Since 1957

KSCAA®

Karnataka State Chartered Accountants Association (R)

NEWS BULLETIN

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RESTORATION OF CANCELLED GST REGISTRATION

Create & Complement

Karnataka State Chartered Accountants Association

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From the President

Dear Readers,

It is a pleasure to write as the president of the association and share my thoughts on the month gone by and the activities of the association.

Let me start with the most sought after news in recent times, Karnataka recently went for State Election and the results have been completely one-sided with little room for disruption in claiming the majority. This would make space for the single party to move ahead with their own set of agenda. As residents of the state, we wish that the ruling party retains the brand Karnataka and Bengaluru and leads the state to a better future. Karnataka as a state is one of the largest contributors to the nation's kitty and is better to many states in terms of infrastructure, income, health and other indexes, but the expectation on the state is also moving as a model state to the whole of the nation.

The recent statement made by the Chief Economic Advisor of India, highlighting India's projected GDP growth of more than 6.5% up to 2030 without further reforms is an encouraging precedent. This positive outlook is indeed encouraging and testifies to the resilience and potential of our great nation. Professionals have a pivotal role to play in supporting and facilitating economic growth. Let us leverage our expertise, knowledge, and experience to contribute meaningfully to the realization of this promising forecast. By providing the sound financial guidance, embracing innovation, and fostering transparency, we can collectively propel India towards even greater heights.

Recently an Income Tax notice relating to a claim of deduction in the ITR is in circulation in social media, where the department has requested details of a chartered accountant who has assisted in filing the Income Tax returns. Without passing any inference of why this was propelled, I thought to take this as a timely reminder for all of us to be diligent and meticulous in fulfilling our professional responsibilities. There may be no standards on how we assist in helping clients in claiming deductions, it must not be believed that we are the beneficiaries of such ill-doings. As trusted advisors, it casts extra duty (beyond what is generally perceived) to exercise caution and ensure accurate and compliant filing. Let us remain steadfast in upholding the highest ethical and professional standards as we navigate the new complexities of our profession. By doing so, we can safeguard the reputation and integrity of our esteemed profession while contributing to the overall well-being of our nation.

At the Association we have recently submitted three representations; one is on issues in refund under the provisions of the Income Tax Act 1961, the second is on suggestions on the proposed change to Rule 11UA of Income Tax Rules 1961 and the third is to the department of Co-operative Audits compelling the auditors to ensure new Audit report format. We have many representations in the pipeline to various departments and we consider this as one of the Key result areas during the term to provide feedback to policymakers to work on unattended areas. This association is also proud to say that we initially demanded the change in Audit formats in the Co-operative sector, we also worked closely with the department and committee for faster release of formats and rationalised many of the issues. There are further improvements that are required in Audit formats which we would like to work on in near future. Recently we conducted a program on Growth mindset in Bandipur to instill the mindset of growth in CAs, a program to articles/assistants on filing ITR and Excel which was very well attended and received.

I encourage you all to actively participate in all the initiatives, workshops, and networking opportunities that KSCAA provides. Let us come together, exchange ideas, and collectively strive towards excellence. The success of our association depends on the active involvement and contributions of each and every member. Together, we can foster an environment that nurtures professional growth, promotes knowledge-sharing, and advances the accounting profession.

In case you have any suggestions to give to the association, we are looking forward to the same with open arms.

Happy Reading !
Yours' faithfully,
CA. Pramod Srihari
President

Since 1957

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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.

Email: journal@kscaa.com | Website: www.kscaa.com

Income Tax Updates For The Month

JUDICIAL UPDATES

ITAT

1. Disallowance/adjustment made by Assessing Officer on account of delayed deposit of employees' contribution to PF/ESI under section 36(1)(va) relying on Supreme Court judgement in Checkmate Services (P) Ltd. v. CIT (2022) 448 ITR 518 (SC) was justified as it was latest decision and would be applicable retrospectively. [*150 taxmann.com 297 (Kolkata - Trib.)*]

2. Levy of a penalty under Section 271B for failure to get books audited in a case where no books of account were maintained was justified. [*150 taxmann.com 298 (Ranchi-Trib.)*]

3. Transfer that is excluded by Section 47(vi) would be included in Section 56(2)(viia), resulting in the transfer or receipt of shares of a company in which the public is not substantially interested being taxable as income from other sources in the hands of the recipient. [*150 taxmann.com 109 (Hyderabad - Trib.)*]

High Court

1. Death of the assessee notified after notice u/s 148 and subsequent notice on the legal heir without issuing notice u/s 148 is not valid and the notices and consequential orders set aside. [*(452 ITR 17) (Guj)*]

2. Net profit rate was confirmed as 0.5 % by the CIT(A) and ITAT based on material available on record considering the factual aspects analysed based on the material adduced before the authorities. [*(452 ITR 22)(Guj)*]

3. The amalgamating company ceases to exist due to order of the court and also the department was informed on the same. However, initiation of reassessment processings u/s 147 will be void as the PAN is non-existent. [*(452 ITR 55)(Bom)*]

4. Initial notice issued in the name of the deceased assessee is invalid and order u/s 148A(d) was set aside. [*(452 ITR 59)(Bom)*]

Supreme Court

1. Where no incriminating material was found in case of any of assessee either from assessee or from third party and assessment were under section 153-C, High Court rightly set aside assessment order. [*150 taxmann.com 108 (SC)*]

2. Where Commissioner, while considering application of assessee for grant of exemption under section 10(23C)(vi) specifically observed and held that activity of assessee could not be said to be solely for imparting education and that assessee was indulging into profit and said finding of fact recorded by Commissioner, as such, had not been upset by High Court while setting aside order passed by Commissioner denying exemption under section 10(23C)(vi), impugned judgment and order passed by High Court was to be quashed and set aside. [*150 taxmann.com 40 (SC)*]

FROM CBDT

1. Agreement between Republic Of India and Republic Of Chile for elimination of double taxation and prevention of fiscal evasion and avoidance with respect to taxes on income signed on 9th March 2020. [notification s.o. 2059(e) [no. 24/2023/f. no.500/62/2017-ft&tr-v (pt-iii)], dated 3-5-2023]

2. Clarification on faq 6(reporting) and faq 3 (reporting) issued by u.s. Irs in respect of FATCA reportable accounts. [circular f. no. 500/107/2015-ft&tr-iii, dated 4-5-2023]

3. For the purpose of TDS on interest on the income other than the interest on securities u/s 194A a scheme has been notified by CBDT namely Mahila Samman Savings Certificate, 2023 for

the purpose of sub-clause (c) of clause (i) of sub-section (3) of section 194A of the Income-tax Act, 1961. [notification s.o. 2189(e) [no. 27/2023/f.no. 370142/11/2023-tpl], dated 16-5-2023]

4. CBDT has released FAQs regarding the inclusion of international credit cards (ICCS) under LRS. [press release, dated 19-5-2023]

5. CBDT proposes changes to rule 11UA in respect of angel tax - also proposes to notify excluded entities. [press release, dated 19-5-2023]

6. CBDT issues guidelines for removal of difficulties under sub-section (3) of section 194BA of the income-tax act, 1961. [CIRCULAR NO. 5 OF 2023 [F. NO. 370142/12/2023-TPL], DATED 22-5-2023]

7. Amendment in rule 31A, form no. 24Q, form no. 26Q, form no. 27Q & form no. 27EQ; insertion of rule 133 and substitution of form no. 16. [notification g.s.r. 379(e) [no. 28/2023/f.no. 370142/12/2023-tpl], dated 22-5-2023]

8. Clarifications of the provisions relating to charitable and religious trusts regarding their registration/approval under sections 12AA & 12AB and furnishing of various forms. [circular no. 6 of 2023 [f. no.370133/06/2023-tpl], dated 24-5-2023]

9. Guidelines for compulsory selection of returns for complete scrutiny during financial year 2023-24 - procedure for compulsory selection in such cases. [circular f.no.225/66/2023/ita-ii, dated 24-5-2023]

10. Central Government notifies the class or classes of persons to whom provisions of section 56(2)(viib) shall not apply. [notification s.o. 2274(e) [no. 29/2023/f. no. 370142/9/2023-tpl (part-i)] dated 24-5-2023]

11. CBDT notifies E-appeals Scheme, 2023 u/s 246(5) of the Act. [notification s.o. 2352(e) [no. 33/2023/f.no. 370142/10/2023-tpl], dated 29-5-2023]

Indirect Tax- Recent Judicial Pronouncements


CA. Raghavendra C R
CA. Bhanu Murthy J S

1. **CCE Vs. Ashwini Homeo Pharma, (2023) 6 Centax 39 (S.C.)**

   Issue: The issue which came up before the Supreme Court was whether Ashwini Homeo Arnica Hair Oil would be classifiable as medicament falling under chapter 30 or as cosmetic falling under chapter 33.

   Held: The Supreme Court observed that the subject product is manufactured as drug after being duly licensed by competent authorities and the said product carries combination of four Homeopathic medicines, (Arnica Montana, Cantharis, Pilocarpine, and Cinchona) in its preparation which were duly found mentioned in Homeopathic Pharmacopoeia of India as also in Dictionary of Practical Materia Medica. Further, the product was intended to control hair fall as also to prevent dandruff and induce good sleep. Therefore, the product has therapeutic and prophylactic use. It was held that merely on account of the fact that the product is labeled as "Hair Oil" or its availability over the counter in shops would not make it a cosmetic.

2. **CCE, Mumbai East Vs Flemingo Travel Retail Ltd., (2023) 5 Centax 173 (S.C.)**

   Assessee is engaged in the business of running Duty Free Shops at the arrival and departure terminals of the Mumbai and Delhi International Airports. Assessee claimed refund of service tax paid on various services procured including renting of immovable property for running the said business [rebate of taxes paid for use in exports]. The refund was rejected by the Department.

   Held: In this background, the Supreme Court referring to decisions in the cases of ITDC Ltd - Hotel Ashoka v. The Assistant Commissioner of Commercial Taxes and Anr. And Aatish Altaf Tinwala v. Commissioner of Customs (Airport), Mumbai, observed that in view of the aforesaid judgments and Article 286 of the Constitution of India, Duty Free Shops, whether in the arrival or departure terminals, being outside the customs frontiers of India, cannot be saddled with any indirect tax burden and any such levy would be unconstitutional. Therefore, if any tax is levied, the same cannot be retained and the Duty Free Shops would be entitled for refund of the same without raising any technical objection including that of limitation.

3. **Central GST Delhi - III Vs. Delhi International Airport Ltd., 2023 SCC OnLine SC 670**

   Background: Assessee had entered into joint venture arrangements/agreements with the Airports Authority of India, [a body corporate created by the Airports Authority of India Act, 1994] to operate and maintain airports. The assessee was authorised by various notifications (dated 27 February 2009) issued by the Central Government under Section 22A of the AAI Act to collect a "development fee" @ Rs. 100/- for every departing domestic passenger and Rs. 600/- for every departing international passenger at the concerned airports for a period of 48 months.

   Issue: Whether user development fee (UDF) levied and collected by the airport operation, maintenance and development entities (i.e., the Mumbai International Airport Pvt. Ltd., the Delhi International Airport Pvt. Ltd., and the Hyderabad International Airport Pvt. Ltd., is subjected to service tax levy.

   Held: The Supreme Court relying on the decision of the Supreme Court in the case of Consumer Online Foundation [(2011) 5 SCC 360] held that UDF is a statutory levy and the said collection is not premised on rendering of any service from the passengers or

users. Further, the said UDF collected is deposited into an escrow account and the utilization of funds is monitored and regulated by law, for the purpose of upgradation and renovation of airports. Therefore, no service tax could be levied and collected on UDF.

4. **Mahanagar Telephone Nigam Ltd. Versus Union of India, (2023) 5 Centax 279 (Del.)**

Background: Telecom Regulatory Authority of India(TRAI) recommended withdrawal of MTNL's entire spectrum holding, which was originally allotted. MTNL spectrum was used for carrying CDMA services and it had made significant capital investment for providing such services. MTNL claimed that if the allocated spectrum is prematurely surrendered, it must be reimbursed/compensated. Accordingly, DOT, Government of India issued orders for sanction of compensation.

Issue: Issue before the High Court was whether the compensation received would be liable to service tax in terms of Section 66E(e) of the Finance Act, 1994 ["agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"]

Held: The Court taking into account the definition of service, observed that the surrender of the spectrum or receipt of any value / financial support on account of the unexpired period of the allocation does not amount to any service as understood in the common parlance.

Further, referring to the provisions of Section 66E(e), the Court observed that based on the wording of the above-referred clause, it cannot be said that MTNL had agreed to forbade doing any act as is contended on behalf of the respondents. MTNL had merely agreed to surrender the allocation of an asset. It did not agree to tolerate an act. The spectrum is a public asset, and its allocation is controlled by the Government of India. A specific band was allocated to MTNL for providing telecommunication service. Since MTNL had made investments for rendering services using the allocated spectrum, the Government of India had decided to provide financial support on MTNL vacating the spectrum. This cannot be construed as forbearance of an act or tolerating an act to fall under section 66E€.

The Court also took note of the amendment to Section 66E. In the year 2016, wherein clause (j) was inserted to bring allocation and subsequent transfer of right to use radio frequency and observed that where the Government intended to tax the allocation of or subsequent transfer of radio frequency, under section 66E(j), same cannot be taxed under the different heading for the previous periods.

On the issue of invocation of an extended period of limitation in terms of section 73, the Court held that where there is no material to show that the assessee was aware of tax liability and suppressed the same, the extended period cannot be invoked. Further, the fact that the amounts received on account of giving up spectrum was shown in the books of accounts which is a public document, clearly shows that there is no suppression of facts.

