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Theme : GOODS & SERVICE TAX (GST)

Tax Culture Necessary for Encouraging Better Tax Compliance

Kolkata. Concrete steps are required for developing Tax culture with a view to encourage better tax compliance said **Justice Pinaki Chandra Ghose** of the Supreme Court while inaugurating a Tax Seminar organized by Direct Taxes Professionals' Association (DTPA). It is desirable to change the mind set of Taxpayers and the tax professionals may play role of a catalyst for that purpose. In recent years, tax laws have been simplified in order to achieve better compliance and effective enforcement, he added.

Speaking on the occasion **Justice R.K. Agrawal** of the Supreme Court said that Taxation laws play a major role in the development of the country's economy and its integration with the world. It helps in maintaining economic stability by reducing economic inequalities by means of equitable distribution of wealth by way of imposing tax in the income earners on slab system.

Mr. Gopal Mukherjee, Member (Revenue), Central Board of Direct Taxes, Ministry of Finance, urged the people to take benefit of **Income Declaration Scheme, 2016** to disclose their income, and come clean. Even benami properties may be declared in accordance with the scheme. The information contained in the declaration will be kept confidential, he assured.

Mr. Narayan Jain, Chairman of the Conference Committee said that the Government should set up a group to chalk out action plan to develop tax culture to ensure **"Better Tax Compliance"** and for this purpose adequate amount needs to be earmarked. On call of Mr. Jain, the audience instantly responded to support the movement for developing better tax culture in our country and they joined to sing in chorus ***"Hum Honge Kamyab..."***. **Mr. Vivek Gupta**, MP appreciated the call of DTPA for developing tax culture and its beginning from Kolkata. He assured to take up the issue in Parliament.

Seen Hon'ble Mr. Justice Pinaki Chandra Ghose, Hon'ble Mr. Justice R.K. Agrawal, Judges Supreme Court of India, Shri Gopal Mukherjee, Hon'ble Member CBDT (Revenue), Shri Vivek Gupta, Hon'ble M.P., Dr. A.L. Saini - Hon'ble Member ITAT, Shri K. Narsimha Chary - Hon'ble Member ITAT, Shri CM Bachawat, Hon'ble Member WBTT, Advocate Narayan Jain, Chairman Conference Committee, CA Sunil Surana, President DTPA, CS Mamta Binani, President ICSI and others.

CA Sunil Surana, President of DTPA highlighted the objects and activities of DTPA and said the association is the largest tax professionals body in the City. It helps young tax practitioners in grooming them.

Deliberating on **Tax aspects of Joint Development Agreement Mr. R.S. Upadhyay**, Principal DIT, Kolkata said that the land owner is one person and the property is constructed or developed by other party usually termed as developer or promoter. As per some court decisions land owner should pay the tax in the year he receives part consideration and hands over possession to the developer. **CA Bhupendra Shah** pointed out the difficulty of the land owner if tax is charged in the year of execution of JDA as landowner may not have enough resources to pay tax in that year. **Mr. Firoze B. Andhyarujina**, Sr. Advocate, explained the new provisions relating to **Charitable Trusts**. The session was chaired by **Dr. A. L. Saini**, Accountant Member, Income Tax Appellate Tribunal (ITAT), Kolkata.

Mr. S. R. Wadhwa, Advocate spoke on expanding provisions of **deemed income** particularly treating the stamp duty value as consideration for the purpose of capital gains on transfer of immovable property. **Mr. N.K. Poddar**, highlighted the new **penalty provisions** and said that 50 per cent penalty may be levied in case of under-reporting and 200 per cent penalty may be imposed in case of misreporting of income.

Mr. Narayan Jain moderating Panel discussion on IDS with Panelists Mr. Firoze Andhyarujina, Mr. Ashish Verma, Pr.CIT, Mr. A.A. Shanker, Pr.CIT, Mr. N.K. Poddar, Mr. NM Ranka, Mr. S.R. Wadhwa and CA Bhupendra Shah.

Mr. N.M. Ranka, Sr. Advocate presided over 2nd Technical Session and answered the queries of delegates jointly with other speakers.

The panel discussion on **Income Declaration Scheme - 2016** was moderated by **Mr. Narayan Jain**. The panelists were **Mr. A. A. Shanker**, Principal CIT-3, **Mr. Ashish Verma**, Principal CIT-17 and other speakers.

CS Mamta Binani, President ICSI, **Mr. S.M. Surana**, President, I.T. Bar Association and **Mr. R.D. Kakra**, Chairman AIFTP(EZ) as well as Central Council members of ICAI - CA Debashish Mitra, CA Ranjeet Agarwal, CA Sushil Goyal and Mr. Siddharth Mukhopadhyay, representative of Bar Council of West Bengal also lent their support for the cause of tax culture.

CA Sanjay Bajoria, Convenor, Study Circle conducted the inaugural session and CA Vikash Parakh, Secretary thanked all and acknowledged with response of professionals. CA Pawan Agarwal, Mr. Arvind Agrawal, CA Kamal Bagrodia, CA Ramesh Chokhani, CA R.N. Rustagi, CA M.C. Jagwayan, CA Nilima Joshi, CA K.P. Khandelwal, CA P. R. Kothari, Mr. Paras Kochar, CA Aghor Dudhewala, CA Rajesh Agrawal, CA N.K. Goyal, CA Niraj Harodia, CA Ritesh Vimal and Mr. Deepak Jain actively assisted for the success of the Conference. Many dignitaries, past presidents and senior members were present.

CA Sunil Surana delivering welcome address. Also seen CA Sanjay Bajoria, Hon'ble Mr Justice Pinaki Chandra Ghose, Hon'ble Mr Justice R.K. Agrawal, Judges Supreme Court of India, Shri Gopal Mukherjee, Member CBDT, Mr. Narayan Jain, CA Vikash Parakh.

In Pursuit of Knowledge

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Dear DTPAians,

The month of September brings two ends together for us; festive delight along with immense work pressure. On one hand, we celebrate Ganesh Chaturthi, Vishwakarma Puja and other important festivals and on the other we come across frenzied atmosphere of filing of Income Tax Return and Tax Audits. This month also presents a very important day in form of “Teachers Day”. We completely agree with what Helen Caldicott has said about teachers - “Teachers, are the most responsible and important members of society because their professional efforts affect the fate of the earth.”

We believe our last journal on “Budget and Finance Act, 2016” has fulfilled you on terms of its composition and substance. In this months' journal, we tried to cover various important topics related to Income Tax, Company Law, Employees' Provident Fund, Ind-AS, GST and Audit Outsourcing.

GST being an “on the go” topic for all, has raised various questions in mind. We expect GST to be a critical reform in spurring growth in the economy. When introduced, GST will not only make the tax system simpler, but will also help in increased compliance, boost tax revenues, reduce the tax outflow in the hands of the consumers and make exports competitive. Ind-AS being another very important area, made us understand its significance in the international platform to drive growth and earn international credibility.

We hope this journals able to cover the relevant areas and provide valuable insight and information. This article brings an end to our term, which has successfully ended with various memories. We hope the Quarterly Journals, the Annual Souvenir and the Conferences organized have helped you in your professional growth. It was an honour to be associated with the legends of our profession during my tenure with DTPA. I hope, this is just a start of long journey.

We would request all the members to share their observation and feedback on their experience with DTPA on this term, helping us to work on the improvement in the construction and contents of the Journal. You can email us your feedback and advice on dtpajournal@gmail.com. The copy of the Journal will be available on our website and will also be shared on Facebook so that you all can share the same with your colleagues.

At last I would like extend my sincere gratitude to our President Shri Sunil Surana, Committee Advisor Shri P R Kothari and Co- Chairman Shri Mahendra Agarwal for extending their unconditional blessings for successful release of all the four journals. I would like to thank our Secretary Shri VikashParakh and all the members of editorial team who stood beside me all through, our printer Shri Ramesh Didwania and Designer Shri Sanjib Dey for their untiring efforts, our association office for making possible timely delivery of the journals to all DTPAians and last but not the least, my sincere thanks to all distinguished members of this coveted association for accepting and appreciating our efforts.

Thank you. We hope you will find this issue informative.

CA. Niraj Harodia
Chairman
DTPA Journal and Other Publication
Ph. No. 8017467202, Email : nharodia@gmail.com
12th September, 2016

FROM THE DESK OF THE President - DTPA

Dear Members,

It has indeed been an honour and a rich experience of a kind to lead our Association for the term 2015-16 as I conclude my term as President of this esteemed Association at the forthcoming Annual General Meeting scheduled on 14th day of September, 2016. I request all the members to kindly take their valuable time out to attend the meeting and be part of its glorious journey. The growth graph of our Association is rising and will continue to rise in the times to come.

As we are all busy with audits and filings of returns for which the due date is September, 2016, it is important to note that the dates are not likely to be extended this time since the forms were notified at the start of the assessment year. I urge all the professionals to complete their work well before time. The last date for declaration of income/assets under Income Declaration Scheme is also 30th day of September, 2016. The Rules have been notified and several clarifications have also been issued by CBDT in respect of the Declaration Scheme. I once again request all the members to request their clients to come forward to avail the Scheme and take maximum benefit out of the same.

With more than 15 states ratifying the GST Constitutional Amendment Bill, we are eagerly awaiting the notification of the setting up of the GST Council by the President of India. With GST likely to be in place from April next year, we should be prepared for very busy time ahead since lots of professional opportunities would be in store for all of us.

From the judicial front, we have been fortunate to have 2 more permanent postings of members of ITAT at Kolkata Benches in the form of Hon'ble Judicial Member Shri Narsimha Chary and Hon'ble Accountant Member Dr. A. L. Saini. With this, the total strength of members at Kolkata ITAT is 7, which is bound to bring speedy disposals and quicker justice.

We had also organized a very successful Annual Tax Conference at Taj Bengal, Kolkata on Saturday, the 6th day of August, 2016 with the theme “Better Tax Compliance – Role of Professionals”which was chaired by our Past President Sri Narayan Jain wherein eminent speakers from various parts of ourcountry have been invited to deliberate upon the current issues in taxation. Hon'ble Justice Pinaki Chandra Ghose and Hon'ble Justice R. K. Agrawal, Judges of the Supreme Court, had inaugurated the Conference and Mr. Gopal Mukherjee Member (Revenue)CBDT had also graced the Conference as our Guest of Honour. The Technical Sessions were chaired by Dr. A. L. Saini, Member, ITAT, Kolkata & Shri N. M. Ranka, Sr. Advocate, Jaipur.

I am glad that we have been successful in taking out quarterly journals for the benefit of all of you as this is the 4th and the last journal for the term 2015-16.I am deeply obliged to our Advisor of Journal Sub-Committee and our Past President Sri P. R. Kothariji and our Chairman Sri Niraj Harodia who have meticulously planned all the issues of our Journal. Hope this publication will be informative and useful to you.

Wishing you all a very happy Ganesh Chaturthi and on the occasion of Jain Samvatsari Mahaprav, I beg forgiveness with all my heart , mind and soul for all my deeds, words and actions during my regime as President, if the same has hurt anyone.

With Warm Regards.

CA. Sunil Surana,
President

Suo moto Returning of Income u/s 115BBE

CA P.R. Kothari

Introduction :

Section 115BBE was inserted in Income tax Act, 1961(all sections referred in this article are of this Act only) by Finance Act, 2012 w.e.f. asst. Yr. 2013-14 which provides for tax at flat rate of 30% (+ s. charge, if applicable and E. cess) of income referred in section 68 (unexplained cash credit), section 69 (unexplained investments), section 69A(unexplained money), section 69B(partially undisclosed investment), section 69C (unexplained expenditure) and section 69 (Hundi Loans) (hereinafter referred as 'unexplained income'). It is widely whispered now a days particularly in the context of Income Declaration Scheme, 2016 that one may get rid of stigma of unexplained income by suomotu returning of such income in current year u/s 115BBE and paying 30% tax thereon without attracting any penalty u/s 270A. It is true that no penalty u/s 270A will be attracted when assessee himself had added such unexplained income in his returned income and had paid taxes accordingly. But certain issues have to be kept in mind while opting for such course of action and these are enumerated hereinafter.

Issues to be kept in mind :

i) No deduction of any expenditure whatsoever will be allowable from unexplained income.

ii) No deduction of any allowance (including depreciation or brought forward unabsorbed depn.) whatsoever will be allowable from unexplained income.

iii) Since asst. yr. 2017-18, set off of even any loss will also not be allowed against unexplained income.

iv) If before introduction of such unexplained income in the regular books of accounts, any search u/s 132 takes place and the said unexplained income is detected in the course of such search, a penalty @ 20% of such unexplained income over and above the tax may be levied u/s 271AAB(1)(b) provided the said income is declared in timely filed return for the year under consideration and due tax is paid on such unexplained income also by the due date of filing return. Otherwise, penalty ranging between 30% to 90% of unexplained income may be imposed as per clause (c) of section 271 AAB(1). It is to be appreciated that clause (a) of section 271AAB(1) shall not be applicable, as the assese would not be able to substantiate the manner of deriving such unexplained income.

v) In the circumstances described in iv) above, the assese may have to face prosecution proceedings u/s 276C also . So far as recourse to section 270AA for immunity from such prosecution is concerned, a controversy may arise as to the applicability of said section as section 270A is not applicable in respect of unexplained income covered by section 271AABwhile 270AA speaks of application for immunity from penalty u/s 270A and prosecution u/s 276C/276CC both. It is not clear whether application for immunity from section 276C alone can be made or not. Even if the answer is in affirmative i.e. an application for immunity from prosecution u/s 276C alone can be made u/s 270AA even in case of search assessment also, the conditions of non filing of appeal and payment of tax and interest as well as non initiation of penalty proceedings by Department for under reporting of income envisaged u/s 270A(9), had to be fulfilled as provided in section 270AA(1)& (3).

A question may arise that if no search takes place and assesseedeclares unexplained income in the return for asst. yr. 2017-18 u/s 115BBE and pays taxes accordingly, whether prosecution proceedings u/s 276C can be initiated by the Department by taking recourse to clause iii) of Explanation to section 276C in view of suomotu admission of unexplained income [as admission is considered a very good evidence against the maker of it as per Supreme Court Judgement in ITO Vs. Mangta Ram Norata Ram Narwana (2011) 336 ITR 624(SC)]. The writer of this article is of opinion that assessee may make an application u/s 270AA to the A/O not to initiate proceedings u/s 276C provided no appeal is filed against the other additions, if any, made in the asst. order, full tax is paid in respect of those other additions also and penalty proceedings u/s 270A has not been initiated by Department on account of underreporting of income envisaged in section 270A(9) in respect of those other additions (no penalty proceedings u/s 270A will lie against Suo moto declaration of income u/s 115BBE in return of income)though controversy mentioned in earlier part of V) above remains there.

Concluding remarks :

In view of above discussion, it may be inferred that all the aforesaid aspects be kept in mind and the unexplained income be introduced in regular books of accounts immediately and advance tax also be paid accordingly, if one is not opting to declare the same under Income Declaration Scheme,2016.

IMPACT OF GST ON E-COMMERCE

CA Harsh Gadodia

The rapidly growing E-commerce industries is one of the major industries that's having far reaching effect on how the business is to be conducted overhauling the whole business process which are being limited to certain square feet of infrastructure.

When we talk about the E-commerce industries, several issues in relation to taxing crops up which bound the industries to limit their activities to certain states. Every State has their own set of rules/guidelines to tax the E-commerce industries/operators. State of Uttarakhand has imposed additional 10% tax on goods delivered via e-commerce. States like Delhi and Kerala require E-Commerce Operators to provide the information relating to the suppliers selling through their platform. Delhi VAT laws have even gone to the extent of imposing penal provisions on the E-Commerce Operators by treating them as dealers in case of non-provision of information about the suppliers as required by them. In some other cases, the tax authorities have been seeking to fasten the tax liability on the E-Commerce Operators by treating them as agent of the suppliers. Further while States like Bihar, Orissa, Assam have been treating the transporters as "dealer" for paying Entry Tax, Gujarat has fastened the liability of paying entry tax on the E-Commerce Operator itself.

A lack of clarity and different set of rules/guidelines create a legal hassle for the E-commerce industries/operators to carry out their operation smoothly i.e. without the interference of the revenue authorities.

Vijay Shekhar Sharma, CEO of Alibaba backed Paytm, said that lack of clarity and difficulty in compliance has led to companies such as Paytm stopping delivery in crucial markets such as Noida and Ghaziabad. "We have force ourselves to stop delivery in UP, at the end everybody loses," he added.

With GST on the way, E-commerce industries/operators expected that it will help the industry business model to flourish by providing uniformity in tax rates and regulation across the country. This will help doing business in India easier, allow free play to market dynamics and allow deeper penetration to these services. However, the question arises whether GST model law came out by the revenue authority will fulfill above requirement and creates a hassle free and less compliance burden for the industry from the taxation perspective.

As we all know, E-commerce industries worked under various model. It can generally categorized in following categories.

- Business - to - Business (B2B)
- Business - to - Consumer (B2C)
- Consumer - to - Consumer (C2C)
- Consumer - to - Business (C2B)
- Business - to - Government (B2G)
- Government - to - Business (G2B)
- Government - to - Citizen (G2C)

The biggest challenge is to develop the GST model which can comprehensively covers all the paths/models on which E-commerce industries works. There are several issues that's needs to be address considering the impact of the model GST law on the E-commerce industries/operators which are discussed as follows –

Firstly, what about the provision regarding the goods returned by the customer? As we know, under Model GST law once the goods are being supplied, suppliers need to charge the GST on the bill and the same need to be paid to the Government. But if the goods are being returned back from the customer, whether the assesse can claim the credit of the same or can apply for refund. Certainly, there is no provision enumerated in the model law in this regard. As per section 38 of the Model GST law, refund can be apply only when there is unutilized credit on account of exports or when there is credit accumulation on account of rate of tax on inputs being higher than the rate of tax on outputs. Even debit and credit notes cannot be issued for the adjustment as same can be issued only when there is undercharge or overcharge in the bill as per section 24 of the model law. Taking into fact that around 30% of the products are being returned in online retails, it's going to hit the sector very hard.

