is a central law aimed at regulating and Development of the Indian real estate sector and safeguarding the interests of home buyers. The Act lays down strict norms for the promoters (builders and developers) to ensure transparency and accountability in their transactions with Allottees (customers and other stakeholders).

Real estate industry is considered as a **capital-intensive industry** as it requires significant investments of money in order purchasing land for the project, for obtaining approvals and NOC's from the statutory authorities, construction of the building, making infrastructure, facilities, amenities development. The large initial costs may be for the acquisition of project land, approvals etc. These initial and large investments can make it challenging for new entrants to the industry to compete with established players who have more financial resources. Additionally, the long-term nature of real estate investments and the uncertainty surrounding future market conditions can also make them riskier than other types of investments, further emphasizing the need for large amounts of capital. Additionally, real estate projects have a **long lifespan**, so significant investments are often necessary to ensure **profitability**. The cost of real estate projects can be substantial, so businesses in this industry require substantial capital investments to finance for the completion of the project irrespective of the market demand or circumstances.

As we all aware, post implementation of RERA, every promoter shall declare the End date / completion date *https://taxguru.in/corporate-law/importance-date-completion-date-real-estate-regulation-development-act-2016.html* of the project at the Application for grant of registration of RERA number. Promoter is allowed to market, enter into agreement etc., based on the end date / completion date of the Project. E.g., RERA registration certificate validity of a project is 31.12.2025, the promoter cannot mention the completion date/possession date in the Agreement of sale beyond 31.12.2025 unless the promoter obtains the extension as per the RERA Act 2016.

In order to achieve the completion of the development works of the project within the end date / committed date, the promoter shall have the sufficient funds / cash flow without hindrances, failing which the real estate project development and possession may be delayed. In order to achieve the completion of development as per the schedule of plan/time (as submitted during RERA registration) the RERA authorities may ask the promoter's to submit the details of source of funds or means of finance along with the application for grant of RERA Registration.

Means of finance or Source of funds may include the following –

a. Promoters own funds – capital / equity investments –

    a. Promoter contributions are made considering Promoter's capacity to infuse capital assessed with supporting documents like Equity capital contribution, availability of reserves & surplus along with composition of liquid and bankable assets reflecting the solvency of the promoter/entity. Further, the individual, partner's and director's capacity to infuse necessary capital should also be assessed and documents like past Income Tax Returns, partnership shares in another concern/s, etc. shall be considered as supporting documents for preparation Report on MoF

b. Borrowings – loans, debentures etc –

    a. Assessment of requirement, quantum, timing and cost of borrowed funds be carried out in the light of borrowing plan for computation of Institutional Loans / Debentures etc. When a real estate project is to be funded by institutional loan, documents reflecting promoter's sanction letter and tie ups with Banks / Financial institutions should be considered while submitting data with the Authorities. When institutional loan is backed by collateral other than the project assets, repayment of the loans can go beyond project completion date.

c. Realisation from sale of units in the project / Customer Receipts

    a. Promoter formulates the marketing and sales plan for the real estate project depicting quarterly sales and Projection of Receipts from allottees. Adequate emphasis be made on demand of projects of similar type, scale, segment in the area of the project. Further, such projections shall also be in sync with projected Construction stages of the project leading to percentage completion-based receipts from the allottees. Booking trends of past projects of the promoter can be considered for sales forecast of units in project being undertaken by a particular promoter/group

d. Any other sources –

   a. Means of Financing Plan of the Project should be cash-positive in all quarters to ensure liquidity on hand. Computations of cash inflows in accordance with the guidance provided in above paragraphs would require the Promoter to opt for an appropriate financing mix for the project considering project and promoter specific circumstances. For Capital strong promoter/entity reliance on borrowed funds may not be required. Whereas for promoters not having proven track record for borrowed fund raising, wherewithal for own capital infusion has to be demonstrated. Reliance on allottee contributions coupled with contractual obligations for payments towards land as per development/purchase agreement requires framing of the optimal financing mix, which has to demonstrate necessary liquidity for servicing of these scheduled obligations, for which additional capital infusion or contractual deferment of payments towards land dues may be considered so as to ensure uninterrupted construction of the project. The need for capital infusion may also be substituted by borrowed financing where the promoter has institutional arrangement or proven track record for the same. Empirical data with authority reveals that the principal cause of slow construction progress of registered projects is liquidity crunch and absence of contingency mitigation plan with the promoter. Requirement for framing the financial plan for project execution at the time of registration is aimed at making available a well thought plan with the promoter for ensuring necessary liquidity with promoter for smooth execution of construction activities in a time bound manner so that he can fulfil his promise of Delivery of Real Estate by Project End Date.

Few state RERA Authorities have notified the formats of means of finance and CA certificate formats.

Statement showing cash flow for the real estate project from time to time (receipt and payments) may be insisted by the RERA Authorities as part of the documents. The promoters shall provide the information / statement showing –

a. Cost incurred towards Land and construction till date of application

b. Cost estimated to be incurred post RERA registration

   a. Such information may be provided quarter wise / Half yearly or yearly

Gujarat RERA on Means of Finance

Gujarat RERA in its circular on Means of Finance mentions - Objective preparation of Report of MoF encompassing this guidance will surely contribute to project executions being well-planned and well-managed, protecting interests of all stakeholders and contributing to the thriving real estate sector in the State of Gujarat.