5. **Dyrektor Krajowej Informacji Skarbowej Vs. Rzecznik Małych i Średnich Przedsiębiorców, 2023 (149) taxman.com 352 (ECJ)**

Background: Assessee carries on the activities consisting of the installation and operation of electric vehicle recharging stations which are accessible to the public. Those stations would be equipped with 'multi-standard' chargers, which would have both direct current quick-charge connectors and alternating current slow-charge connectors. Assessee has a website or an IT application that would enable the user concerned to reserve a particular connector and to view his or her transaction and payment history. The supply provided during each recharging session could, in principle, include, depending on the needs of the user concerned, transactions consisting of:

- access to recharging devices, including integration of the charger with the vehicle operating system;
- the supply of electricity, within duly adjusted parameters, to the batteries of the vehicle; and
- the necessary technical support

The issue before the Court: Whether the activities detailed above are to be treated as a supply of goods (supply of electricity) or as a supply of services

Held: The Court observed that the activities involve a combination of transactions consisting of the supply of electricity for the purpose of recharging electric vehicles and the provision of various services, such as providing access to recharging points and facilitating the use thereof, providing the necessary technical support, and providing IT applications facilitating the reservation of a connector as well as the monitoring of, and payment for, transactions.

The supply of electricity to batteries of the users of vehicles would constitute as supply of goods. The re-charging infrastructure, IT infrastructure, etc., are services that are ancillary to the main supply of goods. Therefore, the entire transaction is to be treated as a single complex supply involving the supply of goods (electricity).

6. McDonalds India Pvt. Ltd. Vs Additional Commissioner of CGST (Appeals-II) (2023) 7 Centax 11 (Del.)

Background: Assessee entered into a service agreement with its holding company-McDonald's USA, whereby Assessee had agreed to perform research and development services. Assessee filed an application for refund of tax paid on inputs/ input services used for the export of services to McDonald's USA. The refund was rejected on the basis of the contention that the services rendered by the assessee are intermediary services and consequently, the same does not qualify as an export since the place of supply is in India.

Held: While remanding the matter to the adjudicating authority to re-examine the issue, the Court on the issue of intermediary services, observed that if it is found that McDonald's USA is obliged to perform certain services to third parties and the assessee is facilitating or arranging such services from third-party suppliers; the services performed by the petitioner may fall within the scope of intermediary services. However, it is essential that the principal service, the supplier of such services, and the service purchaser are identified to ascertain whether the services performed by the assessee are those of a facilitator or one that arranges such services.

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YAKTOON

Vinayak Pai

Right to Information has always been an Auditor's right. With experience I can tell you that with most clients, information may be forthcoming only if **RTI is made applicable.**

By CA. Vinyak Pai

Solution to Sudoku - 33
May 2023

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

Adjudication By The Same Officer Who Has Done The Audit U/S 65 Of CGST Act, 2017?


CA. Srikanth Acharya G B
CA. Vasanth Kumar J

GST department has become very aggressive in issuing show cause notices and passing orders in raising the demand and recovery. Orders with huge liabilities & recovery actions thereof with an extremely increased sense of highest compliances, the authorities are keenly looking out towards dual interpretations of the wordings/formats which the assessee are following/practicing since decades in various reports. Also, for every procedural lapse, majorly due to inconvenience in practice, revenue started issuing show cause notices without proper authority and ignoring the procedure laid down in respective provisions. '*The Hon'ble Apex Court in the case of CCE vs Brindavan Beverages (P) Ltd (2007) 9 SCC 617*' held that "if the allegations in the notice are not specific and are on the contrary, vague, lacks details and/or unintelligible, the Show cause notice(SCN) and proceedings will stand abeyance.

There arise a need of quick recap and analysis of SCN issuing authority in true sense and who can take course of action during Audit u/s 65 of CGST Act legitimately.

Before we dwell into the topic it is important to understand some key terms and clarifications:

AUDIT	ADJUDICATION
"Audit" :- As per section 2(13) of CGST Act, 2017, Audit means the examination of records, returns and other documents maintained or furnished by the registered person under this act or the rules made there under or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed and to assess his compliance with the provisions	"Adjudication" :- The word adjudication is not defined under GST Law. Generally, adjudication means a process of deciding an issue relating to tax matters through departmental authorities empowered to determine issues relating to clarification, valuation, refund claim, tax or duty payable etc. The department raises demand by way of SCN to the assesses when irregularities are observed or suspected.
of this act or the rules made thereunder. "Tax Authority" :- The word Tax Authority is not defined under GST Law, Generally, Tax Authority means "an organization with official responsibility for collecting taxes", but here as far as section 65 (1) of CGST Act, 2017 is concerned, the word tax authority will be understood as, The Commissioner or any officer authorised by him, by way of a general or a specific order. "Commissioner" :- As per section 2(24) of CGST Act, 2017, Commissioner means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act. "Audit officers" :- As per Karnataka GST Audit manual Version-1 issued on 01.01.2021, it defines an Audit officer as "an officer entrusted with the responsibility of conducting an audit and also includes those who have been assigned the responsibility of assessment and recovery".	"Adjudicating Authority" :- As per section 2(4) of CGST Act, 2017, Adjudicating Authority refers to any authority authorized to pass orders or make decisions under the CGST Act, except for certain specified authorities such as the Central Board of Indirect Taxes and Customs, and others mentioned in the definition. "Order" :- The word Order is not defined under GST Law. As per Oxford Language, Order means "to give an authoritative instruction to do something".

AUDIT	ADJUDICATION
"Audit report" :- The word Audit report is not defined under GST Law. Generally, audit report means a written letter from the auditor containing their opinion on that particular matter, but here as far as section 65 (6) of CGST Act, 2017 is concerned, the word Audit report will be understood as form named ADT 02. On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.	
The relevant provisions which deals Audit are section 65 and 66 of CGST Act, 2017.	The relevant provisions which deals with adjudication are section 73 and 74 of CGST Act, 2017.

- **"Proper officer" under section 2(91) of CGST Act, 2017:**

  Proper officer in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board.

- **Proper officer includes adjudicating authority as well as Audit authorities.**

  As per CBIC-Circular no 31/05/2018-GST paragraph 6 states that *"The central tax officers of audit commissionerate and Directorate General of Goods and Service Tax Intelligence (hereinafter referred to as "DGGSTI") shall exercise the powers* ***only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate*** *in whose jurisdiction the noticee is registered. In case, there are more than one noticees mentioned in the show cause notice having their principal places of business falling in multiple Commissionerates, the show cause notice shall be adjudicated by the competent central tax officer in whose jurisdiction, the principal place of business of the noticee from whom the highest demand of central tax and/or integrated tax (including cess) has been made falls"*

Section 65. Audit by tax authorities: -

The legal provisions relating to audit by tax authorities under GST is contained in Section 65 of Chapter XIII under the head Audit and Rule 101 of Chapter XI under the head Assessment.

The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person by serving Notice in **FORM ADT-01** for such period, at such frequency and in such manner as may be prescribed.

The proper officer, on conclusion of audit, shall, within 30 days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings in **FORM GST ADT-02**, along with the detailed report.

After completion of audit verification, the Audit Officer should prepare the verification report in ADT-02 for all issues identified in the Audit Plan. This document should record the results of verification conducted as per the audit plan. Any additional issue verified/ point noticed should also be mentioned. The Audit Officer would then discuss each of such issues with the assessee/taxpayer pointing out either non-payment or procedural infractions.

If the audit results in detection of legitimate tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the **proper officer** may initiate issuance of SCN u/s 73 or 74 **after obtaining** the authorisation from the Commissioner or any other authorised officer. The authorising officer may give the authorisation to initiate action under Section 73 or 74 to the same officer who has audited or to a different officer.

As we are well aware that the **Proper officer** under section 73 or 74 may serve show cause notice (SCN) to a person due to any of the following reasons:

- Tax not paid/short paid;
- Tax erroneously refunded;
- Input tax credit wrongly availed or utilized.

Along with SCN, he shall issue a summary of SCN in Form DRC-01.

DRC-01 has to be issued by the proper officer, the question that arise is who should issue the show cause notice, whether adjudicating authorities or Audit authorities?

In the general sense, it is understood that the Adjudicating Authority has the power to **issue** SCN under sections 73 and 74. However, reading of sections 65(7), 73(1), 74(1) and CBIC-Circular no 31/05/2018-GST paragraph 6 into consideration, it infers that, the "proper officer" to initiate action under section 73 or section 74 and issue SCN and thereafter it is adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered.

With this, it can be understood that Power of adjudication of a SCN will rely on competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered and this process of adjudication of a SCN is an internal administration mechanism that the department has adopted (by segregating the functions or assessments to go unbiased). However, as we are well aware, Circulars are normally explanatory or clarificatory in nature and Circulars are internal memos that are issued for the proper implementation of the Act and intended to clarify the ambiguities and provide procedures for implementation of the Act, and which will always **bindings on Departmental authorities.**

From the above discussions, it can be expressed that, the **power to Issue** Show Cause Notice will be in the hands of **Audit authorities** but power to **Adjudicate** the Show Cause Notice will be in the hands of the competent **central tax officer of the Executive Commissionerate** in whose jurisdiction the noticee is registered.

However, there is no legal bar in initiating proceedings by CGST officer, who has conducted audit, to issue Show Cause Notice (against audit objections) and adjudicate such Show Cause Notice.

COMMENTS: -

An overall reading of the provisions infers that there is a clear-cut demarcation between audit and adjudication to be conducted by authorities under GST law, in terms of powers, scope, and conclusion of proceedings. An audit authority has the power to conclude its findings and has no power to create demand and recover the same. Whereas the Adjudicating Authority has the power to determine tax, interest, and penalty and recover the same in accordance with the law.

The above view is fortified by section 107 of the Act, where an appeal can be preferred against a "decision" or "order" passed under this Act, and not against an "Audit Report".

A SCN should ideally be issued by the authority empowered to adjudicate the case as this ensures accountability as well as rigour of examination as demands of higher amounts are adjudicated by the officers of higher rank.

Jurisdiction plays an important role in the adjudication process and the post, circulars are binding in nature for the department and are for the purpose to maintain uniformity among the field formation.

On the other hand, principally an assessee cannot expect natural justice i.e., Fairness, reasonableness, equity, equality, unbiased and unprejudiced mind if SCN issuing authority and adjudicating authority is one and the same. The possibility of preconceived notion bias cannot be ruled out. The ultimate purpose of any adjudication is to accord justice (fairness in justice) to the taxpayer in letter and spirit of GST Laws.

Articles 14 and 21 of the Constitution of India provide a strong basis of the principles of Natural Justice. Natural Justice stands for fairness, reasonableness, equity and equality

Two main principles of Natural Justice are: -

(i) No one should be the Judge in his/her own case and

(ii) each party should be given the opportunity to be heard.

Thus, if SCN issuing authority and adjudicating authority are the same, it is in violation of the principles of natural justice.

In case the detecting agency, SCN issuing authority and adjudicating authority are same, the taxpayer/notice can be prone to the following kinds of bias:-

(i) 'Pecuniary Bias'

(ii) 'Subject-matter Bias'

(iii) 'Departmental Bias'

(iv) Pre-conceived bias

In this regard, it is important to mention Hon'ble Delhi High Court Decision in the case of Swastik Plastics vs Commissioner Of DGST W.P(C) 5680/2022 dated 5/4/2022, where Hon'ble Court appraised that, there would be a likelihood of bias, if the person, who carried out the search and seizure operation is also empowered to conduct the adjudication proceedings.

Authors are of the view that, proper clarification needs to be issued with regard to Audit and Adjudication, Authorities competent to conduct Audit and Adjudication.

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Indirect Tax Updates – June - 2023

CA. Sowmya C A

A special All-India Drive against fake registrations has been initiated and will be conducted for two months from 16 May 2023 to 15 Jul 2023 with the objective of detecting and eliminating fake dealers / fake billers. Detailed guidelines have been issued vide Instruction No. 01/2023-GST dated May 04, 2023. GSTN/DGARM, intelligence will identify suspicious GSTIN for initiation of the verification drive and will be shared with the field formations for initiation of action. If upon verification, the registration is found to be fictitious, the department may initiate necessary action including blocking of credit. It is, therefore, necessary to be up to date with compliances and not to panic during inspection but to extend co-operation and provide the details requested.

The GST policy wing has also issued a SOP document for scrutiny of returns of the period beginning FY: 2019-20 onwards vide Instruction No. 02/2023-GST dated May 26, 2023. The online workflow for scrutiny of returns in the CBIC ACES-GST application has been provided. The module provides for a detailed workflow beginning with communication of discrepancies in ASMT10, reply of the Registered Person in ASMT 11 and issuance of an order in ASMT-12 or to take further proceedings. Selection of returns for scrutiny will be done by the Directorate General of Analytics and Risk Management (DGARM) based on various risk parameters identified by them and will be shared with the field formations who will schedule the scrutiny of the returns with the approval of the Asst. / Deputy Commissioner. It is expected that scrutiny will be performed only with records available with the officer with minimum interface with the taxpayer.

The proper officer is required to scrutinize all the returns pertaining to the Financial Year under consideration and a single compiled notice in FORM GST ASMT-10 may be issued to the registered person for that financial year. Instruction No. 02/2022 dated 22.03.2022 shall continue to be followed for the scrutiny of returns for the financial years 2017-18 and 2018-19. It is to be noted that the Ministry of Electronics and Information Technology has notified PLI Scheme 2.0 for IT Hardware to boost indigenous manufacturing and exporting capabilities. The scheme will be for the manufacture of laptops, All-in-one PCs, Tablets, servers, etc. The incentive is spread over a period of 6 years and shall be applicable from 1 Jul 2023, 1 Apr 2024, or 1 Apr 2025 depending on the applicant's choice.

The DGFT amnesty scheme notified with regard to the Export Promotion Capital Goods scheme and Advance Authorisation has provided the last date of the application being 30 June 2023. Further, the GST Amnesty scheme for (i) revocation of cancellation of registration, (ii) one-time amnesty of late fees for belated filing of annual returns and final returns, (iii) amnesty for filing of returns by non-fliers - will also end by 30 June 2023.