Secondly, do E-commerce operators have to apply for registration in every state? As per section 19 of the Model GST Law, E-Commerce operators are made compulsory to take the registration irrespective of the threshold (Para 5(viii) of schedule III of Model GST Law). However, as per my view, E-Commerce operators is required to take the registration but not in every state but at the principal place of business in order to fulfill the compliances enumerated in section 43C of the Model GST law, which speaks about collecting TCS from the sales proceeds collected by it from the end-consumers and crediting to the account of the supplier. The TCS so collected is to be deposited to the Government. Additionally they will also be required to file a statement giving the details of tax collected and supplies made by the suppliers through their platform. But, in case E-commerce operators are having godowns, warehouses or other facilities for storing of goods in different states, the same needs to get registered in Model GST Law in various states where godowns/warehouses are located. The issue is - the law in this regard is still not clear. At the first meeting of the Empowered Committee of State Finance Ministers, representation had been made by the Flipkart, Snapdeal, Amazon India that they are only "service providers" to the vendors and as such are liable to pay GST only on service income. But WB State Finance Ministers didn't agree with the above view and asked the e-commerce companies to give in writing how the tax structure for such companies should be under GST regime.

Thirdly, no threshold limit is allowed to the vendors/suppliers supplying their goods or services through electronic commerce operator other than branded services. That means, every supplier before registering in the e-commerce portals needs to get themselves registered under GST first and do all the compliances as and when required. Section 43B(c) defines "branded services" to mean services which are supplied by an electronic commerce operator under its own brand name or trade name, whether registered or not. In today's scenario, there are lacs of vendors who sell their products through electronic commerce operator and hardly get a turnover of Rs. 2-3 lacs in a year. Imagine the amount of compliance burden, they need to face. Annually atleast 37 returns (12 returns inward supply, 12 return outward supply, 12 monthly returns and 1 annual returns) needs to file once you get registered apart from other compliances burden. Eventually, the amount to spend on compliance burden is more than profit earned. In order to spare the small vendors from the compliance burden, certain threshold limit is required to be introduced for online vendor.

Fourthly, as per section 42 of the model GST law, every registered person shall maintain books of account at his principal place of business and where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business concerned. Section 2 (75) of the Model GST law defines "place of business" to includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods and/or services. Since various E-commerce operators provide the facility of storing i.e. warehouse, godowns in the number of states, they have to maintain the record in each such place thereby increasing the compliance burden. Thus the concept of centralized accounting is done away with GST which ultimately increasing the compliances.

Fifthly, Section 43C(1) of Model GST law states that every electronic commerce operator shall, at the time of credit of any amount to the account of the supplier of goods and/or services or at the time of payment of any amount in cash or by any other mode, whichever is earlier, collect an amount , out of the amount payable or paid to the supplier, representation consideration towards supplied of goods or services made through it. Section 43C(4) of the Model GST law states that every electronic commerce operator shall furnish a statement electronically, of all amount collected under subsection (1), towards outward supplies of goods and/or services through it during a calendar month. It's an additional burden puts on ecommerce operating companies. In case of B2B transaction, to some extent it can be complied in order to tap revenue leakages, but, in case of B2C transaction, it would impose practical challenges for vendors with respect to potential credit accumulation as consequences of tax collection at source.

Sixthly, E-Commerce industries are all about digitalization where various facilities in regard to payment have been provided. One such facility is digital wallet/e-wallet which nowadays customers used in order to make the payment for the purchases made. However, as per section 2(68) of the Model GST Law, "money- means legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal electronic remittance or any such similar instruments when used as consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value." The above definition creates confusion whether it covers digital wallet/e-wallet and other similar instruments as money?

Conclusion

As the model GST Law is new and every brainstorms is working, it's an appropriate time to make a representation in order to bring hassle free law for the industries, consultants etc. The issues address above is only the few among many which come to the mind of the author while reading the subject. But, considering the hassles, industries are currently facing, GST is a positive sign for the E-Commerce.

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TIME OF SUPPLY FOR GOODS AND SERVICES AS PER THE MODEL GST LAW

CA Ankit Kanodia

The Finance ministry of India has placed the Model GST Law, 2016 for public comments/suggestions on its website aiming to GST roll out w.e.f. April 2017. Goods and Services Act is divided into 25 Chapters and having 162 sections and 4 schedules.In this write-up, we aim to analyse the following provision:,

- SECTION 12 - TIME OF SUPPLY OF GOODS
- SECTION 13 - TIME OF SUPPLY OF SERVICES
- SECTION 14 - CHANGE IN RATE OF TAX IN RESPECT OF SUPPLY OF SERVICES

Now, a question arises, as to why we need to know the time of supply of goods /services?

The same is because we need to know the time of supply to determine the exact date of supply as liability to pay CGST/SGST shall arise at the time of supply.

Section 12 deals with the time of supply of goods. As per the provisions of this section, time of supply of goods shall be the earliest of the following dates:

(i).Where the goods are required to be removed:The date on which the goods are removed by the supplier for supply to the recipient, or

(ii).Where the goods are not required to be removed:The date on which the goods are made available to the buyer. The goods are said to be made available to buyer when the goods are placed in disposal/control of recipient.

Goods are not required to be removed in the following cases:

a. when they are physically not capable of being moved or,
b. supplied in assembled or installed form or
c. supplied by supplier to agent or principal; or

(iii).Date on which invoice is issued by the supplier: The supply is deemed to be made to extent it is covered by supplier invoice or

(iv).Date on which payment is received: the supply is deemed to be made to extent it is covered by payment. The date when supplier receives payment is earliest of date on which the payment is entered in his books of accounts or the date on which the payment is credited to his bank account; or

(v).Date on which buyer shows the receipt of goods in his books.

If the goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place, the time of supply shall be at the time when it becomes known that the supply has taken place or six months from the date of removal, whichever is earlier.

The following table makes the explanation more clear,

Date of removal	*Date of availability to the recipient*	*Date of invoice*	*Date of payment*	*Date of entry in books*	*Time of supply*
30.06.17	-	01.07.17	01.07.17	05.07.17	**30.06.17**
15.05.17	20.05.17	15.05.17	21.05.16	01.06.17	**15.05.17**
-	16.06.17	11.06.17	12.06.17	30.06.17	**11.06.17**
30.06.17	01.07.17	29.06.17	05.07.17	15.07.17	**29.06.17**

- <u>Time of supply of continuous supply of goods</u>
  - Where successive statements of accounts or successive payments are involved:

    Time of supply shall be the date of expiry of the period to which such successive statements of accounts or successive payments relate.
  - If there are no successive payments of account:

    Time of supply shall be the earliest of date of issue of the invoice (or any other document) or the date of receipt of the payment.

For the above case, 'continuous supply of goods' means,

1. A supply of goods which is provided or agreed to be provided,
2. Continuously or on recurrent basis,
3. Under a contract
4. Whether or not by means of wire, cable, pipeline or other conduit,
5. And for which the supplier invoices the recipient on a regular or periodic basis.

In addition, the central or the state government may, on the recommendation of the GST council, specify by notification, the supply of goods that shall be treated as continuous supply of goods .

EXAMPLE: Contract for supply of concrete at site from April 2017 to September 2017.

- Where successive statements of accounts/ payments are involved:

  Statement of accounts is drawn up for supply of concrete on quarterly basis. For quarterly period of April 2017 to June 2017, and invoice is made on 15th July 2017. Payment is received on 30th July 2017.

  Thus, as per section 12 of GST Act, time of supply shall be the date of expiry of the period to which such successive statements/payments are involved, i.e. 30th June 2017.
- Where successive statements of accounts/ payments are not involved:

  Considering the above example, time of supply shall be the earliest of date of issue of invoice or payment received whichever is earlier, i.e. 15th July 2017.

- *<u>Time of supply in case of goods under reverse charge</u>*

For supply of goods under reverse charge, time of supply of goods shall be earliest of the following dates,

- Date of receipt of goods, or
- Date on which the payment is made, or
- Date of receipt of invoice, or
- The date of debit in the books of account.

EXAMPLE:

Date of receipt of invoice is 1st June 2017

Date of receipt of payment is 15th July 2017

Date of receipt of goods is 15th May 2017

Date of debit in books is 10th June 2017

- Time of supply of goods shall be the earliest of the above mentioned dates, i.e. 15th May 2017.
- *<u>Time of supply where goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place:</u>*

Here, time of supply shall be the earliest of the following,

- Time when it becomes known that the supply has taken place, or
- Six months from the date of removal.

EXAMPLE: Goods are sent for approval to the customer on 15th July 2017. However, customer intimated approval on 20th December 2017.

- In this case, six months from the date of removal shall be 15th January 2017 whereas the date of supply is 20th December 2017. Thus, as per section 12 of GST Act, time of supply shall be the earliest of the mentioned dates, i.e. 20th December 2017.

- *<u>In cases other than the above:</u>*

Time of supply shall be,

- Where periodical return has to be filed , *the date on which such return is to be filed*, or
- In any other case, *<u>CGST/SGST and IGST is paid</u>*.

Next, Section 13 deals with the *time of supply of services.*

As per section 13 the liability to pay CGST/SGST shall arise at the time of supply as determined in terms of the provisions of this section:

Time of supply of services shall be

(i) • In cases where the *invoice is issued within a prescribed time*, earliest of

- Date of issue of invoice or

- Date of receipt of payment

(ii) ● In cases where the *invoice is not issued within a prescribed time*, earliest of

- Date of completion of provision of service , or
- Date of receipt of payment

(iii) ● In *cases other* than the above conditions:

Time of supply shall be the date when the receiver of service shows the receipt in his books of account.

The table below shall explain more clearly :

Conditions	Date of issue of invoice	Date of payment	Date of completion of service	Date of showing receipt in books of accounts	Time of supply
Invoice **issued** within prescribed time	09.05.17	20.05.17	15.05.17	15.05.17	**09.05.17**
Invoice **not issued** within prescribed time	09.05.17	10.05.17	08.05.17	15.05.17	**08.05.17**
Invoice **issued**within prescribed time	10.04.17	-	15.04.17	-	**10.04.17**
Invoice **not issued** within prescribed time	10.04.17	30.04.17	-	-	**30.04.17**
Other cases	09.05.17	20.05.17	15.05.17	16.05.17	**16.05.17**

Time of supply in case of continuous supply of services:

1. Where the due date of payment is ascertainable from the contract, time of supply shall be

· *the date when the recipient of service is liable to pay for the services received, whether or not any invoice is issued.*

2. Where the due date of payment is not ascertainable from the contract, time of supply shall be

· *Each such time when the supplier of the services issues invoice or the receives payment whichever is earlier*

3. Where the payment for the services received is linked to the completion of an event, time of supply shall be

· *The date of completion of such event.*

EXAMPLE:

1. Due date of payment as agreed is 14^{th} of every succeeding month. Invoice is issued by the supplier by the 30^{th} of every preceding month.

· Time of supply of service shall be 14^{th} of every succeeding month (the date when the receiver is liable to pay for the services received).

2. Due date of payment is not mentioned in the contract. However , the supplier issues invoices on 1^{st} of every month and receiver makes payment on 5^{th} of the months concerned.

· Time of supply of services shall be 1^{st} of every month (issue of invoice or receipt of payment whichever is earlier)

3. Contract for cleaning of carpets of a 5-star hotel is a one month task (01.04.17 to 30.04.17) As agreed , payment has to be made only after the carpets are delivered after one month, dated 1^{st} May 2017.

· Time of supply shall be 30.04.17. (date of completion of the event)

Time of supply in case of services under reverse charge:

In this case, time of supply shall be the earliest of the following dates,

1. The date of receipt of services , or

2. The date on which the payment is made, or

3. The date of receipt of invoice , or

4. The date of debit in the books of accounts.

For the above purpose , date on which the payment is made shall be earlier of ,

1. The date on which payment is entered in the books of accounts of the recipient , or

2. The date on which the payment is debited in his bank account .

Where the supply of services ceases under a contract before the completion of supply:

Such services shall be deemed to have been provided at the time when the supply ceases.

EXAMPLE: A contracted workers for extension of his house for a period of 14.04.17 to 31.05.17. due to dispute between A and the workers , the extension was stopped midway on 15.05.17.

- Here, time of supply of services shall be deemed to be 15.05.17 (it is deemed to be the date of completion of the event).

In cases other than above:

When time of supply cannot be determined as per the above rules, it shall be as per the following,

- Where any periodical return is to filed , the date on which such return is filed, or
- The date when CGST/SGST and IGST is paid.

Section 14 states the conditions for the time of supply where there is a change in effective rate of tax in respect of supply of services.

1. Where taxable services have been provided before the change in effective rate of tax

Conditions	*Time of supply*	*Old rate of GST*	*New rate of GST*	*Effective rate*
Invoice issued and payment received after the change	Date of invoice issued or date of receipt of payment, whichever is earlier.	20%	17%	20%
Invoice issued before change and payment received after change	Date of issue of invoice	20%	17%	20%
Invoice issued after change and payment received before change	Date of receipt of payment	20%	17%	20%

2. Where taxable services have been provided after the change in effective rate of tax

Conditions	*Time of supply*	*Old rate of GST*	*New rate of GST*	*Effective rate*
Invoice issued and payment received before the change	Date of invoice or date of receipt of payment whichever is earlier	20%	17%	17%
Invoice issued before change and payment received after change	Date of receipt of payment	20%	17%	17%
Invoice issued after change and payment received before change	Date of issue of invoice	20%	17%	17%

FATE OF 'MRP BASED VALUATION' IN GST REGIME

CS ADITYA SINGHANIA

Valuation has always been a core issue in the levy of taxes which are transaction specific in nature, whether be it goods or services. Under the present regime of indirect taxation, centre levies Excise duty on the manufacture of goods, service tax on the provision of services, CST on the interstate trade or commerce, import duties on import of goods and export duties on the export of goods. On the other hand, State levies VAT on intra-state trade or commerce of goods and entry tax on entry of goods into a local area.

From the perspective of valuation of goods for levy of 'excise duty', there are several methods stipulated under the Central Excise Act, 1944.

- Assessable Value basis, as stipulated in Section 4 of the Central Excise Act, 1944 states that the transaction value shall be taken as the assessable value for the levy of excise duty if goods are sold at the time and place of removal, to the unrelated buyers and where the price is the sole consideration.
- Tariff value basis is basically the notional value fixed by the government from time to time for calculating excise duty.
- Production capacity basis is another form of valuation under central excise applicable only for the limited goods like pan masala and gutkha wherein excise duty is payable on the basis of production capacity without any reference to actual production.
- Now, the unique form of valuation introduced in the year 1997 called 'Maximum Retail Price' (MRP based valuation), has been stipulated under Section 4A of the Act, wherein excise duty is payable on packaged goods based on the Retail Sale Price (RSP, also known as MRP) after taking into account the abatement specified.

Now, let us understand the intent of introducing the MRP based valuation under central excise, when the transaction value method was already stipulated under Section 4 of the Act. It must be acknowledged that the Central Government has the power to levy tax on goods manufactured or produced in India as per Article 246(1) of the Constitution of India. Post manufacture of goods, they are usually sold, where the State Government levies VAT. In simple words, we get to understand that the Central Government has the power to levy tax only till the point of manufacture and is therefore helpless in scooping revenue from subsequent transactions taken place which directly sweeps into the kitty of the State Government. Consequently, manufacturers started taking advantage by declaring lower transaction value at first point of manufacture cum sale, so that they can save certain portion of excise duty. In other words, prior to the introduction of MRP based valuation, when the transaction value was accepted as the assessable value, major chunk of the manufacturers declared lower value on certain goods at first point of sale to escape certain portion of excise duty and thereafter at subsequent sale points, they used to sell the goods at high prices wherein only VAT was levied without any shadow of excise duty. Gradually as the time passed, it was noticed that the transaction value offered for the purpose of levy of Excise duty was very low when compared with the selling price to ultimate consumers. Further, it got difficult for the Excise officers to value those transactions wherein different business arrangements like contract manufacturing, job work, warehouse or depot based sales, etc. took place. So, in order to curb this practice, Government extended its reach to introduce a new method of valuation for payment of Central Excise duty based on the MRP after providing specified abatements.

Section 4A of the Central Excise Act, 1944 stipulates that if the goods are covered within the ambit of Legal Metrology Act, 2009 and its corresponding Rules, to declare Retail Sale Price [RSP] on the package, which are also being notified by the Central Government under the central excise law, then without taking into account the actual transaction value as envisaged under Section 4 of the Act, retail sale price less abatement shall be deemed to be the value for the purpose of levy of excise duty. The list of such goods falling under the MRP based valuation has been enlisted under Notification No. 49/2008-C.E. (N.T) dated 24-12-2008 which contains the Chapter headings of those goods along with the percentage (%) of abatement on RSP. The Central Government being buoyed by the increasing trend of revenue expanded the list of such goods which, at the present stands at nearly 141 items. For instance, chocolates, biscuits, pan masala, mineral waters, toothpaste, footwear, packaged software, etc. are few goods falling within the purview of MRP based valuation.