Further Gujarat RERA Authorities have made it mandatory to issue detailed Means of Finance Report in the manner and format as notified for the Projects having estimated cost of the project Rs.25 Crores and above (vide circular no 21/2020 dated 14th Feb 2020)

Gujarat RERA mandates the Chartered Accountant Certificate certifying the Means of Finance and the Certificate and shall in accordance with the "Report on Examination of Prospective Financial Information" as per "Standard on Assurance Engagement 3400" issued by the Institute of Chartered Accountants of India. He should obtain sufficient appropriate evidence as to whether:

A. management's best-estimate assumptions on which, the prospective financial information is based are not unreasonable and, in the case of hypothetical assumptions, such assumptions are consistent with the purpose of the information;

B. the prospective financial information is properly prepared on the basis of the assumptions

C. the prospective financial information is properly presented and all material assumptions are adequately disclosed, including a clear indication as to whether they are best estimate assumptions or hypothetical assumptions; and

D. the prospective financial information is prepared on a consistent basis with historical financial statements, using appropriate accounting principles.Means of finance or Source of funds may include the following –

***MahaRERA** on Means of Finance*

MahaRERA has included the following Table as part of the Chartered Accountants Certificate -

RERA

Sl No	Particulars	Estimated (At time of registration proposed and indicative) In Rs	Proposed/ Estimated As on the date of the certificate In Rs	Actual (As in the date of certificate) In Rs
1	Own Funds			
2	Total Borrowed funds (Secured) - Drawdown availed till date			
3	Total Borrowed funds (unSecured) Drawdown availed till date			
4	Customers Receipts used for the project			
	TOTAL			

Further Section 4 of the RERA Act and Rule 3(b) of Karnataka RERA Rules 2017 mandates the promoter to submit *annual report including audited profit and loss account, balance sheet, cash flow statement, directors report and the auditors report of the promoter for the immediately preceding three financial years; and where annual report is not available, the audited profit and loss account, balance sheet, cash flow statement and the auditor report of the promoter for the immediately preceding three financial years.*

The RERA Authorities review the financial statements of the promoters and assess whether sufficient funds / assets are available with the promoters to complete the project within the time. If the authority is not satisfied with the sufficiency of funds as per financial statements, a question or query may be raised before issuance of RERA Registration. The promoter shall reply to the query with the explanation and details substantiating that the promoter will arrange sufficient funds to complete the project.

As part of the reply, the promoter shall furnish the means of finance statement. Such report shall consider estimated cost *https://taxguru.in/corporate-law/rera-estimated-cost-real-estate-project.html* of the project and availability of funds mode of raising funds to complete the project.

In view of the above, it is important to understand the concept of Means of Finance or Source of Funds for the real estate project and submit the details while filing the Application for Grant of RERA Registration.

Source: Gujrat RERA and Maharashtra RERA Websites

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Intellectual Property Rights and Protection in India Alternate Remedies For IP Protection

(Part - XXX of IPR series)

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Digital Environment and IPR

From the deliberations made in the foregoing two parts, [*Dilution of IP Rights in Digital Environment- (Part – XXVIII) and Copyright Violations in Digital Environment (Part - XXIX)*] it is evident that the IP rights granted in pursuance of IP laws have got much diluted in the new virtual space. The existing IP laws have largely failed to protect the basic rights of the IP creators /owners. The IP laws are required to be amended suitably to continue /extend the desirable protection for the IPs in the cyber space.

Further the jurisdictional issue in the virtual digital world poses challenges for providing a fair protection to the IPRs. Abusing the virtual mode, the perpetrators of cybercrimes are on the full spree, infringing the IP rights for commercial gains, as it is very difficult to identify and to bring them to justice for enforcing the stipulated remedy. The intermediaries involved in facilitating the electronic platform for such violations have the doctrine **of** '*due diligence*' to protect their conduct.

In view of the precarious situation, IP infringements / violations are taking place relentlessly in the digital space. Therefore, to safeguard the interest of the IP holders, it is time and appropriate to examine alternate legal remedies available. In further part of this series, we shall find out as to whether the provisions of the Information Technology Act 2000 ('IT Act' for brevity) or similar allied laws can extend any additional protection to the IP products and services and to the owners. It is also necessary to find out any other alternate remedies possible, by use of technology itself as a tool. The general technological solutions available are also listed at the concluding part, with a view to find out a fair and realistic way for protection for the IPRs in the current cyber society.

Information Technology Act, 2000

The IT Act, 2000 as amended by the IT Act 2008, is the primary law for regulating the matters related to Cybercrime and e-commerce in India. This law, among others, prescribes penalties for various cybercrimes, thefts, and frauds committed through the application of digital/electronic format. Under this law, for any crime involving a computer or a network located in India, even the foreign nationals can be prosecuted. The IT Act has not been updated/ amended, to equip better for regulating the growing menaces of IP related crimes in the cyberspace. Therefore, we can infer that the IT law do have some solution to preserve the legal properties arising from human intellect, that is, knowledge and information expressed in a physical and digital form.

The Copyright Act 1957 protects computer-based technology and applications, but it does not protect against pirated versions on the web. Section 79 of IT Act stipulates that an intermediary shall not be held liable for a third-party content on its platform, provided that the said intermediary observed *'due diligence'* as prescribed. This immunity to intermediaries is termed as the 'Safe Harbour' Principle. Some claim that **"***due diligence***"** under IT Law encompasses vicarious copyright infringements. However, this is a controversial matter which must be addressed through judicial scrutiny, and therefore the IT Act 2000 is inactive regarding digital copyright and other IP infringements.

Courts clarifying the '*due diligence*' have held that the intermediary should not knowingly host information which is contrary to the *Information Technology (Intermediaries Guidelines) Rules, 2011***.** When an e-commerce website is '*conspiring, abetting, aiding, or inducing, or contributing to selling counterfeit products*'**,** it could be said to cross the line from being an intermediary to an active participant. In such a case, the website would be liable for infringement in view of its active participation. In *Super Cassettes Industries Ltd. vs. Myspace Inc. & Anr.*, the Hon'ble Court held that the intermediary is liable for allowing viewing and sharing images over the intellectual property ownership of Super

IPR

Cassettes. The case pronounced the above decision based on reading Section 81 of the IT Act 2000 in conjunction with Section 79 of the IT Act 2000.

