



C.V.O.CA'S

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NEWS & VIEWS

From President's Desk...



Dear Professional Colleagues and Readers,

Month of August was good start of festival seasons with celebration of Platinum Jubilee (Amruth Varsh) of our Independence Day of India & Rakshabandhan with full of love. The greatness of culture is found in its Festivals & India is known for its Festival Celebrations. Before start of holy Paryushana Parv in this month, I would also like to take this opportunity to seek forgiveness to all my brothers and sisters and say "*Michhami Dukkadam*" for any knowing or unknowing acts.

Hon. PM Narendra Modi had addressed the nation on 15th August 2021 being occasion of India's 75th Independence Day, wherein he highlighted various aspects of India, lauded the efforts to battle Covid pandemic, Olympic winners and announced measures for development in various sectors. As a responsible citizen, we must contribute to build a new India by way of supporting his mission of "*Aatmanirbhar Bharat*". As Economic Security is important, adaption of technology should be based of our terms. We have to be "*Swa-Nirbhar*".

With increasing importance of social media, CVOCA's YouTube channel crossed Landmark 5000 Subscribers. I would like to encourage you all to use this platform for updating yourself and learning process.

Programs in Retrospect

MSME businessmen are backbone of the economy. With outbreak of COVID-19, many businessmen are facing challenge in Recovery of Dues resulting into Working Capital crunch. To address such issues, Program Committee has timely organised Program on Recovery of Business Dues & with great response it became helpful to many MSME businessmen in their day to day business practice.

Students are future of the Profession. Guidance to students aspiring to become CA is need of the time. Students Committee had organised Career Guidance Seminar for Students forshowing road map towards course and got excellent response to it.

It is important to provide training of compliance to Staff of our firms & clients in order to smooth functioning and to reduce burden penal provisions. Publication, Training & Representation Committee had organised GST Beginners, Learners & Advanced Course & TDS / TCS Course & response for the same was morale booster.

Capital Market Committee had organised Industrial Visit to Time Technoplast Ltd, having locations at Daman & Silvassa. It was great learning experience for all participants.

Youth Committee is always enthusiastic in arranging recreational activities for the members. Youth Committee had organised 15 days Fitness Challenge League along with live session on Yoga & fitness training to focus on physical health and mental health which is vital need of current situation. *Warm Wishes to all be stay Safe, Healthy and Fit...*

Thank you all..... Always in Gratitude

"Leadership is unlocking people's potential to become better."

- Bill Bradley

CA Rahul Nagda

September 1, 2021

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AWARENESS (JAGRUTI)



CA Dinesh Shah

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FROM THE DESK OF CHAIRMAN

WHO AM I? WHY I AM HERE? WHAT IS THE PURPOSE OF LIFE ""

Paryushan Parva is regarded as the most important of all Jain festivals, because it provides us with an auspicious opportunity to reflect, introspect and strive towards achieving our spiritual goals.

Human beings have been eternally asking the question 'WHO am I?? A human being is a seeker, who is in search of himself, Many seek : however only a few find the answer.

Life is eternal: we never give a thought to this truth. When someone dies we declare that the person is immortal, but the truth is we ourselves are immortal too. That is why we do not feel that we have grown old.

No matter how old person is, he feels he is never going to die. If someone else dies, we say 'oh that poor fellow died'. 'Everyone else dies but I won't this feeling is there somewhere. There is a stream of awareness within us that cannot be destroyed. To acknowledge and observe that stream is spirituality- 'I have not change, I have not own grown old I am just the same.' This brings such courage and strength in life that nothing can shake you, examining your life, observing it is spirituality, it is 'satsang'.

Satsang is not just listening to discourse or singing bhajans but pondering on the truth of your life. What is the most important truth of your life- there is an element within me that does not perish. Does not diminish and is deathless. If you direct even the slightest attention to it, life becomes easy and uncomplicated.

The second truth – everything changes. The body undergoes many changes, as does the mind, so do our thought. Knowing that everything is changing stabilizes you. When you are established in this truth, such a smile blossoms from within you that can never fade, cannot be robbed. To sit in an efforts to gain this knowledge is satsang. If we change, we can change our environment, our society and this world.

'God knows, how many lifetime it will take for me to gain this awareness' – do not harbor such thoughts. Now that you have come to satsang, believe that you have already gain it. Once you are on the train, know that you will reach the destination. That is for sure. How do we make this smilesunshakable? How do we make our time on the planet meaningful? Being human we all have certain needs and certain responsibilities. If your needs are more than your responsibilities, there will be unhappiness in life guaranteed! If your responsibilities are more than your needs, life will be peaceful. What you need to do is reduce your desires and take on more responsibilities. It is for us to realize that there are two stages in life: the first when we run after the worldly pursuits chasing power, pleasure, possessions and prestige. We seek our happiness in acquiring these toys, Many of us do not go beyond this first stage and waste our entire life pursuing these material goals.

While a few reach the second stage on their own, many start the journey on this second stage because of some rude awakening or a harsh wake-up call, the death of a near and dear one, some major financial setback, loss of a job, breaking up of marriage, a near death experience or on advice from near one and well wishers etc.,. These events set one on the path to the second stage, Death in this sense is a friend as it puts us on the right path of thinking, We only start living when we think of death seriously.

In this second stage, of life we discover that there is much more to life than merely attaining worldly progress. We come to realize the worthlessness of our wealth and personal belongings. We realize the emptiness of the so-called success in life or business/profession, our power and our prestige. We realize as Bhagvat Gita says :-

"What belongs to you today, belonged to someone else yesterday!!! and will belong to someone else tomorrow,"

When we die, only two questions remain: how much love have you shared, and how much knowledge have you gained? One day or the other, we are going to die. But we have to make sure, we all together and create a divine society till the time we are in this world.

TREAT OTHERS THE WAY YOU WANT TO BE TREATED

REMEMBER "THE SOUL IS ON THE JOURNEY"

Thank you all..... Always in Gratitude

CA Dinesh Shah



KEY AMENDMENTS AND DISCLOSURES FOR CSR AND SECTION 185 & 186



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Ministry of Corporate Affairs (MCA) have increased the reporting requirements in the financial statements for listed as well as unlisted Companies manifold over last few years. Over the last year there has been significant changes in reporting requirement for expenditure incurred on account of Corporate Social Responsibility (CSR). Also there has been observation that disclosure requirement for S. 185 / 186 are not in accordance with the requirement of law. Accordingly, this article intends to summarise the amendment related to CSR and revisit the requirement related to S. 185 for Financial Statement for FY 20-21.

1. CORPORATE SOCIAL RESPONSIBILITY

1.1 APPLICABILITY OF CORPORATE SOCIAL RESPONSIBILITY

Every company having:

- A. net worth of Rs. 500 crore + or
- B. turnover of Rs. 100 crore + or
- C. Net Profit of Rs. 5 crore +

during immediately preceding financial year, including a foreign company having its branch office or any projects in India and fulfils the conditions mentioned above.

The MCA issued a Notification on January 22, 2021, amending the Companies (Corporate Social Responsibility Policy) Rules, 2014. General Circular No.1/2021 dated 13th January, 2021 for clarification on spending for awareness and public outreach for CVOID-19. Clarification on August 2, 2021.