Let us understand the same by way of an example:

Sl. No.	Particulars	Amount (Rs)
A	MRP on Puma Shoes	1000
B	<u>Less:</u> Abatement 30% [Entry No. 56 of N/N:49/2008 CE(NT)]	(300)
C	Deemed Assessable Value [A-B]	700
D	Excise Duty Rate of 12.5% under Chapter 64 [700*12.5%]	87.5

Now, let us analyse and discover the fate of MRP based valuation under the Goods and Services Tax (GST) regime. Before dealing with the valuation provisions as stipulated under the Model GST Law, 2016 as released on 14th June, 2016, it must be loudly acknowledged that the Retail Sale Price (RSP) shall be continued, to be mentioned on every packaged goods falling within the ambit of Legal Metrology Act, 2009 as stipulated under Rule 6(1)(e) of Legal Metrology (Packaged Commodities) Rules, 2011.

Section 15(1) of the Model CGST/SGST Law, 2016 deals with the valuation provisions of the goods and services falling within the ambit of GST. This valuation section in its opening words widely louds for 'transaction value' as the value of supply of goods and services i.e. the price actually paid or payable. The transaction value is very common method of valuation adopted in most of the countries which provide for greater certainty and utility in valuation of supply of goods and services in terms of WTO Valuation Agreement. This section accepts for transaction value only if the supplier and buyer are unrelated and price is the sole consideration for supply. It would be pertinent to note that, the proposed law does not distinguish between the packaged and non-packaged goods, which means that even in case of packaged goods on which RSP as per the Legal Metrology Act, 2009 are applicable, their value of supply shall be taken as transaction value irrespective of the MRP mentioned on the goods. The Model GST law has made endeavour to identify certain situation under which the 'transaction value' cannot be accepted and consequently will have to refer the GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016 which provides alternatives to the transaction value method in the sequential manner viz. Comparison Method, Computed Value Method and Residual Method. Such situations are enumerated here-in-below for ease-of-reference:

(i) The consideration, whether paid or payable, is not money, wholly or partly;

(ii) The supply and the recipient of the supply are related;

(iii) There is a reason to doubt for the truth or accuracy of the transaction value declared by the supplier;

(iv) Business transactions undertaken by a pure agent, money changer, insurer, air travel agent and the distributor or selling agent of lottery;

(v) Such other supplies as may be notified by the Central or State Government in this regard on the recommendation of the Council.

Let us understand how the example given above changes under the GST regime assuming GST rate as 18%:

Sl. No.	Particulars	Amount (Rs)
A	MRP on Puma Shoes	1000
B	Transaction Value of Supply [Say, 30% reserved as margin for subsequent suppliers]	700
C	Intra State Supply [CGST 9% and WBGST 9%] 700*18%	126

From the perusal of the aforesaid governing section of valuation as well as the corresponding Valuation Rules, we find that there is a complete absence of the MRP based valuation which exists under the present Central Excise Law. It would be pertinent to note that MRP based valuation under the Excise law was introduced because the transaction value offered for the purpose of levy of Excise duty was very low when compared with the selling price to ultimate consumers which was just due to the Centre's power to levy tax only up to the point of manufacture. Post manufacture, only State Government enjoyed the power to levy tax on all sales. However, the scenario under the GST regime shall be completely changed as both the Centre as well as States have gained the power to levy GST at each point of supply both on the goods as well as services wherein seamless flow of input tax credit of GST shall be allowed at each stage of business. Since the revenue under the Dual Model of GST structure shall most probably be equal for both Centre and States, therefore, the need of MRP based valuation also sinks with the advent of GST regime. Doing away with the deemed mode of valuation i.e. MRP less abatement method under GST will definitely pave the way for the Indian markets to be globally competitive and this mode of valuation which has alignment with the WTO Valuation Agreement will help in introducing a common and unified market in One India. Such deeming methods of MRP based valuation was indeed a mandatory call to dispense with under the GST regime as it would lead to the regressive form of taxation.

Demystifying the myths of GST

CA Shubham Khaitan

With the 122nd Constitutional Amendment Bill becoming the 101st Constitutional Amendment Act after the Presidential Assent on 8th September, 2016, we are closer than ever to that day when the GST becomes a reality. This realization has started sinking in within the stakeholders and they are now trying to figure out as to how the GST will impact them. With the Government presenting a rather too optimistic picture about GST, the media giving its biased opinion and through hearsay from the other so called experts, these stakeholders have developed certain myths about this tax reform. A careful analysis of the Model GST law and the business process documents released by the Government will reveal some of the realities of the GST law which might have escaped the public eyes. This is an attempt to demystify these obscurities by visualizing these myths in its true light.

Myth 1: There will be seamless flow of input tax credit without any barriers or restrictions.

GST is supposed to integrate the goods and services together and hence it was expected that there would be no restriction on allowance of input tax credit provided they are used for business purposes. But the provisions ofInput tax credit of the Model GST law enlists a number of items on which no input tax credit will be allowed though it may easily be argued that they have been used for business purposes.

Input tax credit on motor vehicles except when used for transportation of goods or passengers or for imparting motor training has been disallowed. There can be instances of Motor vehicles being used exclusively for business purposes for which the Input tax credit will still not be available. For example, motor vehicles engaged by the business exclusively for the transport of its executives to/from office should be allowable as input tax credit under GST but is unfortunately not as per the Model GST Law.

Goods and/or services used for consumption of employee has been disallowed as well. There can be quite a number of goods and/or services which are used by employees for business purposes. Not allowing input tax credit in these cases defies economic sense and could well lead to litigations. For example, outdoor catering services provided to employees within office during the office hours are exclusively used for business purposes.This is because without these facilities, it is impossible for the employee to work. But, this is not allowable as input tax credit under GST.

Another major item of disallowance of input tax credit is the goods and/or services acquired by the principal for construction of immovable property. Developers constructing residential or commercial complexes may not be able to obtain the input tax credit on the goods and/or services utilized for such construction. Even works contract given by these developers to contractors may not be allowable. This may be very detrimental to the construction industry.In fact, this is also a regressive provision from the perspective of any industry which constructs its place of business. For example, a cement manufacturing company hiring a contractor to construct its factory will not be allowable input tax credit on such construction cost.

Myth 2: GST will remove multiplicity of taxes completely as it will subsume all indirect taxes within its fold

Though GST will subsume quite a number of indirect taxes within its fold, certain levies have also been kept out of it.

Basic Customs Duty, Excise duty on Tobacco Products, Export duty, taxes on petroleum and petroleum products, state excise on liquor, taxes on electricity, environment tax etc. will be outside the purview of GST. To the extent of these taxes, the existing levies will continue and the multiplicity of indirect taxes will continue.

Myth 3: One nation one tax means that there will be only one GST levied throughout the country instead of multiple tax levies like today

Since India is a federal country, autonomy of the Centre and States is of prime importance when it comes to collection of taxes. Both the Centre and States want their share of taxes without the other encroaching onto their territory. So, India will be adopting a dual taxability model.

On every supply, a part of tax will be going to the Centre and the rest to the State where the place of supply occurs. In case of intra state supply, CGST and SGST will be levied. The portion of CGST will be accruing to the Centre and the SGST to the State. In case of inter-state supply, IGST will be levied which will be the sum of CGST and SGST. This IGST will be apportioned between the Centre and the State as per their share.

So, instead of the multiple tax levies today, GST will be brought in the form of CGST, SGST and IGST.

Myth 4: The problem of levy/payment of one tax instead of the other will not occur anymorein GST

In case of works contract, air conditioned restaurants, software etc. there are a number of disputes as to whether VAT or service tax or both will be levied and what will be the component of each. Due to interpretational differences, assessees at times end up paying taxes under both the regimes. If one pays a higher tax in one of the regimes, then it does not absolve him of the tax liability in the other regime.This is because Service tax and VAT are Centre and State levies respectively and they cannot encroach upon each other's revenue share.

Under GST also, if a taxable person ends up paying CGST/SGST on a transaction which is later held to be an inter- state supply, then he cannot adjust the taxes already paid for payment of IGST. First, that person has to pay IGST and then he will be eligible to claim refund of CGST/SGST already paid under the refund provisions. With a bleak history of the Government in providing refunds on time, the businesses might end up paying taxes twice on the same transaction.

Myth 5: State boundaries will not hamper the utilization of input tax credit anymore under GST

It should be noted that every taxable person will need to take registration on a state wise basis. Different registration numbers will be allotted in different state. Even within the state, if a person opts for multiple registration for multiple business verticals, he may do so. Each registration will be considered as independent for the purpose of input tax credit.

Input tax credit between different registrations cannot be set off between each other or transferred to one another except when there is a supply between the two registrations or one transfer the input tax credit to the other as an input service distributor

So, there might arise situations wherein the taxable person might be having excess input tax credit in one registration and is paying taxes through the electronic cash ledger in the other registration. This requires careful business and strategic planning from the point of view of the entity as a whole.

Also, if a person has SGST of another state in his input tax, such amount will not be allowed to be set off against his output tax liability. For example, if a dealer in Gujarat buys an article from Maharashtra without quoting his GSTN and the Maharashtra dealer charges CGST and SGST, then the SGSTof Maharashtra will not be allowed as Input tax credit to the Gujarat dealer. The Gujarat dealer can only claim input tax credit of SGST charged within Gujarat. To claim the input tax credit of another state, IGST should be charged instead of CGST/ SGST.

Myth 6: There will be no cascading effect of taxes at all under GST

Cascading effect refers to the phenomenon of tax on tax. For example, On an excisable product getting removed by the manufacturer, both the excise duty and VAT needs to be paid and the valuation for the purpose of VAT includes the portion of excise duty. Under GST, though this cascading effect will be reduced to a large extent, it will not be completely eradicated.

Under GST, there are quite a few taxes which are not getting subsumed. The levy of these taxes along with GST will still continue the cascading effect as under the earlier regime. For example, taxes on electricity will continue under the existing law. However, goods used for setting up a power plant will be liable to GST and the same will not be eligible for set off for providing outward supplies. So, this will increase the cost of goods procured from a business point of view and create a cascading effect.

Also, in case of composition scheme, the output tax paid by the supplier will not be eligible as input tax credit to the recipient. This will create a distortion in the input tax credit chain and will result in an increase in the cost of the goods/ services by means of cascading.

Myth 7: There are no provisions for revision of returns under GST, so any mistake committed in the return cannot be rectified

Even though there is no provision for revision of returns, there is scope for rectifying omissions and errors. If any taxable person discovers any error or omission in the return of a prior period, then he can rectify these in the return for the tax period during which he notices them. For example, if a person detects an error for the month July 2017 in September 2017, then he can rectify the error in the return for the period September, 2017.

Myth 8: If the supplier has not made the payment of GST/ not filed his return/ filed incorrect particulars of the recipient in his return, the input tax credit to the recipient will be disallowed immediately without any recourse

Under GST, the input tax credit of the recipient is dependent on the fact whether the supplier has complied with the formalities of making the payment and filing the returns with correct particulars of the recipient. If any of these are not complied with, the input tax credit is subject to disallowance. However, there is a provisional time limit for which the input tax credit will be allowable in the hands of the recipient even if the supplier has not made the requisite compliances. The Government after matching the output tax paid by the supplier and the input tax credit claimed by the recipient, will communicate the discrepancy to both the parties. If the discrepancy is not rectified in the month of receiving this communication, only then the input tax credit claimed by the recipient will be added to his output tax liability.

For example, if a mismatch for the period April, 2017 is communicated by the Government in June, 2017 and the same is not rectified within that month, the excess input tax credit claimed by the recipient will be added to his output tax liability in the return for the period July, 2017.

Myth 9: Compliance burden will ease out in GST for all the sectorswhich will result in a decrease of compliance cost

It must be emphasized here that GST is expected to bring uniformity of compliances as opposed to the different nature of compliances in the various tax regimes prevalent today. However, this does not necessarily mean that the compliances burden of the businesses will ease out immediately. To derive the true benefits of GST, it is of utmost importance that the IT systems and infrastructure of the taxable persons are robust and GST compliant.

Small suppliers from the unorganized sector will be the worst sufferers under GST. Since, the threshold limit of aggregate turnover in a financial year for the purpose of exemption may be kept as low as Rs. 10 lakhs, a large number of small suppliers will be covered within the ambit of GST.The fact that the frequency of returns is very high further complicates the situation for them. Even the smallest of taxable persons have to file atleast 37 returns in a year. With the lack of resources at the disposal of these small suppliers, the GST may turn out to be a nightmare for them if they don't upgrade their infrastructure adequately to ensure GST compliance.

Myth 10: The Working Capital requirements will be lower under GST

It is important for businesses to analyze their specific situation with regard to working capital requirements and optimize the same under GST though proper planning. The notion that GST will bring in lower working capital requirements for every industry is not correct. Compliance of a number of provisions in the Model GST law will require an increase of working capital requirements as well. Few of these illustrative instances have been enumerated below.

Stock transfers under the current tax regime is not subject to VAT on production of Form F. However, any stock transfers between two units of the same entity are also covered within the definition of supply and hence will involve payment of GST. The amount paid as GST will however be available as input tax credit to the recipient unit and this can be claimed against the tax liability on its outward supply. So, bringing stock transfer within the ambit of GST essentially will catapult the liability of GST to an earlier date i.e. the date of stock transfer rather than the date of supply to an outsider. This will call for a higher working capital requirement for the entities.

Also, if any advance payment is received in respect of a supply then the same will be considered as time of supply under GST. At this point in time, the liability to pay will arise. Though this provision is largely similar to the Service tax law, it is sharp contrast to the Central Excise Law and the VAT law. The liability to pay excise duty under the Central Excise law arises only upon the removal of goods. In case of VAT, this liability occurs at the time of transfer of property in goods. The date of receipt of advance payment is immaterial in both the laws. Preponing the date of liability to pay tax in case of goods will definitely result in higher working capital requirements for the taxable person dealing in goods.

Also, the Government is planning to do away with most of the exemptions in GST. The incentives that need to be provided will be mostly provided by way of refunds. This way the input tax credit chain will not be broken. However, it will also result in payment of tax once and then claiming of refund. This cash outflow will necessitate the need for higher working capital.

Conclusion

GST is being touted as the most game changing tax reform of the country since independence. It is certainly going to affectall the businesses and professions throughout the country.So, it is paramount for the trade and commerce to make an impact assessment for their respective businesses.For that, they should rise above the myths of GST and have a transparent picture of tax reforms ahead of them. Only by seeing through these myths, true benefits of GST through strategic planning can be realized.

Impact Assessment of Companies (Share Capital and Debentures) Third Amendment Rules, 2016 dated 19th July, 2017

CA Sumit Binani

Background:

The Ministry of Corporate Affairs has notified Companies (Share Capital and Debentures) Third Amendment Rules, 2016 on 19th July, 2016. The Amendment Rules further amend the Companies (Share Capital and Debentures) Rules, 2014 (hereinafter referred to as Principal Rules). The amendments are a welcome change. For a ready reference of the said amendment rules one may use the link below:

http://www.mca.gov.in/Ministry/pdf/Rules_19072016.pdf

Impact of Amendments in Principal Rule 4(1)(g) pertaining to Equity Shares with differential rights:

Conditions for Issuance of Equity Shares with differential rights

The Principal Rule 4(1) lists out the conditions which a company limited by shares has to comply with, if it issues equity shares with differential rights as to dividend, voting or otherwise in terms of the provisions of section 43 of the Companies Act, 2013 (hereinafter referred to as CA 2013).

In terms of the Principal Rule 4(1)(g), for a company to issue equity shares with differential rights as aforesaid, should not have defaulted in:

1. payment of principal or interest on the following sums that have become repayable:
   - dividend on preference shares or
   - repayment of any term loan from a public financial institution or state level financial institution or
   - scheduled bank
2. payment of dues with respect to statutory payments relating to its employees to any authority
3. crediting the amount in Investor Education and Protection Fund to the Central Government

Earlier, if any company defaulted as mentioned above, it could have never issued any equity shares with differential rights. Now in view of the said amendment rules, a company may issue equity shares with differential rights upon expiry of 5 years from the end of financial year in which the aforesaid default is made good.

It may also be noted here that in lieu of the exemption notification issued by MCA on 5th June, 2015 for private limited companies, the provisions of section 43 read with the aforesaid principal rule 4(1) shall not apply to a private limited company if its MOA or AOA so provides. In other words, the above amendment would largely impact public companies as private companies by virtue of the exemption notification are not mandated to comply with the principal rule 4(1) provided their MOA or AOA so provide.

Impact of amendment in Principal Rule 8 pertaining to Start Up Companies:

Increase in cap for Issuance of Sweat Equity Shares

The Principal Rule 8(4) read with the provisions of section 54 of CA 2013 states that the company shall not issue sweat equity shares for more than 15% of the existing paid up equity share capital in a year or of the issue value of Rs 5 crores, whichever is higher. However, the issuance of sweat equity shares in a company shall not exceed 25% of the paid up equity capital of the Company at any time.

Now in view of the amendment rules, a start up company, may issue sweat equity shares not exceeding 50% of its paid up capital up to 5 years from the date of its incorporation or registration.

Hence, the amendments have more than doubled the existing cap on issue of sweat equity shares for a start up company.

Relaxation in Conditions for Issuance of Employee Stock Options

The Principal Rule 12(1) read with the provisions of section 62(1)(b) of CA 2013 lays down requirements to be complied by unlisted companies while issuing stock options to employees. The expression employee has been defined therein and excludes:

a) an employee who is a promoter or a person belonging to the promoter group; or

b) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than 10% of the outstanding equity shares of the company.