Jurisdiction Issues in Cyberspace

The cyber world, due to accelerated exchanges through the internet, has contracted itself into a common space with no geographical or political borders or barriers. In such a situation, the quest for a fair justice in respect of the cross-border IP disputes against private parties and the complex infringements committed, are the emerging concerns. A sovereign has the power to adopt a criminal law that may be applicable to offences that are enforceable within its borders even though the offensive act was committed outside its borders. The courts may assume jurisdiction for prosecuting a cyber offender based on universal jurisdiction, where the offensive acts are known universally by the international law.

When some information on the internet infringes over an Indian user's copyrights, the court has jurisdiction as per Section 2(1)- [sub-clause (k), (l), (j), and (o)] of the IT Act 2000, where the phrases "*computer resource*" "*computer network which contains one or more computers*", can be claimed that a computer can comprise of a worldwide network. The Indian court can order for deletion of IP infringed product or services, on a global level, as the Section 2(2) and Section 75 of the IT Act 2000 provides necessary provisions in respect of "*violation committed beyond India.*" Section 75 IT Act, 2000 applies to offences committed outside India if the conduct constituted an offence involving a computer, computer system, or computer network located in India.

International Injunctions and Directives

Injunctions, damages, border compliance, or criminal punishments are the normal form of legal solutions and remedies existing for protection from copyright, trademark, or other IP violations. By its very nature, internet is a common good across the world and therefore any authority in India, when grants relief in the form of an injunction, preventing violating content, such measures can only be implemented within the borders and not beyond. Because injunctions, banning, and other reliefs will be limited to India, criminals may use the Virtual Private Networks (VPNs) to obtain illegal content, rendering court rulings ineffective. In the existing legal framework, the Indian courts do have the authority to issue worldwide injunctions and judgments in the public interest over violating works, to safeguard the personal IP rights of owners, but the enforcement of such orders depend upon the administration of the other country, which cannot be compelled to honour the decisions of the Indian courts.

In view of the expansive sharing of illegal digital contents online, the world recognised the necessity for Digital Copyright legislation as a fundamental requirement in cyberspace. Accordingly, the World Intellectual Property Organization Copyright Treaty (WIPO), (year 1996), obligated the member nations and signatories to protect within their respective jurisdictions, the copyright of any content that may have been created by citizens of a different country.

Digital Millennium Copyright Act

In this regard it is important to understand the role of Digital Millennium Copyright Act (DMCA), a legislation enacted by the United State congress in 1998, to move the USA's copyright law into the digital age. The DMCA expanded existing copyright laws to include and address issues associated with the internet and digital media. This legal framework conforms to the requirements of internationally ratified treaties and the WIPO, of which it is a member.

In the year 2018 India became a member of the WIPO Copyright Treaty, and thereby granting legal enforceability to the DMCA as India's existing domestic law. Hence, the internet users in India are not only governed by the IP Laws in India, but also the DMCA, 1998, as it applies to the contents originating from USA. Most of the popular social media platforms like *Facebook, Instagram, WhatsApp, Twitter* **and** *Google* are registered in USA and any copyright infringements recorded in any of these platforms will attract the application of DMCA for any offender, irrespective of their geographical location. In other words, the DMCA provisions are applicable and are at par with the domestic IP laws of every member country, including India.

DMCA is generally used to regulate the ethical use of content over the internet with the objective of preventing the abuse of any IP rights. DMCA empowers users to approach any social media intermediary with verified requests to take down any content which violates their IP rights. Most of the social media intermediaries maintain rapid response mechanisms to DMCA takedown notices. They also conduct their own due diligence before restricting any account or removing the content from their platforms. Additionally, social media intermediaries regularly deploy proactive monitoring measures through artificial intelligence or through expert oversight to identify potential copyright breaches on the websites and initiate appropriate actions against the alleged violators.

Section 52(1)(c) of the Indian Copyright Act allows the issuance of takedown notices to file-sharing websites to remove infringing content. Internet Service Providers, content hosts, and other intermediaries may take down content when they receive a take-down notice. The Indian Copyright Rules, 2013 further lays down that upon receipt of the written complaint. The person responsible for the storage of the infringing copy will require to remove the material within thirty-six hours. Therefore, the DMCA route is a powerful tool to fight back against those who steal IP Protected contents, goods, and services.

Legal Remedies Under Allied Laws

In addition to protection available in respective IP laws, there are other acts which offer legal remedy in the digital virtual commercial environment in respect of counterfeited goods. One among them is The Indian penal code.

The Indian Penal Code

The Indian Penal Code, 1860 (IPC) is a comprehensive criminal code of intended to cover all substantive aspects of criminal law. '*Counterfeiting*' is a crime under the IPC also. Section 28 of the IPC states *"A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised."* Punishments relating to counterfeiting of coins, government stamps and articles of national interest are elaborated under Chapter XII, whereas, counterfeiting of marks comes under the ambit of Chapter XVIII of the Indian Penal Code, 1860. The above provisions also could be invoked in instances where the IP law do not provide the desired remedies.

Further the Section 4 IPC extends its jurisdiction to offences committed in any place outside India targeting a computer resource located in India. Indian courts have the legal authority to adjudicate against the infringers of intellectual property in the cyber domain, and judicial activism followed with effective jurisprudence may rescue of the intellectual property owners. By using these provisions through appropriate legal means, the sale of counterfeited goods could be reduced.

The Consumer Protection Act, 2019

As per section 2 (21) of the Consumer Protection Act, "goods" means '*every kind of movable property and includes "food" as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006*'. It also defines "*spurious goods*" as of Counterfeit goods as "*such goods which are falsely claimed to be genuine*" (Section 2(3)). The "*unfair trade practice*" means '*a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice*' which includes '*manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services*' [Section 2(47) of the Act]. Section 91 of the Act treats the activity by anyone, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any spurious goods as a criminal offence.