1.2 Key Amendments brought in by the Rules are as follows:

1.2.1. Governance and compliance changes:

- The Board of directors are required to ensure that the CSR activities are undertaken by the company itself or through others are registered with the Central Government with effect from 1 April 2021;
- Filing of form CSR-1 electronically with the Registrar by the entity which is to be verified by CA/CS/Cost Accountant in practice;
- Responsibility of the board to ensure that the funds disbursed are utilised for the purpose approved by it and CFO / person responsible is required to certify the same.

1.2.2. Activities not to be considered as CSR activities:

1. research and development activities undertaken in normal course of business;
2. training activity for Indian sports personnel undertaken by the company outside India;
3. contribution of any amount directly or indirectly to any political party under section 182 of the Act;
4. activities of giving sponsorship for marketing benefits for company's products or services;
5. activities for fulfillment statutory obligations under any law in force in India;
6. Spending for vaccination for employees;

1.2.3. Activities bought within the ambit of CSR activities:

1. Research & development activity in normal course of business for new vaccine, drugs and medical devices related to COVID-19 from financial year 2020-21 to 2022-23 subject to following conditions:
 - activities to be in collaboration with any of the institutes or organisations
 - details of activity to be separate disclosed in Annual report on CSR
2. Creating Awareness, campaigns including public outreach campaign, programs relating to promotion of health, sanitization, education and disaster management;
3. Spending for vaccination for family members of employees;
4. Any training activity for Indian sports personnel representing at State or Union territory or national level or India at international level is to be considered;
5. activities benefitting employees of the company as per Code of Wages, 2019;

1.2.4. Expenditure, surplus, excess spending and unspent amounts for CSR

- Any surplus arising out of the CSR activities shall not form part of the business profit of a company and
- shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in
- pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund
- specified in Schedule VII, within a period of six months of the expiry of the financial year.

Understanding spending and Ongoing project and other than ongoing project**Ongoing project**

For any amount pending to be spent for an ongoing project, the company is required to transfer such funds within 30 days from the end of financial year to a special account to be opened in a scheduled bank with name Unspent Corporate Social Responsibility account and the funds are to be utilised for CSR spending within three financial years from the date of transfer. If there is unspent amount post three years the same is to be transferred to specified fund within 30 days from the completion of the third financial year.

Other than ongoing project

The remaining unspent amount for any activity other than an ongoing project the company is required to transfer the unspent funds any specified fund within a period of six months from the end of the financial year. Hence a provision for the liability for the amounts to be transferred is required to be made in the financial statements which gives us the understanding that there is a change in measurement and recognition of CSR spending for the year.

1.3 Disclosures:

1.3.1. Suggestive presentation in financial Statements of a private limited company for CSR:

- i. From the perspective of better financial reporting and in line with the requirements of Schedule III in this regard, it is recommended that all expenditure on CSR activities, that qualify to be recognised as expense should be recognised as a separate line item as 'CSR expenditure' in the statement of profit and loss. Further, the relevant note should disclose the break-up of various heads of expenses included in the line item 'CSR expenditure'.
- ii. The notes to accounts relating to CSR expenditure should also contain the following:
 - a) Gross amount required to be spent by the company during the year
 - b) Amount spent during the year on:

Sr.No.	Particulars	F.Y. 2020-21			F.Y. 2019-20		
		Paid in Cash	Yet to be paid in Cash	Total	Paid in Cash	Yet to be paid in Cash	Total
(i)	Construction / acquisition of any asset						
(ii)	On purposes other than (i) above						

The above disclosure, to the extent relevant, may also be made in the notes to the cash flow statement, where applicable.

- c) Details of related party transactions, e.g., contribution to a trust controlled by the company in relation to CSR expenditure as per Accounting Standard (AS) 18, Related Party Disclosures.
- d) A movement in provision during the year is to be presented in following suggestive format:

Particulars	2020-21 Amount	2019-20 Amount
Opening provision		
Addition during the year		
Utilised during the year		
Closing provision		

e) Amount earmarked for ongoing project

Particulars	F.Y. 2020-21			F.Y. 2019-20		
	With company	In separate CSR unspent a/c	Total	With company	In separate CSR unspent a/c	Total
Opening balance						
Amount required to be spent during the						
Transfer to separate CSR Unspent a/c						
Amount spent during the year						
Closing balance						

f) Details of excess amount spent

Particulars	2020-21 Amount	2019-20 Amount
Opening balance		
Amount required to be spent during the year		
Amount spent during the year		
Closing balance		

1.3.2. The composition of the CSR Committee, and CSR Policy and Projects approved by the Board is to be provided on the website.

1.3.3. The Board's report of the company is to present an annual report on CSR providing the details in separate Annexure I and II.

The following are the details required to be presented in Board report:

- i. Brief outline on CSR Policy of the Company.
- ii. Composition of CSR Committee.
- iii. To provide Web-link of the website where Composition of CSR committee, CSR Policy and CSR projects approved by the board.
- iv. To provide the details of Impact assessment of CSR projects carried out.

Understanding:

Company having obligation of Rs. 10 crore and more in three preceding financial years will have to appoint an independent agency which will undertake impact assessment of the CSR projects which have completed one year or more and are having outlays of one crore rupees or more before undertaking impact study.

- v. Details of the amount available for set off and amount required for set off for the financial year.

Understanding:

If a Company spends in excess of the requirement of the act then such excess will be available for set off upto next three financial years subject to conditions:

- The surplus, if any, arising out of CSR activities is not to be included
- The board is required to pass a resolution for the same

- vi. Average net profits of the company as per Section 135(5).

- vii. Following information is required to be given:

Sr.No.	Particulars	Amount
a.	Two percent of average net profit of the company as per section 135(5)	
b.	Surplus arising out of the CSR projects or programmes or activities of the previous financial years	
c.	Amount required to be set off for the financial year, if any	
d.	Total CSR obligation for the financial year (a+b+c)	

- viii. CSR amount spent or unspent for projects or other than projects:
 - a) CSR amount spent or unspent for the financial year
 - b) Details of CSR amount spent against ongoing projects for the financial year
 - c) Details of CSR amount spent against other than ongoing projects for the financial year
 - d) Amount spent in Administrative Overheads
 - e) Amount spent on Impact Assessment, if applicable
 - f) Total amount spent for the Financial Year
 - g) Excess amount for set off, if any
- ix. CSR amount Unspent and spent for preceding year:
 - a) Details of Unspent CSR amount for the preceding three financial years:
 - b) Details of CSR amount spent in the financial year for ongoing projects of the preceding financial year(s):

2 SECTION 185 AND 186 OF COMPANIES ACT, 2013

Over the years we have seen there have been governance issues relating to loans given by the companies to directors, interested parties of the directors etc. There are few exemptions given to private limited companies subject to certain conditions.

The full text of the Section 185 has been replaced by the Company (Amendment) Act, 2017. The intent behind bringing the amendment in Companies Act, 2013 is to strengthen the corporate governance, to protect the funds of the company and to help improve ease of doing business in the country.

Section 185 provides restrictions on the company for giving loans to directors including guarantees or any security in connection with any loans. The section has widely covered directors, entities where directors are interested, related parties of directors etc.