On the judicial front, there have been some sensational judgments by the courts. All these and the latest updates from DGFT, GST are presented herein below:

Recent DGFT Notifications:

- **DGFT notifies amendment under the Interest Equalisation scheme.**

  The interest equalization scheme was extended by RBI up to 31 Mar 2024. The annual net payout under the scheme will be capped at Rs. 10 crores per IEC in a given financial year.

  (Trade Notice No. 5/2023 dated 25 May 2023)

- **DGFT introduces an online facility for requesting appointments for virtual meetings/personal hearings for exporters.**

  As a measure of trade facilitation, DGFT has introduced a facility of virtual meetings/personal hearings to exporters from 1 Jun 2023. The exporters may apply for VC facility for their online hearing on the DGFT website using the navigation in the DGFT website (https://dgft.gov.in) → Services → Request for video conference.

  (Trade Notice No. 06/2023 dated 31 May 2023)

Recent GST Notifications:

- E-invoicing is mandatory for all businesses with annual turnover above Rs 5 crore from August 1, 2023
- E-invoices will become mandatory for all businesses with annual turnover above Rs 5 crore from August 1. E-invoicing for B2B transactions was first made compulsory for companies with a turnover of Rs 500 crore from October 1, 2020, and gradually the turnover threshold has been brought down to Rs 10 crore at present. CBIC has enabled an e-invoice facility for taxpayers with an Aggregate Annual Turnover (AATO) between Rs. 5 crore and Rs. 10 crores.

(Notfn No. 10/2023 -CT dated 10.05.2023)

Recent advisory under GST Laws:

- **GSTN enables Aadhaar authentication status in its portal.**

  The GSTN has added a new functionality in its portal to view the Aadhaar authentication status for proprietors/partners or promoters. The new feature also enables downloading e-KYC documents for new registration applications and uploading e-KYC documents of registered persons in the provisional verification report, which can be used by tax officers. The move will speed up the process of GST registration and reduce paperwork and the time taken for physical verification.

(Registration Advisory No. 23/2023 dated 15 May 2023)

LEGAL UPDATES:

Can a reply to SCN be rejected on the ground that is filed beyond the statutory period allowed for reply? Whether order for such SCN be passed without providing an opportunity of being heard even though the request for PH was made in the reply filed belatedly?

The mandate under Section 75(4) of the CGST Act, 2017 is clear that, when a written request is made from the person chargeable with tax or penalty seeking for personal hearing, the same is required to be considered. The court held that clearly there is a violation of the mandate under Section 75(4) of the Act and the submission of the Revenue that requested for a personal hearing made out in the reply was rejected on account of the reply being filed belatedly, is a hyper-technical interpretation which has resulted in the rejection of the opportunity under Section 75(4) of the Act, which cannot be accepted.

Therefore, an order was set aside on being violative of provisions of section 75(4) of the Act with the direction to adjudicate the case afresh after extending a personal hearing.

(M/s. Principle Mahendra Private Limited Vs. DCCT Bengaluru - 2023 (6) TMI 137 - Karnataka HC)

Can 'Intermediary Services' provided to an overseas recipient be considered as export of services? If not, whether such service is liable to State Tax/Central/ IGST Tax?

Dharmendra M Jani (the petitioner) is engaged in providing marketing and promotion services to his customers located outside India. Under an agreement, the petitioner provides services to enable get customers in India. Petitioner has treated the said services as export of services, as the same are consumed outside India and is outside the purview of the CGST Act, whereas the department considered it under intermediary services. The petitioner alleged that the parliament is not empowered to enact laws in respect of extraterritorial transactions. Therefore, the levy is ultra vires of Article 286(1) in so far as it is not empowered to levy tax on extraterritorial transactions. The issue before the court was "Whether the transaction is an export of services within the meaning of section 2(6) of the IGST Act and if not, what taxes is bound to be levied for the said transaction. There was a split verdict earlier in 2021 by two judges Ujjal Bhuyan and Abhay Ahuja. Therefore, the matter was referred to a third judge which was decided as under.

GST being a destination-based tax, wherein, export of service is being altered into a transaction of intra-state supply merely by the friction of law. Therefore, the friction, which is created by Section 13(8)(b) of the IGST Act, would be required to be confined only to the provisions of the IGST Act, as there is no scope for friction traveling beyond the IGST Act. Further, the State does not have the power to levy tax on the interstate supply of services vide Article 286 of the constitution. Therefore, the said transaction can never be a State subject and the court held that the provisions of Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid and constitutional. Further, these are confined in their operation to the provisions of the IGST Act only and the same cannot be made applicable for the levy of tax on services under the State Acts.

This is an important judgment by the Bombay HC wherein it has held that the services provided by intermediaries to persons abroad will not attract central GST and state GST. However, it has been held that the provision of Section 13(8)(b), read with Section 2(13) of the IGST Act, is not ultra vires or unconstitutional in any manner.

(Dharmendra M. Jani, A.T.E. Enterprises Private Limited 2023 (6) Tmi 290 - Bombay High Court)

Whether online /offline games such as Rummy is a game of chance or a game of skill. Whether played with/ without stakes tantamount to 'gambling or betting' as contemplated in Entry 6 of Schedule III of the Goods and Services Act, 2017?

M/s. Gameskraft Technologies Pvt. Ltd., (for short 'the GTPL') Bangalore-based online gaming company that runs technology platforms that allow users to play skill-based online games among two or more players are registered under the Karnataka GST Act. Pursuant to investigation proceedings, a show cause notice was issued under section 74(5) with a demand to pay tax to the tune of Rs. 21,000 crores along with interest and penalty for payment of tax on the prize money. An application was preferred before the Hon. Karnataka HC against such notice. It was the argument of the petitioner that the only seravice provided is the facilitation service as an online intermediary. The 'buy-in' amounts are not the property of the Petitioner. The Petitioner has no lien or right over such money and the same has to be disbursed to the winning players once the game is over. The petitioner only gets a small percentage of the fee as a platform fee as a usage fee of the online portal. On the other hand, it was the contention of the Revenue that online Rummy was a game of chance when stakes are involved.

The Hon'ble Karnataka High Court concluded as under:

- There is a distinct difference between games of skill and games of chance.
- Though Section 2(17) of the CGST Act recognises even wagering contracts as included in the term business, that in itself would not mean that lottery, betting and gambling are the same as games of skill.
- Taxation of games of skill is outside the scope of the term "supply" in view of Section 7(2) of the CGST Act, 2017 read with Schedule III of the Act.
- A game of skill whether played with stakes or without stakes is not gambling.
- A game of mixed chance and skill is gambling if it is substantially and predominantly a game of chance and not of skill.
- A game of mixed chance and skill is not gambling if it is substantially and predominantly a game of skill and not of chance.
- Rummy is substantially and predominantly a game of skill and not of chance whether played with or without stakes and irrespective of whether it is online or offline;

Consequently, the Impugned SCN issued by respondents was held to be illegal, arbitrary, and without jurisdiction and deserves to be quashed.

(Gameskraft Technologies Private Limited 2023 (5) TMI 926 - Karnataka High Court)

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Restore Your Cancelled GSTIN - Last Opportunity


CA. Ashika
CA. Rajesh Kumar T R

Application of GST Law and various sections there on is on different type of persons. It's very important to read the applicability of the section to either a Person, Taxable Person, Registered Person, Related person etc. Registration plays a key role in fulfilling various compliances under the law especially for Availment of Input Tax credit or passing on credit etc. However, the registration granted under GST can be cancelled either for non-compliance by the taxpayer or voluntary.

- At times such voluntary action could also be an unintended accident caused by a user having login access with the relevant credentials.
- The cancellation would be initiated by the department at its own motion for the reasons mentioned under Sec 29 of the Act read with Rule 21 of CGST Rules. When the registration has been cancelled by the proper officer on his own motion, then the registered person, whose registration has been cancelled, can submit an application for revocation of cancellation of registration, in FORM GST REG-21, to the Proper Officer under Rule 23(1).

1. Time Limit to Apply for Revocation

Revocation is required to be applied within a period of thirty days from the date of the service of the order of cancellation of registration at the common portal. However, this period of 30 days can be extended by:

- by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;
- by the Commissioner, for a further period not exceeding thirty days, beyond the period specified above

In the 49th GST Council Meeting, the Council has recommended to increase the time limit for making an application for revocation of cancellation of registration from 90 days to 180 days, the same is not yet implemented.

2. Procedure for Revocation of Registration

a. A registered person is required to submit an application for revocation of cancellation through **FORM GST REG-21** on the GST portal.

b. If the proper officer is satisfied with the reason provided by the taxpayer, the registered officer is required to,
   - o Record the reasons for revocation of cancellation of registration in writing.
   - o Pass an order of revocation in **FORM GST REG-22.**

c. However, if the reason submitted by the taxpayer is not found satisfactory to the authorised officer, he can reject the application for revocation.
   - o The officer is required to order in **FORM GST REG-05** and communicate the same to the applicant.
   - o Before rejecting, the proper officer must issue a show cause notice in **FORM GST REG–23** for the applicant to show why the application should not be rejected.
   - o The applicant must reply in **FORM GST REG-24** within 7 working days from the date of the service of the notice.
   - o The proper officer is required to pass the Order within 30 days from the date of receipt of clarification from the applicant in **FORM GST REG-24**

3. What happens to the Transaction during Interim Period

When a registration certificate is cancelled or suspended, in the interim i.e from the date of Cancellation/ suspension order till the date of restoration or rejection of certificate how shall the GST treatment be given to Purchase and Sales of that period. It is pertinent to note that a cancellation order can be issued prospectively or retrospectively. Here are scenarios considering

a) a cancellation order has been issued on 2nd June 2023 while
b) GSTR 1 has been filed till Jan 2023
c) GSTR 3B has been filed till Dec 2022

Effective Cancellation Date	Type of Cancellation
1st Jan 2023	Retrospective
1st May 2023	Retrospective
1st June 2023	Retrospective
2nd June 2023	Prospective

a. Can the Taxpayer continue the business

- o Taxpayer can continue the business in the normal course by considering the following risks
- o Availment of ITC :
  - Sec 16(1) starts with a statement "Every Registered person…." The status of registered person is lost till it is revoked hence such person cannot avail ITC.
  - Sec 16(2)(d) requires person availing ITC should have furnished the return under section 39, while the same is not possible since the portal has blocked filing of such returns.
    - o Collection of GST and passing on Credit, since the person is not registered he cannot collect GST hence passing of Input tax credit for the past purchases also is not possible

b. Issue of Tax Invoices for the supplies made:

A. On suspension/cancellation of registration, the Taxpayers shall not issue a Tax Invoice nor collect any amount in the name of GST during this period.

B. **Supplies made to registered Persons:** Once registration is revoked/restored in term of Section 31(3)(a) of the GST Act, taxpayer is required to issue a Revised Tax invoice against the invoices already issued after suspension till restoration.

C. **Supplies made to Unregistered Persons:** The taxpayer shall issue a Revised Tax Invoice (consolidated or otherwise) for the bills already issued by him during the suspension/ cancellation period.

c. Time of Supply:

A. Goods: There appears to be a tricky situation here, the time of supply of the Goods shall be

1. the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or

   Since the date of Revised Tax Invoice is post restoration an argument can be made the time of supply would be such revised invoice date.

B. Services: The time of supply of the Services shall be the date of receipt of payment, considering that the payment is received by the supplier on the basis of bill issued during the suspension.

In case of Supply of Service, the taxpayers are liable to pay interest on account of delayed payment of tax made in cash.

d. Filing of GST Returns:

- o Every registered person who has made outward supplies for the period the suspension/ cancellation was in force shall **declare** the same in the **first return** furnished by him **after suspension**/ cancellation is revoked in terms of Section 40 of the CGST Act.
- o All Return due from the effective date of cancellation till date of order of revocation shall be furnished within 30 days from the date of revocation of cancellation of registration.

e. Availment of Input Tax Credit:

- o Whether such Taxpayers can Avail ITC in respect of the period from the cancellation of the registration till the registration is restored:
  - Yes post revocation , these taxpayers will be eligible for ITC Availment subject to the other conditions of section 16 of the GST Act.
  - To report a B2B sales in GSTR 1 there shall be a valid GST Registration number, and the suspended registration numbers would not be accepted by the portal for filing the returns, hence the taxpayer should reach out to their suppliers post suspension seeking to amend their GSTR 1 and include the sales made to them.
- o When recipient can avail:
  - One of the conditions to avail ITC is visibility of such purchase in GSTR 2B as per sec 16(2)(aa).
  - Post revocation the taxpayer has to file his GSTR 1 and GSTR 3B, this will allow recipients to avail ITC.

f. Late Fees: There is no specific provision waiving the late fees for the period from the date of Order of Cancellation till the Date of Revocation. However, it is not necessary that delay in the process of getting the Order of Revocation may not be solely associated to the assessee.

Judgements : The Hon'ble Calcutta High Court in *M/s. Modicum Enterprise (OPC) Private Limited v. Deputy Commissioner of State Tax/Assistant Commissioner of State Tax [M.A.T No. 1828 of 2022 with I.A. No. CAN 1 of 2022 dated December 22, 2022]* has held that the assessee cannot be penalised by demanding late fee under Section 47 of the CGST Act where, the assessee had not filed returns due to the cancellation of its GST Registration on the factually incorrect grounds. Further held that, the demand of late fee from the assessee is without jurisdiction and not tenable in the eye of law. Directed the Revenue Department to facilitate the process of filing of return, without the payment of late fee.

The Hon'ble High Court Of Karnataka In Sri Chandrashekaraiah & Others Vs The State Of Karnataka Finance Department and others, it was held when non-compliance of the Taxpayer is beyond his control owing to a dispute between the State Department on the works contract awarded to him, hence no penalty to be levied for the past returns due if regularised within 6 months from the date of the order.