Further the Rule 5 of The Consumer Protection (E-Commerce) Rules, 2020, provides that "*every marketplace e-commerce entity shall require the sellers through an undertaking to ensure that descriptions, images, and other content pertaining to goods or services on their platform is accurate and corresponds directly with the appearance, nature, quality, purpose and other general features of such good or service in a clear and accessible manner, displayed prominently to its users at the appropriate place on its platform*". Using these provisions, the sale of counterfeited and spurious goods could be truncated through appropriate legal means.

Added to the above, the Drugs and Cosmetics Act and the Food Safety and Standards Act, gives a significant contribution in preventing counterfeit products, especially in respect of pharmaceutical and food products, thereby, empowering officers and enforcement agencies to seize false imitations of branded goods as well as to take away manufacturing licenses of those involved in such activities. These laws could be invoked to protect the interests of the IP holders.

Customs Enforcement Rules 2007

Many counterfeit and infringing goods enter the Indian market through porous Indian borders. Keeping this in view, the Government through the Customs Act, 1962 and Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, has made it possible to counter the IP infringement. Equipped with stringent and mandatory procedures and rules, the Customs enforce the IP rights of the right holders.

As per the enforcement Rules, registered holders of trademarks, Geographical Indications, Industrial designs, and copyrights have the rights to register their IPs with custom offices with an intent to put a stop on import/ export of counterfeited products. Import of infringing goods is prohibited under section 11 of Customs Act 1962. Further the Imports are provided a timebound coverage as per the Section 6 of the Intellectual Property Rights (Imported

Goods) Enforcement Rules 2007, in pursuance of TRIPS agreement. These provisions could be used in prevention of contraband goods entering the domestic markets, during imports.

Technological protection

Over the years, many corporate ventures have come up with technological solutions to counter piracy and counterfeiting in goods and service, both in physical domain and digital realms. Using the computer technologies and big data, the *Alibaba* has rolled out a sophisticated system, for detection of counterfeit products. The solution involves the use of techniques like fake product identification modelling, image recognition techniques, semantic recognition algorithms, product information databases, and real-time interception systems and data collaboration platforms etc.,

Similarly, in India, e-commerce companies such as flipkart and snapdeal are diligent in catching fake products by use of algorithms detecting price gaps thereby comparing it with original prices. On the similar lines, Amazon also launched its anti-counterfeiting tool, Project Zero that stands for zero tolerance for counterfeit goods.

While the social-media and web platforms are on cutting edge of its battle against counterfeiting, many rely on the Counterfeit detector or Anti-Counterfeit Solutions which consists of wide array of digital tools and mechanisms such as holograms, smart cards, biometric markers, data modelling identification, block chain applications, blacklisting and whitelisting, search engine de-indexing and many more. Genuine proprietors utilize these innovations at diverse stages of the method and ensure that their products are not replicated.

Technological Tools

Since the legal frameworks are not able to provide adequate protection to IPRs in the digital world, it is inevitable to think of technological instruments and solutions, to strengthen the objective of protecting vested rights of IP related products and services. Some of the possible tools are listed below, for enabling further quests in this regard.

1) **Anti-erasing Ink:** used to mark expiration dates on labels of medicinal or other consumable products to prevent counterfeiters from selling expired goods with changed dates.

2) **Cryptography:** scrambling (or encryption) of the information to render it unreadable or not understandable language, which only the legitimate user can unscramble (or decrypt). However, cryptography protects the work during transmission or distribution only. After the work is decrypted, it does not provide any protection.

3) **Digital Signature Technology:** includes identity of the sender and/or receiver date, time, any unique code etc. This information can be added to digital products. This digitally marks and binds a software product for transferring to a specified customer. Digitally signed fingerprints guarantee document authenticity and prevent illegal copying.

4) **Digital Watermark Technology:** The message might contain information regarding ownership, sender, recipient etc or information about copyright permission. The system consists of a watermark generator, embedder and a watermark detector decoder. The legal user can remove these watermarks with a predetermined algorithm. The watermarking technology is extensively used in protecting multimedia works.

5) **Electronic encryption:** This causes a video to become unviewable when recorded as there is disturbance signal encoded into the video to confuse video recorders.

6) **Electronic Marking:** In this technique, the system automatically generates a unique mark that is tagged to each of the document copies. This technique is used to protect copyright as well as in electronic publishing where documents are printed, copied or faxed.

7) **ePedigree :** System of drug industry is a paper trail that shows where a product originated and where it is meant to reach at the end. The system is an online way for doing that same which requires electronic signatures & cannot be faked as easy as handwritten records.

8) **Holograms:** not limited to personal ID cards, can be embedded on bar-codes, price labels and logos. Work with the help of 2D and 3D stickers and dot matrix printers.

9) **IBM's nano rods**- allows a nano sized pattern which is randomly generated for each product and can't be replicated even by the creator, hence creating an anti-counterfeit pattern on the product to prove authenticity.

10) **Kodak's Traceless:** It is considered an infallible system that detects if a product is a fake. It also has a fail-safe that doesn't allow for reverse engineering.

11) **Microscopic tags:** These kinds of tags were originally used to find and trace explosives to their place of origin, however as they are virtually indestructible given their size, they are good method to track products.

12) **Monoclonal antibodies:** These chemical makers are added in minute concentrations to pharmaceutical or liquor products that can be detected using a kit with specific antibodies.

13) **Optically Variable devices (OVD):** This point covers more than one type of technology, from inks that respond to light, holograms, optically variable thin films, retro-reflective materials and scrambled images.

14) **Photochromic/thermochromic inks:** These types of inks are light/ heat reactive and can be used on the packaging of products to check authenticity.