Relative for above section shall cover members of HUF, Husband, wife, Father, Mother, Son, Son's wife, Daughter, Daughter's husband, Brother and Sister

An explicit non-applicability of the section is provided for follows:

- for loans given by holding company including guarantees or any security provided by a holding company in connection with any loans made to its wholly owned subsidiary.
- Any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company.

Issue:

Loans given by one company to another with a definite interest rate and repayment clause. However, the receiving company is facing financial crises and is unable to pay even interest. Whether the loan giving company should recognise interest income on such loans?

Let us look at the disclosures required in financial statements for compliances in relation to Section 185 and 186:

i. Suggestive format for additional disclosure:

The details of loans, guarantees and investments under section 186 of the Companies Act, 2013 read with the Companies (Meetings of Board and its Powers) rules, 2014 are as follows:

- (i) Details of investment made are given in Notes ___ and _____ of financial statements.
- (ii) The company has given loan to the below mentioned companies for their business purpose.

Sr. No.	Name of Entity	As at 31 March 2021	As at 31 March, 2020
		-	-

Against the name of entity reference may be drawn to note number of Long term loans and advances and/or short term loans and advances.

Comments: The company shall disclose the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security. (Ref.: GN 8.7.6)

(iii) The company has furnished guarantees for below mentioned companies for their business purpose.

Sr. No.	Name of Entity	As at 31 March 2021	As at 31 March, 2020
		-	-

Against the name of entity reference may be drawn to note number of Contingent liabilities.

Conclusion: It can be witness that government is day by day moving forward to make CSR a mandatory spending along with plans of the corporates for future spending and compelled to provide disclosure in financial statements. It can be understood that regulatory has made mandatory of disclosure for loans, investments, guarantees for better corporate governance and transparency.



COMMON ERRORS OBSERVED IN THE IND AS FINANCIAL STATEMENT



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The Council of the Institute of Chartered Accountants of India (ICAI) constituted the Financial Reporting Review Board (FRRB) to improve financial reporting practice in India. The FRRB reviews the general purpose financial statements of various enterprises for compliances with generally accepted accounting principles, compliance with the reporting obligations of the auditor and compliance with disclosure requirements prescribed by regulatory bodies, statutes and rules and regulations relevant to the enterprise.

In February 2021, the FRRB issued *Study on Compliance of Financial Reporting Requirements (Ind AS Framework)* containing instances of common non-compliances or errors in Ind AS financial statements with an objective to enhance the quality of the reporting in the financial statements.

This article broadly encompasses some of the common and critical errors observed by the FRRB in their publication by summarising the non-compliances observed in application and disclosure of various Ind AS, in adopting the General Instructions for preparation of Financial Statements of a Company required to comply with Ind AS Division II - Ind AS Schedule III to the Companies Act 2013 and Guidance Note on Division II - Ind AS Schedule III to the Companies Act 2013 and other key matters.

The common and critical errors observed by the FRRB are as under:

A. IndAS16: Property, Plant and Equipment

Sr. No	Particulars of the Financial Statements	FRRB Observation
1.	<p>CLASSIFICATION OF PPE INTO TANGIBLE AND INTANGIBLE ASSET:</p> <p>A company classified "Toll Equipment" as an intangible asset. Further, depreciation on Toll Equipment was calculated on a WDV basis over useful life of 7 years.</p>	<p>It was observed from the accounting policy that Toll Equipment's has been classified under Intangible Assets. Further, as per accounting policy on property, plant and equipment, it was noted that depreciation on Toll Equipments calculated on a WDV basis over useful life of 7 years.</p> <p>It was observed that based on the accounting policy on Property, Plant and Equipment as well as the fact that Toll Equipment is a tangible asset. Consequently, the classification of Toll Equipment under Intangible asset is not correct in accordance with definition mentioned in para 6 of IndAS16.</p>

Sr. No	Particulars of the Financial Statements	FRRB Observation
2.	<p>COMPONENT ACCOUNTING OF PROPERTY, PLANT AND EQUIPMENT:</p> <p>The accounting policy in Financial Statements read as follows: " Subsequent expenditure related to an item of PPE is added to its carrying value only if it increases the future benefits from the existing asset beyond its previously assessed standard of performance".</p>	<p>It was observed that as per paragraph 13 of IndAS 16, subsequent expenditure would be recognized in the carrying amount of PPE when that cost/expense would meet the recognition criteria given in paragraph 7 of Ind AS16 i.e. it is probable that future economic benefit will flow to the entity and the cost is reliably measurable. There is no criteria on that capitalisation should be done only if there is increase of future benefits from the existing asset beyond previously assessed standard of performance ".</p> <p>Consequently, as per FRRB the stated policy was not in line with the component accounting concepts given in IndAS16.</p>
3.	<p>CAPITALISATION OF PROPERTY, PLANT AND EQUIPMENT:</p> <p>Accounting policy of the company stated "All project related expenses viz. civil works, machinery under erection, construction and erection materials, pre-operative expenditure net of revenue incidental/attributable to the construction of project, borrowing cost incurred prior to the date of commercial operations are shown under Capital Work in Progress (CWIP)."</p>	<p>It was noted that all the project related expenses which have been incurred prior to the date of commercial operations have been capitalised.</p> <p>As per paragraph 20 of IndAS 16, recognition of costs in the carrying amount of PPE ceases when the item is in the location and condition necessary for it to be capable of operating in the manner intended by management.</p> <p>Hence, capitalising expenses incurred upto the date of commercial operations is not in line with IndAS16.</p>
4.	<p>DEPRECIATION ON LEASEHOLD LAND:</p> <p>Accounting policy for depreciation on Leasehold land stated "Depreciation on Leasehold improvements is provided over the primary period of lease or over the useful lives of the respective fixed assets, whichever is shorter."</p>	<p>It was observed that depreciation on lease hold improvements is provided over the primary period of lease or over the useful lives of the respective fixed assets, whichever is shorter. The said policy is not in accordance with requirement of paragraph 56 of IndAS16, which gives guidance about various factors to be considered while determining the useful life of an asset which, inter alia, includes legal limits on the use of asset such as the expiry dates of related asset. Accordingly, it was observed that for providing depreciation on lease hold improvement, lease term should have been considered instead of considering primary period of lease.</p>

Sr. No	Particulars of the Financial Statements	FRRB Observation
5.	<p>MOVEMENT OF CAPITAL WORK-IN-PROGRESS</p> <p>Movement of Capital work-in-progress was not given by the Company for the reporting as well as comparative years in the notes to the accounts.</p>	<p>It was observed that since the capital work-in-progress is also the part of property, plant and equipment, the amount of expenditures recognized in the carrying amount of capital-work-in-progress should have been disclosed by the company in line with the requirement of para 74 of IndAS16. Consequently, as per FRRB the disclosures were not in line with the requirement of IndAS 16.</p>