Now in view of the amendment rules, a start up company, may issue stock options to the above categories of employees up to 5 years from the date of its incorporation or registration

Meaning of Start Up Company

A start up company would mean a company as defined in accordance with notification no GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, India. A link enabling view of the said notification is provided below:

http://startupindia.gov.in/upload/Startups_Notification_17_02_16.pdf

Impact of Amendments in Principal Rule 13 pertaining to Issue of shares on preferential basis:

Deletion of Condition of fully paid up at the time of allotment

The Principal Rule 13(2) read with the provisions of section 62(1)(c) of CA 2013 lays down requirements to be complied by unlisted companies while issuing shares on preferential basis.

One of the requirements is that the securities allotted by way of preferential offer are to be made fully paid up at the time of its allotment.

Now in view of the amendment rules, the said requirement has been done away with.

Timing condition of valuation of convertible securities offered on preferential basis

Prior to the amendment, the Principal Rule 13(2)(h) read with the provisions of section 62(1)(c) of CA 2013 stipulated that where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of a valuation report of a registered valuer who shall submit a valuation report to the company giving justification for the valuation.

Now in view of the amendment rules, the price of the resultant shares pursuant to conversion shall be determined:

(i) either upfront at the time when the offer of convertible securities is made, on the basis of valuation report of the registered valuer given at the stage of such offer, or

(ii) at the time, which shall not be earlier than 30 days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than 60 days of the date when the holder of convertible security becomes entitled to apply for shares

Provided that the company shall take a decision on either of the above clauses (i) or (ii) at the time of offer of convertible security itself and make such disclosure under sub-clause (v) of clause (d) of sub-rule (2) of Principal Rule 13.

Impact of Amendments in Principal Rule 15 pertaining to Alteration of share capital:

Form SH-7 to be filed with Registrar for if a Company not having any share capital increases its members

The Principal Rule 15 read with the provisions of section 64 of CA 2013 provides that a notice in Form SH-7 needs to be given to the Registrar concerned for alteration in share capital by a company.

Now in view of the amendment rules, notice in Form SH-7 is also required to be filed with the registrar concerned if any company without any share capital increases its members.

Impact of Amendments in Principal Rule 18 pertaining to Issue of Secured Debentures:

Secured Debentures by creation of a charge on the properties or assets of subsidiaries, holding and associate companies

The Principal Rule 18 read with the provisions of section 71 of CA 2013 stipulates conditions for issue of secured debentures by a company.

Prior to the amendment, issue of debentures was required to be secured by the creation of charge, on the properties and assets of the company issuing debentures. Now, properties and assets of subsidiaries, holding and associate companies are also included. Accordingly the principal rule 18(1)(b) stands amended.

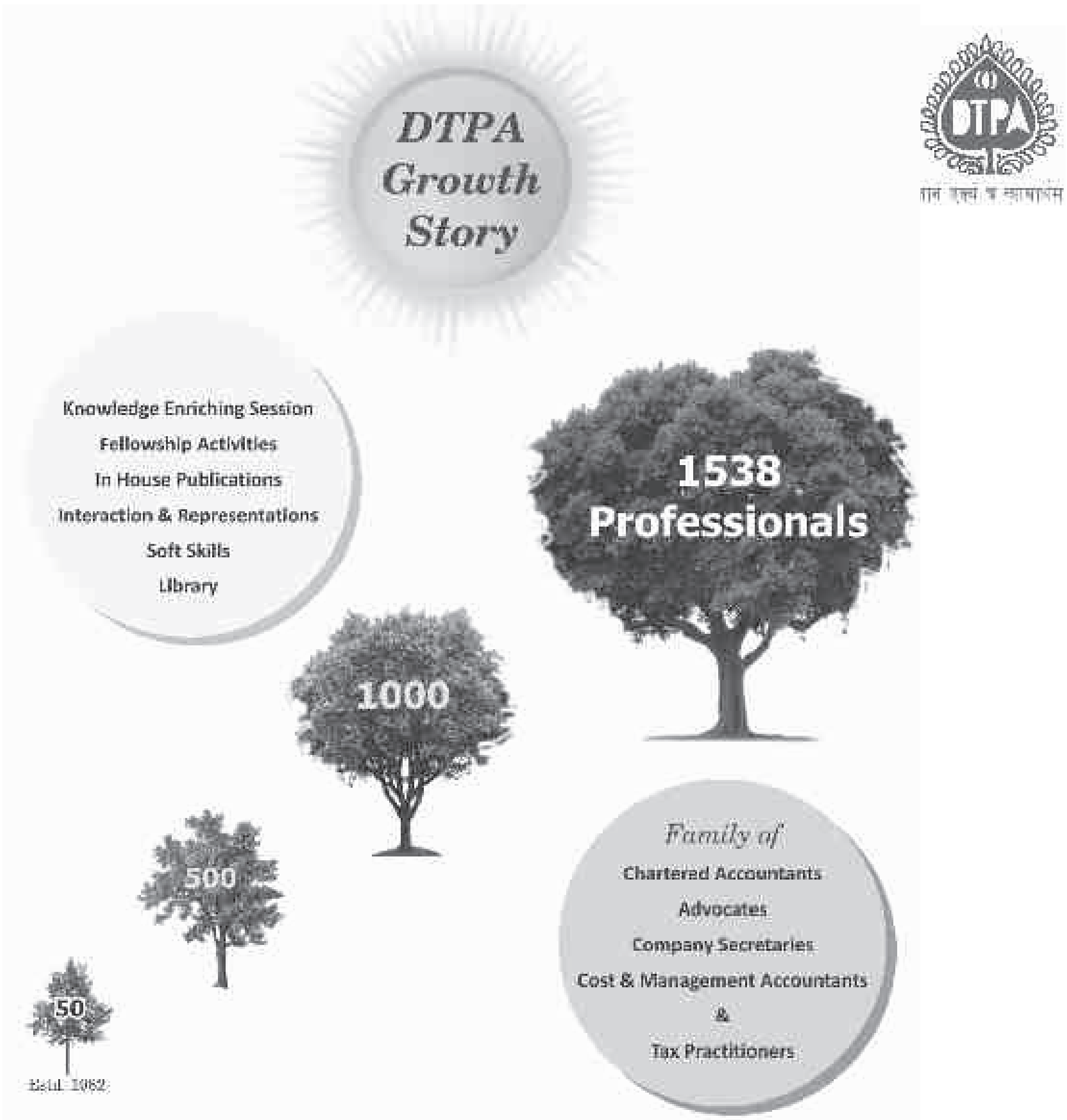
Similarly, prior to the amendment, the security for the debentures by way of charge or mortgage was to be created in favour of the debenture trustee, as applicable on any specific moveable property of the company (not being in the nature of pledge). Now, the amended principal rule 18(1)(d)(i) provides as follows:

“the security for the debentures by way of charge or mortgage shall be created in favour of the debenture trustee on any specific moveable property of the company or its holding company or subsidiaries or associate companies or otherwise.”

Requirements for Debenture Redemption Reserve (DRR)

The Principal Rule 18 (7) prescribes the conditions for creation of DRR for issue of secured debentures by a company. Prior to the amendment, the prescribed percentage for DRR creation (i.e. 25%) was to be applied on the value of debentures issued. Now with the amendments, it shall be applies on the value of outstanding debentures issued. Accordingly the principle rule 18(7)(b)(ii) & (iii) stands amended.

Further, a proviso has been inserted after principle rule 18(7)(b)(ii) which provides that where a company intends to redeem its debentures prematurely, it may provide for transfer of such amount in DRR as is necessary for redemption of such debentures even if it exceeds the limits specified in this sub-rule i.e. even if it exceeds 25% of the value of outstanding debentures.



CONSOLIDATED FINANCIAL STATEMENTS

CA Mohit Bhuteria

Overview

Consolidated financial statements are the financial statements of a group presented as those of a single enterprise. For a wide variety of reasons such as taxation, investment laws, foreign exchange fluctuations and other business purposes, entities may choose to conduct their operations through several entities instead of a single large entity. However, all these entities remain under the control of the ultimate parent. Hence, the financial statements of the parent alone do not represent the entire economic picture of the financial position or performance of the parent. Users of financial statements would like to know the picture of the group as a whole. Hence, there is a strong case for mandatory presentation of consolidated financial statements so as to reflect the economic reality. The Companies Act, 2013 has made it mandatory for companies to prepare and present consolidated financial statements in case they have Subsidiary(ies)/ Associates/Joint ventures.

Section 129(3) of the Companies Act, 2013 provides that *"where a company has one or more subsidiaries, it shall, in addition to the standalone financial statements, prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own"*. The Consolidated Financial Statements should also be laid before the annual general meeting of the company along with the standalone financial statements.

Explanation to section 129(3) states that the term 'subsidiary' shall include associate company and joint venture as well for this purpose i.e. for the purpose of consolidation of financial statements.

The first proviso to Section 129 (3) provides that *the Company shall also attach along with its financial statements, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries (including joint ventures and associate company) in such manner as prescribed.*

Rule 5 provides that *"the statement containing the salient feature of the financial statement of a company's subsidiary or subsidiaries, associate company or companies and joint venture or ventures under the first proviso to sub-section (3) of section 129 shall be in Form AOC-1."*

The second proviso to Section 129 (3) further provides that the Central Government may provide for consolidation of accounts of companies in such manner as prescribed under Rule 6 of Companies (Accounts) Rules, 2014.

Rule 6 provides that *"the consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards:*

Provided that in case of a company covered under sub-section (3) of section 129 which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions on consolidated financial statements provided in Schedule III of the Act."

Rule 6 was further amended vide MCA notification dated 14th October, 2014 and the following two provisos were inserted after the existing proviso:

"Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statement by an intermediate wholly-owned subsidiary, other than a wholly-owned subsidiary whose immediate parent is a company incorporated outside India:

Provided also that nothing contained in this rule shall, subject to any other law or regulation, apply for the financial year commencing from the 1st day of April, 2014 and ending on the 31st March, 2015, in case of a company which does not have a subsidiary or subsidiaries but has one or more associate companies or joint ventures or both, for the consolidation of financial statement in respect of associate companies or joint ventures or both, as the case may be."

The amended rules provided for exemption to an intermediate holding Company, which is a wholly-owned subsidiary and whose immediate parent is a Company incorporated in India. The rules also provided for a 1-year exemption to companies which have associates or joint ventures, but which do not have subsidiaries, for F.Y. 2014-

15. These amended rules were in contrary to the provisions of the Act which required Companies to prepare consolidated financial statements.

Rule 6 was further amended vide MCA notification dated 16th January, 2015 2015, and the following third proviso was inserted:

"Provided also that nothing in this rule shall apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India only for the financial year commencing on or after 1st April, 2014."

The aforesaid amended rules provided transitional relief to companies having one or more foreign subsidiaries only from preparation of Consolidated Financial Statements for the financial year commencing on or after 1st April, 2014.

Rule 6 was further amended vide Notification dated 27th July, 2016 and the second proviso to Rule 6 was replaced by a new proviso:

"Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:-

(i) it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;

(ii) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and

(iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards."

The conditions prescribed have to be cumulatively satisfied to avail the exemption from preparation of Consolidated Financial Statements, i.e only certain intermediate holding companies have been exempted from CFS requirement.

Section 129(6) of the Companies Act, 2013 provides that the Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of section 129 or the rules made there under, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in

the notification. Till date i.e. August, 2016 no such notification has been issued in the public domain by the Central government.

It may be noted that under the Companies Act, 1956, there was no requirement for preparation of consolidated financial statements. Clause 32 of the listing agreement made it mandatory for listed companies having subsidiaries to publish Consolidated Financial Statements. It is also noteworthy that as per the said clause to the listing agreement, no Company which did not have any subsidiary was required to prepare and present Consolidated Financial Statements in addition to Standalone financial statements. Under the Companies Act, 2013 even companies not having any subsidiaries but having Joint Ventures and Associates will also have to prepare Consolidated Financial Statements in addition to Standalone Financial Statements.

Section 129(4) of the Companies Act, 2013 requires that the provisions of the Companies Act, 2013 applicable to the preparation, adoption and audit of the standalone financial statements of a holding company should, *mutatis mutandis,* apply to the consolidated financial statements.

It is pertinent to note that in case of associates equity method of accounting is to be followed which is of course not a full scale consolidation and the considering the aforesaid definition of Consolidated financial statements, the Standard cannot be applied for Consolidated Financial Statements. Moreover, the Standard states accounting for investments in associates in Consolidated financial statements but does not anyway mandate preparation of Consolidated Financial Statements if an enterprise only has one or more associates and no subsidiary.

<u>Format and manner of preparation of consolidated financial statements</u>

Rule 6 of the Companies (Accounts) Rules, 2014 provides that the consolidation of financial statements of the Company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards. Section 129 (1) provides that financial statements of the Companies are to comply with the Accounting Standards notified under Section 133. Further it has been provided that in case of a Company which is required to prepare consolidated financial statements under the provisions of Section 129(3) but which are not so required under the Accounting Standards then such Company will be required to comply with the provisions stated in Schedule III to the Companies Act, 2013.

Consolidation of financial statements is dealt with by AS 21, 23 and 27 wherein there is no requirement that mandates a Company for the preparation Consolidated Financial Statements. These Standards require that if a company prepares CFS, these standards to the extent applicable should be followed.

Coming to AS 21 it talks of consolidation of group which comprises of parent and subsidiaries. It further provides for accounting for investment in associates using Equity method as per AS 23. AS 23 does provide for manner of CFS of a company having only associate.

Therefore under the present scenario, it shall be sufficient if the provisions of Schedule III on CFS are complied with. However this again creates a lot of confusion.

General Instructions for Preparation of Consolidated Financial Statements, as given in the Schedule III of the Companies Act, 2013, provide that where a company is required to prepare Consolidated Financial Statements i.e., Consolidated Balance Sheet and Consolidated statement of Profit and Loss, the company should mutatis mutandis follow the requirements of Schedule III of the Companies Act, 2013 as applicable to the company in the preparation of Balance Sheet and Statement of Profit and Loss. In addition, consolidation financial statements shall disclose the information as per the requirements specified in the applicable Accounting Standard including those prescribed in Schedule-III.

Schedule III requires a Company the aforesaid information in Balance Sheet and the Statement of Profit and Loss which would be possible only when Consolidated Statements are prepared. Therefore the prima facie appearing exemption provided by Rule 6 of Companies (Accounts) Rules, 2014, remains irrelevant.

Coming to AS 21 it talks of consolidation of group which comprises of parent and subsidiaries. It further provides for accounting for investment in associates using Equity method as per AS 23. AS 23 does provide for manner of CFS of a company having only associate.

The Central Government, in consultation with National Advisory Committee on Accounting Standards amended the Companies (Accounting Standards) Rules, 2006. As a result of which the MCA vide notification dated 30th March, 2016 notified the Companies (Accounting Standards) Amendment Rules, 2016.

Para 9 of amended Accounting Standard 21 provides that *"A parent which presents consolidated financial statements should consolidate all subsidiaries, domestic as well as foreign, other than those referred to in paragraph 11. Where an enterprise does not have a subsidiary but has an associate and/or a joint venture such an enterprise should also prepare consolidated financial statements in accordance with Accounting Standard (AS) 23, Accounting for Associates in Consolidated Financial Statements, and Accounting Standard (AS) 27, Financial Reporting of Interests in Joint Ventures respectively."*

Para 11 of Accounting Standard 21 contained in the aforesaid amended Rules provides that *"A subsidiary should be excluded from consolidation when: (a) control is intended to be temporary because the subsidiary is acquired and held exclusively with a view to its subsequent disposal in the near future; or (b) it operates under severe long-term restrictions which significantly impair its ability to transfer funds to the parent. In consolidated financial statements, investments in such subsidiaries should be accounted for in accordance with Accounting Standard (AS) 13, Accounting for Investments. The reasons for not consolidating a subsidiary should be disclosed in the consolidated financial statements."*

On combined reading of the aforesaid paras, it is clearly evident that Companies are to prepare Consolidated financial statements, in cases where the parent does not have any subsidiary but has one or more associates and/or JVs .

It has further been clarified that the amendments shall be applicable for financial years commencing after the date of notification i.e. from F.Y. 2016-17 and onwards.

Therefore, as far as F.Y. 2016-17 is concerned, AS-21 clearly states that even if an enterprise has only associates/JV, consolidated financial statements should be as per AS-23 / AS-27 ,as the case may be.

<u>Adoption of consolidated financial statements</u>

Section129(4) of the Companies Act, 2013 requires that the provisions of the Companies Act, 2013 applicable for the adoption of the standalone financial statements of a holding company should, m*utatis mutandis,* apply to the consolidated financial statements.

Audit of consolidated financial statements

Sections 129(4) of the Companies Act, 2013 requires that the provisions of the Companies Act, 2013 applicable for the audit of the standalone financial statements of a holding company should, mutatis mut*andis,* apply to the consolidated financial statements.

Sections 143(2) require that the audit report on Consolidated Financial Statements should be addressed to the members of the company and not Board.

According to Proviso to Section 143(1) of the Companies Act, 2013, the auditor of a company which is a holding company should also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries.

Accordingly, the components of the financial statements are same as given in Section 2(40) of the Companies Act, 2013.

Board approval and Board Report

Section 134(1) of the Companies Act, 2013 requires that the financial statement, including consolidated financial statement, if any, should be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one should be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed.

Section 134 (3) of the Act, 2013 read with Rule 8 of the Principal Rules specifies the matters that are required to be mentioned in the Board's Report. As per sub-rule (1) of Rule 8, the Board's report shall contain a report on the performance and the financial position of its subsidiaries, associates and JVs included in the consolidated financial statement. By virtue of the amendment, vide MCA notification dated 27th July, 2016, the Board's report shall in addition to the disclosures as mentioned in the existing provisions of the Act requires to report on the contribution of such subsidiaries, associates and JVs to the overall performance of the company during the period under report.