15) **Plastic Identifiers:** Non-removable nanoparticles can be added to plastic resins providing a unique chemical signature of the manufacturer that can be verified using scanners.

16) **Quantum Dot:** This micro-resonant structure allows a band of specific colors to transmit, when quantum dot and spectral structures are used together the bar codes are almost impossible to recreate.

17) **RFID (Radio Frequency Identification):** Radio transmitters attached to the packaging of the good or sometimes even to the active ingredients of drugs and emit an electronic product code. With these, the individual packs, the ingredients expiry, and location of the product can be tracked throughout the custody chain. It is also considered a better option as compared to barcodes.

18) **Smart cards:** This plastic card incorporates a computer chip which provides the means to write into or read information from the card with various degrees of security.

19) **SMS:** Text message technology reached a new height, when customers receive a product bought online or delivered to them; they receive a code, which is sent to the manufacturer for authentication of the products' origin.

20) **Spectroscopy:** used in the supply chain to accurately identify chemicals without direct contact with the substance, through sealed glass, plastic bottles, bags and blister packs at ports of inspection, loading docks, points of sale and manufacturing plants.

It is clear from the above that protection of IPRs in cyberspace accompanies infinite issues, but the common point for such infringements is principally based on 'intent'. Dishonest intentions ought to lead to reading the legal and regulatory provisions in more stringent forms to derive the capability to disallow any of the IPR infringements seemingly permissible. Rampant violations of IPRs on the internet affecting a larger mass, call for urgent legal protections. The responsibility is not restricted to the lawmakers or the law enforcement systems, but also to the IP holders/ owners and intermediary software companies. IP theft notices and displays of licenses and warnings with limited permissions on the websites by the IP owners need to be ensured as a regular feature.

The minimum requirement at present for the IP holders are the necessity support to guard, recompense, and kindle innovation in the creative works and initiatives of the innovator. The harmonization of international law and positive domestic laws are essential to bolstering intellectual property rights in cyberspace. The technological innovations to provide suitable technological solutions will serve in a long way to restore the confidence of the IP holders.

Taking into consideration the dark world of counterfeiting, India has rolled out the National IPR Policy, to cut down counterfeiting and promote general awareness about intellectual property. Under the policy the formation Intellectual Property Rights Cells in states have been promoted to increase awareness. Regular training programmes are being conducted for enforcement agencies, customs, and judicial forums. But more needs to be done in this regard to protect the IP holders, especially such owners in the MSME sector.

In the coming part, the various support measures available to MSMEs in creation of Ips and protection will be deliberated.

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A Cog In The Wheel Or A Spanner In The Works?

Shivanand Pandit

Corporates, particularly listed entities and the big unlisted firms, may soon have to get ready to obey the concept of obligatory 'joint audits' of their financial statements. To tighten the audit structure and enrich the integrity of audit reports the government is likely to implement a phased roll-out for compulsory joint audits of companies. It will begin with public interest entities and big listed businesses. The proposal will be a part of the amendments to the Companies Act and tabled in Parliament in the Budget session of 2023.

The government will probably accept the significant suggestions of the Company Law Committee relating to the regulation of auditors. Moreover, debates and discussions are still taking place on the comprehensive rules for compulsory joint audits such as real-time audits of an entity by two or more auditors, and non-audit services such as tax strategy, management consulting, valuation, market research, legal advisory, etc that auditors can and cannot offer to the entities they audit. The Institute of Chartered Accountants of India (ICAI), the statutory organisation delegated with the growth and supervision of the profession of chartered accountancy, comes to backing the suggestion of the joint audit.

The two major concerns namely, joint audit and rules of non-audit amenities of auditors have been at the centre of prolonged discussions with both the audit group along with India Inc suggesting their modifications. The action comes against the backdrop of financial scams such as the IL&FS catastrophe in 2018.

Nevertheless, most sections of India Inc via antechambers namely Confederation of Indian Industries and Federation of Indian Chambers of Commerce and Industry, mentioned instead of diminishing audit perils, the action will worsen perils, because each auditor will be examining particular portions of the company's financial affairs, and may not execute comprehensive independent audits. The Confederation of Indian Industries noted in its statement that communications with few corporate entities with joint auditors revealed that they do not witness any advantage and, instead, there are worries about risks, as none of the joint auditors does the complete audit.

Nuts and Bolts of the proposal

In place of the conventional practice of involving only one firm to carry out an audit for a company, a joint audit involves more than one auditor. In joint audits, two or more auditors perform an audit of a legal entity, that is the auditee, to generate a single report. Presently, they are being done in the case of public sector banks and companies. Its aim is superior scrutiny, compliance, and, therefore, better business functioning. In basic terms, it refers to two sets of people vouching for the legitimacy of information in two distinct parts of a financial statement.

The Companies Act of 2013 does not make joint audits an obligation for private companies. According to the Companies Act, implementation of a joint audit is the choice of the company's members. A quick review reveals that it was public sector companies and banks that transitioned to joint audits, the latter after the Reserve Bank of India (RBI) in 2021 made it compulsory for financial firms with asset size of ₹15,000 crores or more.

Global Lessons

Not all nations allow the use of joint audits. Nations that permit joint auditing at times permit bilateral audits to be organized by teams comprised of auditors from other participating countries. Participating nations include Japan, the United States, Mexico, Spain, and Turkey. In most main jurisdictions, including the United States, and much of the European Union, a single audit is the standard, compulsory joint audit being the odd exception. Both France and Africa have legislations that Enforce joint audits in specific circumstances such as the auditing of financial institutions. In France, where a joint audit has been attempted, the indication is insignificant.