4. Actions to be done before filing an application for Revocation.

File the necessary returns till the effective date of cancellation as shown in the below table.

Sl. No.	Revocation Scenario	GSTR-3B filed Upto	Date of Cancellation Order	Effective Date of Cancellation	Return to be filed before Revocation	Payment to be made before Revocation	Return to be filed within 30 days of revocation
1(a)	Prospective	May, 22	Dec 31, 2022	Dec 12, 2022	Jun, 22 to Dec, 22	All due periods	Jan 23 till date of revocation
1(b)	Prospective	May, 22	Dec 21, 2022	Dec 21, 2022	Jun, 22 to Nov, 22	All due periods	Dec 22 till date of revocation
2(a)	Retrospective	May, 22	Dec 31, 2022	May 31, 2022	NA	All due periods	Jun 22 till date of revocation
2(b)	Retrospective	May, 22	Dec 31, 2022	Sept 1, 2022	Jun, 22 to Sep, 22	All due periods	Oct 22 till date of revocation
2(c)	Retrospective	May, 22	Dec 12, 2022	Oct 15, 2022	Jun, 22 to Sep, 22	All due periods	Oct 22 till date of revocation

5. Amnesty Scheme: Pursuant to the decision of the 49th GST Council Meeting, CBIC has issued Notification No. 3/2023-CT dated 31st March, 2023 for restoration of registration.

Where registration has been cancelled

- on account of non-filing of the returns on or before the 31st day of December, 2022 and
- who has failed to apply for revocation of cancellation of such registration within the time period specified in the section 30 of the CGST Act.

Taxpayers have been provided with a Onetime opportunity for revocation of cancellation. This opportunity is subject to the conditions that:

- Revocation Application to be applied on or before 30th June, 2023
- Revocation shall be applied
  - o after furnishing the returns due up to the effective date of cancellation of registration
  - o after payment of any amount due as tax, in terms of such returns,
  - o along with any amount payable towards interest, penalty and late fee in respect of the such returns

Even a person whose appeal against the order of cancellation of registration or the order rejecting application for revocation of cancellation of registration under section 107 of the said Act has been rejected on the ground of failure to adhere to the time limit can also apply for revocation.

6. Advisory note issued to Department officers for Revocation:

The following advisory issued for actions to be taken by the proper officers in clearing the revocation application forms.

a. Visit to Place of Business before revocation.

b. Ensure filing of all the return before filing of revocation application, in case of prospective cancellation or within 30 days from the date of order of revocation, in case of retrospective cancellation.

c. Ensure filing of all the returns from date of order of cancellation to the date of order of revocation, in case of prospective cancellation within 30 days

from the date of order of revocation.

d. Ensure all payments are made before an order of Revocation of Cancellation of Registration.

e. If after revocation, registered person fails to file return, the appropriate action may be initiated under section 29, section 75(12), section 62, section 132.

7. Why Revocation is necessary?

a. Rejection of New Registration: If a taxpayer does not apply for revocation of cancellation, it shall be deemed to be a 'deficiency' within the meaning of Rule 9(2) of the GST Rules, 2017 and can be considered as a ground for rejection of the application for fresh registration.

Circular no. 95/14/2019-GST dated 28th March 2019 clarified that in cases where a registered taxpayer applies for another registration within the same state, the authorised officer is required to analyse whether existing registration continues or is being cancelled

Proper Officer is authorised to reject an application of fresh registration, if upon verification, the applicant is found to have a registration cancelled on account of violation of provisions of section 29 (2) (b) [composition dealer has not furnished returns for 3 consecutive tax periods] or section 29 (2) (c) [registered taxpayer has not furnished returns for a continuous period of 6 months], and the applicant has not filed for the revocation of the same.

b. Continue Supply of Goods/ Services: If the taxpayer continues to trade goods and supplies without restoration of GST, it shall be considered as an offence under GST law and the taxpayer shall be liable to heavy penalties.

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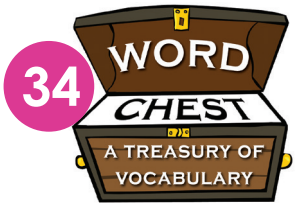

Web 3 in Music Industry

The music industry has developed rapidly in the last two decades, as we went from listening to CDs using a Discman to having access to millions of songs on our mobile devices. ***Web3*** *takes this a step further by presenting new opportunities for musicians to connect with fans, protect their intellectual property (IP) rights, and generate revenue from their work.* ***Web3*** *is influencing the legal component of the music industry by leveraging blockchain technology to create secure, transparent, and immutable records of ownership and royalties for music creators and rights holders.*

Web3 *music platform facilitates the release and purchase of instrumental tracks to which lyricists can apply their vocals as NFTs. Owners of these NFTs are then granted IP rights related to the music they've purchased, establishing fresh avenues for artists and creators to produce open-source music.*

This also gives musicians the opportunity to circumvent intermediaries such as record labels or streaming services that typically receive the lion's share of revenue. With ***Web3****, musicians at all levels of their career have the opportunity to create self-controlled revenue streams through tokenization and fan engagement.*

Financial Reporting And Assurance

CA. Vinayak Pai V

KEY UPDATES

A. AS|Ind AS

1. EAC Opinion – Preparation of Statement of Profit and Loss in a non-revenue generation organisation

The June 2023 edition of the ICAI Journal has carried an Expert Advisory Committee **(EAC) opinion – *Timing of capitalisation of Irrigation Assets.***

A summary of generic **key takeaways** from the opinion is summarised herein below. [**Background** - The querist is a Company wholly owned by the Government of Karnataka formed for the purpose of completion of irrigation projects in the Krishna river basin. The opinion of the EAC was sought as to whether it is appropriate to capitalise the irrigation assets comprising the water lifting system and canals, prior to completion of the Field Irrigation Canals (FIC) based on completion certificates issued in respect of individual component of the canal system. If not, what is the criteria to be adopted?]

- The EAC is of the view that in the extant case, **since the irrigation project is an integrated project and unless FIC is completed, the entire project is not capable of being usable,** the various units/ parts of the Project cannot be considered to be in the location and condition necessary for it to be capable of operating in the manner intended by management. Accordingly, **such units/parts cannot be capitalised as an item of PPE, prior to completion of the FIC(s)** based on completion certificates issued in respect of individual component of the Project.
- In case it is possible that as soon as a section of FIC is complete and is ready (while construction of other section of FIC is being undertaken), it may enable the functioning of other inter-linked assets of irrigation project and make the entire project capable of being used, although in a limited area and not at the intended irrigation potential or capacity or catering to the entire group of intended farmers' fields, the project to that extent may be considered to be in the location and condition necessary for it to be capable of operating in the manner intended by management, as per the requirements of Ind AS 16 and accordingly, may be capitalised as an item of PPE, only to such extent, even prior to completion of entire FICs.

Link to the Opinion - **https://resource.cdn.icai.org/74200cajournal-june2023-8.pdf**

B. ASSURANCE

2. ICAI Announcement – Deferment of second phase of Peer Review Mandate

On 10th May, 2023, the Institute of Chartered Accountants of India (ICAI) announced the **deferment of the applicability of the second phase of the Peer Review Mandate by 3 months to be effective 1st July, 2023.**

The **second phase of the Peer Review Mandate is applicable for the following Practice Units:** *Practice* Units which propose to undertake Statutory Audit of unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year: For these Practice Units, there is a pre-requisite of having Peer Review Certificate. **OR** Practice Units rendering attestation services and having 5 or more partners: For these Practice Units, there is a pre-requisite of having Peer Review Certificate before accepting any Statutory audit.

Practice Units which accept Statutory audits on or before 30th June, 2023 should ensure that they have a Peer Review Certificate at the time of signing.

Link to the Announcement - **https://www.icai.org/post/deferment-of-second-phase-of-peer-review-mandate**

3. UK FRC – Audit Committees and the External Audit: Minimum Standard

On 22nd May, 2023, the UK Financial Reporting Council (FRC) issued ***Audit Committees and the External Audit: Minimum Standard*** with the objective of enhancing performance and to ensure a consistent approach across audit committees within the FTSE 350. By setting out clear expectations and guidelines, the FRC aims to support the delivery of high-quality audits and reinforce public trust in the financial reporting process. The standard will apply to FTSE350 companies.

The minimum standards cover Tendering, Oversight of Auditors and Audits and Reporting.

Link to the Minimum Standards - **https://www.frc.org.uk/getattachment/4e00c100-24fd-44b7-84ed-289879051d4e/Audit-Committee-Minimum_-2023.pdf**

C. NFRA

4. NFRA Order u/s 132(4) of the Companies Act – Sun and Shine Worldwide Ltd.

The NFRA vide order No. NF-23/05/2021 dated 19th May, 2023 in the matter of Sun and Shine Worldwide Ltd., imposed a **monetary penalty of ₹ 5 lakhs on the Engagement Partner (Statutory Auditor) and debarred him for 5 years** from being appointed as an auditor.

The Order finds that the financial statements of the said company (for F.Ys. 2012-13 and 2013-14) were materially misstated wherein the amount of revenue from operations was overstated. Revenue from derivative contracts were recorded by the company based on daily carried over amount of the unsettled contracts without their actual closure or settlement on the exchanges. This erroneous accounting and misleading presentation also affected the corresponding expenses i.e., 'Purchase of Derivative Contracts', giving a false and inflated impression of the company's scale of operations. According to the NFRA, the Engagement Partner failed to perform audit procedures to identify these manipulations in the accounts showing his gross negligence, non-adherence to SAs and failure in questioning the management on such erroneous reporting, which resulted in providing a misleading picture to investors and stakeholders.

Link to the Order - **https://cdnbbsr.s3waas.gov.in/s3e2ad76f2326fbc6b56a45a56c59fafdb/uploads/2023/05/2023051933.pdf**

5. NFRA Order u/s 132(4) of the Companies Act – Giri Vidhyuth (India) Ltd.

The NFRA vide order No. NF-23/14/2022/05 dated 30th May, 2023 in the matter of Giri Vidyuth (India) Ltd. (GVIL), imposed a **monetary penalty of ₹ 1 crore on the Audit Firm** and **debarred it for 2 years** from being appointed as auditors. Further, a monetary penalty of **₹ 5 lakhs each was imposed on its two engagement partners apart from debarring them for 5 years** from being appointed as auditors.

As per the Order, the auditors of GVIL (F.Y. 2019-20) *inter-alia* failed to meet the relevant requirements of SA's and the provisions of the Companies Act. They failed to evaluate their potential conflict of interest and failed to maintain their independence from GVIL by having audit and non-audit relationships with a large number of group companies and the family members of the promoters. They violated ICAI Code of Ethics, as the percentage of professional fees received from the Group (Coffee Day) was more than 40% of their total professional fees. They were also found to have not exercised professional judgement and skepticism during the audit.

Link to the Order - **https://cdnbbsr.s3waas.gov.in/s3e2ad76f2326fbc6b56a45a56c59fafdb/uploads/2023/05/2023053044.pdf**

D. IFRS

6. IASB – Amendments to IAS 12 - OECD Pillar II Model Rules – Temporary relief from accounting for deferred taxes

In December 2021, the OECD published the **Pillar Two model rules** to ensure that large multinational companies would be subject to a **minimum 15% tax rate.** More than 135 countries and jurisdictions representing more than 90% of global GDP have agreed to the Pillar Two model rules.

Now, on 23rd May, 2023, the International Accounting Standards Board (IASB) issued **amendments to IAS 12 Income Taxes providing companies temporary relief from accounting for deferred taxes arising from this international tax reform.**

The amendments introduce: **a temporary exception**-to the accounting for deferred taxes arising from jurisdictions implementing the global tax rules; and **targeted disclosure requirements**-to help investors better understand a company's exposure to income taxes arising from the reform, particularly before legislation implementing the rules is in effect.

Companies can benefit from the temporary exception immediately but are required to provide the disclosures to investors for annual reporting periods beginning on or after 1st January, 2023.

Link to the Announcement - **https://www.ifrs.org/news-and-events/news/2023/05/iasb-amends-tax-accounting-requirements/**

7. IASB – Amendments to IAS 7 and IFRS 7 – supplier finance arrangements

On 25th May, 2023, the IASB issued **amendments to IAS 7, *Statement of Cash Flows and IFRS 7, Financial Instruments: Disclosures.*** The new disclosure requirements are **aimed at enhancing the transparency of supplier finance arrangements** and their effects on a company's liabilities, cash flows and exposure to liquidity risk. [Supplier finance arrangements are often referred to as supply chain finance, trade payables finance or reverse factoring arrangements.]

The amendments supplement requirements already in IFRS Accounting Standards and **require a company to disclose**: the terms and conditions; the amount of the liabilities that are part of the arrangements, breaking out the amounts for

which the suppliers have already received payment from the finance providers, and stating where the liabilities sit on the balance sheet; ranges of payment due dates; and liquidity risk information.

The amendments, which affect IAS 7 and IFRS 7 are effective for annual reporting periods beginning on or after 1st January, 2024.

Link to the Announcement - **https://www.ifrs.org/news-and-events/news/2023/05/iasb-increases-transparency-of-companies-supplier-finance/**

8. IFRS Foundation's IFRS for SMEs Educational Material – Effects of climate-related matters on financial statements

On 16th May, 2023, the IFRS Foundation published an **Educational Material, *Effects of climate-related matters on financial statements prepared in accordance with the IFRS for SMEs Accounting Standard.***

The educational material contains a non-exhaustive list of examples of when companies may need to consider climate-related matters in their financial statements and is aimed at supporting the consistent application of the IFRS for SMEs Accounting Standard. The material is based on similar educational material published by the IFRS Foundation to support full IFRS Accounting Standards.