B. IndAS1: Presentation of financial statements

Sr. No	Particulars of the Financial Statements	FRRB Observation
1.	<p>ASSETS NOT OWNED BY THE COMPANY:</p> <p>Accounting policy of the company stated: "Assets not owned by the Company are amortized over a period of ten years."</p>	<p>It was observed that no disclosure was made in the financial statements as to which are these assets that are not owned by the company.</p> <p>It was further observed that even though the policy has been disclosed for amortization of assets not owned by the company, no disclosure was made regarding nature and details of such assets anywhere in the notes to accounts. Additionally, even the basis for ten years period of amortisation was also not disclosed.</p> <p>In view of above observations, it was observed that appropriate disclosures as expected by Para 7 of INDAS 1 are not made.</p>
2.	<p>OTHER EQUITY:</p> <p>Under Other Equity: Company had disclosed various reserves such as Capital Redemption Reserve, Securities Premium, General Reserve and Retained Earnings.</p>	<p>It was observed that though various reserves are disclosed by the company however; the nature and purpose of these reserves were not disclosed by the company in the notes to accounts.</p> <p>As per the requirements of IndAS 1 and Guidance Note on Division II-Ind AS Schedule III to the Companies Act, 2013, the nature and purpose of each reserve is required to be disclosed. Consequently, it was observed that the requirements of Ind AS 1 and the Companies Act, 2013 have not been complied with.</p>

Sr. No	Particulars of the Financial Statements	FRRB Observation
3.	<p>NON-CURRENT BORROWINGS:</p> <p>Loan from related parties were presented under Non-Current Borrowings. These loans from related parties were interest free and repayment terms were not stipulated.</p>	<p>It was observed that since loans from related parties are interest free and repayment terms have not been stipulated, such loans are callable on demand. Consequently, the classification of such loans as non-current was not in accordance with the disclosure requirements of para 69 of IndAS1.</p>
4.	<p>GAIN ON FOREIGN CURRENCY TRANSACTION:</p> <p>Gain on foreign currency transaction was deducted from other expenses.</p>	<p>It was observed that gain on foreign currency is an income, hence it should be shown under other income instead of deducting from other expenses. Consequently, it was observed that the disclosure requirements of para 7 of Ind AS 1 have not been complied with.</p>
5.	<p>FUNCTIONAL CLASSIFICATION OF EXPENDITURES:</p> <p>Statement of Profit and Loss of a company included expenses under the head "Administrative Expenses".</p>	<p>It was observed that the company has classified the expenses based on functional classification instead of nature-wise classification as required by paragraph 99 of IndAS1. Consequently, the disclosures made are not in accordance in requirement of IND AS1.</p>

C. IndAS107: Financial Instruments: Disclosures / Ind AS 32, Financial Instruments Presentation

Sr. No	Particulars of the Financial Statements	FRRB Observation
1.	<p>FINANCIAL ASSETS - NON-CURRENT INVESTMENTS:</p> <p>In case of Non-Current Investments, the Company had designated three investments in equity shares at fair value through OCI (FVTOCI).</p>	<p>It was observed that the Company had designated three investments in equity shares which were fair valued through OCI(FVTOCI). However, the reason for using the FVTOCI alternative was not disclosed as required by paragraph 11A(b) of IndAS 107. Consequently, it was observed requirements of IndAS107 have not been complied with.</p>
2.	<p>PRESENTATION OF FINANCE COST:</p> <p>The Company had shown the interest expense netted off with interest income in the financial statements.</p>	<p>Para 20 of IND AS 107 requires disclosure of interest income and interest expenses using effective interest method.</p> <p>Para 32 of IND AS 1 does not permit offsetting of assets and liabilities or income and expenses unless permitted by other IND AS.</p> <p>Guidance Note on Division II-Ind AS Schedule III to the Companies Act, 2013 also requires to present interest income and interest expenses separately.</p> <p>Considering the above, it was observed that interest expense should not have been netted off against the interest income and the netting off is not in compliance with provision stated under Ind AS 1, Ind AS 107 and Guidance Note on Division II- Ind AS Schedule III to the Companies Act,2013.</p>
3.	<p>FINANCIAL ASSETS:</p> <p>The following disclosures have been made in the notes to accounts: Interest accrued was disclosed under the head of Non-financial Assets. Prepaid expenses and Balances with revenue authorities were shown as Financial Assets.</p>	<p>As per the requirements of paragraph 11of IndAS 32, interest accrued is in the nature of financial asset and hence should be disclosed under the head of financial assets, whereas prepaid expenses and balances with revenue authorities are in the nature of non-financial assets and hence it should be shown under the head of non-financial assets.</p> <p>Consequently, it was observed that the requirements of Division II to the Schedule III to the Companies Act, 2013 and Ind AS 32 have not been complied with.</p>

Sr. No	Particulars of the Financial Statements	FRRB Observation
4.	<p>CORPORATE GUARANTEES:</p> <p>The company had given corporate guarantees to several banks in respect of funded and non-funded limits availed by its foreign subsidiary and its associate company.</p>	<p>As per para8.2.5.1 of Guidance Note on Division II - Ind AS Schedule III to the Companies Act, 2013, Other financial liabilities are required to be presented as a separate line item on the face of the Balance Sheet under 'Financial Liabilities'. Financial guarantees meet the definition of financial liabilities as per Ind AS 32 and should be presented under other financial liabilities. It was observed that the aforesaid corporate guarantees were in the nature of financial guarantees. Consequently, such corporate guarantees should have been recognized, measured, presented and disclosed in line with the above stated requirements of Ind AS109, Ind AS32 and Division II-Ind AS Schedule III to the Companies Act,2013.</p> <p>Since the above disclosure requirements were not met, it was observed that requirements of Ind AS 109, Ind AS 32, para8.2.5.1 of Guidance note on Division II - Ind AS Schedule III to the Companies Act, 2013 have not been complied with.</p>

D. Ind AS 23: Borrowing Costs

Sr. No	Particulars of the Financial Statements	FRRB Observation
1.	<p>PROPERTY, PLANT AND EQUIPMENT:</p> <p>Accounting policy on Borrowing Cost stated as under:</p> <p>"Borrowing Costs directly attributed to the acquisition of fixed assets are capitalized as a part of the cost of asset up to the date the asset is put to use. Other Borrowing Costs are charged to the statement of profit and loss account in the year in which they are incurred."</p>	<p>As per para8 of IND AS 23, borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset shall be capitalised, whereas company policy only mentions about borrowing cost related to acquisition.</p> <p>Further as per para 22 of IND AS 23 borrowing costs should be capitalized till the asset is ready for its intended use or sale not up to put to use date as mentioned in the policy of Company.</p> <p>Based on the above, it was observed that company has not complied with the requirement of para8 & 22 of Ind AS 23.</p>

E. Ind AS 8: Accounting Policies, Changes in Accounting Estimates and Errors

Sr. No	Particulars of the Financial Statements	FRRB Observation
1.	<p>LEASE HOLD LAND:</p> <p>In the financial statements the company had made following disclosure: "The lease term in respect of lease hold land is 97 years. The lease term in respect of land acquired under finance lease is upto 97 years with ability to opt for renewal of lease term on fulfillment of certain conditions."</p>	<p>As per para 7 of IND AS 8, for all the transactions entered, the entity has to disclose the accounting policies followed. In the absence of accounting policy, principles, bases, conventions, rules and practices applied by the company in preparing and presenting the disclosures related to finance lease is not clear. Consequently, it was observed that the company has not complied with the requirement of IND AS 8.</p>
2.	<p>PRIOR PERIOD ITEMS:</p> <p>The financial statement presented by the entity were the first IND AS financial statement and the entity has disclosed Prior period items during the current year and comparative year under other expenses. No additional disclosure were made in connection with prior period items.</p>	<p>As per Para 42 of IND AS 8, prior period items should be adjusted either by restating the comparative amounts for the period in which error occurred or restating the opening balances of assets, liabilities and equity for the earliest prior period presented.</p> <p>Further para 49 of IND AS 8 states to make certain disclosures in case of prior period items such as nature, amount, adjusted EPS etc.</p>

