DTPA
Direct Taxes Professionals' Association
ज्ञानं एक्यं च न्यायार्थम
Estd. 1982

January, 2023
eJournal

Editorial Board

....From the Desk of Editors

Respected seniors and my dear friends,

At the onset, I am thankful to the President and each one in the Executive Committee at DTPA as well as Past Presidents to provide me this opportunity of Chairing the Journal Sub Committee with an enthusiastic and hardworking friend, Sujit as Co-Chairman in the committee.

New Year brings within us new energy, new commitments and new resolutions. We at journal sub-committee have taken this resolution to keep the bar of knowledge and updates high amongst our readers with coverage of upcoming issues and professional opportunities. In this series, in the present edition this journal contains thought provoking articles on upcoming professional areas such as valuations, startup and IBC.

At the same time apart from knowledge and updates we will keep you connected on the activities of our association. The photographs of the related events remain with each one of you as a pleasant remembrance of the moments members shared amongst themselves particularly during Annual Conference, Annual General Meeting, Executive Committee Meetings, Diwali Meet and recent seminars & Group Discussions.

We invite seniors in the profession and my fellow brother and sisters to pen down words of wisdom in the form of articles on recent issues and upcoming professional opportunities and share your thoughts with many others through DTPA Journal.

Reaching to you in the next issue soon, till then wish you very Happy Saraswati Puja and Republic Day in advance. We Pray Maa Sarwaswati to bless all of us with lot of wisdom.

With Best Regards

Yours truly,

Giridhar Dhelia
Chairman
Journal Sub-Committee, DTPA

Sujit Sultania
Co-Chairman
Journal Sub-Committee, DTPA

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Estd. 1982
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Index

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ज्ञानं एकयं च न्यायार्थम
Estd. 1982

January, 2023
eJournal

....From the Desk of President

Dear Colleagues,

"An investment in knowledge pays the best interest."

- Benjamin Franklin

Wish you all a very happy New Year!

I am feeling privileged as President of this august body to reach to you through this 1st edition of e-Journal of DTPA for the year 2023. I am sure after long compliance session and time barred deadlines; you must have enjoyed the year end break and rejoiced the New Year. Change is the only constant and after this soothing cold winter, we will be witnessing the beautiful autumn season in next few days.

As you all are aware, our Association has completed 40 years of its glorious existence and stepped into 5th decade of it'sjourney with around 1800 members. We at DTPA are working hard to set new trends of professional excellence and recognition with the organised efforts and co-operation of all stakeholders of the Association. In terms of our commitment in the last AGM, we have set up different committees and we are organizing lecture meetings and group discussions on varied subjects.It is our endeavourto provided DTPA platform to young,budding and other professionals to come forward and explore their professional abilities both as a speaker and through research activities.

DTPA has organised a very successful two nights 3 days Residential Conference at Shantiniketan from 13th of January to 15th of January, 2023 which was attended by more than 100 participants.We had interactive group discussions and deliberation by eminent speakers along with entertainment programmes, local sight-seeing, Makar Sakrantiand kite flying festival.

We have already sent our Pre-Budget Memorandum to the Honb'le Finance Minister and quite hopeful of incorporation of many of the suggestions in the forthcoming budget.The Union Budget, 2023 will be presented on 1st of February and thereafter we all will be busy with analyzing the provisions of the Finance Bill, 2023 and advising our clients upon the possible impactthereof. DTPA is organizing Live Budget Analysis on 1st of February, 2023 at DTPA Hall. DTPA Study Circle is organizing a Seminar on Union Budget on 3rd of February, 2023 at National Library, Kolkata wherein erudite speakers will analyse the provisions in details. more details of the same is there inside this journal. I take this opportunity to appeal each one of you to attend the Seminar on Union Budget and get professionally enriched.

Let's achieve more in our professional pursuits and make a difference.

With this, I wish you all Happy Saraswati Puja and 74th Republic Day in advance.

With Best Regards

Yours truly,

CA D. S. Agarwala

President, DTPA

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Estd. 1982
January, 2023
eJournal

AGM on 9th Sept. 2022 at DTPA Conference Hall

1st E C Meeting on 14th Oct. 2022 At The Conclave

DTPA
Direct Taxes Professionals' Association
ज्ञानं एकं च न्यायार्थम
Estd. 1982
January, 2023
eJournal

Group Discussion Meeting on 21st Nov. 2022 At DTPA Conference Hall On Issues In Faceless Proceedings In Income Tax Initiator, CA. Akkal Dudhwewala

Bijaya & Diwali Get-together on 5th Nov. 2022 at 4a, Short Street

DTPA RESIDENTIAL CONCLAVE'23

Forth Coming Programme of

DTPA CA CPE Study Circle of EIRC of ICAI

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Email :- dtpakolkata@gmail.com

Web :- www.dtpa.org

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Estd. 1982

BUDGET SEMINAR

Friday,
03 Feb, 2023

10:00 AM – 02:00 PM

National Library,
Belvedere Road,
Block – A, Alipore,
Kolkata – 700 027

"4 CPE HOURS"

PARTICIPATION CHARGES:

RS. 200/-

SPEAKERS:

Adv Kapil Goel
Delhi
Direct Tax

CA G. S. Prashanth
Bengaluru
Direct Tax

CA Pulak Kr Saha
Kolkata
Indirect Tax

CA Mahendra Agarwal
Convenor

CA Shyam Agarwal
Deputy Convenor

Compliance Calendar for January, 2023

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07 th Jan,2023	Dec-22	TDS/TCS Deposit	
	14th Jan, 2023	Dec-22	Issue of TDS Certificate for tax deducted under Section u/s 194-IA / u/s 194-IB / u/s 194 M	
	15th Jan 2023	Oct-22 to Dec-22	TCS Return	
	31st Jan 2023	Oct-22 to Dec-22	TDS Return	
	30th Jan 2023	Dec-22	Furnishing of challan-cum-statement in respect of tax deducted u/s 194-IA / u/s 194-IB / u/s 194 M	
Statute	**Due dates**	**Compliance Period**	**Return**	**Turnover**
GST	10th Jan 2023	Dec-22	GSTR-7	TDS
	10th Jan 2023	Dec-22	GSTR-8	TCS
	11th Jan 2023	Dec-22	GSTR-1	Above 5 Cr
	13th Jan 2023	Dec-22	GSTR-1(Quaterly)	Taxpayers who have opted for QRMP Scheme
	13 th Jan 2023	Dec-22	GSTR-6	ISD
	20 th Jan 2023	Dec-22	GSTR-3B	Above 5 Cr
	22th Jan 2023	Dec-22	GSTR-3B(Quaterly)	Below 5 Cr (State-I)*
	24th Jan 2023	Dec-22	GSTR-3B(Quaterly)	Below 5 Cr (State-II)**
	20th Jan 2023	Dec-22	GSTR-5	Non-Resident Foreign Taxpayers
	20th Jan 2023	Dec-22	GSTR-5A	Non-Resident OIDAR Service Provider

*State I includes Taxpayers whose principal place of business is in Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep

**State II includes Taxpayers whose principal place of business is inHimachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi

Statute	Due dates	Compliance Period	Details
ESI, PF & Prof. Tax	21st Jan 2023	Dec-22	Prof. Tax Payment
	15th Jan 2023	Dec-22	PF Payment
	15th Jan 2023	Dec-22	ESIC Payment

Speaking Opportunity at DTPA Platform

Dear Members,

At the outset, I wish you all year 2023 full of hope, happiness, good health and prosperity.

As a part of our commitment in the last AGM, DTPA will provide its members an opportunity to speak at the DTPA platform on any topics of professional interest. The opportunity may be through group discussions, webinars, workshops, Student Training Programme and so on.

If you stay outside Kolkata, you may do it through webinars.

So, if you are looking for such an opportunity, then please fill up the attached google form to help us find your interest area and take the things forward:

https://forms.gle/hcCsjYcsY9U63Mf3A

Regards,

CA D. S. Agarwala
President-DTPA

Request for Article in DTPA Journal

Dear Sir/Madam,

Direct Taxes Professionals' Association, popularly known as 'DTPA', established in the year 1982 is a Kolkata based Association consisting of Chartered Accountants, Advocates, Company Secretaries, Cost Accountants and Tax Practitioners.

We invite you to contribute articles **for the Journal on the given below topics which will be considered for publication in the upcoming edition of the E-Journal, subject to approval by the Editorial Board.**

Topics:

- Direct Taxes
- GST & Indirect Taxes
- Corporate & Allied Laws
- Information Technology
- International Taxation
- Accountancy and Audit
- Insolvency and Bankruptcy
- Emerging areas of Practice

The articles sent for publication in the newsletter should conform to the following parameters:

- The article should be original and contents are owned by Author himself.
- The article should help in development of the profession and highlight matters of current interests/challenges to the professionals/emerging professional areas of relevance.
- The length of the article should be 2000-2500 words and should preferably be accompanied with an executive summary of around 100 words.
- The tables and graphs should be properly numbered with headlines and referred with their numbers in the text.
- The authors must provide the list of references at the end of article.
- A brief profile of the author, e-mail ID, postal address and contact number along with his passport size photograph and declaration confirming the originality of the article as mentioned above should be enclosed along with the article.
- **The article can be sent by e-mail at dtpaejournal@gmail.com**

Please note that Journal Committee has the sole discretion to accept, reject, modify, amend and edit the article before publication in the Journal.

For further details, please contact us at: dtpaejournal@gmail.com and at Mob: 9830255500/ 9831016678

Thanks and Regards,

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Direct Taxes - Notifications & Circulars

CBDT RELEASES DRAFT COMMON INCOME TAX RETURN FORM FOR PUBLIC CONSULTATION

At present, taxpayers are required to furnish their Income-tax Returns in ITR-1 to ITR-7 depending upon the type of person and nature of income. The current ITRs are in the form of designated forms wherein the taxpayer is mandatorily required to go through all the schedules, irrespective of the fact whether that particular schedule is applicable or not, which increases the time taken to file the ITRs.

The proposed draft ITR takes a relook at the return filing system in tandem with international best practices. It proposes to introduce a common ITR by merging all the existing returns of income except ITR-7. However, the current ITR-1 and ITR-4 will continue. This will give an option to such taxpayers to file the return either in the existing form (ITR-1 or ITR-4), or the proposed common ITR, at their convenience.

[PRESS RELEASE, DATED 1-11-2022]

CBDT CONDONES DELAY IN FILING FORM NO. 10A FOR WHICH EXTENDED DUE DATE WAS 31-3-2022

As per the provisions of the Income-tax Act, 1961, Form 10A was required to be filed electronically by 30-6-2021, which was extended to 31-8-2021 and further extended to 31-3-2022 by Circular No. 16/2021.

In view of the representations received by Central Board of Direct Taxes (CBDT) and with a view to avoid genuine hardship to taxpayers, the CBDT condones the delay in filing of Form 10A up to 25th November, 2022 in respect of certain provisions of section 12A / section 10(23C) / section 80G / section 35 of the Income-tax Act, 1961.

[PRESS RELEASE, DATED 1-11-2022]

MONITORING OF DOSSIER CASES - RE-FIXATION OF MONETARY LIMITS FOR VARIOUS INCOME TAX AUTHORITIES

In view of the very large number of Dossier cases requiring periodic reporting and review by various Income Tax Authorities and the fact that the monetary threshold for classification of cases of outstanding demand as a Dossier case has not been revised in the last many years, it has been decided by the Board to modify the threshold so as to facilitate focused monitoring and rationalization of workload.

2. Accordingly, in supersession of Instruction No. 10/2015, dated 16/09/2015, the revised jurisdiction of Income Tax Authorities in respect of dossier cases is as under:—

Monitoring Authority	Current Jurisdiction	Revised Jurisdiction
Range Head	Up to Rs. 30 lakh	Rs. 10 lakh to Rs. 1 crore
Pr.CIT	Above Rs. 30 lakh to Rs. 3 crore	Above Rs. 1 crore to Rs. 25 crore
CCIT	Above Rs. 3 crore to Rs. 15 crore	(*i*) For Delhi and Mumbai region: Above Rs. 25 crore to Rs. 250 crore (*ii*) For other regions: Above Rs. 25 crore to Rs. 100 crore
Pr. CCIT	Above Rs. 15 crore to Rs. 25 crore	(*i*) For Delhi and Mumbai region: Above Rs. 250 crore to Rs. 500 Crore (*ii*) For other regions: Above Rs. 100 crore to Rs. 500 crore
Pr. DGIT (Admin & TPS)	All dossiers above Rs. 25 crore by Pr. DGIT (Admin) with assistance of ADG (Recovery). Pr. DGIT (Admin) to monitor specific very high demand cases on the directions of Member (Revenue) with assistance of ADG (Recovery).	All dossiers above Rs. 500 crore by Pr. DGIT (Admin & TPS) with assistance of ADG (Recovery). Pr. DGIT (Admin & TPS) would submit proposals for monitoring very high demand cases for approval of Member (TPS).
Member (Revenue), CBDT		-

[INSTRUCTION NO. 1/2022 [F.NO.404/1/2022-ITCC], DATED 3-11-2022]

CONDONATION OF DELAY UNDER SECTION 119(2)(b) OF THE INCOME-TAX ACT, 1961 IN FILING OF FORM NO. 10A

On consideration of the matter, with a view to avoid genuine hardship to such cases, the Board, in exercise of the powers conferred under section 119(2)(*b*) of the Act, hereby condones the delay upto 25-11-2022 in filing Form No. 10A under sub-clause (*i*) of clause (*ac*) of sub-section (1) of section 12A /clause (*i*) of first proviso to clause (23C) of section 10/ clause (*i*) of first proviso to sub-section 5 of section 80G / fifth proviso to sub-section (1) of section 35 of the Act, which was required to be made electronically on or before 31-3-2022.

CIRCULAR NO. 22/2022 [F.NO.197/93/2022-ITA-1], DATED 1-11-2022

SECTION 200 OF THE INCOME-TAX ACT, 1961 - DUTY OF PERSON DEDUCTING TAX - EXTENSION OF DUE DATE OF FILING OF FORM 26Q FOR SECOND QUARTER OF FINANCIAL YEAR 2022-23

On consideration of difficulties arising in timely filing of TDS statement in Form 26Q on account of revision of its format and consequent updation required for its filing, the Central Board of Direct Taxes, in exercise of its powers under section 119 of the Income-tax Act, 1961, hereby extends the due date of filing of Form 26Q for the second quarter of financial year 2022-23 from 31st of October, 2022 to 30th of November, 2022.

[CIRCULAR NO. 21/2022 [F.NO. 275/25/2022-IT (B)], DATED 27-10-2022]

CIRCULAR NO. 20/2022 [F.NO. 225/49/2021/ITA-II], DATED 26-10-2022

PARTIAL RELAXATION WITH RESPECT TO ELECTRONIC SUBMISSION OF FORM 10F BY SELECT CATEGORY OF TAXPAYERS IN ACCORDANCE WITH DGIT (SYSTEMS)

On consideration of the practical challenge being faced by non-resident (NR) taxpayers not having PAN in making compliance as per the above notification, and with a view to mitigate genuine hardship to such taxpayers, it has been decided by the Competent Authority that such category of Non-resident taxpayers who are not having PAN and not required to have PAN as per relevant provisions of the Income-tax Act, 1961, read with Income-tax Rules, 1962, are exempted from mandatory electronic filing of Form 10F till 31st March, 2023. For the sake of clarity, it is reiterated that such category of taxpayers may make statutory compliance of filing Form 10F till 31st March, 2023 in manual form as was being done prior to issuance of the DGIT (Systems) Notification No. 3 of 2022.