Link to the Educational Material - **https://www.ifrs.org/content/dam/ifrs/supporting-implementation/smes/smes-effectsclimaterelatedmatters-may2023.pdf**

E. SUSTAINABILITY REPORTING

9. IFAC – Placemat to guide Audit Committees to oversee sustainability-related disclosure

On 24th May, 2023, the International Federation of Accountants (IFAC) released a placemat document, ***Key Questions for Audit Committees Overseeing Sustainability-Related Disclosure*** to prepare audit committees with effective questions to ask when overseeing sustainability and ESG related disclosures.

The **key questions for audit committees cover:** Roles and responsibilities across the organization; Data collection, processes and controls; What's being reported?; and Audit and assurance.

Link to the Publication -**https://www.ifac.org/knowledge-gateway/preparing-future-ready-professionals/publications/key-questions-audit-committees-overseeing-sustainability-related-disclosure**

10. IFAC – Guide to Accountants : greenhouse gas reporting

On 30th May, 2023, IFAC released new guidance to help professional accountants and finance professionals deliver robust greenhouse gas (GHG) reporting. The first part of the guidance, ***8 Steps to Enhance GHG Reporting: A Roadmap for Accounting and Finance Professionals,*** provides finance and accounting professionals with a roadmap to engage with others across their business to prepare for GHG emissions reporting requirements aligned to financial reporting processes. While the second, ***GHG Reporting Building Blocks for Accountants,*** equips accountants with the technical guidance necessary to collect and enhance the quality of data related to all scopes of GHG emissions at individual entity and group levels.

The publications have been released in preparation for the upcoming international and jurisdictional standards and regulations that will make it mandatory for companies to advance GHG reporting to new levels and provide investors with decision-useful information related to climate risks and opportunities. These include the International Sustainability Standards Board (ISSB) *General Sustainability-related Disclosures* (IFRS S1) and *Climate-related Disclosures* (IFRS S2), the *European Financial Reporting Advisory Group's* (EFRAG) *European Sustainability Reporting Standards* (ESRS) and proposed rules for climate change disclosures by the US Securities and Exchange Commission (SEC).

Link to the Announcement - **https://www.ifac.org/news-events/2023-05/mandatory-climate-disclosure-horizon-new-guide-shows-accountants-how-get-greenhouse-gas-reporting**

F. USGAAP

11. FASB Exposure Draft – Clarifying accounting guidance related to Profits Interest Awards

On 11th May, 2023, the Financial Accounting Standards Board (FASB) published a proposed Accounting Standards Update, ***Compensation – Stock Compensation (Topic 718) – Scope Application of Profits Interest Awards***. The Exposure Draft intends to improve USGAAP by adding illustrative guidance to help entities determine whether profits interest and similar awards should be accounted for as a share-based payment arrangement within the scope of Topic 718, *Compensation—Stock Compensation.*

It may be noted that certain US entities, typically private companies, provide employees and other service providers with profits interest and similar awards to align compensation with the company's operating performance and provide those holders with the opportunity to participate in future profits and/or equity appreciation of the company.

Link to the Exposure Draft - **https://www.fasb.org/document/blob?fileName=Proposed%20ASU-Compensation-Stock%20Compensation%20(Topic%20718)-Profits%20Interest%20Awards.pdf**

G. OTHER USEFUL PUBLICATIONS

12. **COSO** - Fraud Risk Management Guide [2nd Edition]. [2nd May, 2023.]
13. **IFRS Interpretations Committee – *Compilation of Agenda Decisions, Volume 8*.** [4th May, 2023.] [https://www.ifrs.org/content/dam/ifrs/supporting-implementation/agenda-decisions/agenda-decision-compilations/compilation-agenda-decisions-vol-8-nov22-apr23.pdf]
14. **IFAC – Global Fight, Local Actions: Anti-corruption Advocacy Workbook for Professional Accountancy Organizations'.** [16th May, 2023.] [https://ifacweb.blob.core.windows.net/publicfiles/2023-05/IFAC-Anti-Corruption-Advocacy-Workbook-for-PAOs.pdf]
15. **IAASB – Digital Technology Market Scan: Internet of Things Technology.** [24th May, 2023.] [https://www.iaasb.org/news-events/2023-05/iaasb-digital-technology-market-scan-internet-things-technologies]
16. **ICAI – Technical Guide on Accounting for Not-for-Profit Organisations (NPOs) (3rd Edition).** [24th May, 2023.] [https://resource.cdn.icai.org/74188asb60123.pdf

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Auditor's Responsibility on Climate Change Accounting

CA. Aditya Kumar S

Background: The objective of a Statutory Auditor has been to express their opinion on whether the financial statements show a true and fair view of the Business, and to have their comments on specific reporting requirements based on each geography and the need of the regulators. In the process of concluding true and fair view of the business, the auditors are expected comply with Standards of Auditing which also includes SA 315, "Auditor's Responsibility to Identify and Assess the Risks of Material Misstatement in the Financial Statements". Risks are dynamic and needs to be watched very closely and some of these risks are emerging ones like impact of Environment Social and Governance (ESG) aspects on the business and regulations that are being or already promulgated thereto, which may have significant bearing on the entity. A Statement from the International Federation of Accountants[1] ('IFAC') gave an overview of how Business and Capital markets are going to respond to climate change risks and increasing scrutiny by regulators and investors community in the 2021 reporting cycle. In 2022, IFAC for the 2022[2] reporting cycle also included how 'external audit considered material sustainability risks and their potential impact on the audit of the financial statements' as one of the key questions for audit committees overseeing sustainability-related disclosure. Some of the statutory audit reports have considered climate related scenarios and risk assessing therefrom in Key Audit Matter or in the paragraph relating to various risks assessed by the auditor.

The need to consider climate change in audit report: There is increased awareness and education amongst the Investor community, IASB publication emphasizes that under the current IFRS rules, an assessment of climate-related risks should be incorporated in financial statements. There is one school of thought which believes that we need to meet the investor expectations and give more disclosures on climate change or sustainability related issues, whereas the other school of thought is of the view unless mandatory by IFRS or similar authority there is no legal requirement to discuss the sustainability related issues either in the financial statements and consequently in the audit report. Investors firms like BlackRock, Principles for Responsible Investment (PRI), UN Environment Programme Finance Initiative (UNEP FI), UN Convened Net-zero Asset Owner Alliance Initiative, Asia Investor Group on Climate Chance etc., have voiced their expectations on corporate reporting appropriately considering climate-related risks and align to Paris Agreement, etc., [3] Shareholder groups like Australian Investor Group on Climate Change and Institutional Investor Group on Climate Change have begun to require 'Paris-aligned accounts' to include information as to assumptions underlying various judgements towards achieving Net Zero by 2050 or sooner and limiting global average warming to 1.5°C above pre-industrial temperatures.[4]

References in Key Audit Matter on Climate Change: Key Audit Matters are those matters that, in the Auditor's professional judgement, were of significance in the audit of the financial statements of the current period. Key audit matters are selected from matters communicated with those charged with governance. The selection of key audit matters shall consider areas of higher assessed risk of material misstatement in accordance with SA 315, significant Auditor judgments relating to areas in financial statements that involved significant management judgement including accounting estimates which have high estimation uncertainty, effect on the audit of significant events or transactions that occurred during the period etc., There are also instances where Auditors have disclosed that after careful evaluation of climate change risks, why they have not considered them as Key Audit Matters.

Some of the examples from published Annual reports and other literature around the world:

[1] *https://www.ifac.org/knowledge-gateway/contributing-global-economy/discussion/corporate-reporting-climate-change-information-and-2021-reporting-cycle (last seen 30 May 2023).*

[2] *https://ifacweb.blob.core.windows.net/publicfiles/2023-05/key-questions-audit-committees-sustainability-disclosure.pdf*

[3] *https://www.unpri.org/accounting-for-climate-change/investor-groups-call-on-companies-to-reflect-climate-related-risks-in-financial-reporting/6432.article*

[4] *https://www.cpaaustralia.com.au/-/media/project/cpa/corporate/documents/tools-and-resources/environmental-social-governance/guide-to-climate-change-and-financial-reporting.pdf?icid=internal-page-banner*

Name of the Company and Year of Annual Report	Extract from Key Audit Matter	Extract from Auditor's Response
British Petroleum – Annual Report 2022, Page 154-156.	Potential impact of climate change and the energy transition (impacting PP&E, Goodwill, Intangible Assets, Investments in Joint Ventures, and Provisions): Climate change impacts BP's business in several ways and remains a key focus of management. The related risks for the audit includes, (a) Forecast assumptions used in assessing the value-in-use of Oil and Gas PP&E, may not appropriately reflect changes in supply and demand due to climate change and the energy transition (b) the recoverability of certain of the group's assets that are potentially exposed to climate change.	Auditors held discussions with management, with climate change specialist and others to assess climate change could have a potential impact on the financial statements. The audit procedures included, obtaining understanding of the groups E&A write-off and impairment assessment processes and regarding climate change litigation, designed procedures specifically to respond to the risks that provisions could be understated, or that contingent liability disclosures may be omitted or be inaccurate including, holding discussions with general counsel, conducting a search on climate change limitations, making inquiries, etc.,
National Grid Plc. 31 March 2021	We tested management's internal control over the accounting for and disclosure of the potential impacts associated with the energy transition and climate change. We challenged management's judgement that the useful lives of the Group's gas assets extend beyond 2050 including, assessing potential strategic pathways to achieve net zero targets, obtaining	Our testing confirmed that the relevant controls over management's assessment of the impact of the energy transition and climate change operated effectively. We observe that whilst some indicators do exist suggesting that the useful economic lives of the Group's gas assets may be limited to 2050, these are mitigated by other

Name of the Company and Year of Annual Report	Extract from Key Audit Matter	Extract from Auditor's Response
	and reading government.	statements by governments and advisory bodies which suggest gas, and therefore gas transmission and distribution assets, will continue to have a role beyond 2050.
Shell Annual Accounts 2020 Page 202	The financial impacts of climate change and the energy transition remain an area of audit focus, as they have a pervasive impact on many areas of accounting judgement and estimate and, therefore, our audit. Risk is elevated compared to 2019 due to the increased focus on climate change of investors and regulators. Similarly, there is an audit risk that the narrative disclosures around material climate risk in the Annual Report and the financial statements are not aligned.	Our audit procedures took account of the communication by the Audit Committee Chair regarding their call for "Paris-aligned" accounts, as well as the document published on the same date by "the Institutional Investors Group on Climate Change (IIGCC) entitled" Investor Expectations for Paris-aligned Accounts" and the FRC's climate change thematic review. The procedures we carried out included the following understanding Shell's processes around the climate change and energy transition-related disclosures in the Annual Report, including risk assessment, viability and greenhouse gas emissions' reporting, assessing the consistency of Shell's public statements on energy transition and climate change with significant judgements and estimates reflected in the financial statements (for example

Name of the Company and Year of Annual Report	Extract from Key Audit Matter	Extract from Auditor's Response
		oil and gas reserve estimates, future capital and operating expenses assumptions and assumed refining margins).

On the other hand, there are auditors who have concluded that climate change is not a risk and hence not included in key audit matter paragraph for example, In the annual report of Koninklijke Philips N.V. (Philips), for the year ending 31 December 2022, and in case of Experian Plc for the year ended 31 March 2022; the auditors evaluated the risks of climate change and concluded that it is not a key audit matter to be reported in the current period; possibly considering the nature of business and other factors.

As per Financial Times, for several companies that file accounts in both the US and Europe, climate features prominently as 'key audit matter' in the audit report to investors internationally, only for that information to vanish or shrink drastically in the same company's US filings and as per 'Carbon Tracker's report.[5]

Key Audit Matters are the professional judgement of the auditor. Based on the above examples, it appears that the climate change has now started to become part of the risk assessment of the auditors and it is one of the factors that are considered for evaluation of impairment testing of assets, going concern, valuation of investments etc., at least to large corporates, to start with, and in my personal view would trickle down to other businesses as well over a period of time.

Relevant Pronouncements on discussing climate change in financial statements / audit:

1. From Australian Government – Accounting Standards Board, Auditing and Assurance Standards Board: Climate-related and other emerging risks disclosures: Assessing financial statement materiality using AASB/IASB Practice Statement 2
2. Financial Reporting Council – UK – Climate Thematic – November 2020
3. From International Accounting Standards Board - Effects of climate-related matters on financial statements (November 2020)
4. CPA Canada: Essential Guide to Valuations and Climate Change - - A framework to assess the impact of climate change on business valuations
5. Environment and Climate Change – Auditing Guidelines – Comptroller and Auditor General of India
6. United Nations Conference on Trade and Development – Climate related financial disclosures in mainstream entity reporting: Good practices and key challenges.
7. Accounting for Climate – Integrating climate-related matters into financial reporting – Climate Disclosure Standards Board and KPMG.
8. Accounting for Net Zero: The Role of Audit Institutions IMF – Public Financial Management Blog.

Indian scenario: In India, since Business Responsibility and Sustainability Reporting (BRSR) has become mandatory for Top 1000 companies from the financial year 2022-23 it is important for the auditors of these companies to comply with SA 720, "The Auditor's Responsibilities Relating to Other Information' and review the contents of BRSR and see whether there are any gaps or disconnects between BRSR and the financial statements. Review of BRSR would surely bring out new perceptions and new questions to be posed to the management and fundamental assumptions that are being made for management judgements can be challenged. Similarly, Companies who are voluntary giving ESG related information and if it qualifies to be classified as 'other information' and 'annual report' as per SA 720; auditors should consider reviewing the same and reporting accordingly. In some of the audit reports, issued in 2023, of large, listed companies in India, the Other Information para in the Audit Report includes 'Business Responsibility and Sustainability Reporting' as one of the information to have been reviewed as part of 'Other Information' and contents of 'annual report', indicating the auditor have gone or would go through the information depending on its availability to them by the management. It would be really curious to watch how entities who have committed to RE 100 (Global initiative to commit to 100% renewable energy), EV 100 (Global initiative to commit to switching to electric vehicles and EP 100 (Global initiative committed to measuring and reporting on energy efficiency improvements) and to

[5] *https://www.ft.com/content/ea63671c-ad00-4da0-8d52-ff2b7ba3940c*

align with Paris Agreement and other initiatives would include this in preparation of financial statements and how auditors would address them in the audit report of financial statements, apart from the discussions in Indian regulatory space to bring in audit report specifically for BRSR.