F. Ind AS 40: Investment Property

Sr. No	Particulars of the Financial Statements	FRRB Observation
1.	<p>INVESTMENT PROPERTY:</p> <p>Disclosure of investment properties was given, in the note to the financial statements of a company on Investment Properties. Depreciation on investment properties was not charged in the reporting year but the depreciation on such investments properties was charged during the comparative year.</p>	<p>As per the principles of IndAS 40, an investment property is measured initially at cost. Under the cost model, investment property is measured at cost less accumulated depreciation and any accumulated impairment losses and Fair value is disclosed in notes to accounts. Accordingly, depreciation should have been charged on these properties and debited to Statement to Profit and Loss.</p> <p>Since the company has not charged any depreciation on investment properties during the reporting year, it is observed that the requirements of IndAS 40 have not been complied with.</p>

G. Ind AS 2: Inventories

Sr. No	Particulars of the Financial Statements	FRRB Observation
1.	<p>INVENTORIES:</p> <p>Accounting policy of the company states as under: "Inventories are stated at lower of cost and fair value (except scrap/ waste which are valued at net realizable value)....."</p>	<p>Para 9 of Ind AS 2 required that inventories should be valued at lower of cost and net realisable value. Para 6 of Ind AS 2 gives definition of net realizable value(NRV) and para 9 of Ind AS 113 defines fair value. The net realizable value is in nature different from the fair value of inventories.</p> <p>As per the requirements of para 9, the company should have valued the inventory at lower of the cost or net realisable value and not the fair value.</p> <p>Accordingly, it was observed that the company has not complied with the requirement of IndAS2.</p>

H. Ind AS 109: Financial Instruments

Sr. No	Particulars of the Financial Statements	FRRB Observation
1.	<p>FINANCIAL GUARANTEES:</p> <p>Letter of comfort to banks against credit facilities / financial assistance availed by subsidiaries and corporate guarantee given to banks against credit facilities/ financial assistance availed by its associate company have been disclosed as contingent liabilities by the Company.</p>	<p>It was observed that in substance the contract was in the nature of financial guarantee, irrespective of whatever name it was called. As the significant feature of a letter of comfort and corporate guarantee contract was the contractual obligation to make specified payment in case of default by the subsidiary / associate company. Therefore, the same should have been accounted as financial guarantee contract as required by IND AS 109.</p> <p>Since in the above case, only disclosure of contingent liability was made instead of accounting in accordance with IND AS 109, it was observed that IND AS 109 is not complied with.</p>
2.	<p>PROVISION FOR EXPECTED CREDIT LOSS:</p> <p>No provision was made in the accounts even though some of the trade receivables were disclosed as doubtful.</p> <p>In the note to the financial statements of a company on Trade Receivables, no provision for doubtful trade receivables was created.</p>	<p>It was observed that when trade receivables are disclosed as doubtful, the company should have provided and disclosed the amount of credit loss that is expected on those receivables in accordance with Ind AS 109. Further, such loss should have been presented as separate line item as deduction from gross carrying amount of trade receivable as per the requirements of Division II to the Schedule III of the Companies Act, 2013. Consequently, it was observed that the requirements of Division II to the Schedule III to the Companies Act, 2013 as well as IndAS 109 have not been complied with.</p>
3.	<p>FOREIGN EXCHANGE CONTRACTS:</p> <p>Accounting policy of a company on Sale of securities stated as under:</p> <p>“Gain/loss from trading in derivatives has been recognised only upon settlement of trade. The Mark to Market margins have not been charged to revenue.”</p>	<p>It was observed that gain/ loss from trading in derivatives was recognized only on settlement. Gain/loss on MTM (Marked to market) transactions was not charged to the Statement of Profit and loss.</p> <p>As per the requirements of Ind AS 109, all derivatives, other than those parts of hedging, which do not meet the criteria for classification as subsequently measured at Amortised Cost or Fair Value through Other Comprehensive Income (FVOCI) are measured at fair value at each reporting date and all gains and losses are recognised in the Statement of Profit or Loss.</p> <p>Since the above was not followed, it was observed that the policy adopted by the company is not in line with Ind AS 109.</p>

I. Ind AS 18: Revenue

Sr. No	Particulars of the Financial Statements	FRRB Observation
1.	<p>REVENUE RECOGNITION:</p> <p>The company has presented interest income in its financial statements under Exceptional Item. Such interest income was recognized during the reporting year and the comparative year. The receivables corresponding to the same amount were written off as not recoverable during the reporting year.</p>	<p>As per Ind AS 18, revenue should be recognized only when it is probable that the economic benefits associated with the transaction will flow to the entity. The measurement principle is guided by Ind AS 109.</p> <p>Therefore, it was observed that when the recoverability of interest income was not certain, the recognition of the same should not have been done, as per the recognition principle of Ind AS 18.</p> <p>Accordingly, it was observed that the company has not complied with the requirement of Ind AS 18.</p>
2.	<p>PRESENTATION OF REVENUE ON NET BASIS:</p> <p>Purchase of traded power was netted off from revenue from traded power, while presentation of revenue in the financial statements by the Company.</p>	<p>Definition of revenue as per para 7 of IND AS 18, states that revenue is the gross inflow of economic benefits arising.</p> <p>Further para 9.2 of Guidance Note on Division II - Ind AS Schedule III to the Companies Act, 2013, permits netting off only in case of "Other Non-operating income" subject to certain conditions. Therefore, netting off purchase of traded power against the income from traded power is not correct treatment.</p> <p>Accordingly, it was observed that requirements of Ind AS 18 and Guidance Note on Division II - Ind AS Schedule III to the Companies Act, 2013 have not been complied with.</p>
3.	<p>INTEREST INCOME:</p> <p>Accounting policy of a company for Interest income read as follows:</p> <p>"Interest income is recognized on time proportion basis taking into account the amount outstanding and the applicable interest rates and is disclosed in other income. Interest income earned in the course of the Merchanting Trade undertaken by the company is classified under 'operating income' since the underlying bank deposits are in-extricable linked with such trade and the interest Income from such deposits are as much part of the margin from such trade."</p>	<p>As per para 30 of IND AS 18, interest income should be accounted using effective interest rate. Based on the accounting policy, it is observed that effective interest rate is not used for interest income.</p> <p>Consequently, it was observed policy followed by company is not in accordance with the requirements of Ind AS 18.</p>