The existing format of AOC-1 has been slightly modified to include the date since when the subsidiary was acquired and the date on which the associate or JV was associated or acquired by the company. Amendments have also been made to the existing format of AOC-4.

FAQ on CFS issued by ICAI

The Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India has issued Frequently Asked Questions (FAQs) to illustrate and to assist in clarifying the requirements regarding preparation Consolidated Financial Statements:

1.

(i) Whether a company H ltd is required to consolidate its subsidiary which is a Limited Liability Partnership (LLP) or a partnership firm?

(ii) Would the answer be different if LLP is an associate or joint venture of H Ltd?

(i) As per rule 6 of Companies (Accounts) Rules, 2014, under the heading 'Manner of consolidation of accounts' it is provided that consolidation of financial statements of a company shall be done in accordance with the provisions of Schedule III to the Companies Act, 2013 and the applicable Accounting Standards.

It is noted that relevant Indian Accounting Standard i.e., Ind AS 110, *Consolidated Financial Statements* provides that where an entity has control on one or more other entities, the controlling entity is required to consolidate all the controlled entities. Since, the word 'entity' includes a company as well as any other form of entity, therefore, LLPs and partnership firms are required to be consolidated. Similarly, under Accounting Standard (AS) 21, as per the definition of subsidiary, an enterprise controlled by the parent is required to be consolidated. The term 'enterprise' includes a company and any enterprise other than a company. Therefore, under AS also, LLPs and partnership firms are required to be consolidated.

Accordingly, in the given case, H ltd is required to consolidate its subsidiary which is an LLP or a partnership firm.

(ii) If LLP or a partnership firm is an associate or joint venture of H ltd, even then the LLP and the partnership firm need to be consolidated in accordance with the requirements of applicable Accounting Standards.

2. A Company H ltd has no subsidiaries, but has investment in an associate and a joint venture. Whether H Ltd. is required to prepare consolidated financial statements for the year ending March 31, 2016, in the context of Companies (Accounting Standards) Rules, 2006.

Section 129 (3) of the Companies Act, 2013 provides that where a company has one or more subsidiaries, it shall prepare a consolidated financial statement of the company and of all the subsidiaries. Further, an Explanation to this sub section provides that the word "subsidiary" shall include associate company and joint venture.

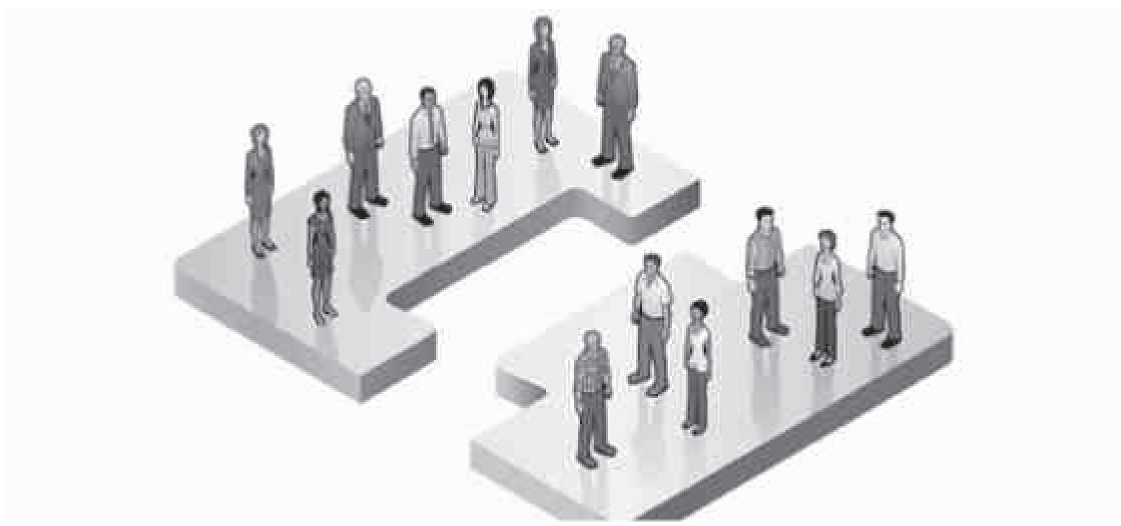
In view of the above, in the given case, though H ltd does not have any subsidiary, it is required to prepare consolidated financial statements for its associate and joint venture in accordance with the applicable Accounting Standards, viz, AS 23, *Accounting for Investments in Associates in Consolidated Financial Statements* and AS 27,*Financial Reporting of Interests in Joint Ventures*, respectively.

Penalty for contravention

Section 129(7) of the Companies Act, 2013 requires that if a company contravenes the provisions relating to preparation of financial statements, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees, or with both.

Conclusion:

Therefore, although the legal position seems that consolidation of financial statements for companies only having associates and/or JVs and no subsidiary consolidation was not required for F.Y. 2015-16, but going by FAQ of ICAI and third proviso to Rule 6 of the Companies (Accounts) Amendment Rules, 2014 providing exemption only for F.Y. 2014-15 to companies having only associates/JV and no subsidiary, it is seems that the intent of the legislature is to mandate preparation of consolidated financial statements for F.Y. 2015-16 in cases where a company has only associates/JVs and no subsidiaries.



Closing the GAAP – Indian Accounting Standards (Ind-AS) Impact Analysis

CA Roshan Bajaj

In the last few years, the regulatory framework for financial reporting in India has evolved significantly with the movement towards adoption of globally accepted financial reporting standards, referred to as International Financial Reporting Standards (IFRS) in form of Ind-AS. Although, Ind-AS are not IFRS and are only an adaptation of those principles, but they are indeed closer to these international standards with limited carve-outs/ carve-ins.

On 2 January 2015, the Ministry of Corporate Affairs (MCA) announced the final road map for implementation of Ind-AS, paving the way for overdue reforms in the accounting regime.

Snapshot of Ind-AS implementation roadmap:

Particulars	Phase I	Phase II	Voluntary adoption
Year of adoption	2016-17	2017-18	2015-16 or thereafter
Comparative year	2015-16	2016-17	2014-15 or thereafter
Covered companies (a) Listed companies	All companies with net worth equal to or more than Rs. 500 Crore or more	All listed companies and those in the process of getting listed	Any company could voluntarily adopt Ind-AS
(b) Unlisted companies	All companies with net worth equal to or more than Rs. 500 Crore or more	Companies having a net worth equal to or more than Rs. 250 Crore	
(c) Group companies	Applicable to holding, subsidiaries, joint ventures or associate of companies covered in (a) & (b) above		

Critical analysis of impact of Ind-AS

Transitional impact on accounting and financial reporting

A study of the provisions of Ind-AS highlights the following critical transitional changes:

1. Accounting for financial instruments, will undergo a comprehensive change, which on the one hand affects the balance sheet ratios due to changes in classification of instruments as liability or equity and fair valuation of financial instruments, and on the other hand affects the operational performance measures, due to accounting for fair value changes and interest and other transaction costs on effective interest rate method.

2. Group structures are likely to include more entities, which were hitherto not consolidated. The definition of 'control' will go through a paradigm shift, making the evaluation of holding-subsidiary relationships more judgmental than ever before. Terms of loans and guarantees given for financing businesses as well as existence of potential voting rights in equity/preference share instruments will need to be monitored to determine whether or not such businesses get consolidated.

3. Use of fair values is going to be extensive and complex. There are numerous instances in the new accounting literature where fair valuation is mandated. This will not only involve huge expenditure in determining fair values, it will also bring a great degree of volatility to the income statements and subjectivity to the financial statements as a whole. Besides, Ind-AS financial statements will have massive disclosures around use of fair values with a separate standard on fair value disclosures.

4. Accounting for business acquisitions will become more challenging as Indian business houses become more global and explore acquisition opportunities outside India. Unlike present accounting practices, which involve the use of book values, Ind-AS mandates recognition of assets acquired and liabilities assumed at fair values on acquisition date. Further, the new accounting standards will require seeing through an acquisition transaction to identify hidden or unsaid elements therein which may further complicate accounting.

5. Revenue recognition will witness certain high-impact changes. Whether it is accounting for multiple element arrangements or identification of principal-agent relationships, revenue contracts will need to be carefully drafted to avoid unintended negative impacts on the income statements. Business development teams will have to work in tandem with the accounting and financial planning teams to ensure that there are no loose ends which could land their companies in judgmental territories leading to tax and accounting complexities.

Accordingly, it is imperative for a company to define a process whereby the following is achieved:

- choice of appropriate accounting policies and consistency in application thereof across subsidiaries, segments, jurisdictions and sectors
- well defined systems for timely and accurate financial reporting
- reliance on processes rather than on people

<u>Challenges in implementation of Ind-AS</u>

Implementation of Ind-AS may pose various challenges for the Indian companies, few of which have been listed below:

- Additional costs to be incurred on:
  - Capacity building of employees in terms of knowledge of Ind-AS
  - Hiring of experts for effective implementation of Ind-AS
  - Hiring fair value experts for fair valuation of assets and liabilities as prescribed
  - Changes in IT systems to enable capturing of relevant information as per Ind-AS
- Companies may have to maintain two sets of accounts; for financial reporting as per Ind-AS and for Income Tax as per Income Computation and Disclosure Standards (ICDS)
- Companies' management needs to devote more time through pro-active participation in Ind-AS implementation
- Departments like business development, legal, IT etc. also needs to work in tandem with Finance & Accounts department

<u>Industry-wise major impact areas</u>

Industry	Major impact areas
Real Estate	❖ Revenue and expense recognition ❖ Consolidation of SPVs ❖ Investment property
IT/ITES	❖ Multiple element contract ❖ Share based payment
Entertainment & Media	❖ Revenue recognition method ❖ Guaranteed viewership compensated by discounted rate/ free slot
Telecom	❖ Bundled multiple services ❖ Accounting for indefeasible right to use ❖ Asser retirement/ restoration obligation (ARO)

Pharmaceutical & Research	❖ Collaborative arrangements ❖ Intangible assets (patents, licenses etc.) and its amortization
Power	❖ Long term power purchase agreements ❖ Decommissioning costs
Oil and Gas	❖ Exploration cost booking ❖ Abandonment/ Site restoration cost
Automobile	❖ Revenue for free services ❖ Assets of vehicle manufacturer used for component manufacturing
Infrastructure/ Construction	❖ Service concession arrangements ❖ Revenue recognition

Parting thoughts

Ind-AS implementation is not merely an accounting exercise but a business reform. It involves changes to processes, policies, internal controls, IT systems etc. and has an organization wide impact. Companies therefore have to formulate a robust plan for implementation to deal with a revolution of this magnitude. Company's management needs to be at the forefront of this change and should not shy away from making investment of resources for effective implementation of Ind-AS.

On a positive side, Ind-AS can significantly enhance the quality, transparency and international comparability of financial statements thus boosting investor confidence in the Indian regulatory environment and is expected to increase productive foreign investments into India. It may also reduce capital costs and facilitate international fund raising by Indian companies.

Major changing impacts on : Role, Duties & Responsibilities of Directors & KMPs ....under various Corporate Laws

CS Atul Kumar Labh

"DIRECTORS"

Definition :

• Section 2(34) of the Companies Act, 2013

"director" means a director appointed to the Board of a Company.

• Section 2(13) of the Companies Act, 1956

"director" includes any person occupying the position of director, by whatever name called.

• Major Changes

➢ "Director" compulsorily to be a part of the Board now.

➢ No other person can use the designation "Director" unless a part of the Board now.

➢ "Director" has to mention the word "Director" now.

➢ The new definition has a major impact on entities registered as Non-Profit seeking entity.

(Under Section 8 of the Companies Act, 2013 / earlier Section 25 of the Companies Act, 1956)

• Types of Directors :

➢ Additional Director

➢ Alternate Director

➢ Casual Director

➢ Director (Promoter / Non-Promoter)

➢ Nominee Director

➢ Independent Director

➢ Whole-time / Executive Director

➢ Managing Director

➢ Chief Executive Officer (CEO)

Key Managerial Persons (KMPs)

➢ Managing Director (MD)

➢ Manager

➢ Company Secretary (CS)

➢ Chief Financial Officer (CFO)

➢ Whole-time / Executive Director

Role, Duties & Responsibilities of Directors & KMPs Under The Companies Act, 2013

Directors : Role / Duties

➢ Duties of Directors have been defined (Section 166) for the first time in the Act.

➢ There are more clarity now for Disqualification for appointment of Director (Section 164), Vacation of office of Director (Section 167), Resignation of Directors (Section 168) and Removal of Directors (Section 169).

➢ *Disqualification of Director (Section 164) :*

➢Most of the aspects like, insolvency, unsound mind, conviction, etc. are common in comparison to that of the previous Act of 1956.

➢ *New Provisions* :

□ Director is disqualified if he has been convicted of the offence dealing with RPT u/s 188 at any time during the last preceding 5 years;

□ He does not have the DIN (Section 152(3))

➢ *Vacation of Office of Director (Section 167) :*

➢ In case of any of the disqualification in Section 164;

➢ *New Provisions* :

➢ Leave of Absence : in case of a director absents from all the meetings of the BOD held during a period of twelve months with or without seeking leave of absence of the Board, his/her directorship will be ceased.

➢ Failure to disclose his nature of interest u/s 184.

➢ *Resignation of Director (Section 168) :*

➢ *New Provision :*

Director can file his resignation directly with MCA (DIR-11)

➢ *Removal of Director (Section 169) :*

➢ Nothing new as such.

➢ *Duties of Directors (Section 166) :*

➢ To act according to the AOA of the Company;

➢ To act in good faith in order to promote the objects of the Company for the benefit of the members as a whole and in the best interests of the Company, its employees, the shareholders, the community and for the protection of the environment;

ÀÛ¾ÜTo exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;

➢ To avoid conflict of interests;

➢ To not to achieve any undue gain or advantage either to himself or to his relatives, partners or associates ;

➢ To not to assign his office;

➢ For contravention :

Fine : Minimum : Rs. 1 Lakh

Maximum : Rs. 5 lakhs

➢ *Miscellaneous Provisions* :

➢ To attend the Board Meetings, Committee Meetings and General Meetings.

➢ To recommend the remuneration of the auditors to the Board : by the Audit Committee.

➢ To consider observations of the auditors – Audit Committee / Board.

➢ To ensure proper access, reporting and control over fraud reporting.

➢ The Chairman of the Audit Committee has to attend the Annual General Meeting.

➢ To ensure that the Accounting Standards are properly followed.

➢ To laid down the criterias for appointment of Senior Management and other employees : by the Nomination and Remuneration Committee.

➢ To recommend the appointment of Senior Management and other employees : by the Nomination and Remuneration Committee.

➢ To frame the Remuneration Policy : Nomination and Remuneration Committee.

➢ To furnish the declaration of independency : Independent Directors.

➢ To furnish the disclosure of interest at the beginning of every financial year.

➢ To frame the CSR policy : CSR Committee.

➢ To develop the Risk Management Policy including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the Company.

➢ To make the formal annual evaluation of its own performance and that of its Committees and individual directors.

➢ To laid down the internal financial control and monitor its operating effectiveness.

➢ To establish vigil mechanism for directors and employees to report genuine concerns.

➢ To conduct at least one meeting in a year exclusively for the Independent Directors and to :

(a) Review the performance of non-independent directors and the Board as a whole;

(b) Review the performance of the Chairperson of the Company, taking into account the views of executive directors and non-executive directors;

(c) Assess the quality, quantity and timelines of flow of information between the Company management and the Board that is necessary for the Board to effectively and reasonable perform their duties.

➢ To ensure that the matters required to be passed by the Board get passed by the Directors only.

Directors : Responsibilities

➢ Managing Director : In overall in-charge of the affairs of the Company and being a KMP responsible for almost all the provisions of the Act.

➢ Executive / Whole-time Director : Shall be responsible for the violations only if it applies to the KMPs or the entire Board.

➢ Other Directors : Shall be responsible for the violations only if it applies to the entire Board.

Key Managerial Personnel

➢ *Company Secretary* :

➢ Functions of the Company Secretary is exclusively defined in Section 205 of the Act.

➢ Company Secretary has to report to the Board about the compliances with the provisions of the Act, the rules made there under and other laws as applicable to the Company;

➢ Shall be responsible for the violations only if it applies to the KMPs. However, almost in all the provisions of the Act Company Secretary is responsible along with Managing Director.

➢ The Company Secretary has to sign the financial statement.

➢ *Other KMPs (except MD and CS)* :

➢ CFO has to sign the financial statement.

➢ Shall be responsible for the violations only if it applies to the KMPs.

Under Secretarial Standards (SS-1 / SS-2)

➢ Directors must ensure receipt of Notice of the Board Meeting alongwith Agenda and necessary annexures at least seven days prior to the date of the Board Meeting.

➢ All the directors, including all other attendants, to sign the attendance register.

➢ In case of video conferencing the director opting for such mode must inform the company well in advance.

➢ The Board has to ensure that the audio visual means of the recordings are kept at least for one year from the date of Board Meeting.

➢ The directors must receive the draft minutes of the meeting within fifteen days of the conclusion of the meeting.

➢ The directors may provide inputs or record their dissent or seek clarification on the draft minutes within next seven days.

➢ The Company Secretary has to ensure the minutes duly complete entered into the minute book within thirty days of the conclusion of the Board Meeting.

➢ The final minutes should be circulated to all the directors alongwith notice of the Board Meeting
and the Agenda.