According to a manuscript issued by the International Federation of Accountants, a group of national accounting industry organizations, a joint audit is required or allowed in 55 countries. France is the only major province that has had compulsory joint audits since 1966, primarily for listed and bigger unlisted companies, and since 1984 for all companies that prepare consolidated financial statements. According to IFAC, the directive was proposed to help foster, stimulate, and uphold a sustainable French audit system. Following France, some nations in Africa compelled joint audits. Then some had second thoughts about it – for instance, Canada, Denmark, South Africa, and Sweden. They had instructed joint audits but afterward eliminated them.

The U.K. Competition and Markets Authority assessed joint audit and shared audit in which the statutory auditor is accountable for the audit but is supported by a minor organization and decided to support joint audit by a Big 4 firm (PwC, KPMG, EY, and Deloitte) and a large non-Big 4 contender organization. In 2019, a U.K. House of Commons committee stated it "shared the reservations about the utility and impact of joint audits but believed that they had a role to play in increasing the resilience of the market in the medium term." The Committee suggested that joint audits involving a Big 4 firm and a contender organization should be made compulsory for the FTSE 100 companies while sustaining audit quality.

A report named *Shared & Joint Audits: Are two Auditors Better than One?* released in 2019 by the Institute of Chartered Accountants in England and Wales asserted that the government and audit controllers would need to consider support for contender organizations and listed entities if joint audit reforms were announced. It also mentioned that they would also need to form a procedure for supervising shared or joint audits to determine whether competition and choice did enhance over time and whether there was a constructive consequence on audit quality.

Not All Roses

Two heads are safer and sounder than one since each of the joint auditors can use their brains autonomously, and it would be stiffer for management to induce all the auditors. As a result, audit quality will enhance. The audit market for bigger entities is substantially concentrated in favour of the Big 4 firms and other larger audit organizations. A joint audit will lessen the audit industry concentration, amplify choice for companies, reinforce resilience in the event of the collapse of a big audit firm, and help build proficiency among a larger number of firms.

On the other hand, although the government of India's intention is fair and fine, the realities and pitch actuality paint a different picture. In nations where joint audits have been actioned, there is neither much influence nor a noticeable difference narrated in corporate governance. Joint audits force both auditors to assent to the group audit opinion, and audit reports can be very big, running into several pages encompassing all observations and issues. This would need a high level of cooperation between the two auditing firms. In a few cases, there is always the risk of one audit firm being more leading than the other, leaving the latter with less bite. This could distort the power equilibrium and lead to disputes.

Each audit firm evaluates the work of the other in a joint audit setup as a function of quality management. This assessment and appraisal are done on the footing of the strictures of every individual firm. When there is no meeting point, it is an understood fact that the outcomes can vary. Also, they may lead to a waste of time, energy, and finances. Importantly, joint audits are an added cost to the entities and their balance sheets.

If a joint audit must be materialized, then, as is usual in traditional scenarios, the auditing organizations will need to trust internal auditors for standard conventions and functioning processes. But then again this is a double-edged sword, assuming that it is well understood that internal auditors who are under internal control are the weaker wickets in the team. Therefore, accepting their procedures can be risky in case there are certain grave matters which may have gone overlooked by the auditing organizations as they presumed there would be no hiccup with standard procedures. To fully avoid this probability, an ambiguity-free outline must be shaped in the joint-audit proposal. Or else, this idea by itself is unfeasible.

Furthermore, the other big strain is that two distinct organizations managing specific and separate parts of an audit may not help well over time. As opposed to account conciliation, it could produce wide gulfs and therefore, more annoyances for business firms because significant and fundamental components that need auditing and a professional appraisal can slip through such a scenario. This might compromise the audit excellence and muddle corporate difficulties rather than fabricate the smooth procedure envisioned by the joint-audit recommendation.

Also, there is a giant question mark on the ease of business if a joint-audit suggestion goes through. The genuine remedy to having a more effective, time-saving, and proficient system is to guarantee that internal financial controls are strengthened and sharpened. Maybe this needs to be taken into consideration by the government; data quality attempts could then be allied with it.

The practice of multinational joint auditing has led to some controversy over the management of conflicting tax laws. On an international level, cooperation and communication become key factors in the process of a joint audit. The teams must be able to establish an appropriate degree of information sharing and protocol that assists both nations. As a result of varying degrees of cooperation between participating nations, international joint auditing can be a lengthy process.

To conclude, the conviction that joint audit quality is excellent is an urban myth. Having manifold auditors and none of them performing high-standard work cannot credibly make the whole audit quality worthier. The government should ask for proof of the efficiency of the joint audit. Otherwise, this new initiative would become fruitless.

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Corporate Sustainability Reporting Directive (CSRD)

CA. Aditya Kumar S

Background: The manner and the format of reporting of Environmental, Social and Governance ('ESG') aspects has been increasing lately and the content and complexity has also been increasing significantly. This article attempts to summarize requirements of European Commissions direction to adopt the new reporting requirements. According to European Commission, this will have reaching implications on the manner and the content of the reporting. As part of the European Commission's ('EC') commitment to improvise the sustainability disclosure. The European Financial Reporting Advisory Group ('EFRAG') brought in Non-Financial Reporting Directive ('NFRD) which is now superseded by Corporate Sustainability Reporting Directive ('CSRD') which was formalized in November 2022.

The objective of this article is to highlight the new reporting requirements and new concepts that are emerging.

"For the first time – and this is how significant this debate and this Directive is – we are putting sustainability reporting on an equal footing with financial reporting." Extract from the opening remarks by Commissioner McGuiness at the European Parliament plenary debate on Corporate Sustainability Reporting Directive. (Source: https://ec.europa.eu/commission/presscorner/detail/en/speech_22_6747). That is the importance being placed by EU in terms of sustainability reporting which is also being gaining importance in the rest of the world.