[NOTIFICATION NO. 3/2022, DATED 16-7-2022

CIRCULAR F.NO. DGIT(S)-ADG(S)-3/e-FILING NOTIFICATION/FORMS/2022/9227, DATED 12-12-2022]

ORDER F.NO. 282/15/2022-IT (INV.V)/267, DATED 22-11-2022

SECTION 119, READ WITH SECTION 133A OF THE INCOME-TAX ACT, 1961 - CENTRAL BOARD OF DIRECT TAXES - INSTRUCTION TO SUBORDINATE AUTHORITIES - POWER OF SURVEY - NOTIFIED INCOME TAX AUTHORITY

ORDER F.NO. 282/15/2022-IT (INV.V) / 267, DATED 22-11-2022

In view of clause (*a*) of Explanation occurring after sub-section (6) to Section 133A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") as amended by Finance Act, 2022, read with Proviso to sub-section (6) of Section 133A of the Act, and in supersession of Orders F.No. 187/3/2020-ITA-1, dated 13-8-2020, 18-9-2020, 19-10-2020 and 31-12-2021, and F.No. 275/29/2020-IT(B), dated 19/10/2020, issued in this regard, the Board, in exercise of powers conferred under section 119 of the Act hereby directs that authorization for action under section 133A of the Act shall be issued by an income-tax authority not below the rank of Joint Director or Joint Commissioner with the prior approval of the Director General/Chief Commissioner in the case of Directorate of Investigation, Directorate of I & CI, Central, and TDS charges, and the Principal Chief Commissioner in case of all other charges. Where TDS charge is headed by the Principal Chief Commissioner, approval shall be granted by the Principal Chief Commissioner.

2. The Principal Commissioner of Income Tax/Commissioner of Income tax/Principal Director of Income Tax/Director of Income Tax concerned,shall monitor and ensure that the survey action is conducted

in accordance with the provisions of section 133A of the Act and guidelines/instruction issued by the Board from time to time.

3. This order shall come into force with immediate effect.

4. The Hindi version of this order shall follow.

(Novel Roy)

Deputy Secretary to the Government of India

GUIDELINES FOR COMPOUNDING OF OFFENCES UNDER THE INCOME-TAX ACT, 1961

The Guidelines on Compounding of Offences under the Income-tax Act, 1961 (herein after referred to as 'the Act') have been reviewed by the Board with a view to simplify and facilitate compounding of offences.

Accordingly, in supersession of all earlier Guidelines on this subject, including the last Guidelines of the Board issued vide F.No. 285/08/2014IT (Inv.V)/147, dated 14th June, 2019, revised Guidelines are issued, henceforth, for compliance by all concerned.

[NOTIFICATION NO. S.O. 6103(E) [NO. 128/2022/F. NO. 500/PF7/S... DATED 28-12-2022]

ORDER UNDER CLAUSE (*a*) OF EXPLANATION OCCURRING AFTER SUB-SECTION (6) TO SECTION 133A OF THE INCOME-TAX ACT, 1961

In pursuance of clause (*a*) of *Explanation* occurring after sub-section (6) to Section 133A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") as amended by the Finance Act, 2022, w.e.f 1-4-2022, the Board hereby, specifies the Principal Director General or the Director General or the Principal Chief Commissioner or the Chief Commissioner, for the purpose of exercise of such powers and functions as specified in section 133A of the Act, by their subordinates, in respect of such territorial areas or such persons or classes of persons or such incomes or classes of incomes or such cases or classes of cases, assigned to them under section 120 of the Act.

However, such specification shall not extend to those charges exercising powers and functions under section 144B of the Act and faceless Penalty (Amendment) Scheme, 2022.

[ORDER F.NO. 282/15/2022-IT (INV.V)/266, DATED 22-11-2022]

[For further details on the items reported herein above please refer to www.incometaxindia.gov.in]

Compiled by

CA Giridhar Dhelia

The Form 10IC vs ITR conundrum
Tax on income of certain domestic companies

CA Harsh Dugar, F.C.A., DISA

Straight to the big topic :

What if a domestic company opts for lower rate of tax under section 115BAA in the ITR but fails to file Form 10IC?

An abstract of section 115BAA of the Income Tax Act 1961 is as under:

"Sub-section (1): Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAB, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of twenty-two per cent, if the conditions contained in sub-section (2) are satisfied

Sub-section (5): Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manneron or before the due date specified under sub-section (1) of section 139 for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:

Provided further that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year."

The prescribed manner as mentioned above in italics refers to the manner of filing Form 10IC

Relevant abstract of ITR-6 (Clause (e) of PART A-GEN)

"Whether the assesse has opted for taxation under section 115BA/115BAA/115BAB? (drop down to be provided in efiling utility) (applicable on Domestic Company)"

Relevant abstract of TAX AUDIT (FORM 3CD) (Sl No. 8(a) of PART – A)

"8(a). Whether the assessee has opted for taxation under section 115BA / 115BAA /115BAB / 115BAC /115BAD ?

and

Section under which option exercised"

The Issue

It is clear that a company is needed to submit a 10IC Form prior to the due date of furnishing the ITR, however it must also be understood that non-submission of Form 10-IC is merely a procedural mistake on part of the company and it is important to note that the assesseeis already declaring its intent of exercising option u/s 115BAA in the ITR by computing the total income in the manner as laid down in the said section. This intent furthermore becomes strong when this option is seen to be exercised and declared even by the chartered accountant of the assessee in his tax audit report, Form 3CD.

It is seen that the ITR utility automatically calculates income tax payable @ 22% if the Company opts for lower rate of tax u/s 115BAA in the ITR. However, the ITR nowhere asks for date of filing of Form 10IC or its acknowledgement no., neither does the IT portal urges the assessee to file form 10IC post filing of the ITR. Therefore, these lack of validation tools increases the risk of failure to file form 10IC on

the assessee' s behalf.

Furthermore, it is also seen that in some cases, the CPC is processing such ITRs where the assessee has opted for taxation under section 115BAA but Form 10IC has not been filed and issuing intimation order u/s 143(1)calculating tax payable at a tax rate of 30%, yes 30%, not even 25%, thereby clearly ignoring the option exercised in the ITR and at the same time applying an enormously high tax rate leading to further complicated litigations and rectifications.

What about AY 2020-21, i.e. 1st year of applicability of Form 10IC?

The delay in filing of Form 10-IC for the previous year relevant to A.Y 2020-21 was condoned by the CBDT vide Income Tax Circular 06/2022,dated: 17th March, 2022, an abstract of which is as follows:

1. Failure to furnish such option in the prescribed form on or before the due date specified u/s 139(1) of the Act results in denial of concessional rate of tax of twenty-two per cent to such person.
2. Representations have been received by the Board stating that Form 10-IC could not be filed along with the return of income for AY 2020-21, which was the first year of tiling of this form. It has been requested that the delay in filing of Form 10-IC may be condoned.
3. On consideration of the matter, with a view to avoid genuine hardship to the domestic companies in exercising the option u/s 115BAA of the Act, the Central Board of Direct Taxes, in exercise of the powers conferred under section 119(2)(b) of the Act, hereby directs that:-

The delay in filing of Form 10-IC as per Rule 21AE of the Rules for the previous year relevant to A.Y 2020-21 is condoned in cases where the following conditions are satisfied:

i) The return of income for AY 2020-21 has been filed on or before the due date specified under section 139(1) of the Act;

ii) The assessee company has opted for taxation u/s 115BAA of the Act in (e) of "Filing Status" in "Part A-GEN" of the Form of Return of Income ITR-6 and

iii) Form 10-IC is filed electronically on or before 30.06.2022 or 3 months from the end of the month in which this Circular is issued, whichever is later.

The condonation favors the assessees and empathizes with them on 3 conditions as stated above. The CBDT seems to acknowledge that there is a scope of procedural lapse on part of assessee to file form 10 IC and if the assessee has duly complied with timely filing of ITR and opting for taxation u/s 115BAA in the ITR, then the CBDT considered condonation of filing Form 10IC and gave the assessees additional time to file Form 10IC.

Great.. But for AY 2021-22 and later?

For AY 2021-22, there is no condonation, consideration or relief announced yet. Certain case laws have not helped the assessee's cause and what happens if the assessee has duly taken care of all other procedural aspects, except filing of form 10IC on time, is yet to be seen. AY 2021-22 might not be the 1st year of filing of form, however, as the filing of form 10IC is a one-time exercise, for many assessees AY 2021-22 may be the 1st year of dealing with this 1 and a half page form which merely contains 7 basic clauses, but can cause immense trouble, hardship and financial loss if not given enough attention to.

Something deeper to think about

It is normally seen on the IT Portal that a return/form is allowed to be filed only if the due date of filing such form is not over. However, even till as late as July 2022, we noticed that the IT portal showed the option of filing Form 10IC for AY 2021-22 even though the due date of filing ITR for AY 2021-22 was over in March 2022. Now as we stand in December, the option to file

such form has been removed and only AY 2022-23 is available to be filed. It is to be again noted that the due date of filing ITR for AY 2022-23 is over as well, yet the portal allows form 10 IC to be filed. I leave it to my respected colleagues, professionals and readers of this article to decide whether any inference can be drawn from this innocent option available at the portal, or is it just another hoax hope waiting to be quashed at any hierarchy of the Income Tax department or the court of law.

References :

The author is aDISA qualified, FCA, having a decade of experience in the field of chartered accountancy and more than 6 years of practice experience. A firm believer in "Knowledge is power", the author seeks to continuously learn and update his knowledge and skills according to the dynamic and radical changes taking place in numerous laws in the country, safeguarding his clients by applying the same and making sure they are comprehensively compliant.He is a partner at Ashok Kumar Duggar & Associates, situated at 33/1 N.S. Road, Marshall House, Office No. 507, Kolkata – 700072, a firm established in 1983 dealing in various functional areas like Audit, Direct Taxes, ROC Compliances etc.

Declaration

This is to certify, that the article submitted by me is an outcome of my independent and original work. I have duly acknowledged all the sources from which the ideas and extracts have been taken. The project is free from any plagiarism and has not been submitted elsewhere for publication.

GST - NOTIFICATIONS & CIRCULARS

Notification No. 21/2022 – Central Tax dated 21st October 2022

EXTENSION OF TIME LIMIT FOR FILING GSTR-3B FOR MONTH OF SEPTEMBER 2022

The commissioner on recommendation of Council has extended the due date for furnishing the return in Form GSTR-3B for the month of Sept-22 by one day i.e., from 20.10.2022 to 21.10.2022.

Comment **:** *Considering the difficulties faced by taxpayers on account of technical glitch on the common portal, CBIC extends the time limit for filing of the same.*

Notification No. 22/2022 – Central Tax dated 15th November 2022

AMENDMENT IN FORM GSTR-9

The Central Government, on the recommendations of the Council, has made certain amendment in the Central Goods and Services Tax Rules, 2017 in **FORM GSTR-9for the figures, letters, and words "between April 2022 to September, 2022", the figures, letters, and words "of April 2022 to October 2022 filed upto 30th November, 2022" shall be substituted.**

This notification is in line with the Notification No. 18/2022 – Central Tax dated 28th September 2022 wherein CBIC has extended the time limit for claiming ITC (for FY 21-22), issuing CDN, and doing amendments to returns of the previous year till 30th November by notifying clause 100 of the Finance Act 2022 to be effective from 01.10.2022

Notification No. 23/2022 – Central Tax dated 23rdNovember 2022

COMPETITION COMMISSION OF INDIA TO HANDLE ANTI-PROFITEERING CASES

Hereby in the aforesaid notification issued by CBIC the Central Government has empowered Competition Commission to examine whether input tax credit availed by any registered person or reduction in tax rate have actually resulted in deflation of price of goods and service supplied by him. The same shall be enforceable from 1st day of December 2022.

Notification No. 24/2022 – Central Tax dated 23rd November 2022

FOURTH AMENDMENT (2022) TO CGST RULES WITH EFFECT FROM 01/12/2022

The said notification has been issued to give effect to N/No. 23/2022.

Rule 122 which provides for Constitution of Authority, Rule 124 which provides for Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority, Rule 125 – Secretary to the Authority, Rule 134 – Decision to be taken by the Majority and Rule 137 that provides for tenure of Authority shall be omitted.

Further, in Rule 127

(i) in the marginal heading, for the word "Duties," the word "Functions," shall be substituted

(ii) for the words "It shall be the duty of the Authority, -," the words "The authority shall discharge the following functions, namely: –" shall be substituted.

After Rule 137, in the *Explanation*, for clause (*a*), the following clause shall be substituted, namely: -

(a) "Authority" means the National Anti-profiteering Authority Constituted under rule 122 shall be substituted with Authority notified under sub-section (2)

of section 171 of the Act.

Notification No. 25/2022 – Central Tax dated 13th December 2022

EXTENSION OF TIME LIMIT FOR FURNISHING DETAILS OF OUTWARD SUPPLIES IN FORM GSTR-1 FOR CYCLONE HIT DISTRICTS OF TAMIL NADU

TheNotification states that registered person who are required to furnish return under Sub Section (1) of section 39 (i.e FORM GSTR -1 for the tax period of November, 2022) and whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tiruvannamalai, Ranipet, Vellore, Villupuram, Cuddalore, Thiruvarur, Nagapattinam, Mayiladuthurai and Thanjavur in the State of Tamil Nadu, the due date shall be **extended till the 13th day** of the month succeeding the said tax period.

Circular No 181/13/2022 dated 10th November,2022

CLARIFICATION ON INVERTED DUTY STRUCTURE (IDS) REFUND

CBIC released beneficial **Notification No. 14/2022 (CT) dated 05-07-2022** making the amendment in IDS Refund formula by considering the deduction of output tax in proportion to the "Inputs" only.

Amended Formula:

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

The Clarification

CBIC further came up with a clarification to the above notification enunciating that same would be applicable prospectively and not with retrospective effect stating that refund applications filed before 05-07-2022 will be dealt as per the formula as it existed before the amendment mentioned supra.

Comments: This circular would create distress in mind for those taxpayers who have claimed refund for the period whose time limit is yet to expire as the prospective amendment would have been of favor to them.

Circular No 182/14/2022 dated 10th November,2022

GUIDELINES FOR VERIFICATION OF TRANSITIONALCREDIT PURSUANT TO SC DECISION

Regardless of GST finishing a span of 5 years of its presence, its execution is yet tormented by many issues counting debates with respect to transitional credit. As of late, one such issue as for the carry forward of credit from the erstwhile regime was at last put to an end by the verdict of the Supreme Court in the instance of ***"Union of India & Ors V. Filco Trade Center Pvt. Ltd & Anr."***

Pursuant to the direction by the Supreme Court, the GSTN has re-opened the portal permitting aggrieved registered taxpayers to file or revise TRAN-1 or 2 Forms for the period between 1 October 2022 to 30 November 2022.

General Precepts

§ The verification and affirmation guidelines emanated in the circular clearly iterates that the SC keeps all questions of law open for filing & revision of Tran 1 or 2 forms. Thereby, ***clarifies that the facility introduced cannot be used for revising the returns already filed under the laws that prevailed earlier***.