➢ The signed copy of the previous minutes should be circulated to all the directors within fifteen
days of the conclusion of the Board Meeting.

➢ There should not be a gap of more than 120 days between the dates of two Board and Audit
Committee Meetings.

➢ All the directors must receive the circular resolution, if any, with a clear cut deadline of the date by which the circular resolution needs to be responded.

➢ The Chairman of the general meeting to ensure that the proceedings are conducted in a fair manner.

➢ The physical ballots are required to be circulated at the venue of the meeting or evoting facility has to be provided at the venue of the general meeting.

Under SEBI (Takeover) Regulations, 2011

➢ No routine compliance under Takeover Regulations unless the director is a Promoter Director.

➢ In case of Promoter Director, the director is required to submit his holding alongwith his associates, to the Company and the stock exchange where the shares of the Company are listed within seven days of the beginning of the financial year.

➢ The Directors, KMPs and senior executives of the Companies acquiring/selling the shares in the Company would have to ensure compliance for the trigger points.

(for every +/- 2% in shares of the Company if the shareholding exceeds 5% / or / first time exceeding 5%, 26% or 75% individually / or / of the entire promoters' shareholding beyond 75%)

Under SEBI (Insider Trading) Regulations, 2015

➢ Initial Disclosure : Within 30 days of the Regulation coming into effect, i.e. 15.05.2015.

➢ Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.

➢ Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

➢ Any company whose securities are listed on a stock exchange may, at its discretion require any other connected person or class of connected persons to make disclosures of holdings and trading in securities of the company in such form and at such frequency as may be determined by the company in order to monitor compliance with these regulations.

➢ There are major three terms to monitor : Insider / Connected Person / Unpublished Price Sensitive Information.

➢ "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

(v) changes in key managerial personnel; and

(vi) material events in accordance with the listing agreement.

➢ No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

➢ No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

➢ No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information.

➢ In all cases the onus of ignorance would lie on the insiders or connected persons.

ÀÛ¾ÜThe board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, *a code of practices and procedures for fair disclosure of unpublished price sensitive information* that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.

➢ The board of directors of every listed company and market intermediary shall formulate a *code of conduct* to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

➢ *Every other person* who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

Under SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015

➢ All existing material related party transactions entered into prior to notification of listing regulations (w.e.f. 01.12.2015) and which may continue beyond such date shall be placed for approval of the shareholders in the first general meeting subsequent to notification of the listing regulations.

➢ There are certain events upon occurrence of which intimation is required to be given *not later than twenty four hours from the occurrence of event or information* (earlier, such material events were to be disclosed immediately, no timeline was specified). (Regulation 30).

➢ The Listing Regulations lay down a list of information which should be disseminated by a company on its website.

➢ Transfer of securities and issue certificates within 15 days from the date of such receipt of request for transfer.

➢ The listed entity shall ensure that transmission requests are processed for securities held in dematerialized mode and physical mode within 7 days and 21 one days respectively, after receipt of the specified documents.

➢ All share certificates are to be issued *within 30 days of the date of lodgement* for transfer, subdivision, consolidation, renewal, exchange or endorsement of calls/allotment monies.

➢ Disclosure to the SE : Proceedings of Annual and extraordinary general meetings within 24 hours and details regarding the voting results within 48 hours of the conclusion of the meeting.

The CEO and the CFO shall provide the compliance certificate to the BOD (Corporate Governance).

Policies to be adopted :

Regulation Policies

9	Policy for Preservation of Documents
16	Policy for Determining Material Subsidiary
23	Policy on Materiality of Related Party Transactions and on dealing with Related Party Transactions
30(4)	Policy on Materiality of Event
30(8)	Archival Policy
Schedule II (PART-D)	Policy on Diversity of Board of Directors

FAQs on Employees' Provident Funds and Miscellaneous Provisions Act, 1952

CA Vijaya Agarwala

Genesis of Provident Fund:

The term provident means making or ensuring timely preparation for the future. Hence, a Provident Fund (‘PF’) is a social security program run by the State in the form of an investment fund contributed to by employers, employees and the state. Lump sum amount is paid out to employees upon retirement or disablement.

The Act was enacted by the Parliament of India and came into force with effect from 4 March 1952 as a part of series of legislative interventions made by the State under “Directive Principles of the State Policy’. The Directive Principles of the Constitution of India provide that the State shall within the limits of its economic capacity make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old-age, sickness & disablement and undeserved want.

In this article we attempt to answer certain basic queries pertaining to the Act.

1. What are the types of Provident Fund?

The fund being a beneficial piece of legislation and a State monitored savings platform, the interest rate, withdrawals etc. are regulated by the Ministry of Finance and Ministry of Labour. Based on taxability of contribution and it’s withdrawals, provident funds can be of different types as illustrated in the chart below:

Recognised Provident Fund
- Organisations with 20 or more employees;
- Must be approved by the Commissioner of Income Tax

Unrecognised Provident Fund
- Started by employer and employee in an establishment
- Not approved by the Commissioner of Income Tax

Statutory Provident Fund
- Maintained by Government and Semi-Government organisations, local authorities, railways, universities and recognised educational institutions

Public Provident Fund
- Scheme under Public Provident Fund Act, 1968
- Not restrcited to employed people only.

2. What is the objective and applicability of the Act?

The Employees Provident Fund (‘EPF’) and Miscellaneous Act, 1952 has been enacted by the Parliament of India with an aim to advance social security for workers and employees. It provides for a compulsory contribution to the fund for the future of:

a) the employee;

b) dependents of the employee on eventuality of his/her death.

The Act extends to the whole of India except Jammu and Kashmir.

3. What is the regulatory structure of the Employees Provident Fund?

The Employee Provident Fund is maintained by the Employees Provident Fund Organisation (‘EPFO’). The EPFO administers the Act and the three schemes under it, namely provident fund, pension fund and insurance. It is an autonomous tripartite body under the control of Ministry of Labour, Government of India.

The EPFO consists of a Central Board of Trustees, an Executive Committee, Central Provident Fund Commissioner and many subordinate officials.

4. Which establishments are covered by the Act?

The Act extends to more than 180 classes of establishments (as stated in Schedule I of the Act). Any establishment falling under the Schedule and employing 20(twenty) or more persons at any time during the year automatically comes within the purview of this Act.

Schedule I inter alia contains the following classes of establishments:

a) Production;

b) Processing/ Refining;

c) Plantations;

d) Mining;

e) Educational institutions;

f) Entertainment industry;

g) Tertiary/ service sector.

5. Are all categories of employees and workers covered under the Act?

The Act is applicable to all establishments enlisted in Schedule I to the Act, which engage 20 or more persons at any time during the year.

Section 2(f)[1] of the Act defines "employee" *as any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person,-*

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment;

(emphasis supplied)

Casual workers, temporary workers and workers on probation are included in the definition of employee for the purpose of this Act.

6. Are trainees included in the definition of employees?

Apprentices and trainees are excluded from the definition of employees. Several courts have held that trainees are not employees and that stipend paid to them does not amount to wages.

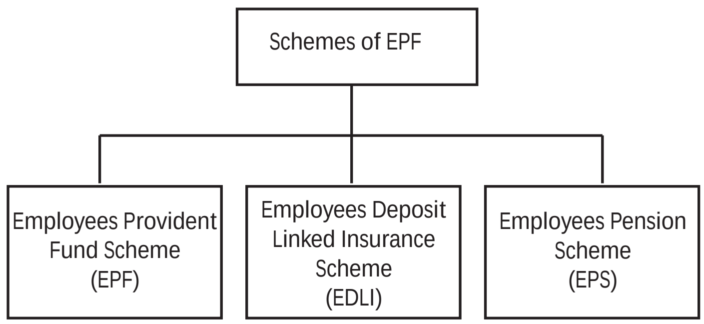
Moreover, unlike employees trainees are recruited under a specific training regime without any guarantee of employment.

7. Is contribution to the EPF mandatory?

Contribution to the EPF is mandatory for those who have a basic salary of up to Rs. 15,000[2]/- However, voluntary contribution to EPF may be made even if the basic salary exceeds Rs. 15,000/-.

8. What are schemes under the EPF Act?

There are three schemes available under the EPF Act as depicted in the diagram below:



9. What is the applicability and prescribed contribution of the Employees Provident Fund Scheme?

Particulars	Employees Provident Fund Scheme	Employees Pension Scheme	Employees Deposit Linked Insurance Scheme
Applicability	Every employee employed in an establishment covered by the Scheme is entitled and required to become a member of the fund from the date of joining the establishment.		
Objective	• It is an important investment that would meet the necessities of the future of employees	The Scheme aims at providing for: • Superannuation pension, retiring pension or permanent disablement pension to employees • Widow/ widower's pension or children pension	To provide life insurance benefits to employees of the establishments covered under the Act

Contribution	• For employees- 12% on a total of basic salary and dearness allowance • For employers- 3.67% on a total of basic salary and dearness allowance. o Additional administrative charge of 1.10% of basic salary and dearness allowance.	• For employees- no contribution required • For employers- 8.33% on a total of basic salary and dearness allowance.	• For employees- no contribution required • For employers- 0.5% on a total of basic salary and dearness allowance. o Additional administrative charge of 0.01% of basic salary and dearness allowance.

10. What is the prescribed contribution limit for EPF both by the Employer & Employee?

Employee contribution is 12% of the Basic + DA of the salary of each employee.

Employer's contribution is 12% of the Basic + DA of the salary of each employee. This is divided into two parts: 3.67% is remitted towards PF; 8.33% is remitted towards pension scheme. Additionally, the employer has to remit 1.61% which is divided as follows:

- 1.61% as administrative charges for EPF;
- 1.10% as administrative charges for pension scheme;
- 0.01% as inspection charges.

However, as an exception, the rate of employer's contribution for certain category of establishment is 10%. These are:

- Any establishment in which less than 20 employees are employed;
- Any sick industrial company and which has been declared as such by the Board of Industrial and Financial Reconstruction (BIFR);
- Any establishment which at the end of any financial year has accumulated losses equal to or exceeding its net worth;
- Any establishment in the following industries :
  - ☐ Jute factories;
  - ☐ Beedi factories;
  - ☐ Brick factories;
  - ☐ Coir factories;
  - ☐ Guar gum factories.s

The table below illustrates the employee, employer and government obligation towards contributions for the various schemes under the Act:

11. Does the employee receive an interest on accumulated EPF Account balance?

The EPFO pays compound interest on all deposits made into any EPF account. The interest rate on the EPF account varies each year and is determined by the Ministry of Finance. Compound interest is paid on the amount standing to the credit of an employee as on 1st April every year.

Contributor	Contribution Accounts			Administrative Accounts		Total (%)
	EPF	EPS	EDLI	EPF	EDLI	
Employee	12	0	0	0	0	12
Employer	3.67	8.33	0.5*	0.85	0.01	13.36
TOTAL	15.67	8.33	0.5	0.85	0.01	25.61

*- Capped at a maximum of Rs. 15,000/-

12. Is the interest on EPF taxable?

    No, interest earned by an employee on his RPF balance is not taxable.

13. Can voluntary contribution be made to PF? What is the benefit of it?

    An employee may voluntarily contribute over and above the stipulated rate of contribution. However, the voluntary contribution will have to be a fixed % of wages and not a fixed amount.

    The voluntarily determined rate of contribution should me intimated to the employer at the beginning of the financial year and must continue till the end of the financial year. However, the employer need not make any corresponding contribution against the voluntary employee's contribution.

14. Can the voluntary contribution percentage be change at any point of time?

    Yes, the rate of voluntary contribution can only be altered at the beginning of the financial year. Any such altered rate of contribution must continue throughout the year and cannot be changed till the end of the financial year.

15. Is the contribution to EPF taxable?

    The employer contribution is exempt from tax upto 12% and employee's contribution is taxable but eligible for deduction under Section 80C of Income Tax Act.

    Voluntary contributions are also available for tax rebates. Interest on voluntary contributions is also exempt from income tax.

16. Can voluntary contribution be withdrawn alone?

    Voluntary contributions alone cannot be withdrawn.

17. Can the PF amount be withdrawn at any point of time?

    Complete withdrawal: The total accumulated corpus of the fund can only be withdrawn upon retirement. With effect from February 10, 2016, the retirement age has been increased to 58 years.

    Partial withdrawal: A member who ceases to be in employment and continues to not be employed with a covered establishment for at least two months, may be permitted to withdraw only his own share of contribution, including interest earned thereon.

    However, the requirement of 'two months' period as referred above shall not apply female members resigning from the service for the purpose of getting married or on account of pregnancy/ child birth[3].

    A member can withdraw upto 90% of his contribution and interest thereon on attaining the age of 57 years (one year before actual retirement).

18. Is the withdrawal subject to tax?

    In case of a recognised provident fund, withdrawals from the fund are before the five years of continuous service shall be subject to TDS. In this case, all previous years income gets re-computed as if the fund was unrecognized from the beginning and all tax benefits availed under Section 80C in the earlier years gets forfeited.

    Exemption from TDS can be claimed by filing Form 15G/ 15H for employees having no taxable income, provided that the amount payable is upto the basic exemption limit for the respective assessment year.

    No tax shall be levied on amount withdrawn after continuous service of five years.

19. Can the withdrawal be for any personal reason?

    Withdrawal is permitted for the following specific purpose. However, if the amount is not utilized for the stipulated purpose, then the same will need to be refunded with penal interest.

    - *Marriage*: For self, siblings and children.
    - *Education:* For self and children
    - *Medical treatment:* Towards medical treatment of self, parents, spouse and children.
    - *Construction of house/Purchase of plot:* Only once during the service of an account holder.
    - *Home Loan Repayment/ House renovation/alteration.*
    - *Retirement:* A person must be 57 years old to withdraw up to 90% of the corpus of his PF account subject to the maximum of employee's contribution and interest earned thereon.
    - *Miscellaneous:* Withdrawal can also be made on the following grounds:
        - o physical or mental disability;
        - o higher studies etc.

20. What is the rate of TDS on early withdrawal?

Withdrawal before five years of continuous service attracts TDS at the following rate:

- 10 percent, if the employee's PAN is registered;
- 34 percent, if PAN is not registered.

The diagram below explains the TDS on EPF withdrawal:

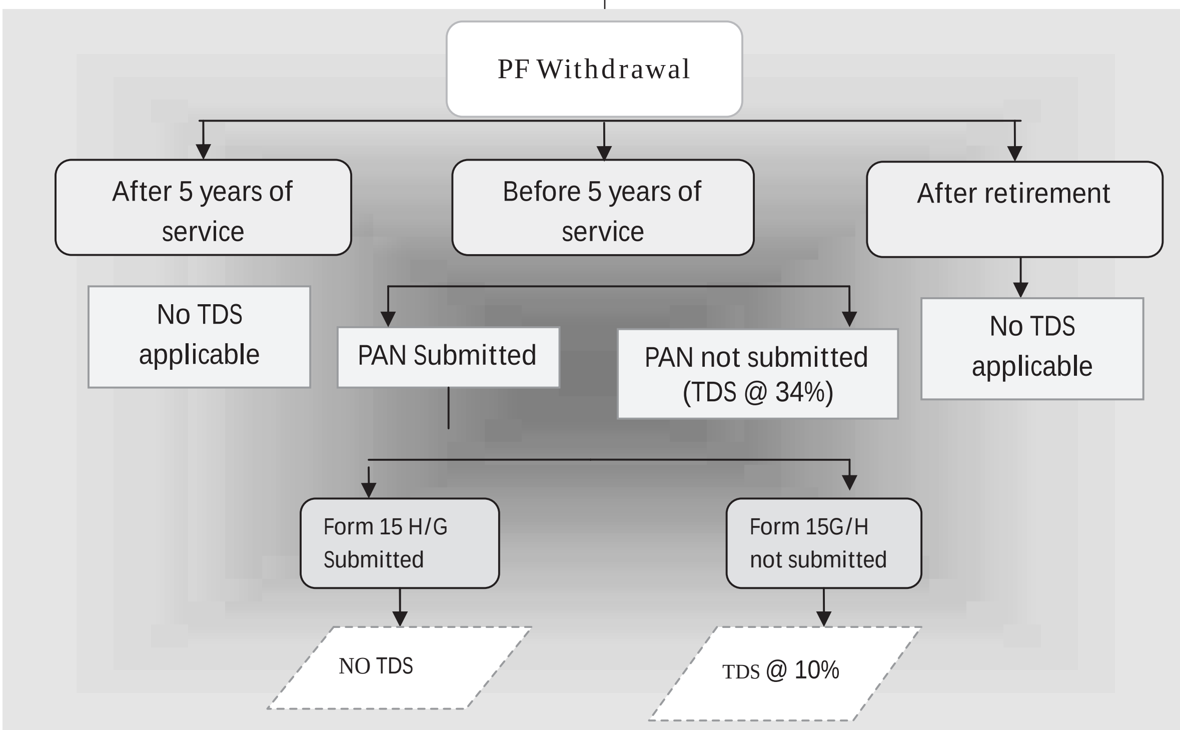
21. What does continuous service mean?

Continuous service means service uninterrupted except for the following reasons:

a) Ill health;

b) Discontinuance of employer's business.

Services rendered to previous employer shall be included for determining continuous service.



22. How is five years computed?

Years in which contribution has been made to PF account are only counted irrespective of the number of employers it pertains to.

23. What are the implications of discontinuation of service before retirement age?

The following circumstance arise in the event of pre retirement termination or resignation:

- Transfer of existing PF account from previous employer to current employer or;
- Partial withdrawal of accumulated fund on cessation of employment and not being reappointed for a minimum of two years;
- No further contribution to the account:
  - o Account becomes dormant after 36 months from the date of the last contribution made (individual continues to be a member of the fund even after he ceases to an employee of a covered establishment);
  - o Interest is payable on the corpus till the completion of 36 months.