J. Ind AS 19:EmployeeBenefits

Sr. No	Particulars of the Financial Statements	FRRB Observation
1.	<p>CLASSIFICATION BETWEEN DEFINED CONTRIBUTION AND DEFINED BENEFIT PLAN:</p> <p>Accounting policy of a company on Employee benefits stated as under:</p> <p>“Defined Contribution Plans such as Provident Fund etc., are charged to the Statement of Profit and Loss Account as incurred. Further for certain employees, the monthly contribution for Provident Fund is made to a Trust administered by the Company. The interest payable by the Trust is notified by the Government. The Company has an obligation to make good the shortfall, if any.”</p>	<p>It was observed that the company has an obligation to make good the shortfall, if any. As per the definition of defined contribution plans given in IND AS 19, employer’s liability to the employee is limited to the amount of contribution & has no further obligation to pay beyond agreed contribution.</p> <p>Since in the above case, it was observed that employer’s liability to the employee is not limited to the amount of contribution and may extend further to pay beyond agreed contribution, consequently the plan should be considered as defined benefit plan as per Ind AS 19 and the company has not complied with the requirements of Ind AS 19 in preparation and presentation of the financial statements.</p>
2.	<p>PROVISION OF GRATUITY</p> <p>Disclosures under note to the financial statements of a company on Employee benefits read as follows:</p> <p>“The company does not contribute to any Gratuity Fund Scheme. The provision in respect of the defined benefit plan is however made by the company and carried as a liability, to be paid out of the regular cash flows of the company. The provision is made in respect of every employee who has completed at least five years of service, as 15 days’ salary for every completed year of service. The present value of the obligation is based on actuarial valuation report”</p>	<p>As per the requirements of Ind AS 19, provision for gratuity should be made for all employees irrespective of whether they have completed at least five years of service or not. The company has not made any provision for gratuity for those employees who have not completed at least five years of service which is incorrect.</p> <p>Further, the disclosures as required under Paragraph 135 of Ind AS 19 have not been disclosed in respect of the same.</p> <p>Accordingly, it was observed that the requirements of Ind AS 19 have not been complied in preparation and presentation of the financial statements.</p>

K. Ind AS 24: Related Party Disclosures

Sr. No	Particulars of the Financial Statements	FRRB Observation
1.	<p>RELATED PARTY DISCLOSURE:</p> <p>In the note to the financial statements of a company on Exceptional Items, the exceptional items included waiver of interest receivables from a related party. No disclosure in this regard was given under related party disclosures.</p>	<p>It was viewed that expense on account of waiver of an interest receivable is a bad debt. As the expense pertains to a related party, it requires disclosure under Related Party Disclosure as per paragraph 18(d) of Ind AS 24. However, under related party disclosure, no disclosure was given in this regard.</p> <p>Consequently, it was observed that the disclosures are not in accordance with IND AS 24.</p>

L. General Instructions for preparation of Financial Statements of a Company required to comply with Ind AS Division II-Ind AS Schedule III to the Companies Act 2013 / Guidance Note on Division II-Ind AS Schedule III to the Companies Act 2013

Sr. No	Particulars of the Financial Statements	FRRB Observation
1.	<p>RECEIVABLES FROM RELATED PARTIES:</p> <p>In the notes to the financial statements on Other Non-Current Financial Assets and Other Current Assets, 'interest receivable from related party' and 'advances to related party' were disclosed respectively.</p>	<p>Though interest receivable from related party and advances to related party were disclosed under Other Non- Current Financial Assets and Other Current Assets, respectively, no cross referencing was made with note related to disclosure of related party transactions.</p> <p>It was observed that requirement of para 4 (ii) of General Instructions for preparation of Financial Statements of a Company required to comply with Ind AS Division II -Ind AS Schedule III to the Companies Act 2013 was not complied with.</p>
2.	<p>RECEIVABLES FROM RELATED PARTIES:</p> <p>Dues from related parties were disclosed in notes to the financial statements under 'Other Financial Assets'.</p>	<p>It was observed that such dues from related parties was not classified into secured, unsecured and doubtful as per the requirement of para 6B of General Instructions for preparation of Balance Sheet of Division II, Schedule III to the Companies Act, 2013.</p>
3.	<p>CASH AND CASH EQUIVALENTS:</p> <p>Substantial amount was disclosed under line item 'Other Bank Balance' Under the note to the financial statements on Cash and cash equivalents.</p>	<p>It was observed that even though the other bank balances were disclosed under the head of 'Balance with Banks', the nature of these bank balances had not been specified as per the requirements of para 6B General Instructions for preparation of Balance Sheet of Division II-IND AS Schedule III to the Companies Act, 2013.</p>
4.	<p>STATEMENT OF CHANGES IN EQUITY:</p> <p>Under the statement of changes in equity on 'Other equity', 'Re-measurement gains / (losses) on defined benefit plans' adjusted/ recognized during the year was taken to Other comprehensive income.</p>	<p>It was observed that the accumulated re-measurements of defined benefit plans at the end of each reporting period were not disclosed. Also, a reconciliation of Re-measurement gains(losses)on defined benefit plans was not prepared as per the requirement of para 8.2.2.3 of Guidance Note on Division II - Ind AS Schedule III to the Companies Act 2013.</p>

Sr. No	Particulars of the Financial Statements	FRRB Observation
5.	<p>COST OF MATERIAL CONSUMED:</p> <p>The company engaged in the business of trading and manufacturing of certain goods and also having its own manufacturing facility, clubbed cost of material consumed under 'Purchases of Stock in Trade and Raw Material' and 'Changes in Inventories of Finished goods and Stock-in-trade' in the Statement of Profit and Loss.</p>	<p>It was observed that the cost of material consumed has not been disclosed separately instead it has been clubbed under 'Purchases of Stock-in-Trade and Raw Material' and 'Changes in Inventories of Finished goods and Stock-in-trade'. The same is not in accordance with the requirement of para 9.5.1 of the Guidance Note on Division II- Ind AS Schedule III to the Companies Act, 2013.</p> <p>Consequently, it was observed that there is non-compliance of Guidance Note on Division II-Ind AS Schedule III to the Companies Act 2013</p>
6.	<p>CORPORATE SOCIAL RESPONSIBILITY EXPENDITURE:</p> <p>In the financial statements, no disclosure was made about the CSR activities.</p>	<p>It was observed that no disclosure was made about the CSR activities. It was further noted that neither the amount spent nor other details as required under para 11.5 of Guidance Note of Division II - Ind AS Schedule III to the Companies Act, 2013 were disclosed.</p>

M. Other Important Aspects

Sr. No	Particulars of the Financial Statements	FRRB Observation
1.	<p>FINANCIAL ASSETS: BALANCES SUBJECT TO CONFIRMATION AND/OR RECONCILIATION:</p> <p>One of the notes in the financial statements read as under:</p> <p>“Certain balances of trade receivable, loan and advances, trade payable and other liabilities are subject to confirmation and/or reconciliation.”</p>	<p>It was observed that such general disclosure was not warranted if the balance confirmations/reconciliations are not material and does not affect the true and fair view of the financial statements of the company, as this would lead to doubts in the mind of readers of the financial statements. On the other hand, if such balances are material and affect the true and fair view of the financial statements of the entity, then the auditor should have issued modified report.</p> <p>It was further observed that auditor should have complied with para 7, 8 and 9 of SA 505, External Confirmation.</p> <p>Accordingly, it was observed that the requirements of SA 705 and SA 505 have not been complied with.</p>
2.	<p>SIGNING OF FINANCIAL STATEMENTS:</p> <p>Signature portion under the Balance Sheet, Statement of Profit & Loss, Statement of Changes in Equity and Cash Flow Statement read as under:</p> <p>—For and on behalf of the Board of Directors</p> <p>Sd/-</p> <p>Director</p>	<p>It was observed that director should incorporate his full name and DIN, below his signature in order to identify his authentication.</p> <p>Accordingly, it was viewed that the requirements of Section 134 read with section 158 of Companies Act, 2013 have not been complied with.</p>

While discharging our duties as professionals, we need to be cognizant of the nitty-gritty in the reporting of the Financial Statements by ensuring correctness and accuracy of Financial Statements and adhering to the applicable statutes, Indian Accounting Standards (Ind AS), Standards on Auditing, Companies (Auditor’s Report) Order (CARO), Schedule III to Companies Act, 2013 (Schedule III), Sections of the Companies Act, 2013, the Study on Compliance of Financial Reporting Requirements (Ind AS Framework) published by the FRRB and such other guidance or publications issued.