§ Any reasoned order passed in the verification process should be in accordance with ***PRINCIPLES OF NATURAL JUSTICE.***

VERIFICATION PROCEDURE:

The verification of the transitional credit shall be conducted by the jurisdictional tax officer. In respect of TRAN-1/TRAN-2 filed/revised by the applicant under the administrative control of the central tax authorities, such verification and issuance of order shall be done by the jurisdictional officer of central tax, whereas in respect of TRAN-1/TRAN-2 filed/revised by the applicant under the administrative control of the state tax authorities, the same shall be done by the jurisdictional officer of state tax.

Where the applicant is under the jurisdiction of central tax officer and the transitional credit claimed has component of state/Union Territory tax also, the jurisdictional central tax officer shall refer the said claim for verification of component of state/UT tax to his counterpart state/UT tax officer or vice-versa.

A)Issuance of Verification Report

§ In respect of verification done by the counterpart officer, after verification, he will prepare a **verification report in the format** detailed in Annexure-II

§ Such duly signed verification report shall be sent by the counterpart officer to the **jurisdictional tax officer** at the earliest, though generally **not later than ten days from the date of receipt of the request from the jurisdictional officer.**

B) Jurisdictional tax officer shall proceed to pass a reasoned order, preferably **within a period of fifteen days** from the date of personal hearing, specifying the amount of transitional credit allowed. Such order shall be passed within a period of 90 days from 01.12.2022 i.e., up to 28.02.2023. CBIC also clarifies description of entries in TRAN-1 (Form) Table along with the indicative checks for verification describing the entries attracting provisions of the CGST Act

To Further Examine

§ Credit which is being claimed through TRAN-1 or 2 Forms is not taken by means of Form GSTR-3B.

§ Clarifications with respect to disputed and blocked credit may also be referred during the verification process.

Comments : ***Post the judgment of the Apex Court in Filco Trade, the CBIC had issued Circular for the benefit of the assessee as to how to file the TRAN 1 again in the window given during 01.10.2022 to 30.11.2022. With this Circular, CBIC has appraised the field formations as to the modalities for verification of the filed TRAN 1 with the intent to bring similarity in the process adopted by CGST and SGST officers.***

Circular No 183/15/2022 dated 27th December,2022

CLARIFICATION TO DEAL WITH DIFFERENCE IN INPUT TAX CREDIT (ITC) AVAILED IN FORM GSTR-3B AS COMPARED TO THAT DETAILED IN FORM GSTR-2A FOR FYs. 2017-18 AND 2018-19

CBIC has issued a clarificatory circular to deal with the mismatch in the ITC availed in GSTR-2A and GSTR-2B for the FY2017-18 and 2018-19. The Board has led down certain scenarios of mismatch between GSTR-2A and GSTR-3B and the manner and procedure of dealing such cases which is as follows:

Ø **Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the**

said tax period do not get reflected in FORM GSTR-2A of the recipients.

- **Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does notget reflectedin FORM GSTR-2Aof the recipient.**
- **Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN if the recipient, but supplier has wrongly reported the said supply as B2C supply instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FOR MGSTR-2A of the said registered person.**
- **Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.**

In such cases, the Board has clarified that the proper officer shall first seek the details from the registered personregarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORMGSTR2A. He shall then as certain fulfillment of the following conditions of Section 16 of CGST Act, 2017 in respectof the input tax creditavailedon such invoicesby thesaid registeredperson:

- That he is in possession of a tax invoice or debit note issued by the supplier or such other taxpaying document;
- That he has received the goods or services or both;
- That he has made payment for the amount towards the value of supply, along with tax payable there on, to the supplier.

Also, the proper officer shall check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed with in the time period specified under sub-section (4) of section16 of CGST Act.

Section 16(2)(c) of the CGST Act, 2017 provides that the recipient is entitled to claim input tax credit when the tax paid on purchases made by him is actually paid to the Government by the Supplier.

Indirectly the burden is on the recipient to prove that tax has been actually paid to the Government by the supplier. Therefore, it is one of main reasons wherein the Revenue authorities issue notices to the tax payers regarding the mismatch between GSTR-2A and GSTR-3B.

Compiled by

CA Ankit Kanodia

Further, CBIC also clarifies that for verification of one of the conditions for eligibility of availing ITC in clause (c) of sub-section (2) of section 16 of CGST which provides that tax on the said supply has been paid by the supplier, the proper officer may take following action:

Sl. No	Issue	Clarification	Remarks
1.	Where difference between the ITC claimed in FORM GSTR-3 Band that available in FORMGSTR 2 A of the registered person in respect of a supplier for the said FY exceeds Rs5 lakh	The registered person **shall produce a certificate for the concerned supplier from the Chartered Accountant(CA) or the Cost Accountant (CMA)**, certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR-3B	**It is to be noted in both the situations that the quantification nof Rs.5 Lakh is with respect to a particular supplier, which means that the claimant shall produce a certificate from the CA or CMA only when ITC pertaining to a particular supplier is more than Rs.5 Lakhs. In all other cases when the ITC is lessthan Rs. 5 Lakhs the claimant shallproduceacertificatefromthesupplier.**
2.	Where difference between the ITC claimed in FORM GSTR-3B and that available in FORMGSTR2A of the registered person in respect of a supplier for the said FY is upto Rs. 5 lakh	The claimant shall produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORMGSTR 3B.	**However, it is important to note that the CA / CMA has to certify that the tax on such invoices has actually been remitted by the said supplier. The circular is silent as to how to verify the payment of tax by the supplier. The CA / CMA can certify the payment of tax by the recipient to the supplier but certifying that the supplier has paid the tax to the govt. is a difficult proposition. The said proposition is already a subject matter of challenge before various High Courts on the principle of doctrine of impossibility. Thus, it would be interesting to see how things turn up regarding the certificate issuance to proof payment of tax by supplier.**

The Circular in our view is a welcome step by CBIC to end a dispute to huge demands of ITC being raised by the department on account of mismatch. However, the earlier jurisprudence laid by Hon'ble Apex Court in judgments such as Commissioner of Trade&Taxes,Delhi,andothersVs.Arise India Limited and others [TS-2-SC-2018-VAT] where in it was held that ITC cannot be denied to a bonafide purchaser in absence of connivance should also hold good in GST law

CIRCULAR NO. 184/16/2022

CLARIFICATION ON ENTITLEMENT OF INPUT TAX CREDIT WHERE THE PLACE OF SUPPLY IS DETERMINED IN TERMS OF PROVISO TO SUB-SECTION (8) OF SECTION 12 OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017

Section 12(8) provides for the place of supply of services by way of transportation of goods, including by mail or courier, where location of the supplier as well as the recipient of services is in India.

Wherein the recipient is a registered person, POS shall be the place of Registered Person.

Where the recipient is unregistered person then POS shall be the location at which such goods are handed over for their transportation.

However, from 1st February 2019 a proviso has been inserted which provides that if a supplier is in India, Recipient is also in India, but the destination of goods is o/s India then in that case POS will be the destination of that goods.

This proviso has created doubts among the taxpayers regarding the availment of ITC.

The circular clarifies that the aforesaid supply shall be treated as Inter State Supply since the location of the supplier is in India and the place of supply is outside India. Therefore, integrated tax (IGST) would be chargeable on the said supply of services.

The circular specifies that the supplier of service would report the place of supply by choosing the State code as 96- Foreign Country.

The circular further clarifies that ITC will be made available to the recipient of service subject to fulfilment of conditions laid down in Section 16 & 17 of CGST Act,2017

Comments* : *This circular clarifies the Nature of tax charged and the availability of ITC. Even if the supplier and recipient is within the same state then also IGST will be charged, and ITC will be available to recipient. With this circular litigation in respect to availability of ITC has been put to rest.

DOCTRINE OF LEGITIMATE EXPECTATION

CA Manoj Nahata, FCA, DISA (ICAI)

Introduction :

Doctrine of "**Legitimate Expectation**"as the name suggest is something which can be reasonably or legitimately expected by someone without having any legal rights attached thereto. There is no statutory definition prescribed for the term 'Legitimate Expectation' under any law. Legitimate expectation is the hope or the desire of a person to obtain a favorable order, inspired by past practice or promoted by representation. Legitimate expectation gives the applicant sufficient locus standi for judicial review.

This concept has emerged as an important doctrine in the taxation matters. The main reasons for gaining popularity of this doctrine perhaps might be the change in the Public Policy, change in the law and change in the behaviors and approach of the Executives by virtue of which someone is deprived of the express promise or representation made to him earlier. So, we can say that this doctrine not only takes care of the Promissory Estoppel but also the rules of natural justice, rule of law, non-arbitrariness, reasonableness, fairness, fiduciary duty and perhaps, to check the abuse of the exercise of administrative power.The doctrine of legitimate expectation in essence imposes a duty to act fairly.

Concept of Legitimate Expectation :

Doctrine of 'Legitimate Expectation' is one amongst several tools incorporated by the Court to review administrative action. This doctrine pertains to the relationship between an individual and a public authority. According to this doctrine, the public authority can be made accountable in lieu of a 'legitimate expectation'.The doctrine of legitimate expectation has an important place in developing law of judicial review.

The doctrine is that a person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. Even in cases where he has no legal right, he may still have a legitimate expectation of receiving the benefit or privilege. Such expectation may arise from a promise or from the existence of a regular practice which the applicant can reasonably expect to continue and be adopted in his case also. If his expectations are belied, the Court or the Tribunal may intervene and protect him by applying principles that are analogous to the principles of natural justice and fair play in action. The principle underlying legitimate expectation is based on Article 14 of the Constitution and the rule of fairness.

The Legitimate Expectations can be of two types viz: Procedural Legitimate Expectations and Substantive Legitimate Expectations.

Evolution of this Doctrine in India :

The development of the doctrine of legitimate expectation in India has been in linewith the principles evolved in common law English courts. In fact, it was from these English cases itself that the doctrine first came to be recognized by the courts in India.

In India this doctrine was first applied in the case of State of Kerala v. K. G. Madhavan Pillai 9(1988) 4 SCC 6690 wherein the Hon'ble Supreme Court held that a plaintiff had a right to sue for breach of contract. In this case, the respondents were given permission to open a new aided school and improve the current ones, but that permission was put on hold 15 days later by an order. The Respondents filed an appeal against this order on the grounds that it violated their

rights to due process of law. The Supreme Court concluded that Respondents had a legitimate expectation of protection under the sanction, and that the second order was contrary to the natural justice.

This doctrine was applied by the Apex Court in several cases, inter-alia,

- Navjyoti Coop. Group Housing Society v. Union of India ((1992) 4 SCC 477),
- Union of India v. Hindustan Development Corporation ((1993) 3 SCC 499)
- M.P. Oil Extraction v. State of M.P ((1997) 7 SCC 592)
- National Buildings Construction Corporation v S. Raghunathan ((1998) 7 SCC66)

In Madras City Wine Merchants v. State of Tamil Nadu ((1994) 5 SCC509)the Supreme Court postulated circumstances which may lead to the formation of legitimate expectations namely-

- If there was some explicit promise or representation made by the administrative body.
- That such a promise was clear and unambiguous.
- The existence of a consistent practice in the past which the person can reasonablyexpect to operate in the same way.

The Hon'ble Supreme Court has Observed in the case of Food Corpn. of India v. Kamdhenu Cattle Feed Industries JT 1992 (6) SC 259 as under:

"There is no unfettered discretion in public law.A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fair play in action'. Due observance of this obligation as part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness is a state action, it is therefore, necessary to consider and given due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review."

Application of doctrine in Taxation matters:

Let's understand the applicability of the doctrine in taxation laws with some judicial precedents.

- In case of Smt. Nayana P. Dedhia v. Assistant Commissioner of Income-tax [2003] 86 ITD 398 (HYD.) the fact of the case was that the C.B.D.T. had issued a press-release to effect that when returned income exceeds income returned in earlier year by 30 per cent, assessment should not be selected for scrutiny. Assessee satisfied conditions of said press-release. However, Assessing Officer took up assessee's case for scrutiny and made addition. The Tribunal relying upon the doctrine of Legitimate Expectations held Assessing Officer was not justified in taking up the case of the assessee for scrutiny in violation of the promise contained in the press-release, and consequently, the additions made in the course of such scrutiny assessment also deserve to be deleted without any further consideration.
- In case of Asiad paints Ltd. v.Union of India [2020] 113 taxmann.com 82 (Karnataka) the Karnataka High Court directed GST authorities to permit assessee to file Form GST TRAN-1 either electronically or manually on or before 31-12-2019. The Court held that it is legitimate for a going concern to expect that it will be allowed to carry forward and utilize the CENVAT credit after satisfying all the conditions as mentioned in the Central

Excise Law and, therefore, disallowing such vested right is offensive against Article 14 of the Constitution as it goes against the essence of doctrine of legitimate expectation.

- In case of Handy Waterbase India (P.) Ltd. v.Deputy Commissioner of Income-tax, Company Circle II(2), Chennai [2021] 127 taxmann.com 634 (Chennai - Trib.)held that when a person establishes unit under any policy of a Government on legitimate expectation that Government will fulfil its promises then such person is entitled to promises made by Government even in a situation where law has been amended and disentitles person from claiming such benefit. In this case the assessee had set up a new 100 per cent EOU in year 2004 on legitimate expectation that it will get deduction towards profit derived from such unit for 10 consecutive years as per provisions of section 10B and fact that there was no change in facts prevailing at time when deduction was allowed to assessee in assessment year 2004-05 and in assessment year 2009-10 when deduction was denied, Assessing Officer, without bringing out change in activities performed by assessee in its production facility could not have denied deduction provided to assessee by virtue of amended definition of manufacture by Finance Act, 2009 with effect from 1-4-2009.The matter was decided in light of the principles of doctrine of legitimate expectations and doctrine of promissory estoppel.
- In case of Maharashtra State Electricity Board v. Joint Commissioner of Income-tax [2002] 81 ITD 299 (MUM.) the ITAT Mumbai Bench 'D' the facts were that -While assessee's appeal against order of Commissioner (Appeals) was pending assessee filed a stay application on 27-2-200. The AO rejected stay application on very next day and issued garnishee order under section 226(3) on 01-3-2001 to assessee's bankers. It was held that notwithstanding that AO was technically correct in issuing garnishee orders on 01-3-2001, he was not justified in ignoring legal principles that had to be followed in such circumstances and conduct to be observed consistent with those principles. It could be said that tests of rationality and procedural propriety had not been followed when AO showed undue haste in passing orders. In instant case doctrine of legitimate expectation was applied and action of Assessing Officer was struck down. The assessee had a right of legitimate expectation to expect that the income-tax authorities would act in conformity with the law while dealing with his stay application and while considering the question whether it would be reasonable or proper to recover the tax through coercive steps such as garnishee orders even during the pendency of the stay application before the Tribunal.
- In another case of Shree Jainarayan Hariram Goel Charitable Trust v. Commissioner of Income-tax, (Exemption) [2021] 130 taxmann.com 493 (Raipur - Trib.)The assessee was a public trust engaged in running of school - Registration under section 12AA(1)(b) was granted to assessee on 07-11-2007.On basis of information from Investigation wing that assessee had received ingenuine donations, registration granted under section 12AA to trust was withdrawn and cancelled with effect from 01-4-2010 by Commissioner (Exemptions). Activity of trust was never doubted in past nor application or utilization of fund was doubted in any year since inception. No single instance was recorded by Commissioner (Exemptions) that assessee-trust was generating any unaccounted cash by any means, which had been allegedly transferred to donor in lieu of receiving donation. The doctrine of legitimate expectations demands that the assessee should be made privy to the tangible evidences in corroboration of statement sought to be relied upon. Similarly, the cross examination of deponent's statement is incumbent to prevent

miscarriage of justice.Since there was no tangible material to the effect that assessee had received in genuine donation, registration of charitable trust per se could not be withdrawn and cancelled and, thus, impugned cancellation order was set aside and issue was restored back to file of Commissioner (Exemptions) / Competent Authority.