Applicability: CSRD will apply to:

Company Type	Criteria	Effective Date	First Year of Reporting
Companies subject to Non-Financial Reporting Directive (NFRD)*	(i) Public-interest entities (i.e., publicly listed companies, credit institutions, insurance undertakings) established within the EU; (ii) Headcount of 500 or more employees	1 January 2024	2025
Large PU Companies	Two of Three following conditions: (i) Headcount of 250 or more employees; (ii) Net Turnover of Euro 40M or greater; (iii) Total Balance Sheet Assets of Euro 20M or greater	1 January 2025	2026
Public EU SMEs	Publicly listed companies that meet the following conditions: (i) Headcount of 10 or more employees; (ii) Net Turnover of Euro 2M or greater, or total balance sheet assets of Euro 2M.	1 January 2026	2027
Foreign Businesses with EU Operations	Non-European companies with EU operations that meet the following conditions: (i) Branch(es) with net turnover of Euro 150M or greater (consolidated) (ii) Subsidiary(ies) that are large companies or listed SMEs.	1 January 2028	2029

SME have an option to opt out of requirements until 2028.

*NFRD means Non-Financial Reporting Directive which required companies to share their business impact, development, performance etc., CSRD has replaced NFRD through an approval in the European Parliament.

Some of the new concepts are dealt herewith in brief:

Applicability: The new reporting requirements from EFRAG, and by ISSB (International Sustainable Standards Board) and SEC (Security Exchange Commission), has made multi-national companies to comply with multiple jurisdictional reporting requirements. These companies must design their reporting requirements which cater to the needs of each of the Standards. A classic example would be case of a US domiciled company which is in scope of SEC requirements and prepares consolidated financial statements. At the consolidated financial statement level, the US Company is expected to follow the SEC norms, and hence naturally the subsidiaries are also required to support this by providing necessary information in their reports. Say, the US Company has a subsidiary in EU then then EU Company should comply with EFRAG requirements, if it is an EU domiciled company. Further, if this EU Company has another subsidiary, say in a non-EU region (say India); and such region has decided to adopt the standards of ISSB (or India's Sustainability Reporting Standards, as and when issued in the instant example) then this non-EU region should technically be supporting the requirements of both SEC and EFRAG for the purpose of step-up and ultimate consolidation and ISSB (or the Indian Standards) for the standalone reporting. There needs to be a separate ESG Reporting System by itself to ensure that the information is available for all the reporting frameworks, and they are consistent with each other.

It's time to relook at the Annual Report, since there would be lot more information coming in than before. The Annual Report would contain lot more information and the way it is expected to be reported also would undergo a paradigm shift.

Double Materiality: As of today, we used the concept of materiality on in terms of financial statements. Now its scope has widened. The CSRD now has the concept of 'double materiality'. It means that entities must report not only how sustainability issues could create financial risks (Financial Materiality); but also, how the entity's own operations impact the people and environment (Impact Materiality). In case of impact materiality, it is a matter which pertains to the undertaking's material actual or potential, positive or negative impacts on people or the environment over a period. The concept is more important since the financial reporting and sustainability reporting are now getting merged in a sense that the information is traceable to the other report and its implications must be disclosed. It is expected that the primary users of financial statements would look into not only 'financial materiality' as part of the financial statements, but also sustainability related disclosures which may have impact on the financial statements or vice-versa and hence 'double materiality' as a concept brings a paradigm shift in the way the financial and sustainability reporting needs to be prepared and presented in the annual report.

Reporting requirements: There are three sets of proposed standards, which are as follows:

a. *Sector Agnostic* – These are the disclosures required regardless of the sector in which they operate viz.,

Environmental Related:	***Social Related***
i. *ESRS E1 – Climate Change* ii. *ESRS E2 – Pollution* iii. *ESRS E3 – Water and Marine Resources* iv. *ESRS E4 – Biodiversity and ecosystems* v. *ERSR E5 – Resource Use and Circular Economy*	i. *ESRS S1 – Own Workers* ii. *ESRS S2 – Workers in Value Chain* iii. *ESRS S3 – Affected Communities* iv. *ESRS S4 – Consumers and End-Users*

b. *Governance (Cross-Cutting Standards)*

   (i) ESRS G1 – Governance, Risk Management, and Internal Control

   (ii) ESRS G2 – Business Conduct

c. *Sector Specific – These are the disclosures required to be given by companies of a particular sector this is coming up later.*

d. *Entity Specific – These are company-specific disclosures reflecting the issues relating to the company.*

In the draft version of ESRS 1, all mandatory disclosure requirements established by ESRS shall be presumed to be material and, therefore, to justify a full disclosure in the accordance with the respective ESRS. However, such presumption is rebuttable based on reasonable and supportable evidence and giving adequate disclosures in thresholds and criteria to determine the disclosure through a statement 'not material for the undertaking'. However, in the latest version, this aspect has been removed based on the feedback received.

Reporting Boundary: The company's reporting boundary or the contents in the report should also include the details of not only of itself and its subsidiaries, but also its Associates and Joint Ventures accounted under equity method of consolidation, or any other entity accounted under proportional consolidation method and includes all upstream and downstream value chain partners also. The data from the subsidiary, associate or joint venture may be directly or indirectly available to the consolidating entity; but to get the data from the 'value chain partners' needs to be evaluated for the challenges to get information from any other entity outside the Group (i.e., standalone, subsidiary, associate, and joint venture for sake of understanding). The practicality of collecting information beyond the Group is also a matter raised by various stakeholders during the formation of the Standard. The entity's reporting boundary is expanded when the entity considers the impact of value chain partner's risks and opportunities especially when it impacts the entity's performance and position and such information

Assurance: An independent professional is also expected to provide assurance over the disclosures made on sustainability matters in the annual report. There are norms of how the report needs to be cross-referenced to the financial statements. Limited assurance would usually involve an opinion given in a negative form of expression confirming that the disclosures are not misstated. The third-party assurance requirement will transition to a requirement for a reasonable assurance assessment. Reasonable assurance would involve an opinion given in a positive form of expression on the measurement of the sustainability disclosures against the criteria.