TAX AUDIT REPORTING – IMPACT OF AMENDMENTS MADE BY FINANCE ACT 2020 & FINANCE ACT 2021



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Introduction

It's the return filing season, everyone would be gearing up to challenge of being able to file the income tax returns and tax audit in Form 3CD on 'E filing Portal 2.0' within the stipulated time to avoid penal consequences for late / non-filing. There have been several amendments by the Finance Act 2020 and Finance Act 2021, which have a direct impact on the computation of total income and reporting under Form 3CD for AY 2021-22.

To gear up to the task in hand, it would be essential for the taxpayers as well as Auditors to revisit the impact of amendments while carrying out reporting requirements under the Form 3CD. Accordingly, an attempt has been made to evaluate the impact of amendments on reporting under Form 3CD.

1. Applicability of Tax Audit

Every person carrying on a business whose sales/ turnover / gross receipts exceeds one crore is required to get his books of accounts audited under Sec. 44AB. The said threshold was increased to 5 crores for AY 2020-21, in a case where an aggregate of cash payment / receipts was below the specified threshold.

Finance Act, 2021 has further increased the said threshold from 5 crores to 10 crores from AY 2021-22, subject to fulfilling the aggregate cash transaction limits. Accordingly, the limit for applicability of audit now stands revised at 10crs.

2. Clause 9 - Change in Partners / Ratio

There has been change in the taxation on account of reconstitution and dissolution of partnership firms by introduction of section 9B and amending the existing provisions of Sec. 45(4), which now treats reconstitution of the firm and transfer of asset to partner as two separate taxable transactions. One would have to be careful while reporting under the said clause, as the department would try and evaluate taxability in hands of a partnership firm based on reporting made under the said clause.

In case of taxability on account of deeming fiction by Sec 9B, one would also have to evaluate whether suitable reporting is now required under Clause 16 which deals with items of income not credited to profit and loss account.

3. Clause 17 - Transfer of land or building or both - section 43CA or 50C

In cases where the consideration received on transfer of asset being land or building or both is more than 105% of stamp duty value, then stamp duty value was deemed to be consideration for the purpose of computing the total income. Finance Act, 2021 has now increased the said safe harbour tolerance limit from 105% to 110%.

Further, in case of transfer of specified assets (fulfilling the following conditions) the safe harbour limit would stand at 120% instead of 110%.

- a) Transfer of residential unit takes place during 12/11/2020 to 30/06/2021
- b) Its transfer by way of first time allotment of the residential unit to any person
- c) Consideration received / accruing for such a transfer is less than 2 crores

Even before the amendment by the Finance Act, Mumbai ITAT in the case of Surendra S Gupta (93 taxmann.com 456) had allowed higher than specified tolerance limit while evaluating the taxability under Sec. 43CA and Sec. 50C.

4. Clause 18 - Depreciation on Goodwill

Claim of depreciation on goodwill has always been a contentious point, until the Supreme Court in the case of CIT v. Smifs Securities Ltd - 24 taxmann.com 222, held that goodwill acquired on amalgamation (being the difference between the net book value of assets and consideration paid) was a capital right which would fall under the expression 'any other business or commercial right of a similar nature' and hence eligible for depreciation while computing business income.

Finance Act 2021, overturned the SC ruling by amending Sec. 2(11), Sec. 32 and Sec. 43(6) to specify that claim of depreciation on Goodwill is not to be allowed as deduction while computing the business income.

The substance of the amendment is to state the following.

- Expression 'intangible asset' will include assets such as know-how, brand, copyright etc. as well as business and commercial rights not being goodwill irrespective of the mode of acquisition of goodwill
- Goodwill remains a capital asset but not a depreciable asset
- Seller of goodwill will pay tax; However, the buyer will not be eligible to claim depreciation

The said amendment is also applicable to the purchase of goodwill that has been acquired before 1st April, 2020 and are already forming part of block of assets, which would mean that the said amendment would be retrospective in nature.

Taxpayers and Auditors would have to judiciously apply their mind to give impact to the above amendment and while applying following points:

- Re-computation of Written down value of intangible assets in accordance with Sec. 43(6) read with rule 8AC
- Where purchase price allocation was not done accurately (bifurcating goodwill and other commercial assets), whether same can now be reclassified in the block of asset and limit denial of depreciation only to the value of goodwill

5. Clause 20(b) - Contributions received from employees for various funds

5.1. Determining due date for employee contribution to various funds

Employee contributions to various funds if not deposited within timelines mentioned in specified Act, are not allowed as a deduction under Sec. 36(1)(va). However, judicial authorities while interpreting the law applied the provision of section 43B on employee's contribution and allowed such amounts as a deduction on actual payment basis even though same were paid beyond the specified due date.

To ensure that deduction is denied to an employer for delay in depositing the employee contribution, Finance Act 2021 has inserted new explanations to Sec 36 (1) (va) and Sec 43B. As per the explanation provisions of Sec. 43B shall not be available for determining the due date for employee contribution. Accordingly, in case of delay, no deduction would be allowed to the employer.

However, it would be interesting to evaluate whether the deduction could be claimed under Sec 37, as the employee contribution is linked wholly and exclusively for the purpose of business.

5.2. Change in due dates on account of COVID relief

On account of the COVID pandemic, various relaxation has been provided in due date for depositing employee contribution. One would have to carefully go through the extension provided under the specified law for reporting of due date under Form 3CD.

Reference:

1. EPFO circular No C-I/Misc/2020-21/Vol.I/1112 dated 15th May 2020
2. ESIC - P-11/12/Misc/SST Misuse/ 2019-Rev II dated 1st January, 2021

6. Clause 26 – Allowability of Interest charged during Moratorium period added to principal amount

Reserve Bank of India (RBI) on 27th March announced a relief package to mitigate the burden of the COVID 19 pandemic for loan borrowers, as per the package 3 months moratorium for term loans and working capital facilities was offered. RBI further extended the moratorium by another 3 months vide its order dated 23rd May, 2020. As per the guidelines issued by the RBI, the moratorium only granted deferment to a borrower in respect of repayment of borrowing, accrual of interest continued as usual during the moratorium period. The interest charged during the moratorium period was later added to the principal amount of the loan.

This resulted in the following question being asked on the allowability of interest under Sec. 43B, which was charged during the moratorium period but later on added to the principal amount, which has been subsequently repaid by the borrower.