- In the case of Siddharth Enterprises v. Nodal Officer [2019] 109 taxmann.com 62 (Guj.) it has been held that the right to avail transitional credit a substantive right and cannot be allowed to be lapsed by application of Rule 117 of the CGST Rules, 2017 on failure to file necessary forms within due date prescribed therein. Such prescription in violation of Article 14 of Constitution of India. Denial of credit against doctrine of legitimate expectations.
- In a recent case of Hon'ble Gauhati High Court dated: 31.10.2022 in case of Star Cement Ltd. and others v. UOI and others in the W.P. (C) No. 2208 of 2019 the doctrine of legitimate expectation was argued before the Hon'ble Court. In this case the notification dated: 05.10.2007 issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion framing Budgetary support under the GST regime was challenged on the ground of doctrine of legitimate expectations. It was argued that the UOI having made out a solemn representation in NEIIP, 2007, it is illegal and arbitrary to deprive the industrial unit from legitimate expectations and entitlement. The Hon'ble Court relying upon the judgment of Apex Court dated: 17.10.2022 in case of Hero Motorcorp Ltd. granted the liberty to the petitioner to approach their representations before GST Council and State Govt.

Limitations or Restrictions of this doctrine :

The doctrine of Legitimate Expectation is not of universal application under all circumstances. There are certain limitations on the operation of this doctrine.Over the years, several Courts rejected plea of Legitimate Expectations on different grounds. Let us try to understand those situations with some judicial precedents wherein this doctrine was not appreciated.

- In 'Union of India V. International Trading Co' –2003 (5) TMI 480 - Supreme Court of India it was held that the applicability of doctrine is a question of fact and that for invoking the doctrine of legitimate expectation there has to be a foundation.
- In 'Travel Agents Association of India V. Balmer Lawrie & Co and others' –2013 (10) TMI 48 - Competition Appellate Tribunal the question raised with respect to the action of the Govt. to direct Govt. officials to purchase travel tickets/tour exclusively from Balmer Lawrie & Co. Limited and/or Ashok Travel & Tours Limited. The appellant alleged that this was in contravention of provision of Sec. 4 of the Competition Act. The appellant contended that the Government had acted in a most unreasonable manner in taking out the aforesaid Government Memorandum. The Government was expected to provide free and fair opportunities to all the players and adopt a fair and transparent system of procuring tickets and tours for the officials. The appellant justified the stand on the ground that if the private players were allowed in the sector, it would be definitely cost effective. The appellant thus invoked the doctrine of legitimate expectation. The Competition Appellate Tribunal held that the appellant has not made out any case whatsoever for invoking this doctrine. Merely because the Government is a purchaser of air tickets and every ticketing agency cannot have expectation much less legitimate expectation that the Government would deal with it. No foundation has been made in this case by the appellant. In fact, no particular ticket agency could claim any right in the matter of dealing with the Government. The Government like

any other consumer has a right with the agency that it likes.

- Where there exist overriding considerations on grounds of public interest, the court would be justified in refusing relief though the doctrine is found applicable to the case and the applicant has been put to hardship on account of breach of the doctrine. Union of India v. Hindustan Development Corpn. AIR 1994 SC 980. Following this principle, courts in India have refused to give relief even in cases where the doctrine was applicable, on the ground that the security of the State was involved or that the doctrine cannot override legislative power or that public interest required that no relief be given to the complainant.
- It was laid down in P.T.R. Exports (Madras) Pvt. Ltd. And Others vs. Union of India and others (AIR 1996 SC 3461) that the doctrine of legitimate expectations has no role to play when the appropriate authority is empowered to take a decision under an executive policy or the law itself and that the Government is not restricted from evolving new policy on account of 'legitimate expectations' as and when required in public interest.
- It was reiterated in the case of Bannari Amman Sugars Ltd. V. CTO ((2005) 1 SCC625) that guarding legitimate expectation should not come at the cost of non-fulfillment of an overriding public interest, so to say that in case a legitimate expectation of a person is not fulfilled, the decision-making body can hide behind the veil of 'overriding public interest'.
- As per the observations of the Supreme Court in Assistant Excise Commissioner v. Issac Peter (1994 SCC (4) 104), the doctrine of legitimate expectation cannot be invoked to modify or vary the express terms of contract, more so when they are statutory in nature.
- Similarly, in Howrah Municipal Corporation& Others v. Ganges Rope Company Ltd(Appeal (civil) 8561 of 1997 on 19.12.2003)it has been held that no right can be claimed on the basis of legitimate expectation when it is contrary to statutory provisions which have been enforced in public interest.
- In Madras City Wine Merchants Association v. State of Tamil Nadu, the doctrine of legitimate expectation was held to become inoperative when there was a change in public policy or in public interest as has been reaffirmed in some of the aforementioned decisions.
- In Shrijee Sales Corporotion v. Union of India. (1997) 3 S.C.C. 398, it was observed that once public interest is accepted as the superior equity which can override individual equity the principle would be applicable even in cases where a period has been indicated for operation of the promise. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal.

Legitimate Expectation under GST :

The doctrine of legitimate expectation can be applied in the matters related to ITC under the GST. Seamless credit was the promise made by the Govt. while implementing GST law.Had seamless flow of credit not been visualized as the pillar of GST, the purpose of GST would have been lost and there was no necessity to implement GST.

Let's explore some probable situationsunder GST where this doctrine can be possibly argued to help the assessee.

(i) ITC mismatch (GSTR-2A v. 3B) cases:

Presently, tax dept. is issuing mismatch notices in respect of ITC appearing in GSTR-2A (Auto populated as per Pt III Sr. No. 8A of GSTR-9) vis-à-vis ITC actually claimed in the GSTR-3B. In

fact, despite satisfactory reply, dept. is confirming demand in many cases. The author is of the view that this doctrine can act as a savior for the assessee in such cases.

The Govt. has issued Press release on 03.07.2019 whereby it was made clear that taxpayers need not be concerned about the values reflected in this table. This is merely an information that the Government needs for settlement purposes. Further para 4 of the press release dated: 18.10.2018 already clarified that the facility to view the ITC in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act.Thus, one can legitimately expect that GSTR-2A appearing in table 8A would not impact the actual claim of ITC. The press release issued by the Govt. is one sort of clarification of its intent or its promise to the stakeholder to not to disallow ITC merely due to non-reflection in GSTR-2A. Further officers of the dept. are well aware of the press releases and in fact it acts like instructions to them. Hence author is of the view that one can successfully argue case invoking this doctrine.

(ii) No recovery /reversal of ITC due to non-payment of tax by the suppliers :

In order to claim ITC, section 16(2)(c) of the CGST Act, 2017stipulates that payment of tax on such supply has been actually paid by the supplier. But practically it is not possible for the recipient to verify whether the supplier has actually reported such supply and paid tax thereon. This is because the recipient has got limited access on the GST portal whereby, he can just know whether the supplier has filed its GSTR-3B return or not. Further we all know GSTR-3B return cannot be filed without payment of tax. Thus, it can be legitimately expected that once supplier has filed its GSTR-3B return he must have included all its supplies and paid the tax thereon. So, the author is of the view that this doctrine can also be applied in such scenario.Moreover, one may also invoke 'Doctrine of impossibility' along with this doctrine to present a strong case.

(iii) Claim of ITC beyond the statutory timeliness u/s 16(4) :

The Govt. vide section 16(4) of the CGST Act,2017 has fixed an upper time frame within which ITC can be taken. As per the amended section 16(4) no ITC shall be taken after the thirtieth day ofNovember following the end of financial year or furnishing of the relevant annual return,whichever is earlier.Now, the dispute arising here is what will be the fate of ITC which was though taken or availed in the books of accounts well within time frame but GSTR-3B in respect thereof was filed beyond the time prescribed i.e post 30th November.

The author here again is of the view that this doctrine may be useful. In this respect the author would place reliance on the legacy law of the Service Tax. As per rule 4 of the CENVAT credit rules 2004 the claim of input was never linked to the filing of return by the recipient. In other words, the recipient was entitled to claim input merely on the basis of recording transactions in its books of account within a period of 1 year from the date of invoice. Under GST law also the wordings used in section 16(4) is 'entitled to take' which does not necessarily mean that ITC can be claimed only by way of filing GSTR-3B. It may be taken based on the accounting entry recorded well within the time frame. So based on the past precedence one may legitimately expect that once input is recorded in the books of accounts within the time frame prescribed under section 16(4) then it becomes vested property of the assessee and one can legitimately expect to avail or utilize the same at a later point of time. At the same time, one may also argue that unlike GST there was no concept of electronic credit ledger under service tax law. Hence there was never a condition to file return for claim of ITC. But still author would stick to its view that credit under GST is not based on filing of return rather entries in the books of accounts within the prescribed time frame.

(iv) Mismatch /Difference in GSTR-1 v. GSTR-3B :

Presently, tax dept. is issuing notices on account of differences/excess liability reported in GSTR-1 vis-à-vis GSTR-3B. Further section 75(12) of the CGST Act,2017 and explanation thereto empowers tax dept. to recover such self -assessed liability directly under section 79. As a result, the tax dept. is trying to recover self-assessed liability without issuance of SCN. But in view of the author the same is wrong and not in line with the doctrine of legitimate expectation. The principles of natural justice and procedural fairness is always expected in any quasi-judicial proceedings. If the opportunity is denied then it is violation of protections granted under article 14 of the constitution. The Govt. has finally realized the fact that difference in GSTR-1 vs. GSTR-3B may be on account of genuine mistakes etc. Accordingly, Govt. issued instructions no: 01/2022 dated:07.01.2022 allowing tax payers to explain such differences. The author is of the view that even if these instructions wasn't issued then also one can argue such cases based on the doctrine of legitimate expectation.

(v) Suspension of registration without affording opportunity :

The proper officer is empowered to suspend registration under rule 21A where he has reason to believe that the registration of a person is liable to be cancelled under section 29 and rule 21 of the CGST Rules,2017. Till 21.12.2020 the same was allowed after affording reasonable opportunity of being heard. But w.e.f. 22.12.2020 the Govt. vide notification 94/2020 – Central Tax dated: 22.12.2020 has omitted the opportunity of being heard in suspension of registration. Thus, he may now straightway suspend the registration without any notice/opportunity. Again, the author is of the view that in such cases doctrine of legitimate expectation may be applied. A reasonable opportunity of being heard is foundation of principles of natural justice and it is always expected even though not specified in the rule 21A. Thus, doctrine of legitimate expectation fits in such cases to get relief.

Conclusion :

Theapplication of doctrine of legitimate expectations depends on the facts and circumstances of each case. There is no straight jacket formula or a thumb rule to apply this doctrine. No doubt this doctrine can be applied even where no specific rights are conferred under a statute but at the same time it must be kept in mind that public policy and public interest overweigh this doctrine. If a denial of legitimate expectation in a given case amounts to denial ofright guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse ofpower or violation of principles of natural justice, the same can be questionedon the well-known grounds attracting Article 14 of the Constitution of India but claim based on mere legitimate expectation without anything more cannot 'ipsofacto' give a right to invoke these principles. Hence this doctrine must be applied carefully after due consideration of all the facts and circumstances.

Disclaimer : Views expressed here-in-above are purely personal views of the author. The possibility of other views on the subject matter cannot be ruled out. So, the readers are requested to refer relevant provisions of statute, latest judicial pronouncements, circulars, clarifications etc. before acting on the basis of the above write up.

GST ON RENTING OF RESIDENTIAL DWELLING

CA Sakshi Jhajharia

Introduction

It has been five years since GST has been introduced in India. The last half decade has been challenging for professionals as well as businessmen as the Law has continuously been evolving. With numerous notifications, amendments, circulars and clarifications, the GST Law has undergone several changes from its introduction. GST has also witnessed several landmark judgments over the last five years, from taxability of ocean freight, to refund under the category of inverted duty structure, from several classification related advance rulings, to the scope/ambit of the definition of supply. While the Tribunal is yet to be set up, the Lawmakers are issuing clarifications and circulars, some of which may increase litigation. The Department has also proven to be reckless in numerous instances while issuance of notices. In such scenario, keeping pace with the ever-changing law is crucial. One of the interesting amendments in GST recently, has been the taxability of rental services of residential dwelling.

Residential Dwelling

'Residential Dwelling' is neither defined in the Act nor in the exemption notification. Therefore, the meaning of expression 'residential dwelling' shall be understood on the basis of the normal trade parlance. It means any residential accommodation, but does not include hotel, motel, inn, guest house, campsite, lodge, house boat, or like places meant for temporary stay.

In the case of ***Collins (AP) v. Uratemp Ventures Limited [2012] 24 taxmann.com 134 (ECJ),*** the European Court of Justice observed that "dwelling" means a place where one lives regarding and treating it as home; it is the place where he lives and to which he returns to sleep and which forms centre of his existence; however, cooking facilities are not necessary for regarding a place as a dwelling.

Further, as per CBEC's Educational Guide on Taxation of Services, it has been clarified that if furnished flats given on rent for temporary stay (a few days) then such renting as residential dwelling for the bonafide use of a person or his family for a reasonable period shall be residential use; but if the same is given for a short stay for different persons over a period of time the same would be liable to tax.

Taxability of Renting of Residential Dwelling up to 18/07/2022

The levy of GST on services of renting of residential dwelling, also known as real estate services was dependent on the purpose for which such services are used by the recipient. A residential dwelling may be used for residential purposes or commercial purposes or partly for residential and partly for commercial purpose.

As per Sl. No. 12 of Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017, services by way of renting of residential dwelling for use as residence is exempt from GST.

As per Sl. No. 16(iii) of Notification No. 11/2017 – Central Tax (Rate) dated 28/06/2017, real estate services are liable to GST at the rate of 18%. Hence, all commercial properties as well as residential dwellings rented out for use as commercial purpose shall be liable to GST at the rate 18%.

In case the residential dwelling is used partly for residential purpose and partly for commercial purpose, like office of a lawyer or clinic of a doctor, the said rental services shall be considered as composite supply of services and the taxability shall be determined based on the principal supply of services. As per the CBEC's Education Guide on Taxation of Services, such cases would be considered as a case of bundled services as renting service is being provided both for residential use and for non-residential use.