24. In which year is the Provident Fund taxable?

Taxability of PF is determined at the time of withdrawal of the fund irrespective of the date of resignation or termination.

25. What is the tax implication on contributions made to the fund and interest earned thereon?

Sections 10(11 and 12) and 80C of the Income Tax Act deals with the taxability of provident fund. The table below illustrates the tax applicability on contribution, interest and withdrawal of PF.

Particulars	Recognised Provident Fund	Unrecognised Fund	Statutory Fund
Employer's Contribution	Exempt upto 12% of salary	Completely exempt	Fully exempt
Employee's Contribution	Deduction under Section 80C is available	No deduction available	Deduction under Section 80C is available
Interest	Exempt upto 9.5%	Not taxable	Fully exempt
Withdrawal upon retirement / termination	Not taxable [(Section 10(12)]: • after 5 years of continuous service or; • termination of employment due to ill health or discontinuance of employer's business.	• Employer's Contribution- Not taxable • Employee's contribution- Not taxable • Interest on employee's contribution- taxable under 'Income from other source'; • Interest on employer's contribution- taxable under Salary Income	Fully exempt [under Section 10(11)]

IRDA - A has somehow been separated from IRD

CS Nikita Snehil

In the recent scenario, the regulators have brought in a barrage of guidelines, notification, clarifications, various amendments in order to promote a better Corporate Governance in the country. In view of the massive changes to the governance of companies brought in by the Companies Act, 2013 ('Act, 2013'), Insurance Regulatory and Development Authority ('IRDA') decided to review the various guidelines of IRDA relating to the governance of insurance companies. Thereafter, with due consultation with the industry representatives and other stakeholders and professionals, IRDA has drawn out the revised guidelines on Corporate Governance through Corporate Governance Guidelines for insurers in India ('guidelines')[1], to align the Corporate Governance requirement of the insurance companies in India with the Act, 2013, via notification dated 18th May, 2016. The Guidelines combine the stipulations regarding the Corporate Governance practices, appointment of MD/ CEO/ WTD and other KMPs as well as the appointment of statutory auditors of insurers.

The revised guidelines combine the stipulations regarding the Corporate Governance practices, appointment of MD/ CEO/ WTD and other KMPs as well as the appointment of statutory auditors of insurers. These are applicable from financial year 2016-17 onwards.

Further, apart from the requirements of Companies Act, 2013 and the Corporate Governance Guidelines issued by IRDA, companies are also required to follow the requirements of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 ('Listing Regulations') dealing with Corporate Governance.

Further, IRDA has issued the Insurance Regulatory and Development Authority of India (Listed Indian Insurance Companies) Guidelines, 2016[2] on August 5, 2016, stating the provisions to be followed by the listed Insurance Companies.

Therefore, owing to the various regulations related to Corporate Governance, We have come up with a comparative analysis of the Corporate Governance norms applicable to companies.

The present article deals with a tabular comparison of the IRDA Guidelines for Corporate Governance ('guidelines') with the Provisions of the Companies Act, 2013 ('CA 13') and Listing Regulationsis as follows:

(Footnotes)

[1] https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo2852&flag=1

[2] https://www.irdai.gov.in/ADMINCMS/cms/frmGeneral_Layout.aspx?page=PageNo2922&flag=1

Comparison of CG Guidelines with the provisions of the Companies Act, 2013 and Listing Regulations

Particular	Corporate Governance guidelines for insurance Companies as per notification dated 18th May, 2016	Provisions of the Companies Act, 2013 ('Act')	Provisions of ListingRegulations	Our comments
Applicability of the guidelines	The guidelines is applicable from From financial year 2016-2017 onwards,to all insurers granted registration by the Authority except: (i) reinsurance companies may not be required to have the Policyholders' Protection Committee; and (ii) branches of foreign reinsurers in India may not be required to constitute the Board and its mandatory committees as indicated herein.	The Actis applicable to all companies incorporated under this Act or under any previous company law.	The Listing Regulations, 2015 are applicable to a listed entity who has listed any of the following designated securities on recognized stock exchange(s): • Specified securities listed on main Board, or SME Exchange or institutional Trading Platform; • b. Non-convertible Debt Securities, Non-convertible Redeemable Preference Shares, Perpetual Debt Instrument, Perpetual Non-cumulative Preference Shares; • IDRs • Securitised Debt Instruments; • Units issued by mutual funds; • Other securities as may be specified by SEBI.	The Act in uniformity is applicable to all the Companies incorporated under Companies Act, 2013. However, there are separate norms for the listed companies and insurance Companies.
Applicability of the appointment of woman director	Provisions regarding appointment of woman director is applicable to the Insurance Companies from the financial year 2016-2017 onwards.	The following class of companies is required to appoint at least one woman director- (i) every listed company; (ii) every other public company having - (a) paid–up share capital of one hundred crore rupees or more;or(b) turnover of three hundred crore rupees or more.	All the listed company shall have atleast one woman director in their Board.	The requirements of the CG guidelines issued by IRDA is in line with the requirement of the Listing Regulations.

Particular	Corporate Governance guidelines for insurance Companies as per notification dated 18th May, 2016	Provisions of the Companies Act, 2013 ('Act')	Provisions of ListingRegulations	Our comments
Appointment of Independent directors	The Board is required to have a minimum of 3 Independent Directors. However the requirement is relaxed to 2 independent directors, for the initial five years from grant of Certificate of Registration to insurers.	Section 149(4) of the Act provides that every listed public company shall have atleast 1/3rd of the total number of directors as independent directors and the following class or classes of unlisted companies shall have at least two directors as independent directors - (i) the Public Companies having paid up share capital of ten crorerupees or more; or (ii) the Public Companies having turnover of one hundred crore rupeesor more; or (iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.	Regulation 17 (1) (b) of the the Listing Regulationsprovides that where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors.	The authority emphasizes the need and importance of having Independent Directors on the Board and thereby specifies the minimum number of the Independent Directors to be three. However, relaxation is provided for initial five years, where the requirement has been relaxed to two.
Formal letter to appointment of Independent Director	An appointment letter shouldbe issued to the Independent Director laying down the terms and conditions, including his duties, responsibilities, sitting fees, etc. However, there is no requirement to post the same on the company's website.	Schedule IV of the Act, 2013 provides that the terms and conditions of appointment shouldbe posted on Company's website.	Regulation 46 (2) (b) of the Listing regulationsprovides that the terms and conditions of appointment of Independent Director shouldbe posted on the Company's website	The requirements are similar to Companies Act, 2013 and the Listing Regulations, however, the website disclosure is not mandatory as per IRDAI.
Chairman	Where the Chairman of the Board is non-executive, the Chief Executive Officer should be a whole time director of the Board.	There is no such requirement	Where the chairperson of the board of directors is a non-executivedirector, at least one-third of the board of directors should comprise ofindependent directors and where the listed entity does not have	IRDAI inorder to maintain a proper knowledge of the day to day activities of the Company mandates the presence of the whole time director, in case the chairman of the Board is a non-executive director.

Particular	Corporate Governance guidelines for insurance Companies as per notification dated 18th May, 2016	Provisions of the Companies Act, 2013 ('Act')	Provisions of ListingRegulations	Our comments
			aregular non-executive chairperson, at least half of the board ofdirectors should comprise of Independent Directors.	
Fit and proper criteria	The guidelines requiresthe Directors of insurers to meet the "fit and proper" criteria. Withaviewtoensuringthe same a due diligence enquiry should be undertaken on the person to be appointed as Director or for the continuance of the existing Directors only after obtaining a declaration from the proposed/existing Directors in the format given in the regulation.	There is no such requirement	There is no such requirement.	In line with the international and domestic norms, IRDAI has mandated the requirement of fulfilling the Fit & Proper criteria by the Directors. The criteria to be satisfied, at a minimum, would relate to integrity demonstrated in personal behaviour and business conduct, soundness of judgment and financial soundness.
Composition of Audit Committee	Point 7.1 of theguidelines provides that every insurer shall constitute an Audit Committee as per Section 177 of the Companies Act, 2013. Chairperson of the Audit Committee should be an Independent Director of the Board with an accounting/finance/audit experience and may be a Chartered Accountant or a person with a strong financial analysis background. Further, the association of the CEO in the Audit Committee should be limited to occasions where the Audit Committee requires eliciting any specific information concerning audit findings. As required under Section 177 of the Companies Act, 2013,	Section 177 of the Act provides that the Audit Committee shall consist of minimum 3 directors with Independent directors forming the majority. Provided that majority of members of the audit committee including its chairperson shall be persons with the ability to read and understand Financial statement.	Regulation 18 of the Listing Regulations provides that every listed company shall constitute an independent Audit committee which shall have minimum 3 directors majority of whom shall be Independent director. The chairperson of the audit committee shall be an Independent Director and he shall be present at Annual general meeting to answer shareholder queries.	Though the composition of the Committeeas prescribed in the guidelines is in line with the Listing Regulations, the guidelines specifies certain restriction regarding the presence of CEO which is not there in the Act or the Listing Regulations.

Particular	Corporate Governance guidelines for insurance Companies as per notification dated 18th May, 2016	Provisions of the Companies Act, 2013 ('Act')	Provisions of ListingRegulations	Our comments
	the Audit Committee shall comprise of a minimum of three directors, majority of whom should be Independent Directors.			
Constitution of Investment Committee as a mandatory committee	The Board of every Insurer is required toset up an Investment Committee comprising of at least two Non-Executive Directors, the Chief Executive Officer, Chief of Finance, Chief of Investment, Chief Risk Officer and, the Appointed Actuary. The Committee is responsible to recommend investment policy and lay down the operational framework for the investment operations of the insurer. Further, the Committee should meet at least once in a quarter to review investment operations and submit a reporttotheBoardonthe performance of the investment portfolio with regard to its safety and soundness.	There is no such requirement.	There is no such requirement.	The policy should focus on a prudential Asset Liability Management (ALM) supported by robust internal control systems. The investment policy and operational framework should, inter alia, encompass aspects concerning liquidity for smooth operations, compliance with prudential regulatory norms on investments, risk management / mitigation strategies to ensure commensurate yield on investments and above all protection of policyholders' funds. Therefore, the funds of the policyholder will be utilized under supervision of the Committee.
Constitution of Risk Management Committee as mandatory committee	Point 7.3 of the guidelines provides that –insurers shouldset up a separate Risk Management Committee to implement the Company's risk management strategy. Further, the entire Risk Management function shall be under the supervision of Chief Risk Officer (CRO) with a clearly defined role.	Section 134 (3) (n) of the Act provides for Risk Management Policy to be attached with the Board's report. However, there is no such requirement of constitution of Risk management committee in the Act.	Regulation 21 of the ListingRegulations provides for formation of Risk Management Committee. However, the same is applicable to top 100 listed entities, determined on the basis of market capitalization, as at the end of the immediate previous financial year.	Realising the presence of risk involved in the insurance sector, the guidelines requires every insurer company to mandatorily constitute a Risk Management Committee.
Risk Management Policy	Point no.6 of the guidelines requires the Board to put in place a policy framework, due	The companies have to report in its Director's Report a statement	The listed entity is required to lay down procedures to inform	In order to control the impact of any risk on the operation or functioning

Particular	Corporate Governance guidelines for insurance Companies as per notification dated 18th May, 2016	Provisions of the Companies Act, 2013 ('Act')	Provisions of ListingRegulations	Our comments
	to thethe risks that an insurer takes in carrying out its operations, and the potential impact it has on its business. Further, the Board will be responsible for the oversight over the control functions of an Insurer	indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company.	members of boardof directors about risk assessment and minimization procedures. Further, the board of directors are responsible for framing, implementingand monitoring the risk management plan for the listed entity.	of the company, the authority has mandated to lays down the policy framework to put in place a system for risk management.
Nomination and remuneration Committee (NRC)	Point 7.5 of the guidelines provides that the insurance companies should constitute Nomination and Remuneration Committee in line with provisions of section 178 of the Companies Act, 2013. The Chairman of the Committee shouldbe an Independent Director. At least one-half of the Committee should comprise of Independent Directors.	The Board of Directors is required to constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half should be Independent Directors. Provided that the chairperson of the company (whether executive or nonexecutive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.	Regulation 19 of the Listing Regulation provides that the Board of Directors should constitute the Nomination and Remuneration committee consisting of 3 directors, all of whom should be non-executive directors and atleast 50% of the directors should be Independent Directors.	As per the guidelines, the Indian Insurance Companies which have constituted two independent committees for Nomination and Remuneration separately may merge these two Committees after seeking the Board approval, under intimation to the Authority, within a period of 180 days from the date of issue of these guidelines. Therefore, the authority has ensured to keep in check duplication of requirements.
Requirement of deed of covenant	Point 7.5 of the guidelines provides that the Directors are required to enter into a Deed of Covenant as per the format placed at *Annexure 3*, with the insurance company, duly approved by the Board, pursuant to their terms of appointment.	There is no such requirement.	There is no such requirement.	The requirement of entering the Deed of Covenant ensures a clear understanding of the mutual role of the company, the Directors and the Board in Corporate Governance. Therefore, the authority has mandated the same.
Policyholder protection committee as a	Para 7.4 of the guidelines provides that each insurer should have a policyholder	There is no such requirement.	There is no such requirement.	The Committee should facilitate proper systems to ensure that

Particular	Corporate Governance guidelines for insurance Companies as per notification dated 18th May, 2016	Provisions of the Companies Act, 2013 ('Act')	Provisions of ListingRegulations	Our comments
mandatory committee	protection committee as a mandatory committee. The Committee should be headed by a Non-Executive Director and should include an expert/representative of customers as an invitee to enable insurers to formulate policies and assess compliance thereof. Further, the Committee should recommend a policy oncustomereducation,for approval of the Board and ensure proper implementation of the same. The Board is required to review the status report on policyholders' protection issues, submitted by the Committee, in each of its meeting.			policyholders have access to redressal mechanisms and should establish policies and procedures, for the creation of a dedicated unit to deal with customer complaints and resolve disputes expeditiously.
Corporate Social Responsibility Committee as a mandatory Committee	As per the guidelines, for Indian Insurance Companies, a CSR Committee is required to be set up if the insurance company earns a Net Profit of Rs. 5 Crores or more during the preceding financial year. Further, the rest provisions are similar to the provision of Section 135 of the Companies Act 2013 and its applicable rules.	As per Section 135 of the Act, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year should constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director should be an Independent Director.	There is no such requirement.	The applicability of CSR on insurance companies are dependent on only the criteria of having Net Profit of Rs. 5 Crores or more during the preceding financial year, however, as per the Act, the applicability criteria is much broader.
With Profit Committee as a mandatory committee	Para 7.7 of the guidelines provides that every insurer transacting life insurance business should constitute a	There is no such requirement	There is no such requirement	The Committee is mandatorily required for insurance companies carrying on life insurance

Particular	Corporate Governance guidelines for insurance Companies as per notification dated 18th May, 2016	Provisions of the Companies Act, 2013 ('Act')	Provisions of ListingRegulations	Our comments
	'With Profit Committee' comprising of an Independent Director, the CEO, the appointed actuary and an independent actuary. Further, the report of the With Profits Committee should be attached to the Actuarial Report and Abstract furnished by the insurers to the Authority.			business and the same is not applicable for companies transacting general insurance business.
Quorum	The quorum of the mandatory committees is two members or one-third of the members of the Committee, whichever is greater, however in case independent director(s) is/ are mandated to be in any of the Committees, at least onesuch independent director or his alternate director, should necessarily be present to form the quorum.	The quorum for the mandatory committees is similar to the quorum requirement of the Board, i.e., one- third of its total strength or two directors, whichever is higher.	The quorum for the mandatory committees is similar to the quorum requirement of the Board, i.e., one- third of its total strength or two directors, whichever is higher, as per Companies Act, 2013. However, the quorum for audit committee meeting shall either be two membersor one third of the members of the audit committee, whichever is greater,with at least two Independent Directors.	The requirement of the guidelines is in line with the provisions of the Act, except where in case independent director(s) is/ are mandated to be in any of the Committees, at least onesuch independent director or his alternate director, should necessarily be present to form the quorum.
Meaning of Key Managerial Personnel (KMP)	"Key Management Person" means members of the core management team of an insurer including all whole-time directors/ Managing Directors/ CEO and the functional heads one level below the MD/CEO, including the CFO, Appointed Actuary, Chief Investment Officer, Chief Risk Officer, Chief Compliance Officer and the Company Secretary.	As per the Act, Key Managerial Personnel, in relation to a company, means— (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Office.	As per the Listing Regulations, key managerial personnel means key managerial personnel as defined in sub-section (51) of section 2 of the Companies Act, 2013	The meaning of KMP is much wider for insurance companies as per the guidelines, because the same encompasses several persons and the same is merely an inclusive list. However, as per the Act, the meaning of KMP has been defined and is specific to only four designation.