Some of the Key Questions for the auditors and preparedness of financial statements:

- To what extent does the climate change impact the valuation of the asset of the entity, including future cash flows when assessing possible impairment of PP&E and financial assets.
- There are disclosures on commitment to Net Zero elsewhere in the annual report, have the managements considered them as disclosures under 'commitments' in financial statements and where needed provided as constructive obligations or explored its implication on other accounting treatment.
- Evaluating relevance and need to consider provision for onerous contracts.
- What are the controls and processes applied by the entity to identify, evaluate, and monitor relevant climate change issues.?
- Would there be a need to discuss with subject-matter experts?
- Whether the disclosures made in the financial statements provide sufficient information to the stakeholders, especially to regulators and other stakeholder group concerned with climate change.
- Where members are rending service in converting or translating other GAAP to India GAAP or vice-versa, to take cognizance of such matters wherein the other country has pronouncements to consider climate-change risks in financial statements and audit report.

We may have lot more questions to ponder and take a view, and possibly we would have authoritative guidance in this regard to help both auditors make right decisions in framing their opinion and for the prepares of financial statements as well. The Audit Report has evolved over a period and in future we would see lot more additions to it and more responsibilities on the Auditors to include them before concluding their opinion.

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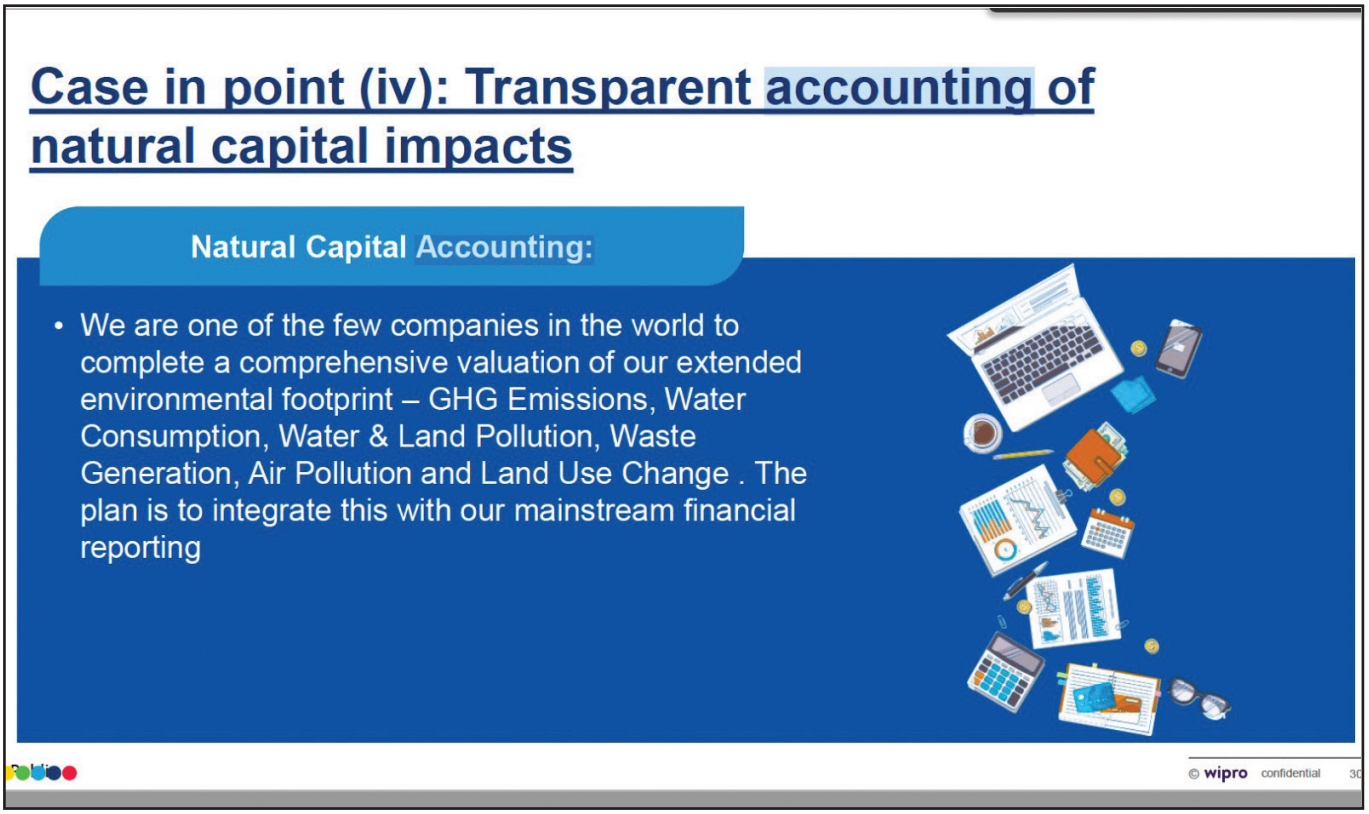


Extension of End Date / Completion Date of Real Estate Project As Per Section 7(3) of The RERA Act 2016

CA. Vinay Thyagaraj

Yes, now we are entering the 7th year of implementation RERA from 1st May 2023. The Real Estate (Regulation and Development) Act, 2016, was enacted by the Parliament of India with the aim of regulating and promoting the real estate sector in India. The Act came into effect on May 1, 2016, and was implemented across the country on May 1, 2017

If we read the objectives, and provisions of the RERA Act 2016, we can understand and appreciate that the RERA protects and promotes the Real Estate Industry and all its stakeholders. Of course, the primary objective of RERA is to protect the interests of homebuyers and to promote transparency, standardisation, responsibility and accountability in the real estate sector. (The Stakeholders of the Real Estate Industry includes Land Owners, Developers, Builders, Customers, agents, channel partners, buyers, investors, Financial Institution, professionals, Government agencies, tax or revenue authorities, contractors, vendors, suppliers, service providers, etc)

The objective and intent are to develop and deliver the real estate project as planned and promised. In the process, the completion of the project development may be delayed for various reasons, which may result in the lapse of validity of plan approval / NOCs, RERA Registration, etc. The promoter shall make necessary steps to keep the validity of the registrations or approvals in order to continue the construction, sales, and marketing of the real estate project.

In the previous month's Journal, I have deliberated on the Revocation of RERA registration under Section 7 of The Real Estate (Regulation and Development) Act, 2016 and its consequences.

In this month, let me deliberate on Section 7(3) of the RERA Act, the provision is as follows –

Section 7(3)	The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

1. Section 3 of the RERA Act 2016 mandates the prior registration of the Real Estate Project. As per registration, the promoter shall declare the End date/ completion date of the project development. Based on his declaration, the RERA Authority granted the registration for the real estate project in accordance with section 5 of the RERA Act.
2. Having received the RERA Registration, the promoter shall complete the development work in the project within the time as granted in the RERA registration certificate. In case the promoter could not complete the development works in the project, he shall make an application for an extension of time as per Section 6 of the RERA Act 2016 read with Rule 7 of Karnataka RERA Rules 2017. The authority on hearing and satisfaction of the reason as specified in the extension application, may permit and grant the extension of a maximum of 1 year of extension of end date/completion date.
3. In a few instances, the promoter may not be able to complete the pending work in the project with such extended end date as granted under section 6 of the RERA Act 2016. The reasons may be many (e.g., financial crunch, market conditions, government orders like NGT, MOEF, etc) In those instances, the promoter needs additional time to complete the pending development works in the project, shall approach the RERA Authority by making an application for additional time.
4. There is no specific provision in the RERA Act 2016 to provide further extension of time for completion of the

pending works in the project. However, in the interest of the various stakeholders (including allottees), the authority shall exercise their powers and allow the promoter to continue the development work and marketing, sale, etc by imposing additional terms and conditions.

5. The following procedure details and documents may be filed with the authority seeking additional time –

   a. Duly filled application

   b. Reasons for additional time / extended time with a brief note

   c. Professional certificates to state the % of completion of work and balance pending work.

      a. Architect

      b. Engineer

      c. Chartered Accountants

   d. Total Number of units booked / un-booked including money realized

   e. Balance amount/funds required to complete the pending work in the project

   f. Source of funds for the balance amount

   g. Affidavits and undertaking from the promoters that he shall comply with the terms of the agreement entered with the allottees in the project including agreeing to pay the compensation for the delay as mandated under the RERA Act 2016

   h. 2/3rd Consent (written) letters from the allottees in the project.

   i. Renewed licenses or NOC's

   j. Any other relevant documents to prove the bonafide intention of the promoter that inspite of his best efforts, the project delivery is delayed.

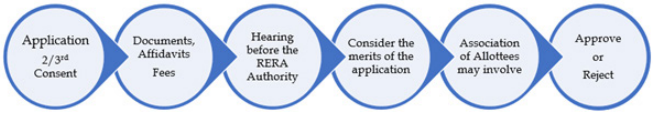
6. Presently the Application filing is a manual process. Further, the authority in its order dated 31st Jan 2023 proposed the 50 % fees paid as per Karnataka RERA Rule 3(3) as the fees payable for such extension application *(https://rera.karnataka.gov.in/reraDocument?DOC=2881388)*

7. Having received the application, the authority shall verify the application and also verify whether the promoter has complied with the mandatory compliances under RERA viz., Quarterly updates, Annual Audit report submission, 70 % deposit into the RERA Designated bank account, complaints of the allottees, etc.

8. The authority shall call the promoter for a hearing, on satisfaction or non-satisfaction by the authority, the authority may approve or reject such extension application based on the merits.

   E.g., the promoter failed to prove the source of funds to complete the remaining development works in the project or % of completion so far is very low and unable to prove that he can complete the project within the time as may be mentioned in the application, etc may be few examples for rejection of the application.

Section 7(3) of the RERA Act 2016



9. Following is the extract of the judgment with respect to extension – in the case of WRIT PETITION NO. 2737 OF 2017 - Neelkamal Realtors Suburban Pvt. Ltd. and anr. (Petitioners) Vs. Union of India and ors.

   Having a careful scrutiny of the relevant provisions of the RERA, its object and scheme and considering the submissions advanced, we have harmoniously construed the provisions of Sections 6, 7, 8 and 37 of RERA. We hold that in case the authority is satisfied that there are exceptional and compelling circumstances due to which promoter could not complete the project in spite of extension granted under Section 6, then the authority would be entitled to continue the registration of the project by exercising powers under Sections 7(3), 8 or 37 of the RERA. Such powers shall be exercised on a case to case basis. We hold that while exercising powers in this regard, the authority shall be bound to hear the promoter, allottee or associations of allottees, as the case may be. In deserving cases the authority would be even entitled to consult the appropriate os-wp-2737-17 & ors. The authority, while dealing with such cases, shall be bound to pass a reasoned order.

   The construction placed by us on these provisions shall not be construed to mean that in every case of failure of the promoter to complete the project within the extended time as prescribed under Section 6, the promoter shall be entitled as of right to seek further extension. SECTION 18

10. Accordingly, authority was required to consider each such case individually on merit and decide the terms and conditions to be imposed upon the promoter for further extension instead of revoking the registration of the project as spelled out in Section 7(3) of the Act.

11. Further, Maharera issued Order No.07/2019 dated 8th Feb, 2019 imposing common conditions to all such promoters intending to seek further extension beyond one year that concerned the association of allottees resolves that existing promoters be permitted to complete the project in specified time limit.
12. 2/3rd consent of the allottees in the project is one of the mandatory conditions for the extension of the end date of the project as per section 7(3) of the RERA Act 2016. This means that if the association of allottees decides not to continue with the existing promoter then the association of allottees shall have first right of refusal to continue as promoter and it can appoint some other developer as promoter.
13. The authority while passing the order and approving the extended time may impose such terms and conditions to protect the stakeholders. Such terms may include but not limited to –
    a. Comply with all provisions of the RERA Act 2016
    b. May direct to deposit 100 % of amount realisation from the allottees instead of 70 % deposit into RERA project designated bank account
    c. Shall not comply with the terms of the agreements entered with each allottees in the project
    d. Direct the promoter to submit monthly progress report instead of quarterly updates
    e. Any other conditions

Conclusion – the promoter while filing and professional while advising, shall consider all relevant facts and circumstances that lead to additional time and submit the application. Allottees consent is mandatory, such consent shall be informed consent in writing.

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Intellectual Property Rights and Protection in India International Issues Relating to Trademarks

(Part - XXXIV of IPR series)

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

Limitations of IP Rights

Intellectual Property Rights (IPR) are crucial for economic prosperity of individuals, start-ups, businesses, and governments across the Globe. They provide desirable and enforceable protection to the intangible IP assets such as Patents, Copyrights, and Trademarks, owned or licenced by of an entity. These rights provide the owners /licensees with the legal framework to safeguard their innovations, creative works, and brands(trademarks). However, the IP rights granted through National laws have exclusive rights limited to the country of grant only. The laws, regulations, and the procedures regarding IP protection in other countries may not be analogous to Indian laws. Further the IP legal enforcement system may not be as strong as in the owner's country. As there is no scope for making IP laws for seeking international rights, the protection and enforcement of IP assets worldwide are quite cumbersome and challenging.

In the previous two articles we have explored the challenges of enforcing Indian Patents and Copyrights in other countries and the steps businesses and individuals must take to protect their IP rights across borders. In this article the possible approach to protect trademarks around the globe are deliberated.