From the above it can be understood that the use of the residential property was a decisive factor in determination of whether rental services are liable to GST or not. However, an important aspect was missed in the aforesaid scheme of levy. Suppose, a company has availed rental services for residential purpose of its employees or the residential house is being used as a

back office or godown. The nature of expenditure is business in nature. However, owing to the aforesaid exemption, such services were exempt from GST. The intention behind such exemption was to ensure that rental services for residential purpose is exempt from GST, being a personal expenditure. If the property is used for residential purpose of employees, the said expense is a business expenditure, i.e., in the course of furtherance of business, however, it remained outside the purview of GST altogether. To clear this anomaly, it was important to levy GST on such untaxed business transactions either under forward charge basis or reverse charge basis.Such anomaly was corrected by levying tax as discussed here under.

Amendment with effect from 18/07/2022

The other challenge was to ensure that individuals having such rental income are not burdened with additional compliance responsibility, the following service was added under reverse charge mechanism vide entry no. 5AA of Notification No. 13/2017 – Central Tax (Rate):

Service by way of renting of residential dwelling to a registered person.

It is important to note that there are two facets of the above entry:

(1) Renting of residential dwelling

(2) Recipient must be a registered person

There is no condition stipulating the purpose of taking such residential dwelling on rent, it may be for residential purpose or non-residential purpose. In either case, the registered person is liable to pay tax under RCM. The next important aspect is to note that the recipient must be a registered person. If an unregistered person takes a property on rent, such person is not required to take compulsory registration under section 24 of the CGST Act solely on account of the aforesaid RCM entry. In other words, since this RCM provision applies only on registered persons, section 24 of the CGST Act does not get triggered by the said provision.

Along with the insertion of the RCM entry, the exemption notification was modified as well. The following amendment was introduced:*Services by way of renting of residential dwelling for use as residence* ***except where the residential dwelling is rented to a registered person.***

However, after the above amendments were introduced, there was confusion among the professionals as to whether rental services for residential purposes by sole-proprietors in their personal capacity was also liable to GST. Could taxability be determined on the basis of the registration status of a person for a purely personal expenditure?

However, it is crucial to understand that renting of a residential dwelling to a proprietor of a registered proprietorship firm who rents it in his personal capacity for use as his own residence and not for use in the course or furtherance of business of his proprietorship firm and such renting is on his own account and not that of the proprietorship firm, shall be exempt from tax. The expenses of a proprietor for personal use cannot be treated as a business expenditure and cannot be considered to be provided to a registered person.

The matter was clarified by the Hon'ble Delhi High Court in the case of ***Seema Gupta v. UOI [2022] 142 taxmann.com 564 (Delhi)*** wherein it was held that where renting of a residential dwelling by a proprietor of a registered proprietorship firm, is in his/her own personal capacity for use as his/her own residence and not for use in course or furtherance of business of his/her proprietorship firm and such renting is on his/her own account and not that of proprietorship firm, same is exempt from GST

Explanation inserted with effect from 01/01/2023

Subsequently, the following explanation has also been inserted in the exemption notification vide Notification No. 15/2022 – Central Tax (Rate):

Explanation. - For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, –

(i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and

(ii) such renting is on his own account and not that of the proprietorship concern.

Hence, it has been clarified that in case the rental services are availed by a registered person being a proprietor entirely for his own personal use, the exemption shall be available to such persons. However, the above explanation has been inserted

with effect from 01/01/2023, which raises an important question as to the position prior to such explanation. Explanations are generally clarificatory in nature and there is no iota of doubt that clarifications are retrospective in nature. However, mentioning an 'effective date' for inserting an explanation may pave way for unnecessary litigation for the period from 18/07/22 to 01/01/23.

Availability of Input Tax Credit

As per Section 16 of the CGST Act, every registered person is entitled to take credit of input tax charged on any supply of goods or services or both to him which are ***used or intended to be used in the course or furtherance of his business*** subject to the conditions and restrictions prescribed in the Law.

RCM paid on services by way of renting of residential dwelling by registered persons which is in the course or furtherance of business, shall be available as credit. However, it may be argued by the Department that the said services are squarely covered by Section 17(5)(g) which blocks credit on goods or services or both used for personal consumption, by contesting that the services are availed for personal consumption of employees/ directors/ other officials. In this regard, it must be noted that such expenses are of business nature inasmuch as the expenses are debited in the Profit & Loss Account of the business entity. Hence, cases of disallowance of such credit must be appropriately contested.

Disclaimer: All views expressed above are personal and do not represent any organization or group.

TAX IMPLICATION OF NON-RESIDENTs UNDER GST

CA Preity Nagi

Goods and services tax (GST) was introduced in India to make compliances user-friendly and avoid multiplicity of taxes. It aims to promote digitalization and increase efficiency through automation of compliance. The registration process introduced under GST is smooth and convenient. There are separate sets of provisions for registration, returns, refunds, etc. for domestic taxpayers and for non-resident taxable persons.

India has seen massive industrial development over the past two decades. Investments by non-resident Indians in India have accelerated the growth of the Indian economy. Various steps have been taken by the Indian government to help facilitate trade and business for NRIs. This has prompted the non-resident Indians to consider India as a viable destination to invest in and earn profits. Investments by NRIs in India have accelerated the growth of the Indian economy.

Section 2(77) of CGST Act defines Non-resident taxable person as any person who occasionally undertakes transactions involving supply of goods /services, whether as principal/agent/in any other capacity, but who has no fixed place of business/residence in India.

A non-resident taxable person making taxable supply in India has to compulsorily take registration. There is no threshold limit for registration. A non-resident taxable person cannot exercise the option to pay tax under composition levy. He has to apply for registration at least five days prior to commencing his business in India using a valid passport (and need not have a PAN number in India). A business entity incorporated or established outside India, has to submit the application for registration along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its Permanent Account Number, if available.

Registration Requirement of NRTP

Section 24 of the GST law specifies a mandatory requirement for registration for a non-resident taxable person without any threshold limit. Therefore, the minimum threshold limit of Rs. 40 lakh/ 20 lakh is not available to Non-Resident Taxable Person. Hence, any Non-resident, who is falling in the definition of Non-Resident Taxable Person, is required to obtain GST Registration irrespective of whether the business is involved in a one-time transaction or frequent taxable transactions.

Registration Procedure for a Non-Resident Taxable Person

- Every person, who falls within the definition of Non-Resident Taxable Person, has to apply for GST registration at least 5 days prior to the commencement of business.
- For GST registration, NRTP shall have to provide its Tax ID or Unique number of its own country.
- NRTP need not to have a PAN of India and it can use its valid passport instead.
- Application for registration need not be like normal applicants. Application can be submitted in simplified form ie REG-09.
- In relation to NRTP GST registration initially a temporary reference number gets generated

electronically by the Common Portal. The purpose of this temporary number is to advance deposit of tax in his electronic cash ledger and an acknowledgment will be issued thereafter.

Provision regarding Returns and payments

As per Rule 63 of CGST Rules The NRTP shall furnish a return in FORM GSTR-5 electronically through the common portal, including the details of outward supplies and inward supplies. Further, he shall pay the tax, interest, penalty, fees or any other amount payable under the Act within 20 days after the end of a calendar month or within 7 days after the last day of the validity period of registration, whichever is earlier.

Provision regarding Refund

The amount of advance tax deposited by a non-resident taxable person at the time of initial registration/ extension of registration will be refunded only after the person has furnished all the returns required in respect of the entire period for which the certificate of registration granted to him had remained in force.

GST Advance Tax Payment by Non-Resident Taxable Person

GST Provisions provide that non-resident taxable person is required to make an advance deposit of GST. This advance payment of tax shall be of an amount equivalent to the estimated tax liability of such person for the period for which registration is being sought.

- At the end of GST registration period on submission of final returns, any tax, which is excess paid, shall be refunded to the NRTP.
- GST registration period, which is initially applied by the NRTP, can be extended by the non-resident taxable person. For the same, an application using the form GST REG-11 should be furnished electronically on GST Common Portal.

Input tax credit to Non-resident

- Section 17(5) (Block input tax credit) restrict the input tax credit on the supply received by non-resident in India, however he is free to take input tax credit of goods imported from outside India

OIDAR Services under GST

OIDAR Services or Online Information and Database Access or Retrieval (OIDAR) Services relate to the delivery made through the internet or electronic network with automated supply and minimal human intervention. With the tremendous growth in cloud technology and SAAS based products in India over the last decade, more and more services are being introduced by Indian and Non-Resident Taxable Persons, which would fall under the classification of OIDAR services.

➢ **LIST OF OIDAR Services**

The IGST Act defines OIDAR Services as delivering services by mediating with information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology. Some examples of OIDAR services include:

- Online advertising service providers
- **Website supply, webhosting, distance maintenance of programs and equipment**
- Cloud service providers
- Supply of e-book, software and other intangibles via telecommunication networks or the internet
- Providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network
- Digital data storage services
- Online gaming services
- **Supply of music, filmsand of political, cultural, artistic, sporting, scientific, and entertainment broadcasts and events.**
- **Supply of Teaching Services.**

➢ **GST Registration for OIDAR Service Providers**

Any entity providing OIDAR services is required to mandatorily obtain GST registration in India, irrespective of the aggregate turnover criteria. The following types of taxable person are required to obtain GST Registration mandatorily and OIDAR service providers is one of them:

- Persons making any inter-State taxable supply;
- Casual taxable persons;
- Persons required to pay tax under reverse charge;
- Electronic commerce operators;
- Non-resident taxable persons;
- Persons required to deduct tax;
- Persons who supply goods and/or services on behalf of other registered taxable persons whether as an agent or otherwise;
- Input service distributor (whether or not separately registered under the Act)
- Persons required to collect the tax;
- Electronic commerce operator
- Every person supplying online information and database retrieval services from a place outside India to a person in India, other than a registered person;

Hence, most OIDAR service providers even outside India providing services to residents in India shall mandatorily obtain GST registration by virtue of being classified under one or more of the above categories.

➢ **SERVICES TO BE TREATED AS OIDAR:-**

Any service can be treated as OIDAR service if it qualifies under two cumulative conditions. If the service fails even one of the two conditions, it will not be categorized under OIDAR.

The two conditions are as follows:

1. Whether the provision of service is mediated by information technology over the internet or an electronic network?
2. Whether it is automated and impossible to ensure in the absence of information technology?

➢ **GST applicability on OIDAR services**

The taxability of OIDAR services is dependent on the location of the recipient and GST liability is determined accordingly:

- If both the supplier, as well as the recipient, are in India, then GST will be applicable and will be charged on the basis of **forward charges.**
- If the supplier is outside the taxable territory, and the recipient located in India is registered under GST, then GST will be applicable. Furthermore, payment of goods and service tax will be on **reverse charge**
- If the recipient is residing in India, but is not registered under GST, and the supplier is outside the boundaries of India, then GST will be applicable, and payment for goods and service tax will be on forward charge basis. When an unregistered, non-taxable person in India imports the OIDAR services, the supplier located outside India will make the payment for such tax on **forward charge**
- If both the suppliers, as well as recipients, are not located in India, then no GST will be applicable.
- If the supplier is residing in India, but the recipient is located outside the taxable territory in India, no GST will be applicable to the export service.

➢ **Who will be responsible for paying the tax?**

- **Recipient under reverse charge**: Under this mechanism, the recipient of the service is liable for the payment of GST. Hence, all registered business entities

receiving OIDAR services in India are required to pay GST when the supplier of such service is located outside India. This is mainly to protect domestic service providers.

- **Supplier/Intermediary:** Where OIDAR Services are provided from a non-taxable territory to a non-registered person or individual.
- **Intermediary:** Sometimes OIDAR products are not owned or belong to the portal or app where it is available for sale but such intermediaries are facilitating entire transaction on purchase of such software/music or other OIDAR products.

➢ **Registration process for OIDAR service providers**

- **OIDAR service providers located in India**: OIDAR service providers located in India can obtain GST Registration through the normal procedure by applying through the GST portal.
- **OIDAR service providers located outside India**: All OIDAR service providers supplying services to residents in India and not located in India are also required to comply with GST regulations. Any OIDAR service provider supplying services from a location outside India to a non-taxable online recipient is required to obtain GST registration by filing **GST REG-10**.The application for GST Registration for OIDAR service providers can be submitted electronically with a self-attested copy of valid passport of the promoters and tax identification number or unique identification number issued by the foreign Government or PAN.

The application for GST registration must be submitted at least five days prior to the commencement of business in India.

Foreign companies can appoint a representative in India for obtaining GST registration, filing GST returns and paying GST payments on behalf of the foreign entity.

REFUND OF IGST PAID ON SUPLLY OF GOODS TO INTERNATIONAL TOURIST LEAVING INDIA UNDER SECTION 15 OF IGST ACT.

The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

Eligibility to claimRefund :-

To claim Refund person seeking refund must be a Tourist as per the definition of IGST Act.

Here The term "tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes. Here the purpose of Stay is a Key factor to be taken into Consideration.

- ➢ The outbound passenger leaving India accompanied by goods purchased on which GST is paid during their stay in India on which IGST has been paid are entitled to claim Refund while leaving India.
- ➢ The outbound passenger is entitled to claim refund of Only IGST paid on goods purchased during their stay in India.
- ➢ A foreign Nationality person who came to India on a work permit and Staying in India for a period exceeding six months will not be categorized as Tourist for the purpose of IGST, therefore not eligible for Refund of IGST.
- ➢ The Refund is not available on services used by the outbound passenger while his stay in India, Eligibility of Refund is only on the Goods being taken along while leaving India.
- ➢ The tax to be collected by India on Goods

and Services where such consumption took place. The Goods which are taken along by the outbound passenger/tourist cannot be considered to be consumed in India and eligible for Refund as goods are considered as Export.

- The Supplier needs to take the proof of passport and visa of such tourist and then arrange to charges IGST on goods supplied to such tourist. The passport and copy of Visa as evidence with the supplier for the basis for charging IGST.
- As per Section 15 of the IGST Act Indians on work permit Coming to India for short duration cannot be considered as Tourist for the purpose of claiming refund of IGST. Indians on work permit in other countries will remain Indian Immigrants.

Tourist as per Section 15 of IGST Act includes :-

- Foreign Diplomats on Official duty in India.
- Foreign Artists, Musicians and Actors visiting India to perform Shows.
- Crew of International Conveyance entering and existing India within short duration.
- Foreign Sports person Visiting India for participating in tournaments or training process.
- Foreign Journalist and camera Crew Visiting India.

Needless to say, GST is certainly one of the path breaking tax reforms of India. In fact, the Finance Minister is positive about GST revenue collection. He said that the GST revenues have been upbeat. This was despite the major GST rate reductions and benefits given to non-residents. It would be like a piece of cake for assessing taxability and decision making for the Indian government as well as non-resident investors.

FAST TRACK MERGER U/S. 233 OF THE COMPANIES ACT, 2013

FCS Mohan Ram Goenka, PCS and ACS Urvi Sahay, PCS

Overview

Sec 233 of the Companies Act, 2013

Section 233 of the Companies Act, 2013 defines the concept of Fast Track Merger which means a simpler procedure for mergers and amalgamations of small companies, holding and wholly subsidiary companies and any other class or classes of company as may be prescribed. Here, in this process these companies undergo merger and amalgamation procedures quickly, simply and within fixed time duration. The Companies Act, 2013 clearly notifies that it applies to all kinds of compromise and arrangements that come within the purview of Sec 233.

In comparison to traditional mergers process, the new Act has simplified the procedures as it no further involves judicial process as concerned with the National Company Law Tribunal. Now the companies are required to take an approval from Central Government power vested with Regional Directors and further some procedural compliances of the Registrar of Companies and Official Liquidator and any other person effecting by the scheme.