Particular	Corporate Governance guidelines for insurance Companies as per notification dated 18th May, 2016	Provisions of the Companies Act, 2013 ('Act')	Provisions of ListingRegulations	Our comments
Appointment of Key Managerial Personnel (KMP)	Para 8.1 of the guidelines provides that appointment, re-appointment or termination of Chief Executive Officer or Whole Time Director should require prior approval of the IRDAI. In this regard the Board shall be responsible to take proactive steps to decide on the continuance of CEO well in time before the expiry of his tenure or to identify the new incumbent.	Section 203 (2) of the Act provides that every whole time KMP of the company should be appointed by means of a resolution of the Board containing the terms and conditions of appointment including the remuneration.	There is no such requirement prescribed in the Regulations for appointment of KMPs.	Though the definaion of KMP is an inclusive one, however the requirement of having KMP is on every insurance company. Whereas, as per the Act only listed company and every other public company having a paid-up share capital of ten crore rupees or more are required to mandatorily have whole-time key managerial personnel.
Requirement of appointing Company Secretary as Compliance Officer	Para 11.4.2 of the guidelines provides that each insurer should designate Company Secretary as the Compliance Officer whose duty will be to monitor continuing compliance with the guidelines. Further, Annual Report of the insurer should have a separate certification from compliance officer.	There is no such requirement.	Reg. 6 (1) of the Listing Regulations provides that a listed company should appoint a qualified Company Secretary as the Compliance Officer. Further, Reg. 7 (3) of the Listing Regulations provides that the listed entities should submit a Compliance Certificate to the exchange, duly signed by the Compliance Officer.	The requirement as specified in the guidelines is in line with the requirements of the Listing Regulations.
Submission of report on Corporate Governance	Para 11.4.4 of the guidelines provides that all the insurers are required to file a report on the status of compliance with the guidelines on annual basis. The report should be filed within 3 months from the end of the financial year i.e. before 30th June, in the prescribed format.	There is no such requirement.	Listed entities are required to submit a quarterly compliance report on corporategovernance in the format as specified by the Board from time to time to therecognised stock exchange(s) within fifteen days from close of the quarter. Further, Schedule V part C of the Listing Regulations provides	Both the guidelines as well as the Listing Regulations requires annual reporting in order to monitor the operations and functioning of the Company as well as to monitor the implementation of the Corporate Governance norms by the companies.

Particular	Corporate Governance guidelines for insurance Companies as per notification dated 18th May, 2016	Provisions of the Companies Act, 2013 ('Act')	Provisions of ListingRegulations	Our comments
			that the disclosures of the compliance with Corporate Governance requirements specified in regulation 17 to 27 and clauses (b) to (i) of sub-regulation (2) of Regulation 46 should be made in the section on Corporate Governance of the annual report.	
Applicability of certification	The guidelines envisaged an annual compliance certification of by the Chief Compliance Officer of the insurer, in Form –KMP-2	There is no such requirement.	The quarterly Corporate report mentioned in clause (a) of sub-regulation (2) shall be signed either by the compliance officer or the chief executive officer of the listed entity.	The certification is required to ensure that the company has provided the correct information to its policy holders/ shareholders.

Insurers in India are yet to go public and get their shares listed on the stock exchanges, IRDA in order to promote globalization, is encouraging the Insurers to get their shares listed. It is relevant to observe here that the Corporate Governance requirements of companies listed in the Stock Exchanges have evolved over time and are outlined in SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015. Therefore, the Authority through the Corporate Governance Guidelines has advised all Indian Insurance Companies to familiarize themselves with Corporate Governance structures and requirements appropriate to listed entities. The companies, even if unlisted, are also well advised to initiate necessary steps to address the extant "gaps" that are so identified to facilitate smooth transition at the time of their eventual listing in course of time, in order to promote transparency and better functioning of the companies which further results into the development of the economy as a whole.

Outsourcing the Audit Function-Key Considerations

CA Sonia Agarwal

Historically auditors have faced unique considerations when the clients out source their business processes to a foreign captive unit / a third party. In recent times, we have also witnessed the emergence of a trend where non-judgmental auditing procedures are being outsourced by large accounting firms in the developed world to their Captive Off-shore Entities (COEs) located in developing economies. While this move is driven primarily by the cost efficiency gains that would accrue by operating in relatively lower cost economy, there might be a host of other considerations that might emerge out of the process. This article explores the intricacies involves in the process.

Introduction

Off shoring of business processes has gained wide currency in recent times. From its simple beginning in the 1970's with the movement of payroll and repetitive transaction processing, off-shoring has grown to a $65 billion market. As per the Global Financial Services Off shoring Report 2007 by Deloitte, over 75% of major financial institutions report off-shoring a portion of their operations. It is estimated by some economists that up to one-third of total U.S. employment in services may ultimately be off-shored.

Audit Quality Inspections; Annual Report 2011/12 published by the Audit Inspection Unit of Financial Reporting Council, UK had this to state about off-shoring

"A number of firms are continuing to pursue "off-shoring" strategies where certain audit procedures are performed in off-shore locations, in order to reduce costs. While the extent of offshoring remains small, generally less than 5% of core audit hours, it continues to increase at a significant rate. Firms will need to ensure that their policies and procedures evolve in order to manage effectively any risks to audit quality associated with off-shoring."

Concept

In an audit, off shoring is when certain auditing procedures for the audit of a US based company are performed by audit firm personnel located in another country, where the US based company may or may not have operations.

Large accounting firms are increasingly performing audit work for their global clients in off-shore locations such as India, China, Pakistan, Philippines etc. This is highly advantageous as the latter provides a skilled labor pool at significantly lower costs than the global counterparts. A partner of KPMG commented at a 2007 faculty symposium that the 'all-in' cost of a chartered accountant at the firm's Indian COE is approximately 25 percent that of the employee's U.S. equivalent.

Further the Indian off-shore team of say a UK practice, typically called acaptive offshore entity (COE) would offer the flexibility in work timings in order to bridge the five and a half hour time-gap between the two countries. An increasing amount of audit related number checking and tabulation is being performed remotely. Improved technology for scanning and transmitting documents to far off locations is facilitating this development

Legal Structure & Impact on Audit Responsibility

In the year 2011, James Doty- the Chairman of the Public Committee for Accounting Oversight Board (PCAOB) has stated the question marks that are being raised about off-shoring of audit function from a USA standpoint. "I am concerned about investor awareness. I have been surprised to encounter many savvy business people and senior policy makers who are unaware of the fact that an audit report that is signed by a large U.S. firm may be based, in large part, on the work of affiliated firms. Such firms are generally completely separate legal entities in other countries." In his book No One Would Listen, Bernie Madoff whistle blower Harry Markopolos (2010) writes "What many people don't realize is that Price water house Coopers is actually a different corporation in different countries. The corporations have the same brand name, but basically they're franchises."

In many instances, a significant portion of the audit may be conducted abroad—even half or more of the total audit hours. The core question here is whether the audit firm in the parent country would be completely responsible for the part of the work that has been off-shored to global networks of member firms.

Let us consider the example of Deloitte Touche Tohmatsu Limited (DTTL), that employs 193,000 people across 150+ countries and posted FY 12 revenues of $. 31.3 bn from its practice of audit, consulting, financial advisory, risk management, and tax services.

This relationship is described on Deloitte's website as follows:

"DTTL does not itself provide services to clients. DTTL and each DTTL member firm are separate and distinct legal entities, which cannot obligate each other. DTTL and each DTTL member firm are liable only for their own acts or omissions and not those of each other"

Through this legal structure, governing organization (such as DTTL) is apparently exonerated from liability for audit failures of other member firms, as well as member firms from liability for audit failures of other member firms. This risk is mitigated in the US where audit form which issues the report is responsible for the entire audit, including audit work done by foreign affiliates. But it is not very clear how it operates elsewhere.

Investor Perception over Quality of Audit

The off-shoring practice is also causing eyebrows to be raised in the off-shoring countries as the audit function has traditionally required the firm's audit staff to spend a significant quantum of time on the premises of the company being audited, allowing for direct observation of its operations and documents. Critics argue that off shoring of audit by large firms is in fact a form of self-inflicted tick-box mentality, breaking down the audit into a series of mundane tasks devoid of client interaction. However, supporters maintained that in every audit there will be routine tasks requiring no judgment, and these boxes can be ticked just as well from India as the UK

As per the current regulatory framework, "If the principal auditor is able to satisfy himself as to the independence and professional reputation of the other auditor and takes steps he considered appropriate to satisfy himself as to the audit performed by the other auditor, he may be able to express an opinion on the financial statements taken as a whole without making reference in his reports to the audit of the other auditor". It is then added with emphasis that "if the principal auditor decides to take this position, he should not state in his report that part of the audit was made by another auditor because to do so may cause a reader to misinterpret the degrees of responsibility being assumed."

Meanwhile in a keynote address in 2012, James Doty- the Chairman of the Public Committee for Accounting Oversight Board (PCAOB) stated that Board is developing a standard to require audit firms to disclose in their audit reports the names of other public accounting firms, including a firm's own affiliates (COEs), as well as individual accountants not employed by the principal audit firm, who contributed to the audit.

It could so happen that if there is an audit failure due to inadequacy of off-shoring unit's personnel, juries may attribute a disproportionate share of the blame to outsourcing. The principal audit form might to able to comply fully with the standards on Audit Documentation if they do not maintain work-papers on procedures performed at AOEs

Thus it becomes onerous on part of the principal auditor to exercise control over the work executed by foreign affiliates. The risk of quality should be addressed in a strategic manner by the audit partner deciding on the optimum mix between off-shoring of judge mental and non-judgmental areas. Also the credentials of the personnel employed in the COE need to be checked via interviews before initiating them on a project. A host of measures can be taken to ensure seamlessness in the quality of work done globally on the project.

Confidentiality

A member in practice shall not disclose any confidential client information without the specific consent of the clients. They may not be uncomfortable with the idea that their confidential information is being passed onto an individual in a foreign COE that they have never met or established a working relationship with, in-spite of the fact that the professionals are the firm's employees. In fact legislation had been proposed in the US - Personal Data Off shoring Protection Act of 2004 to mitigate such concerns. In the UK, The EU's Data Protection Act served as the basis for a lawsuit against Lloyds TSB, which transferred certain customer information to its Indian processing center.

Audit firms will have to reinforce their assurances to clients that procedure sare in place to appropriately safeguard the confidentiality of off-shored client information during and after completion of the audit

Cultural Diversity

Again there are major challenges inherent in the off-shoring process as the engagement team would comprise of individuals from diverse cultural backgrounds who mostly communicate over phone and rarely get to see each other face to face. Audit requires an auditor to be able to demonstrate control of their working papers and supervision and control of the audit work used in arriving at their conclusions. This limitation is overcome if there staff exchanges with the offices providing the offshore services.

Future increase in costs

Even though the offshore provider's location may presently offer pay and tax advantages over time, these costs might rise and may well start to match local costs. Historically, locations such as Singapore and Taiwan provided cheap labour but that is no longer the case. With currency appreciation and rapid growth in their economies, the story might be repeated for India, China, Philippines etc. This underscores the imperative that corporations that make global location decisions ought to focus less on short-term cost considerations, and more on long-term projections of talent supply and operating effectiveness. Off-shoring would need to be cost competitive even after factoring in costs for maintenance, monitoring, and quality controlprocesses

Conclusion

The offshoring of audit procedures presentsauditing firms with unique opportunities and challenges. While off-shoringallows firms to reap benefits from economies of scale and the cost arbitrage, the management of such practices would also need to have adequate mitigation strategies for the real risks and hidden costs. However provided that audit quality is maintained, and appropriate levels of supervision and review are employed to ensure compliance with local regulations of the parent audit firm/expectations of stakeholders; there lie tremendous opportunities where off-shoring could expand into areas requiring judgment as well.

From the desk of General Secretary
- Activities since 01.06.2016

STUDY CIRCLE MEETING & GROUP DISCUSSION

SL. No.	Date	Name of Programme	Speaker
1.	10.06.2016	DTPA S. C. Meeting on " Further Amendments In Finance Act 2016" at DTPA Conference Room	CA. P. K. Agarwalla
2.	20.06.2016	Group Discussion Meeting on "Income Tax Amendments Applicable WEF 1st June'2016" at DTPA Conference Room	CA. P. K. Himmatsinghka
3.	22.06.2016	DTPA S. C. Meeting on " Startup Eco System & Professional Opportunities" at DTPA Conference Room	CA. Alok Patania
4.	24.06.2016	DTPA S. C. Meeting on " Service Tax Assessment, Audit, Scrutiny & Appeal" at DTPA Conference Room	CA. Rajeev Kr. Agarwal
5.	30.06.2016	DTPA S. C. Meeting on " Income Tax Disclosure Scheme" at DTPA Conference Room	CA. Ravi Tulsiyan
6.	15.07.2016	DTPA S. C. Meeting on " Model GST Law - AN Overview" at DTPA Conference Room	CA. Pulak Kr. Saha
7.	22.07.2016	DTPA S. C. Meeting on "CARO & Audit Report under Companies Act 2013" at DTPA Conference Room	CA. Sanjay Agarwal
8.	06.08.2016	DTPA Annual Tax Conference - 2016 on "Better Tax Compliance -Role of Professionals" at Hotel Taj Bengal	CA. P. M. Jagtap Mr. N. M. Ranka
9.	30.08.2016	DTPA S. C. Meeting on "GST – BASIC CONCEPTS & TRANSITIONAL ISSUES" at DTPA Conference Room	CA. ArunAgarwal
10.	02.09.2016	DTPA S. C. Meeting on "Consolidated Financial Statements under Companies Act, 2013 Issies amd Clarifications" at DTPA Conference Room	CA. Mohit Bhuteria
11.	07.09.2016	DTPA S. C. Meeting on"INCOME DECLARATION SCHEME" at DTPA Conference Room	Adv S. M. Surana

Other Events

1.	08.07.2016	Study Circle Meeting at Aayakar Bhawan
2.	09.07.2016	Felicitation of Shri Gopal Mukherjee, Member (Revenue), CBDT
4.	03.08.2016	Press Conference at Press Circle Club

Direct Taxes Professionals' Association

Members are informed that as per the decision taken in the Executive Committee Meeting held on 15/02/2016, sending hard copies of Circulars has been discontinued w.e.f. 01/04/2016.

All the circulars/information related to Study Circle Meetings & other events are being sent through e-mail/sms on the email address/mobile number of the members available on record of the association.

Members are also being kept updated about the study circle meetings and other events through other social media apart from hosting of the events on our website www.dtpa.org

Members who are not receiving emails or sms regarding event information, are requested to mail their updated email id and/or mobile number to dtpakolkata@gmail.com

Members are also informed that DTPA Members Directory 2016 is available. A copy of the same can be collected (if not collected) either personally or through authorised representative by paying a nominal charge of Rs. 100/- during Monday to Friday between 11.30 a.m. to 6.30 p.m.

CA Sunil Surana
President

CA Vikash Parakh
General Secretary

NEW MEMBERS ADMITTED ON 16.08.2016

Sl. No.	NAME	PROPOSED BY	QUALIFICATION	E. MAIL ID.
1	Mr. Vaibhav Khandelwal	Mr. M. M. Khandelwal	CA	vaibhav.khandelwal@gmail.com
2	Mr. Raj Kr. Lohariwal	Mr. Ajit Kr. Tulsian	B.Com, FCA, DISA	rklohariwal@rediffmail.com
3	Mr. Shubham Khaitan	Mr. Surendra Kr. Khaitan	B. Com(H), ACA ACS, CFA(USA), DISA(ICAI)	subham044@gmail.com
4	Mr. Rites Goel	Mr. Ratan Kr. Goel	B. Com(H), CS, LL.B, Advocate	replyrites@gmail.com
5	Mr. Ravi Agarwal	Mr. Vinod Agarwal		
6	Mr. Goutam Kr. Chattopadhyay	Mr. Vikash Parakh	LL.B, Advocate	axcom@yahoo.co.in

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 (W), Income Tax Building, Kolkata-700001

Dear Sir,

I hereby apply for **LIFE 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 : ❐ In Practice ❐ In Service ❐ In Business ❐ Others (Pls. specify)
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 ?

❐ Contributing articles for Journal ❐ Being part of the Core group which runs the functioning of DTPA
❐ Being faculty / Speaker at Conferences / Seminars / Workshops ❐ Others (Please specify)

Area of Professional Interest, ❐ 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 (Pls. Specify)

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/- (b) If application is made within a period of 5 years of attaining first professional qualificatiuon Rs. 5,000/- (c) Corporate Bodies Rs. 7,500/-*
2) *Cheques should be drawn in favour of **"Direct Taxes Professionals' Association"***

DTPA
Annual Conference 2016

on Saturday, 6th August 2016
at **The TAJ Bengal**

STUDY CIRCLE MEETINGS

Startup Eco System & Professional Opportunities on 22nd June 2016

Hony Speaker

CA. Alok Patania

Service Tax Assessment, Audit, Scrutiny & Appeal on 24th June 2016

Hony Speaker

CA. Rajeev Kr. Agarwal

Income Tax Disclosure Scheme on 30th June 2016

Hony Speaker

CA. Ravi Tulsiyan

Model GST Law - An Overview on 15th July 2016

Hony Speakers

CA. Pulak Kr Saha

CARO & Audit Report Under Companies Act 2013 on 22nd July 2016

Hony Speaker

CA. Sanjay Agarwal,
Ernst & Young LLP

STUDY CIRCLE MEETINGS

GST – Basic Concepts & Transitional Issues on 30th August 2016

Hony. Chairman

CA. Arun Agarwal

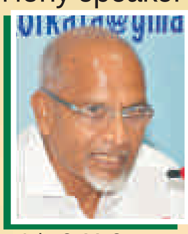
Consolidated Financial Statements under Companies Act, 2013 Issues and Clarifications on 2nd September 2016

Hony Speaker

CA Mohit Bhuteria

Income Declaration Scheme on 7th September 2016

Hony Speaker



Adv. S. M. Surana

GROUP DISCUSSION

INCOME Tax Amendments applicable with effect on 01-06-2016 on 20th June 2016

Initiator

CA. P. K. Himmatsinghka

ज्ञानं एक्यं च न्यायार्थम

Estd. 1982

Direct Taxes Professionals' Association

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

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