Trademarks as Commercial Identity

A trademark confers on the applicant, exclusive rights to prevent third parties (others) from using the signs that distinguish mark/ brand during trade for identical or similar goods or services. Owners can register their trademark in India by filing an application at the Trademarks Registry at the Office of the Controller General for Patents, Designs and Trademarks (CGPDTM). The registration of the trademark in India will be valid for a duration of 10 years and is renewable indefinitely for similar periods thereafter.

The assignment (sale) and licensing of trademark rights may play a significant role in brand commercialization through partnership, merger, and franchising initiatives. Managing brand implies regularly renewing the granted trademarks and enforcing vested rights against infringers and counterfeiters. These aspects have been narrated in detail in the earlier parts of the series.

Brand Creation, Management and Commercialization

A trademark registration provides the necessary legal protection to a brand's name, logo, symbol, or any other distinctive features that represents the brand. However, obtaining a trademark registration is just a beginning of the journey. Post-registration compliances i.e., the legal obligations that a brand must fulfil after obtaining a trademark registration are necessary to ensure that the registered trademark remains valid and enforceable.

Branding a product or service plays a crucial role in the entity's marketing strategy and it is at the core of any business competitiveness. It generates customer loyalty, has a value, and may become strongest asset of the entity. Branding aims at building a distinctive and attractive presence in the market that helps to gain and retain loyal customers. Effective branding involves creating an image in the consumers' minds about the quality of a product or a service, mainly through advertising campaigns centred around the brand. It also requires ensuring the legal protection of the brand against competitors in the market. Branding strategies are at the core of sustained market competitiveness and business success. Creating a brand involves choosing the signs that will distinguish entity's products or services from those of the competitors and getting them legally protected.

Brand owners, after dedicating countless hours for bringing out a unique business identity (could be combinations of name, logo, tagline, and other elements) together into perfect harmony, have an important responsibility to protect their hard-earned trademarks. It is vital to continuously monitor for potential infringements of these trademarks and take up appropriate protection

measures to ensure the brand's long-term success. Taking swift action against any infringers and proceeding to claim damages, are essential for safeguarding the asset.

Trademark Monitoring Services

The entities, to properly safeguard their trademarks, need a comprehensive monitoring system. For finding out the infringing marks, it is necessary for the owner to proactively search the web and scan several social media / outlets for any unauthorized uses of words, logos, phrases, or packaging associated with the brand name. Tracking down expeditiously those who would attempt to infringe or imitate and derive profit from the illegitimate use of brand is critical to protect rights and to safeguard business profits. Finding out such potential brand infringements allow speedy action against the infringers well in time, so that they can be prevented from taking advantage of goodwill on the ignorant customers.

In this regard certain service providers take up the task of 'Trademark monitoring' that can be employed for protecting the brand's image. The 'trademark monitoring service providers' take up the job of search through the internet for potential infringements and alert the brand owners wherever there is a possible risk to be addressed. Trademark monitoring software can keep track of different websites worldwide. Such tools are very efficient and effective in terms of time and cost than hiring employees to search and look out for potential infringements. Brand owners also need to monitor websites across every country in which they sell or manufacture their products. The entities specialised in trademark monitoring service can make the search for potential trademark infringements far more proficiently. In this way the trademark owners can make it easier to address infringements as and when it arises. In view of the above situations, it is essential for a business to have assistance of 'trademark monitoring service provider' to safeguard the brand's image and reputation.

Protecting Brands in Export Markets

Protecting the Indian brand outside the country implies acquiring trademark rights in each of the export markets where the entity wishes /wants to commercialize its products or services. Trademark rights are territorial in nature and therefore to acquire trademark rights abroad, it is legal necessity to file separate trademark applications at the trademark offices of the countries where one wishes to have its brand protected. After grant of such right in those countries, the entity is required to follow procedures as mandated in that country to manage (renew, licence, or assign or enforce) such rights. The above process is not only tedious but also involves huge costs, that may not be viable to entities especially in MSME and similar sectors. However, being a national of India, such entities may take advantage of an alternative, more attractive, cost-effective, and user-friendly 'Madrid route' to acquire and manage trademark rights abroad.

Madrid Protocol

The Madrid system for the international registration of trademarks provides one single procedure for the registration of a mark in several territories. It is governed by two treaties, the Madrid Agreement and the Madrid Protocol. It is administered by the International Bureau of World Intellectual Property Organisation (WIPO) in Geneva, Switzerland. WIPO is a specialized agency of the United Nations. India has joined this international treaty in the year 2013.

This Protocol allows the applicant to obtain and maintain protection for brand around the world by providing a user friendly, expeditious and cost-effective set of procedures for the central filing of trademark applications. By centralized filing of the trademark under the Madrid Protocol the entity is not required to file separate applications in many countries, drafted in different languages, pay fees in different currencies, hire the services of local representatives, and follow different procedures in each of those countries. Instead, the owner can file a single international application online on the IP India website, in a single language (English), pay fees in a single currency, and the application has effects in all the Madrid Union members of his interest. The procedure is very simple, user-friendly, expeditious and cost effective.

On single Filing to seek protection in various Territories Based on Indian trademark anyone can file an international application, online, at the IP India (CGPDTM) website https://ipindiaonline.gov.in/trademarkefiling/user/frmloginnew.aspx

The application may be designated to all or some of the members of the Madrid Union depending upon the needs of the owner and the country where protection is required. A "designation" means an indication in the international trademark application form, of one or more Contracting Parties where the protection of the mark is intended. A "subsequent designation" means an extension of the geographical scope of protection after the mark has already been registered, which has been explained in the later part. The Madrid Union currently has 114 members, covering 130 countries.

The application is transmitted to WIPO for examination, registration, and publication. Thereafter the particulars of the international registration are notified by WIPO to each of the designated Members of the Madrid Union. The Madrid Union members are requested to decide within very strict time limits whether they can grant protection to such mark in their territories. In case, any designated member does not communicate any objection within a period of 18 months from the date of notification of the international registration, the mark under international registration, is deemed to be protected within the territory of that member, as if the same has been registered directly with the IP office of that member.

The Madrid system facilitates the obtaining of protection for marks (trademarks and service marks). From the date of the international registration (or, in the case of a Contracting Party designated subsequently, from the date of that designation), the protection of the mark in each of the designated contracting Parties is the same as if the mark had been the subject of an application for registration filed directly with the Office of that Contracting Party. If no provisional refusal is notified to the International Bureau within the relevant time limit, or if any such refusal is subsequently withdrawn, the protection of the mark in each designated Contracting Party is the same as if it had been registered by the Office of that Contracting Party. Further Contracting Parties may be designated subsequently.

Since an International Registration (IR) is equivalent to a bundle of national registrations, the subsequent management of that protection become much easier. There is only one registration to renew, and changes such as a change in ownership or in the name or address of the holder, or a limitation of the list of goods and services, can be recorded in the International Register through a single simple procedural step. On the other hand, if it is desired to transfer the registration for only some of the designated Contracting Parties, or for only some of the goods or services, or to limit the list of goods and services with respect to only some of the designated Contracting Parties, the system is flexible enough to accommodate this.

Online Databases (*TMview*, Global Brand Database)

Before filing an international application to protect the selected mark abroad, applicant/ agent should check whether the sign that is proposed to be used as trademark is being used or belongs to someone else in the designated international export markets. This requires the conduct of a search for finding out any identical or similar trademarks already protected in those markets for the same goods or services. Several trademark Offices of Madrid Union members offer the unique facility to search their trademark databases online. However, the best way to start making searches for similar trademarks is to consult '*TMview*'.

TMview (https://www.tmdn.org/tmview/welcome) is an online trademark information platform, built by 51 Trademark Offices from around the world (including India's TM Registry), aimed at making trademark data widely available and easily accessible to the public, free of charge. The *TMview* database contains information from all of the EU national IP offices, the European Intellectual Property Office (EUIPO) and a number of international partner offices outside the EU on trademark applications and registered marks. TMview offers the possibility to explore the overall trademark landscape in many countries (including some 10 in Asia, 36 in Europe, 20 in Africa and 4 in the Americas) in a user-friendly way. *TMview* gives access to information on more than 40 million trademark applications and registrations having effects in those countries, plus international registrations under the Madrid system, including data regarding trademark name, applicant's name, trademark type, graphic representation, legal status, list of goods and services, class codes, etc. *TMview* can be employed to carry out trademark searches 24 hours a day, 7 days a week. The accuracy of the data shown in *TMview* is the sole responsibility of the participating trademark offices providing it.

To explore the trade mark landscape abroad one can also consult the Global Brand Database (http:// www.wipo.int/reference/en/branddb/), an online gateway managed by WIPO which contains more than 28 million records from 35 national and international collections, including data on trademarks, appellations of origin and armorial bearings, flags and other state emblems protected in various countries around the world, as well as the names, abbreviations and emblems of intergovernmental organizations.

International Application

Under the Madrid Protocol, an International Application (IR) may be based on either a mark that has already been registered ("basic registration"), or a mark that has been applied for but not yet registered ("basic application"). The international application can be filed only in

respect of goods and/or services covered by the basic application or registration. An entity desiring to file an international application under the Madrid Protocol, has to electronically file in a special form [MM2(E)] available at IAOI (International application originating from India link at comprehensive e-filing services gateway made available at the following address: https://ipindiaonline.gov.in/trademarkefiling/user/frmLoginNew.aspx.

For this purpose, the entity must register with IP India for electronic filing, (if not already done). Entity needs to follow the ensuing steps for enabling e-filing:

(i) procure a class III/II digital signature from any of the Indian Certifying Authorities and install the same on your computer.

(ii) download and install the Signing Component as per the instructions given in the CGPDTM Digital Signature Manual. For any assistance, TM Registry helpdesk at: tmr-helpdesk@nic.in. can be approached. Payment of requisite is also enabled electronically.

The international application form (MM2) must contain: **(i)** Name and address of the applicant/owner. **(ii)** reproduction of proposed mark, which must be identical to your basic mark in India. **(iii)** a list of the goods and services for which protection is sought, which must be fully covered by those indicated in your basic mark; and **(iv)** a list of members of the Madrid Union in which protection for the mark is sought (designated Contracting Parties). These requirements are mandatory and have an impact on the date of the international application.

The international application must also contain: **(i)** an indication of your entitlement to file (establishment or domicile in India or Indian nationality). **(ii)** trademark priority claim, if applicable. **(iii)** name and address of representative, if appointed. **(iv)** number and date of your basic mark at the India Trademarks Registry. **(v)** indications of the mark (kind of mark, colour claim if applicable). **(vi)** description of the mark, if required. (vii) transliteration of the mark, if applicable. **(viii)** amount of the fees being paid and method of payment.

International application also contain (optional content): **(i)** an indication of your nationality or, if you are legal entity, your legal nature and the State under the law of which you have been established as a legal entity; **(ii)** a translation of the mark; **(iii)** an indication in words of the principal parts of the mark which are in colour, when colour is claimed; and (iv) a disclaimer. A 'Guidelines to fill up MM 2(E) form' has been provided in the online form itself.

When filing a trademark application (either national or international), one must correctly indicate the goods and services for which trademark protection is sought (terms that are too vague, linguistically incorrect, or incomprehensible are not accepted) and these goods and services must be correctly classified in accordance with the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification).

Madrid Goods & Services Manager

When preparing the international application, one may also want to consult the Madrid Goods & Services Manager (MGS) (https://webaccess.wipo.int/mgs/), an on-line tool offered by WIPO. This tool will help the applicant to compile the list of good, services, documents etc., that one need to submit when filing an international application. MGS gives the applicant access to thousands of standard terms correctly classified by WIPO according to the latest edition of the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification) and accepted by WIPO under the Madrid system procedures. It also allows the applicant to check whether the terms are acceptable by the Offices of a certain number of Madrid Union members.

In the international application, the applicant must designate the Madrid Union members (Madrid Protocol Contracting Parties) where he/she wants the trademark to be protected. By simply checking the box next to each member's name in the application form (MM2) one can designate any Madrid Union member except India. Applicant's trademark in India (basic mark) will continue to be protected under the Indian law as registered by the India Trademarks Registry.

Certification by India TM Registry

Before transmitting the international application to WIPO, the India Trademarks Registry will check that: (i) applicant's identity as the holder of the basic mark in India; (ii) the mark in the international application is identical to the basic mark; and (iii) the goods and services in the international application are covered by those in the basic mark. If these three conditions are complied with, the TM Registry will certify the international application and transmit it to WIPO with an indication of the date in which the international application was received by the Registry. Just after transmission of international application to the WIPO the Indian office will inform the applicant about the same and inform the amount of fee which applicant needs to pay directly to the WIPO. In

case of some deficiencies in the international application, the Indian office will issue a deficiency letter through their online system to the applicant. An alert for the deficiency letter is also sent at the email of the applicant, who is required to respond to the deficiency letter online through the IAOI link of the comprehensive e-filing services gateway and/or authorise the Indian office to rectify his application on MM2.

If there is a mistake in the classification of goods or services, or if the indication of any of the goods or services in the international application is considered by WIPO to be too vague, linguistically incorrect, or incomprehensible, WIPO will issue an irregularity notice and give the India TM Registry a three-month time limit to make the necessary correction. Similarly, if one or more elements in the international application are missing (name or address, date and number of the basic mark, reproduction of the mark, list of goods and services, indication of designated Contracting Parties) WIPO will give the India TM Registry a three-month period to remedy this irregularity, failing which the international application will be considered abandoned. If there are other irregularities (e.g., address is incomplete, the reproduction of the mark is not sufficiently clear, no fees have been paid or their amount is insufficient), these will be notified directly to be the applicant and should be remedied by the applicant within three months failing which the application may be considered abandoned.

If the international application conforms to the applicable requirements, WIPO will register your trademark in the International Register, will publish the international registration in the WIPO Gazette of International Marks, and will notify it to the Offices of the Designated Contracting Parties (DCPs). It will also inform the India TM Registry and send you an international registration certificate. As a rule, the international registration will bear the date on which your international application was received by the India TM Registry, unless the application has reached WIPO more than two months after that date (in which case your international registration will bear the date in which it was received by WIPO).