Applicability

In terms of Section 233(1) of Companies Act, 2013, a scheme of merger or amalgamation may be entered between:

i. two or more small companies

ii. a holding company & its wholly owned subsidiary company.

iii. other class of prescribed companies.

Eligibility Criteria

The above class of companies would also be eligible for out of Court/Tribunal process of compromise or arrangement in terms of Section 233(12) of the Companies Act 2013. Such compromise or arrangement could be:

i between a company and its creditors or any class of them; or

ii between a company and its members or any class of them.

Due Dilligence under the Fast Track Mergers & Amalgamation

The due diligence is the prime area under the Fast Track Mergers & Amalgamation may be summarized as below:

1. Check MOA/AOA

First of all we have to check that there must be power to amalgamate with other companies in the Memorandum of Association (MOA) of the transferor and transferee companies seeking to merge. If no such power is provided in the MOA then, as a first step get the MOA to be amended and insert the provision empowering the company to get itself merged with one or more other companies.

2. Prepare Financial Statement

Transferor and transferee companies needs to prepare the Provisional Financials statements as on the date (if the merger is filed after 6 month of the end of the financial year) in other words we can say that in any merger whether 230/233 the same has to be submitted to the regulators, The Last Audited Financial statement duly approved by the shareholders and filed in MCA has to be also submitted to the Regional Directors in CAA-11. Its is to be ensured that the Financial statement has been prepared in compliance of Schedule III of the CA-2013, as pe the prevailing

law at the time of approval by the directors and the shareholders.

3. Scheme of Merger

Transferor and transferee companies needs to prepare One composite Scheme of Merger. Now in the Scheme various clauses has to be written very cautiously like Authorized capital post treatment of transferor and transferee companies and fees to be payable, if any, the litigation of any authority in respect of transferor company post merger shall be transferred to the transferee company be also covered properly. Exchange ratio on the basis of valuation report be also stated in the Scheme. In this way each and every point of the Scheme be read and redrafted as required..

4. Valuation

Registered valuer are the persons who has the qualification (issued by the IBBI) to issue the Valuation Report in Securities, land and Building and Plant and machinery,.

A composite Valuation Report has to be obtained from the Registered valuer as per Sec 247 of the Companies Act 2013 for all the transferor and transferee companies. At the time of valuation certain things be kept in mind like—Properties are there in any merging companies or only Investment in Shares is there, because post merger the property of the transferor companies need to be registered in the name of the transferee company and that involves the stamp duty (in West Bengal it is 3.2% of the fair market value) So this aspect be also taken care of at the time of the valuation. The Valuation report in case of property need to be obtained from the registered values of Land and building, then the Registered Valuer of Securities will issue his report. In case of going concern many time the DCF method is also being adopted by many valuer on the basis of the projection of the company's financial performances. Finally the exchange ratio is determined by the valuer and the same has to be stated in the Scheme of Amalgamation

5. Appointed Date

The application shall be filed within one year from the Appointed date or otherwise proper justifications has to be given in the Scheme, if it is beyond one year.

6. Board Meeting

Board Meeting needs to be convened to approve the Scheme of Merger and File MGT-14.

Procedure under the Fast Track Mergers & Amalgamation

The procedure under the Fast Track Mergers & Amalgamation may be summarized as below:

1. File CAA-9 and GNL-1

In the board meeting form CAA 9 needs to be furnished which companies needs to send it to Registrar of Companies (ROC), Official Liquidator (OL) Income Tax, CCIT with Board resolution and Scheme. Manually the Copy has to be submitted and also e-mail if possible. Also GNL-1 be filed in MCA portal by all the companies.

2. As per Rule 25 Sub rule (1), filing of Notice of proposed scheme to ROC & official Liquidator, Income Tax, CCIT for Inviting their rejections/Suggestions, if any in Form CAA-9.

3. Revert from above stated regulatory on Suggestions/ Objections, if any, and they will take 30 days to give objections/ suggestion

4. File CAA-10 and GNL-2

As per Rule 25 Sub rule (2), Declaration of Solvency CAA-10 to be filed by the Companies with ROC-Declaration of solvency has to be filed with ROC before sending the notice for convening the meeting of creditors & members. Along with CAA-10 the last Audited Financial Statement and the provisional financial statement being not older then two month from the date of board meeting be also attached. GNL-2 shall be also submitted in MCA portal by all the companies .

5. NOC

NOC from 90% of the value of the Creditors (Secured & Unsecured). As per Section Sec 233 (4), Approval of the scheme by creditors 9/10th in

value of creditors either in Meeting or otherwise approved in Writing. NOC to be dated after filing of CAA-10 but before the EGM for final approval of Scheme

6. Calling of Extra Ordinary General Meeting of Shareholders and Creditors

The scheme of merger & Objections or suggestions as received from ROC & Official liquidator, I T, CCIT has to be incorporated in the Scheme. The same will be considered in Board meeting and the Transferor and transferee companies board needs to call the EGM.

7. As per Rule 25 Sub rule (3), Notice of General Meeting----Notice of the meeting should be accompanied with Declaration of Solvency --- CAA-10 and Scheme.

8. Once a Shareholders meeting has been called by issuing the Notice in compliance of Section 100 of CA-2013, then in the meeting 90% of the shareholders consent has to be obtained.

In creditors meeting the Notice of meeting has to be send with a 21 days gap and in the meeting 90% consent of the total value of the creditors has to be obtained.

9. As per Rule 25 Sub rule 4(a), Submission of Form CAA -11 in RD-1 and also Form GNL -1 to ROC-Within 7 days after Conclusion of General Meeting, and Should contain a detailed statement as required in GNL-1 (This has to be submitted only by the transferee company for and on behalf of all the transferor companies). Also the mail may be send to the RD, ROC and OL mail id. Hard Copy shall be send to all but the original will be submitted in the RD office

10. The office of the Regional Director may send the questionnaire which needs to be answered within the time stated in the letter by the transferee company.

11. After consideration of the submissions made by the company Regional director may reject or approved the scheme.

12. As per Rule 25 Sub Rule (6), Order for approval of the scheme will be received in Form CAA-12, Order may be expected within 60 days and in case the objection comes then the time limit for filing application with Tribunal for rejection of application is 60 days in CAA-13.

13. As per Section 233(7), Filing of INC-28 for the order received-Within one month of Order received for the approval of the scheme.

Post-Merger Effects & Compliances--

Increase of the Authorized Capital of the transferee Company by addition of the Capital of the transferor Company by payment of additional fees as applicable or not.

Then Allotment of share to the shareholders of the transferor company and filling of PAS-3

The registration of the scheme shall have the following effects, namely:

(a) Transfer of property or liabilities of the transferor company to the transferee company by compliance of the stamp duty payment as applicable;

(b) The charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company;

(c) Legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company;

(d) Surrender of PAN, IEC, GST, ESI, PF of the transferor company to the concerned Authorities.

(e) Closure of the bank account of all the transferor companies.

(f) Issue of Certificates to the shareholders of the transferor companies and extinguishment of their certificates. Also the share register be updated accordingly of all the transferee and transferor companies

(g) Minutes of the Board and general meeting as applicable be recorded and signed properly.

All works be completed otherwise if it is left undone or postponed to future then it generally remain uncompleted, so the same be avoided.

NCLAT JUDGEMENTS ON PRE EXISTENCE OF DISPUTE UNDER IBC IN DECEMBER, 2022

Binay Kr Singhania

NCLT Mumbai dismissed petition filed by Sri Balaji Paper Pack Pvt Ltd, operational creditor (OC) on 2/7/2020 for admitting insolvency against Laxmi Crockery (Pune) Pvt Ltd (CD). OC approached appellate authority NCLAT Delhi. NCLAT pursued the matter.

OC supplied material to CD and approx. Rs. 45.35 lakhs amounts remain unpaid. OC raised demand note on 23/07/2019 for Rs, 65.20 lakhs (including interest of Rs. 19.85 lakhs) which was served on 29/7/2019. CD replied on 8/8/19 and raised dispute for damaged materials and also stated that petition is not maintainable as there was a supply by CD and the aggregate of supply by CD is more than claim of OC. CD also stated that CD is financially strong.

Mainly 3 points were raised by CD, 1) Pre existence of dispute, 2) Limitation period and 3) Jurisdiction.

NCLAT considered all the points raised by CD and observed that IB Code states that existence of dispute, if any or, record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute. Here the dispute was raised by CD while submitting reply on 8/8/19 whereas the demand notice was issued on 23/7/19. There was no dispute raised prior to receipt of demand notice. Further CD has itself mentioned that materials supplied by CD to OC were not billed for clarity on tax payment. Since the bills were not received prior to issue of demand notice which means the dispute raised is an afterthought and can not be considered.

Limitation period and jurisdiction were clubbed and heard together. It is noticed that petition under section 9 of IB Code was filed on 26/08/2019. OC supplied materials and raised total of 13 bills. Out of them 11 bills were issued prior to 23/8/16 and 2 bills were issued on 31/08/2016 and the total of these bills are approx. 3.50 lakhs which is more than threshold limit of 1 lakh. Threshold limit was further increased to 1 crore in March 2020 but earlier it was 1 lakh. Further, for the purpose of Limitation the last transaction need to be taken into account.

NCLAT opined that Adjudicating Authority miserably failed to take into consideration the pecuniary jurisdiction under which the application ought to have been admitted.

NCLAT finally passed order on 20/12/2022 and asked NCLT to start insolvency against the CD.

In a similar another case of Saha Paper Mills Ltd (OC) vs Shree Rama Newsprint Paper Ltd (CD) there was sales made by OC and it was decided that in case of any wastage or defect, CD will return the goods and raise debit note to OC. CD used to make adhoc payments to OC.

OC supplied goods and amount remain unpaid. OC emailed dues to CD. CD confirmed outstanding of Rs, 37.33 lakhs on 15/04/2017. Further there was a debit note from CD on account of wastage to the tune of Rs 1.6 lakhs. However the goods were not returned. There was dispute as regards to the outstanding amount. OC issued several mails to CD for reconciliation of accounts and clarifying disputes which was not resolved by CD. Even representatives visited the CD for reconciliation but it was not made. Thereafter CD replied that there was a change in management of CD in 2015 and the management of CD changed with share transfer agreement and

new management shown its inability to resolve earlier dues.

NCLAT opined that change in management is internal matter of CD and it has no role of OC. Further OC provided several mails for reconciliation but CD did not resolved the matter. CD claimed that it has made excess payment is not acceptable as it is an after thought.

NCLAT relied on precedence in the case of Mobilox Innovations Private Limited vs. Kirusa Software Private Limited as to how the Adjudicating Authority has to examine an Application under Section 9.

Para 34 is as follows:-

"34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an "operational debt" as defined exceeding Rs 1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, Company Appeal (AT) (Ins.) No. 1088 of 2022 7 and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."

NCLT dismissed petition filed by OC on the ground that there was dispute as regard to amount outstanding and there was pre existence of dispute.

NCLAT marked that the dispute was as regard to quantum of outstanding and it was not for quality of goods. The ground for rejection of petition u/s 9 of IB Code by NCLT is erroneous. NCLAT asked NCLT to admit the case under insolvency within a month of receipt of order.

WORKING CAPITAL MANAGEMENT FOR STARTUPS

Deepak Gupta

It was 6:30am on Friday, I called my friend, Ravi – founder of a fintech company. I was apprehensive, he would be occupied with his daily chores and might not be available. Fortunately, Ravi picked up the call. Among zillion things hounding attention, he was logging into his company's bank account portal. He informed me that he has an investor's call lined up, an upcoming board meeting needs to be managed for essential matters, and a couple of investors are seeking his time for somecritical product updates and need to take certain important calls about insourcing tech and sales functions. I could understand the situation of Ravi, he is stuck in a quandary of balancing between managing tactical problems and working on strategic growth areas. He is a sample of a larger cohort of founders.

Two plights shared by almost all the founders of startup enterprises: First, start the day checking the bank balance and priorities the urgent payouts from the never-ending list of vendor bills that always increase like Hanuman's tail. Second, end the day with a sinking feeling of not recovering the total amount against the invoices. Most companies face the double whammy of the cash crunch cycle. On one side, creditors don't give leeway in payment; on the other side, debtors take their own sweet time to pay, disregarding the payment terms. The plight becomes unbearable, with unsold inventories further skewing the liquidity position. The problem statement is significant, but the solutions are simple and require continuous rigour.

Working capital - Ingredients

Before diving deep into the subject, let's understand what working capital comprises.

Working capital management requires hawkish eyes on each element. Various strategic and tactical decisions must be taken to optimize the working capital and ensure it works for the company's benefit.

The working capital may be positive or negative depending on the company's nature. Nevertheless, each element requires careful consideration.

Receivables Management :

Trade receivables are the outstanding amount against the goods/services supplied in the normal course of business. Most startups struggle to get money on time from customers. There can be myriad reasons, but the most common are:

- Not raising invoice on time
- Incorrect invoice in terms of quantity or price
- Not including adequate details / supporting
- Invoice not submitted to the correct person/function
- Above are some hygiene issues that can be addressed through basic checks and controls.

Receivable management starts when startups enter into a contract with the customers. In many cases, the payment terms capture the credit period. But it does not specify other terms, such as the pattern in which the invoice needs to be submitted, pricing calculations, and escalation matrix. Micro, Small and Medium Enterprises

Act enables Startups and MSMEs to charge interest @ 2% per month on payment delays beyond 45 days. This is missing in the agreement payment terms.

Even if the above is captured, the receivables management of the company does not incorporate the innovative factoring and bill discounting facilities offered by Banks and NBFCs. Many facilities are like non-fund-based limits and can be utilized against a fraction of cash collateral. Effectively utilizing bill discounting will ensure the long waiting period of cash gets curtailed, and companies can lubricate the growing needs of operations.

Some startups also bring out-of-the-box thinking in receivable management through discounts, rewards, and differential customer experience. SaaS Startups are known mainly for collecting the monthly fee in advance, providing decent discounts on quarterly/annual payments in advance.

Whatever approach is taken needs to be evaluated for customer psychology, stickiness to the product and market practice.

With the spurt of various finance solutions, such as Buy Now Pay Later (BNPL), zero-cost EMI solutions to the customers, financing sales upfront against monthly sales and deferred payment and related solutions, it becomes easier to manage receivables. However, it comes with a certain cost and operation complexity. In the above financing mechanisms, if the controls about reconciliations processes are weak and invoice-to-collection steps are not thought through, it will lead to leakage and further aggravate the receivables issues.

Supply chain finance is another avenue for Startups to manage receivables better. In this case, buyers with better credit ratings extend their credit lines to the suppliers (startups) for any credit limit for bill discounting.

Inventory Management

Startups requiring an inventory-based model always face the risk of illiquid/unsold stocks and sales returns. This is especially true for large e-com and direct-to-customer (D2C) brands. Demand forecasting and optimizing back-end supply chain comes with its own cost regarding resource deployment and management bandwidth. To the great solace, off-the-shelf software is available that integrates orders from various sources and assists in the demand forecast process.

With the regulatory structures placed by e-com market players, D2C brands stock the products on Sales on Return (SOR) basis to e-Com players. The uncontrolled SOR transactions may lead to high inventory and gauge a large chunk of the most important fuel of the company – liquidity. Founders can avoid this situation with a robust plan and strong rigour in the monitoring and review process.