<table>
<tr><th>Category</th><th>FY 2024</th><th>FY 2025</th><th>FY 2026</th><th>FY 2027</th><th>FY 2028</th></tr>
<tr><td>Large EU PE</td><td colspan="4">Limited Assurance</td><td rowspan="3">Reasonable Assurance</td></tr>
<tr><td>Other Large Companies</td><td rowspan="3"></td><td colspan="3">Limited Assurance</td></tr>
<tr><td>Limited SME</td><td rowspan="2"></td><td colspan="2">Limited Assurance</td></tr>
<tr><td>Ultimate Non-EU Parent</td><td colspan="2"></td><td>Depends on the jurisdiction.</td></tr>
</table>

The International Auditing and Assurance Board has also released a non-authoritative guidance on applying SAE 3000 (revised) to Sustainability and Other Extended External Reporting Assurance Engagements. Even the Institute of Chartered Accountants of India has released SSAE 3000 "Assurance Engagements on Sustainability Information". Hence, there is lot more impetus on ensuring that the information being disclosed is subjected to either limited review in the initial stages and subjected to audit at later stages. It is important for the management to consider the aspect of ESG reporting requirements in preparing financial statements going forward, and auditors would also have to look into from the perspective of new reporting requirements that are emerging.

Enhanced Disclosures: EFRAG would be releasing 41 industry-specific standards going forward. This would indicate that the entity. The proposed standards are on the lines of how Global Reporting Initiative (GRI) had issued which was based on the nature of industry and general disclosures. GRI is now the predominant standard of ESG reporting, and GRI had issued industry specific standards of disclosure. This would also mean that entities now must align their disclosure with specific to a particular industry or a combination of them. ISSB is also considering similar stand to issue industry specific standards which is expected to be more elaborate and EFRAG.

Reporting on Greenhouse Gas Emissions: Reporting on Greenhouse Gas Emissions has always been a challenge for the entities. The reporting is divided as follows:

a. Scope 1 are the details of emission that needs to be reported that occur from sources that are controlled or owned by an entity.

b. Scope 2 are the details of emission that needs to be reported based on the energy purchased.

c. Scope 3 are the details of emission because of activities from assets not owned or controlled by the reporting entity, but that entity indirectly affects in its value chain.

The reporting requirement is to provide emissions in metric tons of CO_2 equivalent and the share of emissions under regulated emission trading schemes apart from disclosure of:

a. the amount of GHG emission reductions or removals from climate change mitigation projects outside its value chain it has financed through the purchase of carbon credits.

b. estimated total avoided GHG emissions from its products and services in metric tons of CO_2 equivalent at its option.

Other Disclosures: Other disclosures that are expected include measurable targets for climate change mitigation and adaptation, policies implemented to manage climate change, energy intensity per net turnover, interrelationship with financial statements, etc., which is going to be added disclosures in the ESG Reporting sphere.

Concluding thoughts….

India is not far away from adopting these standards. The Institute of Chartered Accountants of India has asset up Sustainability Reporting Standards Board (https://www.icai.org/post/16318), like ISSB. We are following the footsteps of international practices and there are some companies in India who have already prepared and are providing world-class ESG reports under other reporting standards like GRI etc., Now is the time to bring in standardization and uniformity in reporting and take the ESG reporting to the next level and hence, the efforts by agencies to bring in new standards of reporting. Further, the new assurance requirements integrated to financial reporting or otherwise would mean a change in the way we do the audit. As professionals, we need to see how the new reporting requirements are expected to make an impact on business and the preparedness to meet the challenges including using data analytics, technology, and internal or external consulting.

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KSCAA Team Meeting held on 12th January 2023 at Karnataka State Lawn Tennis Association, Cubbon Park, Bengaluru.

YAKTOON

'Coming in with some sort of regularity or expected regularity from definite sources' – This connotation appears more and more apt for **Taxation** than for **Income.**

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Winners of Box Cricket Event held on 4th December 2022

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CA. Pramod Srihari, President CA. Vijaykumar Patel, Secretary

Leadership & Skill Development Committtee

Siddharth Javali - Chairman Herambha Hegde - Convenor

venue: Quest Office, Co-working Office Environment, Raheja Towers, MG Road, Bengaluru

Date: 10th and 17th Feb 2023
Timings: 10AM to 6PM
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15th February 2023	Introduction to FEMA	Overview of FEMA, fundamental concepts, understanding of current and capital account transactions, classification of permissible, restricted, and prohibited items, and liberalized remittance scheme.
16th February 2023	ODI Regulations	Regulations on Overseas Direct Investment (ODI), including recent updates, filings with the Reserve Bank of India (RBI), practical examples and scenario analysis.
22nd February 2023	FDI Regulations	Regulations on Foreign Direct Investment (FDI), including recent updates, filings with the Reserve Bank of India (RBI), practical examples and scenario analysis.
23rd February 2023	ECBs, and other misc provisions	External Commercial Borrowings (ECBs), provisions to prevent round tripping, procedures for imports and exports, consequences of non-compliance with FEMA regulations, and practical solutions for past compliance issues.

Speakers

Adv. Vanishri Shankaranarayana | CA Vivek Mallya | CA Amithraj AN | CA Santhosh Kumar

Fees Rs. 2000/- + GST

CA. Pramod Srihari, President, KSCAA CA. Vijaykumar M Patel, Secretary, KSCAA

Corporate and Allied Laws Committee

CA. Prabhava P Hegde, Chairman CA. Santhosh Raj S,Convener

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19.02.2023	8.30am to 6.00pm	Rs. 2,199/-	

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WOMEN EMPOWERMENT COMMITEE

CA. Babitha G, Chairperson CA. Abhilashaa Chaturvedi, Convener

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