A designated Contracting Party (DCP) may refuse protection for your mark on grounds that would apply under national law to marks filed directly with the Office of that DCP (e.g., because the mark already belongs to another person in that DCP). Such a refusal will be subject to review or appeal depending upon the laws and practice of the DCP concerned. Where a DCP does not refuse protection for the applied mark within a prescribed time limit (12 months, or 18 months, or longer than 18 months in case of opposition, depending on the choice made by each DCP), or if such a refusal has been subsequently withdrawn, the protection of your mark in that DCP will be the same as if your mark had been registered by the Office of that DCP as from the date of your international registration. In all the DCPs not having refused protection your mark will be valid for a period of 10 years as from the date of its international registration, with the possibility of indefinite renewal for further periods of 10 years.

Managing Registration

While the Madrid system offers you many advantages to get your trademark protected in various markets, the system offers you even more valuable advantages regarding the management of your mark after registration. Extending protection of your mark to new territories, renewing the protection of your mark for additional periods of ten years, or having changes to your registration recorded in the International Register with effects extending to those Madrid Union members of interest to you, can be done through very simple, user-friendly and cost-effective procedures.

The right holder under an international registration may, at any subsequent time, may seek to extend the protection of the trademark to other members of the Union that were not designated in the original international application, by simply informing in the prescribed proforma to designate such country in the application to WIPO. The subsequent designation must be presented in an official form (MM4) and may be transmitted to WIPO by mail, by facsimile or by electronic means https://www3.wipo.int/osd/ The subsequent designation will bear the date in which it was received by WIPO and also applicable fee has to be paid online.

In all the DCPs not having refused protection, the applied mark will be valid for the remaining duration of the international registration, with the possibility of indefinite renewal for further periods of 10 years. To ensure that after a period of ten years from registration your mark continues to be protected for an additional period of 10 years in those territories it could be done by paying the necessary fees to WIPO.

Advantages of Madrid Protocol

a) An applicant using the Madrid system can apply for protection of a mark in territories of Contracting Parties, by filing a single application in one language and by paying a single set of fees, instead of filing

separate applications in the different IP Offices of the various territories.

b) Regardless of where the applicant wishes to protect his mark, using the Madrid system, the owner will have to file his application in just one of the languages of the Madrid system, namely English, French, or Spanish.
c) If the Office of a Contracting Party does not notify a refusal within the time limit that is specified in the Madrid system, the mark will automatically enjoy protection in the Contracting Party in question.
d) After the trademark has been registered through the Madrid system, the holder of the international registration can extend its geographical scope to additional Contracting Parties in a quick, simple, and cost-effective manner.
e) Irrespective of number of Contracting Parties included in the international registration using the Madrid system, there will be just one date of expiry, and this helps in electronic renewal for all or any of the Contracting Parties included in the registration.
f) Administration costs such as translation of the list of goods and services and representatives' fees are less, compared to several filings in national territories. Generally, less delays are encountered, due to the use of a single administration. Managing a trademark portfolio registered through the Madrid system, e.g., change in ownership, licensing, etc., is more cost-effective.

Madrid Union– Attractive Markets for Indian Exports

The Madrid Union currently has 130 countries, and they represent more than 80% of world trade flows. They constitute very attractive markets for Indian exports. Most of India's top trading partners are members of the Madrid Union. The 15 major export countries, having accounted for 60% of Indian exports in 2016, include ten members of the Madrid Union, namely (by order of importance of export values): *United States of America, China, United Kingdom, Singapore, Germany, Vietnam, Belgium, France, Netherlands and Turkey. Other members of the Madrid Union that also account for significant values of Indian exports include Italy, Japan, Republic of Korea, Mexico, Spain, Thailand, Indonesia, Israel, Australia and Iran.*

Business Action to Stop Counterfeiting and Piracy

Counterfeiting and piracy are a drain on our businesses and on the global economy, which has resulted in the widespread loss of lawful employment and a massive reduction of tax revenues. The creative community is robbed of reward for effort and innovation as well as the incentive to invest is reduced. Consumers are increasingly being harmed by unsafe counterfeit products. All signals also point to linkages with organized crime.

Business Action to Stop Counterfeiting and Piracy (BASCAP), launched by the International Chamber of Commerce (ICC) is a cross border initiative that connects all business sectors worldwide in the fight against counterfeiting and piracy. This global and united approach is vital in identifying and addressing intellectual property rights (IPR) issues more efficiently. It gives the industry a stronger voice when petitioning for greater commitments by local, national, and international officials in the enforcement and protection of intellectual property rights.

The goals of BASCAP include: (i) Increase public and political awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm. (ii) Compel government action and the allocation of resources towards improved IPR enforcement. (iii) Create a culture change where intellectual property is respected and protected.

BASCAP, in partnership with Counterfeiting Intelligence Bureau (CIB) to protect brand owners from the damage caused by counterfeiting has formed guidelines. The ICC/BASCAP Guidelines are aimed to help business in the following ways:

(i) To understand and support the value of IP as the basis of innovative, creative, and economic activity that promotes business and national competitiveness.
(ii) To manage their own copyrights and trademarks more effectively.
(iii) To comply with the IP laws protecting other companies' copyrights and trademarks.
(iv) To manage the business risks associated with infringement.
(v) To prevent and deter counterfeiting and piracy; and
(vi) To develop company policies and practices to effect such compliance.

The document could be accessed at https://iccwbo.go-vip.net/wp-content/uploads/sites/3/2016/11/IP-guidelines-for-business-English.pdf

In the coming the international IP protections issues will be continued.

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What Annoys In The Business?

CA. Jayanth Nagisetty

Introduction

All of us have dreams or aspirations to accomplish them and joyfully live the lives we desire. Majority of us want to be entrepreneurs, and some of us are already doing so or at least you are aware of the person who wants to be a successful entrepreneur. Practically speaking, it might be difficult or moderately easy, or very simple for some of us. You may find it unusual to hear it. However, I strongly believe that you will agree to it by the time you complete the article.

What actually happens within the business? Most men dream of starting their own businesses, with or without the support of their families, and growing them substantially over the course of one or two years. Reality plays an important role after the business is launched. Many people may find it difficult to continue. One will eventually have the thought to give up their business and look for employment. Let's consider the example of Ram.

Ram's Entrepreneurial Journey:

Without any prior business experience, Ram, a 22-year-old man, began a business of manufacturing disposable plastic boxes with a significant investment of INR 50 Lakhs which includes a loan of INR 40 lakhs. His concept, his preparation, and his method for creating the quick-moving disposable boxes are all sound. Slowly he realized that his competitors are very well managed. He couldn't retain the same selling price due to cut-throat competition. He was forced to reduce the selling price and thus reduce his profits. However, his business was still performing well, and he started prioritizing clearing the loan to clear the loan burden from the profits. He was struggling with cash flows but slowly he was capturing the market with his containers. After one year, when he was finally sustaining the competition, his plan was abandoned due to the ban on single-use plastic, eco-friendly disposable boxes, and metabolic issues brought on by consuming hot foods in plastic containers. Apart from the plastic ban, he also faced difficulties with respect to his competitors whose businesses were very well managed even after the plastic ban. Without any industry knowledge and a lack of expertise in that industry, he was forced to close his business. It was admirable to see Ram founding his own company, but it was regrettable that he had to shut it down so quickly.

Essential Preparatory Steps for Success:

If Ram believes in his business, he will succeed. But to do that, he would need to plan certain additional things that would be beneficial to his business growth.

Ram should have done the following additional steps before starting the business:

a. Feasibility study of his business - A detailed analysis of the planned business, either done by the business owner themselves or by a professional.
b. Risk and contingency plan for turnaround and revival of his business - Safety plan for protecting from future business risks.
c. Maintaining an emergency fund for utilization in difficult times.
d. Attend industry specific workshops and events before starting the business and building the professional network.
e. Plan to start small and grow big - Start with low investment, see the profits, reinvest in the same and expand the business.

Steps for Sustained Business Growth:

Ram should have done the following additional steps while doing the business:

a. Hiring professionals for the survival of his business in case of contingencies like a plastic ban.
b. Maintaining the scarcity fund for future emergencies instead of pre-closing the loan.
c. Be alert to the situations/events that affect the business.
d. Plan for diverse product segments apart from the current business
e. Adopt and adapt to the best industry practices in his business segment which will be profitable and compliant with the current conditions.

How can operating a business be easy/middle way?

Suppose Ram takes over his father's business, which was started by Ram's father. Ram's father is a prosperous businessman who bought the assets with the profits generated from his business. Because Ram's father has been in business for such a long time, his father's experience and expertise may revive the business. Even a sudden government policy change may not have a significant impact on the continuance of the business. A possible decision may be to quit the plastic sector business and move on to other product categories or develop a plan to produce lasting plastic goods by making additional investments.

Conclusion:

Starting a business will be easy but only a few are capable of managing it effectively. In order to succeed, we should not wait in the queue to respond to the recent developments. Take assistance, educate yourself, look further, dig deeper, and then grab out the business opportunity.

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2.

KSCAA REPRESENTATIONS

1. "Representation on the delay in the issue of refunds under the provisions of the Income-tax Act, 1961 (the Act)"

2. "Representation on challenges faced in obtaining registration under the Shops and Establishment Act, Karnataka"

3. "Representation on the delay in the issue of refunds under the provisions of the Income-tax Act, 1961 (the Act)"

For full text of above representations,

please visit : www.kscaa.com

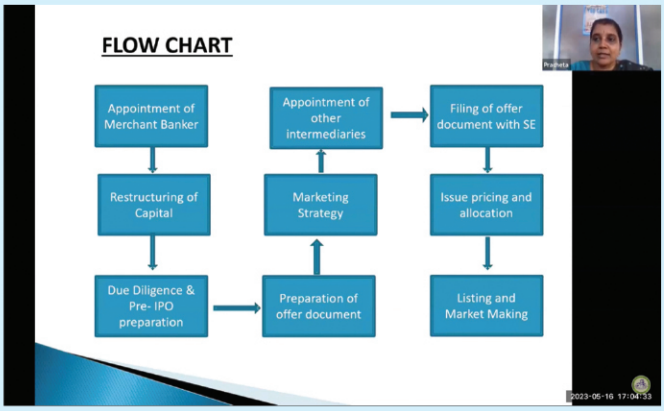
Invitation to Write Articles

KSCAA invites Chartered Accountants and other subject experts to submit articles and share their expertise through KSCAA News Bulletin. The article may cover any topic covering auditing, finance, Tax laws, strategy, technology, Health, RERA, and so on. The authors can share the articles to info@kscaa.com.

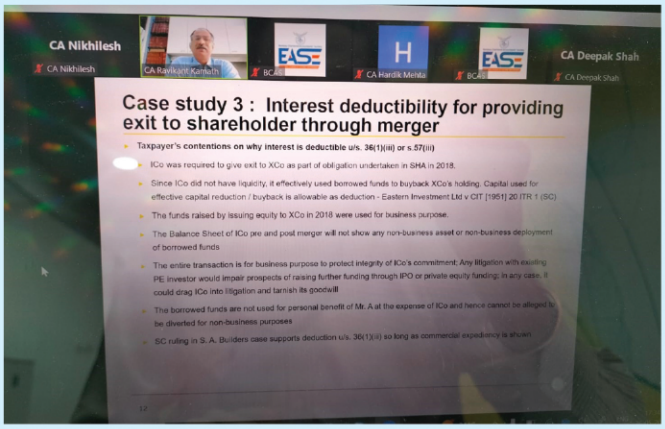
Guidelines for Submission of Articles:

- ✓ Every article is screened by the committee and a panel of experts, and no assurance can be given for publishing the article.
- ✓ The article should be Original; it should not be published or posted elsewhere.
- ✓ As a policy, at KSCAA we believe in 'Zero Tolerance for Plagiarism' and any violation shall be construed seriously.
- ✓ The committee cannot assure the authors of immediate publishing of the article. A repository of articles would be maintained and accordingly published in the upcoming editions on an appropriate basis as decided by the committee.
- ✓ The article should be limited to 1,500 to 1,750 words. The Author is requested to exercise due care, diligence and professional judgement to restrict their article to the above-mentioned limits.
- ✓ The article should be submitted only in Word Document.

Photo Gallery



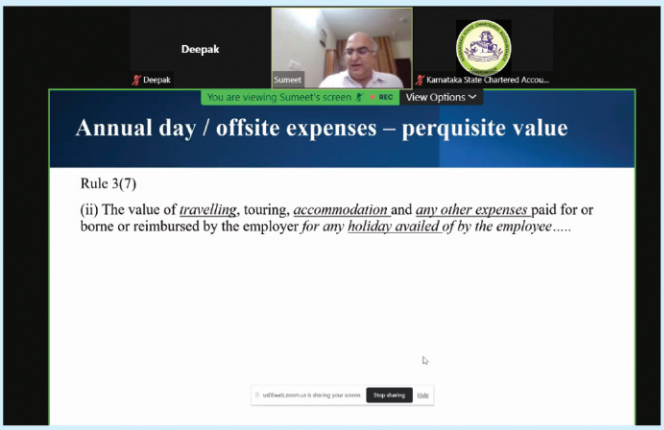
Online Workshop on preparatory framework for an IPO by a private Limited Company organised jointly by Women Empowerment Committee and Corporate & Allied Laws Committee of KSCAA on 16th May 2023.



Direct Tax Home Refresher Course -4 (online) conducted by Direct tax Committee of KSCAA in association with Other eminent institutes.

Microsoft Excel Training for Office Staff organised by Leadership and Skill Development Committee of KSCAA.

Webinar on PMLA provisions concerning Chartered Accountants organised by Direct Tax Committee of KSCAA on 18th May 2023.



Revisiting provisions on Salary Taxation organised by Direct Tax Committee of KSCAA on 12th May 2023.

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