Trade Payables

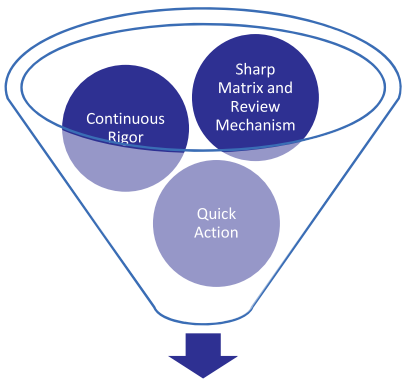
Managing trade payables requires planning at a granular level and monitoring the business activities in line with the plan. The deviations must be kept at minimal or calculated risk that may lead to known downside risk. Startups struggle to implement the basic controls on budgeting and the PO process. With the lack of controls and absence of a key matrix, the orders are placed without precise planning. The unwarranted trade creditors create a more significant issue in skewed working capital.

The delay in paying the creditors also leads to dilution in bargaining power to the vendors and sacrificing on the margin due to higher costs.

One issue faced by startups with an inventory-based model is identifying the optimal order for Raw Materials in frequency and quantity. Large quantities will block the capital, and small amounts will increase inward logistics costs. To overcome this, Companies entered into an

arrangement with vendors to supply material over a more extended period. Large companies provide support through vendor credit mechanisms. In this, the sellers to start ups provide financing support through their credit line. Startups pay the amount after the agreed period per the arrangement's terms.

Three steps Mantra :



Continuous Rigor: Startups suffer from the steroid shot effect. There are knee-jerk reactions when the setback seen by the companies. Once the situation improves, the business returns to the old operation style. Receivable management, Inventory optimization, payable management and other current assets and liabilities management require continuous rigour from the finance team. Any advances need to be checked with the reason for such payment. Robust control of the receivables with a specific focus on aged debtors ensures improving DSO. Adequate inventory control reduces slow-moving/non-moving inventories, shortening the inventory life cycle.

Sharp Matrix and Review Mechanism: "What is not measured, not improve" It is quintessential for the companies to create a sharp matrix and have a periodic review with the business team to ensure the key results are achieved as the way envisaged. The input data needs to be reliable to rely on the given matrix. Startups suffer from information silos and sub-optimal ways of capturing adequate data. Once the data is captured correctly, the appropriate matrix can be created to track the progress and monitor the performance.

Quick Action: Review without actions does not make sense. With the dynamic environment, founders need to immediately arrest the depletion of optimal cash flow and the company's working capital. In the case of bill discounting features, the amount must be funded by the company if discounted invoices are not processed on the agreed time. The non-compliance leads to penalties and may jeopardize the credit limit offered by the bank. Similarly, delay in follow-up and taking quick strategic and tactical level intervention may lead to more significant issues.

Fund Utilization Conundrum: There are situations where the startups find it difficult to manage the current needs and end up deploying the growth capital in their operation working capital needs. Once done, it enters a conundrum wherein growth gets tapered, and the money blocked in working capital is not released. The situation can be on the reverse side as well. In such cases, illiquid and not profit-making assets are created in the company and lead to a skewed cash position. So, startups need to clearly plan short-term and long-term needs and distinctly approach the problem.

To sum up, Startups are always sandwiched between suppliers who follow up continuously for payment on one side and customers who postpone the payment for multiple reasons on the other side. The negative gap creates fund crunch situations and leads to numerous suboptimal calls the founders take. The founders must evaluate business activities and critical drivers and link them to the company's working capital. Each activity directly or indirectly impacts the company's short- and long-term fund needs.

VALUATION OF BRAND

CA Vikash Goel

Imagine if Tata's have to start a new company today. Despite no operations the company would be able to get loans, funds, customers. What is it about Tatas that allows them such an advantage as compared to any other business? It is TATA's presence in our collective minds -- the fact that nine out of ten people forced to name a steel company would name TATA without hesitating. The company has a well-known brand, and this adds tremendous economic value. Brand, as we all know is an intangible asset.

As per Ind AS 38,"An intangible asset is an identifiable non-monetary asset without physical substance."

Intangible assets (intangibles) are long lived assets used in the production of goods and services but do not have a physical existence. However, they represent legal rights or competitive advantages developed or acquired by the holder of the intangible. In order to have value, intangible assets should generate some measurable amount of economic benefit to the owner, such as incremental turnover or earnings (pricing, volume and better delivery, amongst others), cost savings (process economies and marketing cost savings) and increased market share or visibility.

"In US, intangibles represent over 33 percent of total US Gross Domestic Investment."This is only increasing, and India is likely to have a similar proportion in the times to come.

BRAND AND GOODWILL EXPLAINED

People often confuse Brand with Goodwill. A brand may be any sign, symbol, word or combination of these created to identify and differentiate a product/service from its competitors. A brand communicates an image of the company and builds expectations among the stakeholders and may assist the customers to quickly make the buying decision. Brand can be traded.

Goodwill, on the other hand is a reputation, trust, credibility that a company earns over a period of time. A company cannot create goodwill overnight. A goodwill is generally earned by company and not by product. Internally generated goodwill is not recognised as an asset because it is not an identifiable resource, that is, it is not separable nor does it arise from contractual or other legal rights that are controlled by the entity and that are reliably measurable.

As per IFRS/Ind AS, Goodwill is present where the aggregate of the fair value of consideration transferred, the acquisition date fair value of any previously held interest and any non-controlling interest exceeds the fair value of the assets and liabilities acquired. Goodwill appears in the Financial Statements only in case of acquisition and is measured as:

Goodwill = Purchase Consideration in an acquisition – Fair Value of Assets acquired

Remember, value of Goodwill is usually embedded in the value of the company and need not be valued separately.

Goodwill is required to be tested for impairment under accounting regulations. However, under Income Tax regulations, Goodwill was available for depreciation like any other intangible asset. Finance Act 2021 has withdrawn this benefit and goodwill is not eligible for depreciation under Income Tax regulations going forward. For brands, this provision is not applicable.

VALUATION OF INTANGIBLES (IND AS 38)

Recognition criteria: Ind AS 38 requires an entity to recognise an intangible asset, when purchased or self created if, and only if:

1. It is probable that the future economic benefits that are attributable to the asset will flow to the entity; and

2. The cost of the asset can be measured reliably.

In case an intangible item does not meet both of the above criteria, Ind AS 38 requires the expenditure on this item to be recognized as an expense when it is incurred. Where the item meets the recognition criteria, the intangible asset will be recorded as follows:

1. If asset is acquired separately, then it shall be recognized at acquisition cost.

2. If asset is acquired in a business combination or through a government grant, then recognition shall be at fair value of the asset.

3. If asset is generated internally, then the expenditure incurred in development phase shall be the recognition value.

Intangibles can be valued using multiple methods to valuation.

Relief from royalty method

This method combines the application of Market Approach and Income Approach. Under relief-from-royalty-method, the value of an intangible asset is determined by estimating the value of total costs saved that would have otherwise been paid by the user as royalty payments, if had been taken on lease from another party. Alternatively, it could also indicate the value of an intangible asset that could have fetched cashflows in the form of royalty payments, had it been leased to a third party. Any associated costs expected to be incurred by the licensee needs to be adjusted from the forecasted revenues.

In using this method, arm's-length royalty or license agreements for comparable assets are analysed from market sources. The net revenue expected to be generated by the intangible asset during its expected remaining life are then multiplied by the selected benchmark royalty rate (can be obtained from similar transactions or profit split method).The estimated royalty stream is adjusted for expenses and taxes. The resultant value is then discounted to present value, which results in an indication of the value of owning the intangible asset.

Broadly the steps in applying this method includes:

1. Projecting financial information for the overall enterprise, including revenue, growth rates, and tax rates and estimates. The underlying data is generally obtained from the entity's management.

2. Estimating a suitable royalty rate for the intangible asset based on an analysis of royalty rates from publicly available information for similar intangibles (e.g. domain names, brand, trademark).

3. Assess if the royalty rates really reflect the value attributable to the brand or a Brand specific royalty factor may be required. Alternatively, expenses must be adjusted to arrive at pre-tax earnings (and not just revenue) or consumption of assets (Contributory asset charge) from the intangible.

4. Estimating the useful life of the asset (in most cases, it is not perpetual).

5. Applying the royalty rate to the estimated revenue stream.

6. Estimating a discount rate for the after-tax royalty savings and discount to present value.

7. Apply a Tax Amortisation benefit (TAB) factor. TAB Factor or multiplier incorporates the value of the tax benefit resulting from the amortization of the asset. The amortization benefit is calculated as the present value of the tax savings that results from amortization of the asset foy say 5 years as per Income Tax Regulations.

Tax Amortisation Benefit: Tax amortisation benefit (TAB) refers to the net present value of income tax savings resulting from the amortisation of intangible assets. Amortisation of assets decreases the net taxable income and thereby the corporate income tax to be paid as cash. When the purchaser of an intangible asset is allowed to a mortise the price of the asset as an expense for tax purposes, the value of the asset is enhanced by the present value of the future tax savings allowed by the amortisation. The TAB is added to the value of the intangible asset on the premise that a potential purchaser will be willing to pay an amount that reflects the present value of the tax amortisation benefit.

$$TAB_{factor} = \frac{1}{[1 - \frac{t}{n} * (\frac{1}{k} - \frac{1}{(k*(1+k)^n)})]}$$

where

1. TAB factor is the value assuming end-year discounting
2. t is the corporate tax rate applicable to the future amortization of the asset
3. n is the tax amortization period of the asset in years
4. k is the discount rate

The following example may give you some insight on application of valuation as per Relief From Royalty (RFR) Method

Royalty Factor	10%	based on market analysis
Brand Specific Factor	30%	based on proportion of royalty value that is attributable to brand only
Useful Life (Years)	5	assuming competition will catch up after 5 years of Brand specific premium
Discount Rate	13%	
Tax Rate	25.17%	

Year count	-	1	2	3	4	5
Enterprise Revenue (INR Cr)		100.00	120.00	141.60	162.84	182.38
Royalty Saving (10%)		10.00	12.00	14.16	16.28	18.24
Royalty attributable to brand (30%)		3.00	3.60	4.25	4.89	5.47
Present Value of Cash Flows (@13%)		2.65	2.82	2.94	3.00	2.97
Sum of PV of Cash Flows	14.38					
TAB Multiplier	1.22	(1/((1-(TaxRate/Life)*((1/DiscRate)-(1/((DiscRate*(1+DiscRate)^Life))))))				
Value of Brand	17.55					

Multi period excess earnings method (MEEM): The MEEM is used to value an intangible asset which is the primary intangible asset of the business. For example, for valuation of two intangible assets, say customer contracts and intellectual property rights, MEEM should be considered for valuation of one of theintangible asset while the other intangible asset should be valued using another method, unless both intangible assets are significant for the business.

Under this method, the value of an intangible asset is equal to the present value of the incremental after-tax cash flows ('excess earnings') attributable to the intangible asset to be valued over its remaining useful life. In other words, it is the present value of the excess cash flows attributable to the intangible asset to be valued(based on attrition rate of customers) as adjusted by the associated expenses required for the generation of the cash flows and cash flows pertaining to contributory assets (assets that contribute to the cashflows relating to the intangible asset to be valued).

The following are the major steps in deriving a value using the MEEM:

(a) obtain the projections for the entity or the combined asset group over the remaining useful life of the said intangible asset to be valued from the client or the target to determine the future after tax cash flows expected to be generated;

(b) Analyse the projections and its underlying assumptions to assess the reasonableness of the cash flows;

(c) reduce Contributory Asset Charges (CAC) or economic rents from the total net after-tax cash flows projected for the entity/combined asset group to obtain the incremental after-taxcash flows attributable to the intangible asset to be valued;

(d) the CAC represent the charges for the use of an asset or group of assets (e.g., working capital, fixed assets, assembledworkforce, other intangibles) based on their respective fairvalues and should be considered for all assets, excluding goodwill, that contribute to the realisation of cash flows for the intangible asset to be valued;

(e) discount the incremental after-tax cash flows attributable to the intangible asset to be valued to arrive at the present value using an appropriate discount rate; and

(f) Tax amortisation benefit (TAB) can be appropriately built and added to the overall value of the intangible asset.

Contributory asset charge (CAC) is widely used by the valuers and refers to the return on assets supporting the cash flow generation of the intangible asset to be valued. Contributory assets could be in the form of working capital, fixed assets, assembled workforce and any other intangible asset so considered and valued.

Cost approach

The cost approach relies upon the principle of substitution and recognises that a prudent investor will pay no more for an asset than the cost to replace it new with an identical or similar unit of equal utility. Cost approach is a valuation approach that reflects the amount that would be required currently to replace the service capacity of an asset (often referred to as current replacement cost).Valuation of an intangible asset using the cost approach is based onthe principle rule of substitution, i.e. the amount that will be required to create a new similar intangible asset as adjusted for any depreciation becomes the value of the intangible asset to be valued.

Cost method is commonly used to value acquired or internally generated intangible assets for new organisations like software, technology, assembled workforce, etc. Also, cost approach is generally adopted when market and income approach cannot be applied. The cost approach should be used with discretion and generally for intangible assets that are not the primary business drivers and for which a market participant may not be willing to pay a significant premium.

For companies that spend on advertisements, there is often an argument between accountants and valuers. While accountants require advertisement spends to be recognised in Profit & Loss Statement completely, Valuers argue the amounts spend on advertisement may serve at least two purposes – generating sales for the current year and building brands for improved sales in future years as well. So, one of the ways to value a brand can be based on assuming that a percentage of the Advertisements spends is spend on building the brand. This amount may be used to value the brand. In the example below, it is assumed that the amount spent on Brand Development has benefit for 4 years. Accordingly, the unamortised amount of Brand spent is added to the value of the intangible. Of course, this method does not look into the future prospects of the advertisement spent. Also, this method may not be applicable as in many cases where the competition is high, advertisement benefits my not accrue over longer period.

Year Count		-4	-3	-2	-1	0
Advertisement and Brand Development Spend		7.7	9.6	12.0	15	
Amortisation Rate	25%					
Unamortised amount		0	2.4	6	11.25	
Value of Brand						**19.65**

RECENT CHANGES ON CODE OF ETHICS,W.E.F 01.10.2022

CA. Nitika Bagaria

New Changes made applicable from 01.10.2022

With the changing business environment and increasing complexities, the ethical dilemmas faced by an accountant today is different from that faced by him a decade ago. Accordingly, it became imperative to revise the ethical framework for chartered accountants to keep pace with the changing dynamics of the profession. Today, the members of the Institute are not restricted to professional assignments within the country or domestic employment opportunities. Further, even in the domestic domain, there are international clients and international perspectives. There is no denying the fact that the members have to keep abreast of what are the latest international developments. There is lot of research on ethics related issues done by International Ethics Standards Board for Accountants (IESBA).

This revised Code is based on the 2018 edition of Code of Ethics issued by International Ethics Standards Board for Accountants (IESBA). IESBA is the ethics standards setting Committee of IFAC. The 2018 edition of Code has almost completely been rewritten by IESBA. The existing Independence sections (290 and 291) have been characterized as Independence Standards (Parts 4A and 4B) in the new Code. There is new pattern of structuring of each Section. The parts shown as Requirements establish general and specific obligations to be complied with by the members, while the Application material provides context, explanations, suggestions or actions, illustrations and other guidance to assist in complying with the requirements. Practical examples have been incorporated in the Code to illustrate different situations in which pressure might arise. There are dedicated provisions that apply to all professional accountants in all circumstances, when dealing with ethics and independence issues. There is emphasis that if threats cannot be addressed, the professional Accountant must decline or end the specific professional activity. The Accountant is required to form an overall conclusion about whether the actions he takes, or intends to take, to address the threats created to eliminate those threats, or reduce them to an acceptable level. The revised edition of the Code has been made compatible with Indian conditions so that it does not contradict with Indian domestic law. Further, the provisions of the revised Code have been aligned with the provisions of Companies Act, 2013. While the revised Code retains the fundamental ethical principles from the earlier code, it covers refreshed approach and contains certain new/ substantially revised requirements.

As the members are aware, the revised 12th edition of Code of Ethics had come into effect from 1st July, 2020.

Code of Ethics Volume – I (https://resource.cdn.icai.org / 55133CodeofEthics-2019.pdf)

Code of Ethics Volume – II (https://resource.cdn.icai.org/60018code-of-ethics-2020vol2.pdf)

Code of Ethics Volume –III (Case Laws Referencer) (https://resource.cdn.icai.org/59111esb48239.pdf)

It may further be recalled that the applicability of following provisions of Volume-I of Code of Ethics, 2019 was deferred due to situations prevailing due to Covid and to ensure effective adoption and implementation by the membership at large (Ref. Announcement dt. 31.03.2022)

The Council at its 413th meeting held in

August,2022 decided the above mentioned deferred provisions contained in Volume-I of Code of Ethics, 2019 which have been deferred from 1st July, 2020 till 30th September, 2022 will be made applicable from 1st October 2022 with certain amendments.

The amendments are as stated below;-

1. Responding to Non-Compliance with Laws and Regulations (NOCLAR) [Sections 260 and 360]
2. Fees - Relative Size [Paragraphs 410.3 to R410.6]
3. Tax Services to Audit Clients [Subsection 604]

The significant amendments are as under:

Existing provision:-

Fees - Relative Size [Paragraphs 410.3 to R410.6]:-

Where for two consecutive years, the total gross annual professional fees ("total fees) from the audit client and its related entities represent more than 15% of the total fees received by the firm expressing the opinion on the financial statements of the client, the firm shall:

(a) Disclose to TCWG of the audit client the fact that for two consecutive years, the total of such fees represents more than 15% of the total fees received by the firm.

(b) For, public interest entities, Disclose to TCWG of the audit client the fact that for two consecutive years, the total of such fees represents more than 15% of the total fees received by the firm

Revised provision:-

Differentiated disclosure requirements:- For non Public Interest Entities (PIE)- Disclosure is required where for two consecutive years, the gross annual professional fees from an audit client represent more than 40% of the total fees of the firm.

For public interest entities Disclosure is required where for two consecutive years, the gross annual professional fees from an audit client represent more than 20% of the total fees of the firm.

Existing provision:-

Provided that no such ceiling on the total fees of the Firm would be applicable where such **fees does not exceed five lakhs of rupees** in respect of a firm including fees received by the firm for other services rendered through the medium of a different firm or firms in which such member or firm may be a partner or proprietor.

Revised provision:-

Provided that no such ceiling on the total fees of the Firm would be applicable where such **fees does not exceed twenty lakhs of rupees** in respect of a firm including fees received by the firm for other services rendered through the medium of a different firm or firms in which such member or firm may be a partner or proprietor.

Existing provision:-

Provided further that no such ceiling on the total fees of a Firm would be applicable in the case of audit of government Companies, public undertakings, nationalised banks, public financial institutions or where appointments of auditors are made by the Government.

Revised provision:-

In addition to these categories, 'Regulators' has been added.

Existing provision

Pre-Issuance review or Post issuance Review: Action to be taken to address the threat created due to fees dependency as aforesaid.

• Requirements and Application Material Fees – Relative Size All Audit Clients 410.3 A1 When the total fees generated from an audit client by the firm expressing the audit opinion represent a large proportion of the total fees of that firm, the dependence on that client and concern about losing the client create a self-interest or intimidation threat.

• 410.3 A2 Factors that are relevant in evaluating the level of such threats include: „h The operating structure of the firm.

• Whether the firm is well established or new.

• The significance of the client qualitatively and/or quantitatively to the firm.

• 410.3 A3 An example of an action that might be a safeguard to address such a self-interest or intimidation threat is increasing the client base in the firm to reduce dependence on the audit client. 410.3 A4 A self-interest or intimidation threat is also created when the fees generated by a firm from an audit client represent a large proportion of the revenue of one partner or one office of the firm

• 410.3 A5 Factors that are relevant in evaluating the level of such threats include:

• The significance of the client qualitatively and/or quantitatively to the partner or office.

• The extent to which the compensation of the partner, or the partners in the office, is dependent upon the fees generated from the client.

• 410.3 A6 Examples of actions that might be safeguards to address such self-interest or intimidation threats include:

• Increasing the client base of the partner or the office to reduce dependence on the audit client.

• Having an appropriate reviewer who did not take part in the audit engagement review the work.

• R410.5. Fees – Overdue 410.7

• A1 A self-interest threat might be created if a significant part of fees CODE OF ETHICS 146 is not paid before the audit report for the following year is issued. It is generally expected that the firm will require payment of such fees before such audit report is issued. The requirements and application material set out in Section 511 with respect to loans and guarantees might also apply to situations where such unpaid fees exist.

• 410.7 A2 Examples of actions that might be safeguards to address such a self-interest threat include:

• Obtaining partial payment of overdue fees.

• Having an appropriate reviewer who did not take part in the audit engagement review the work performed. R410.8 When a significant part of fees due from an audit client remains unpaid for a long time, the firm shall determine: (a) Whether the overdue fees might be equivalent to a loan to the client; and (b) Whether it is appropriate for the firm to be re-appointed or continue the audit engagement.

• Contingent Fees R410.

• 9 The fees which are based on a percentage of profits or which are contingent upon the findings, or results of such work, is not allowed except in cases which are permitted under Regulation 192 of The Chartered Accountants Regulations, 1988, given as under:-

• (a) in the case of a receiver or a liquidator, the fees may be based on a percentage of the realisation or disbursement of the assets;

(b) in the case of an auditor of a co-operative society, the fees may be based on a percentage of the paid-up capital or the working capital or the gross or net income or profits;

• (c) in the case of a valuer for the purposes of direct taxes and duties, the fees may be based on a percentage of the value of the property valued. CODE OF ETHICS 147 (d) in the case of certain management consultancy services as may be decided by the resolution of the Council from time to time, the fees may be based on percentage basis which may be contingent upon the findings, or results of such work; (e) in the case of certain fund raising services, the fees may be based on a percentage of the fund raised;

• Revised provision:- Repealed.

Taxation Services to Audit Clients [Subsection 604]

Existing provision:-

R604.11 A firm or a network firm **shall not provide tax services** that involve assisting in the resolution of tax disputes to an audit client if:

(a) The services involve acting as an advocate for the **audit client before a "Court"** in the resolution of a tax matter; and

(b) The amounts involved are material to the financial statements on which the firm will express an opinion.

(604.11 A2 What constitutes a "Court" depends on how tax proceedings are heard in India.)

Revised provision:-

R604.11 A firm or a network firm **shall not provide tax services** that involve assisting in the resolution of tax disputes to an audit client if:

(a) The services involve acting as an advocate for the **audit client before a "Court"** in the resolution of a tax matter; and

(b) The amounts involved are material to the financial statements on which the firm will express an opinion.

For the purpose of this subsection, "Court" does not include a Tribunal

604.4 A2 Tax return preparation services involve:

Assisting clients with their tax reporting obligations by drafting and compiling information, including the amount of tax due (usually on standardized forms) required to be submitted to the applicable tax authorities.

• Advising on the tax return treatment of past transactions and responding on behalf of the audit client to the tax authorities requests for additional information and analysis (for example, providing explanations of and technical support for the approach being taken).

• Examples of actions that might be safeguards to address such a self-review threat when the audit client is not a public interest CODE OF ETHICS 210 entity include:

• Using professionals who are not audit team members to perform the service.

• Having an appropriate reviewer who was not involved in providing the service review the audit work or service performed. Audit Clients that are Public Interest Entities

• R604.6 A firm or a network firm shall not prepare tax calculations of current and deferred tax liabilities (or assets) for an audit client that is a public interest entity for the purpose of preparing accounting entries that are material to the financial statements on which the firm will express an opinion. However, the professional accountant may review the tax calculation prepared by the client and provide recommendations.

Responding to Non-Compliance with Laws and Regulations (NOCLAR) applicable to Professional Accountants in service (Section 260)

As per Announcement made on 01-07-2020 by ESB, ICAI applicability for Responding to Non-Compliance of Laws and Regulations (NOCLAR) [Section 260 and Section 360] has been deferred till further notification.

Applicability of NOCLAR was already entrusted on Professional Accountants (PA) through SA 250 and now by Section 360 of Volume -I on PA of Listed entities and Section 260 of Volume – I on PA who are employees of Listed entities.

Revised provision:- Applicability of NOCLAR was already entrusted on Professional Accountants (PA) through SA 250 and now by Section 360 of Volume -I on PA of Listed entities and Section 260 of Volume – I on PA **who are employees of Listed entities. Being Senior professional Accountants in Service.**

Applicable to Audit engagements of entities the shares of which are listed on recognized stock

exchange(s) in India and have net worth of 250 crores of rupees or more. The applicability of Section 360 will subsequently be extended to all listed entities, at the date to be notified later

It is pertinent to note that NOCLAR was effective for all audit engagements as per SA 250 was made effective from 01-04-2009, with the objective of the auditor that

(a) To obtain sufficient appropriate audit evidence regarding compliance with the provisions of those laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the financial statements;

(b) To perform specified audit procedures to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial statements; and

(c) To respond appropriately to non-compliance or suspected non-compliance with laws and regulations identified during the audit.

Non-compliance – Acts of omission or commission by the entity, either intentional or unintentional, which are contrary to the prevailing laws or regulations. Such acts include transactions entered into by, or in the name of, the entity, or on its behalf, by those charged with governance, management or employees. Non-compliance does not include personal misconduct (unrelated to the business activities of the entity) by those charged with governance, management, or employees of the entity.

Noncompliance With laws and regulations (Professional Accountants in Public Practice)

In the course of providing a professional service to a client or carrying out professional activities for an employer, a professional accountant may come across an instance of NOCLAR or suspected NOCLAR committed or about to be committed by the client or the employer, or by those charged with governance, management or employees of the client or employer.

Recognizing that such a situation can often be a difficult and stressful one for the professional accountant, and accepting that he has prima facie ethical responsibility not to turn a blind eye to the matter, the IESBA has incorporated this feature to help guide the professional accountant in dealing with the situation and in deciding how best to serve the public interest in these circumstances.

Outside the Scope of NOCLAR

a) Matters clearly inconsequential

b) Personal misconduct unrelated to the business activities of the client or employer

c) Non-compliance other than by the Client or Employer, or Those Charged With Governance (TWCG), Management or Other Individual working for or under the direction of the client or employer.

I am confident that this article which contains relevant extract, from decisions and pronouncements which have been made by the Council along with Council s perception of major issues, will go a long way for the assistance of the members. It will also assist both old and new members in addressing the issues/problems of the professional conduct which they face in their day to day professional life.

Direct Taxes Professionals' Association

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)
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APPLICATION FOR MEMBERSHIP

2 Pcs. Pass Port Colour Photographs

To
The Hony' Secretary,
DIRECT TAXES PROFESSIONALS' ASSOCIATION
3, Govt. Place, Income Tax Building, Kolkata-700001

Dear Sir,

I hereby apply for **LIFE / GENERAL MEMBER** of the Association.
I agree to abide by the Memorandum and Rules & Regulations of the Association as may be in force from time to time.

1. Name in Full (Mr. / Mrs. / Miss) (BLOCK LETTERS) : _____
2. Father's Name : _____
3. Date of Birth : _____
4. Academic and/or Professional Qualifications _____
5. Professional Status (Pls. specify) : ☐ In Practice ☐ In Service ☐ In Business ☐ Others
6. Organisation : _____
8. Mem. No. of CA/CS/ICWAI/Bar Council : _____
9. Blood Group : _____ (Self) _____ (Spouse)
10. Name of Spouse : _____
11. Office Address : _____
12. Residence Address : _____
13. Telephone (Nos.) : (Off.) : _____ (Resi.) : _____ Fax : _____
    Mobile : _____ E-mail : _____
14. Address where Circular etc. should be sent : ☐ Office ☐ Residence

Enclosed herewith Rs. _____ (Rupees _____)
by Cash/Cheque No. _____ Dated _____ Drawn on _____
towards ☐ Life Membership ☐ General Membership.

Place : _____
Date : _____

_____
Signature of the Applicant

Would you like to contribute to the following activities of DTPA ? (Pls. specify)
☐ Contributing articles for Journal ☐ Being part of the Core group which runs the functioning of DTPA
☐ Being faculty / Speaker at Conferences / Seminars / Workshops ☐ Others

Area of Professional Interest (Pls. specify) : ☐ **Indian Income Tax** ☐ **International Tax**
☐ FEMA ☐ Company Law ☐ Auditing ☐ Corporate Finance ☐ Indirect Tax ☐ General Management
☐ Information Technology ☐ Human Resource ☐ Banking & Financial Services ☐ Investment Consultancy ☐ Others

I would like to receive News Letter / Notices / Circulars by ☐ E-mail ☐ Courier ☐ Both

Proposed By : Name : _____
DTPA Membership No. : _____ Signature : _____

Seconded By : Name : _____
DTPA Membership No. : _____ Signature : _____

FOR OFFICE USE ONLY

Date of Receipt_____ Membership Approved on_____ Membership No. Allotted_____

Chairman, Membership Sub-Committee ***President*** ***General Secretary***

NOTES : 1. *Fee for Life Membership (a) Individual Rs. 7,500/- (G.S.T. Extra @ 18%), (b) If application is made within a period of 5 years of attaining first professional qualification Rs. 5,000/- (G.S.T. Extra @ 18%), (c) Corporate Bodies Rs. 7,500/- (G.S.T. Extra @ 18%).*
2. *Cheques should be drawn in favour of* ***"Direct Taxes Professionals' Association".***

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DIRECT TAXES-RESEARCH & PUBLICATION	Mr. P.R. Kothari	Mr. Ajit Tulsian	Mr. A.K. Tibrewal
DIRECT TAXES CO-ORDINATION	Mr. S.K.Sultania	Mr. Mahadev Lal Agarwal	Mr. M.C.Jagwayan
ITAT CO-ORDINATION	Mr. Arvind Agrawal	Mr. Sunil Surana	Mr. N.P. Jain
GST & INDIRECT TAXES	Mr. Ankit Kanodia	Mr. Abhishek Agarwal	Mr. Sushil Kumar Goyal
GST & INDIRECT TAXES-RESEARCH & PUBLICATION	Mr. Vikash Parakh	Mr. Sahib Singh Choudhary	Mr. Sushil Kumar Goyal
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Note : President and Secretary will be Ex-Officio members of all Sub-Committees.

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