- Whether interest charged would never be allowed as deduction
- If allowed as deduction, then in which year
 - Entirely in first year
 - Entirely in last year
 - Proportionate deduction

Finance Act 2006, had inserted Explanation Sec. 3D to Sec. 43B, which provided that deduction of interest, shall be allowed only if such interest was actually been paid. **Interest which has been converted into a loan or advance shall be deemed not to have been actually paid.** To avoid concerns raised by the taxpayers and banks at the time of introduction of the said provision, the Central Board of Direct Tax (CBDT) issued a Circular No. 7/2006 vide its order dated 17th July, 2006.

The Circular clarified that the amendments were only reiterating the rationale that conversion of interest into a loan or borrowing or advance does not amount to 'actual payment'. **Further, converted interest, by whatever name called, will be eligible for deduction in the computation of income in respect of the previous year in which the converted interest is 'actually paid'.**

Illustration 4 in the CircularNo 7/2006, clearly states that when interest is merged with the original principal and borrower continues to repay the installment. In such situation the repayment would constitute payment of interest as well as repayment of part of the principal. **Accordingly, the amount of deduction on account of actual payment of interest will have to be calculated on a proportionate basis.**

For Example:

Principal Amount as on 1 st April 2020	A	10,00,00,000
Rate of interest	B	10%
Moratorium Interest added to principal (6 months)	$C = A * B$	50,00,000
Revised Principal Amount	$D = C + A$	10,50,00,000
Installment paid till time date of return filing	E	75,00,000
Amount of eligible deduction on account of interest	$F = E * C / D$	3,57,143

Based on the reading of Circular and above illustration, it would be clear that taxpayers would be entitled to claim proportionate deduction in respect of moratorium interest added to principal amount.

It would be interesting to evaluate a proposition whether entire moratorium interest should be allowed in the first year itself, since the amount of repayment is higher than the amount of moratorium interest charged during the year.

7. Clause 33 – Deduction in respect of Dividends

Finance Act, 2021 has reinserted the provision of Sec. 80M which deals with deduction in respect of certain inter corporate dividends.

The provision provides deduction to a Domestic Company which has received dividends and has also distributed dividend to its own shareholders, then deduction is available for dividend received or dividend distributed, whichever is lower.

8. Clause 34

8.1. TCS on sale of goods – Sec. 206C(1H)

Finance Act 2020, inserted a new provision with effect from 1st October, 2020, requiring the specific seller to collect tax on receipt of sales of goods. Further, to avoid ambiguity arising on account of implementation of provision, CBDT issued circular No. 17/2020 dated 29th September, 2020.

Though the provision required liability to be discharged on a receipt basis, practically most of the taxpayers have raised debit notes for TCS alongwith the sale invoices. It would be essential for the taxpayer and auditor to make proper reconciliation to ensure that proper liability has been discharged during the year.

8.2. Change on account of COVID relief

- **Reduction in TDS / TCS rates by 25% (Clause 34(a))**

To mitigate the hardship faced by taxpayers on account of the COVID 19 pandemic and to avoid additional liquidity in hands of the business, the CBDT reduced the TDS / TCS rates by 25% for amounts paid or credited during the period 14th May, 2020 to 31st March, 2021.

The said change in TDS rates will create an additional burden on taxpayers and auditors to ensure proper reconciliation for figures reported in Clause 34(a) and to reconcile the same with profit and loss.

- **Change in due date for filing the TDS returns (Clause 34(b))**

On account of COVID 19, CBDT extended the due date for filing the TDS/ TCS return for Quarter 1 and quarter 2 till 31st March, 2021. Appropriate care and caution is required while reporting the due date in Clause 34(b).

Conclusion

The above is only a summary of additional changes / issues that might come up on account of the changes / amendments brought in by the Finance Act or relief package announced by CBDT on account of COVID. The readers may note that all the existing issues for reporting of Form 3CD will continue and taxpayers / auditors would be required to take proper actions to mitigate the same by making proper disclosures in Form 3CD.



FEMA FROM AUDITOR'S PERSPECTIVE



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1. INTRODUCTION

There are various Regulatory Laws applicable to different entities in India like Companies Act 2013, Limited Liability Partnership Act 2008,, Competition Act 2002, Securities and Exchange Board of India Act 1992, law relating to pollution control etc. and each such law has its regime and applications..

Foreign Exchange Management Act (FEMA) is one such law which regulates foreign exchange (forex) transactions. With most countries having opened up its economy for foreign investment as well as for trade and services, the volume of forex / cross border transactions have increased multifold. Further, since last two decades, considerable liberalization has taken place in FEMA permitting majority of cross border transactions, however, this very general permission at times leads to non compliance and therefore leading to penal implications. In view of this, it can have direct implications on the financials of the company including presentation. Hence, it becomes imperative even from Audit perspective to have fair idea about some of the implications that may arise under FEMA.

2. CASTING OF RESPONSIBILITY ON STATUTORY AUDITORS:

The only place under FEMA where RBI has specifically put an onus / casted responsibility on Statutory Auditor of Indian Company is to ensure whether compliances have been done as per prescribed FEMA guidelines or not in relation to Downstream Investment.

As per Rule 23 of Non Debt Instrument Rules, 2019 ("NDI Rules"), Downstream Investment means investment by an Indian entity which has total foreign investment in it or an Investment Vehicle in capital instruments or capital of another Indian entity. So if an Indian entity which has received foreign investment and if such Indian entity has made downstream investment in another Indian Company then the auditor of Indian Company making downstream investment has to issue certificate on annual basis with respect to compliance of downstream investment guidelines. Further in case of qualified report of Auditor the same shall be immediately brought to the notice of regional office of Reserve Bank of India ("RBI") in whose jurisdiction the registered office of company is located.

In entire FEMA this is the only regulation where specific responsibility has been case on Statutory Auditor of Indian Company which has made Downstream Investment to see whether all guidelines for downstream investment are fulfilled every year and report to that effect has also to be issued every year.

3. UNDERSTANDING FINANCIAL STATEMENTS FROM FEMA POINT OF VIEW:

During the course of audit for any transaction wherein foreign exchange is involved and having FEMA implications an auditor needs to check whether the transaction is in compliance of FEMA provisions or not and whether all compliances relating to transaction as prescribed under FEMA have been properly done. Let us understand some of transactions which have FEMA impact and are important to be reviewed while carrying out an audit of a particular entity. We can divide transactions into two type viz. one involving inward remittance from outside India and others involving outward remittance from India to overseas countries.

3.1 TRANSACTIONS OF INWARD REMITTANCE:

3.1.1 SHARE CAPITAL:

The transaction of receipt of funds from non-resident for investment in Share Capital of an Indian entity is governed by Non Debt Instruments Rules, 2019 ("NDI Rules"). An auditor while reviewing the transaction has to take care that any transaction of receipt of foreign investment is in compliance to NDI Rules. Key Points to be taken into consideration while auditing transaction of Share Capital are as under:

- a. **Check whether transaction is in nature of Foreign Direct Investment ("FDI") or Foreign Portfolio Investment ("FPI")** - Investment made by a person resident outside India ("PROI") in equity instruments of an Indian Company or capital of a LLP is termed as Foreign Investment. Further there is distinction between Foreign Direct Investment ("FDI") and Foreign Portfolio Investment ("FPI").

Investment in Equity Instruments of unlisted Indian Company or 10% or more paid up capital of Listed Indian Company is treated as FDI whereas investment in less than 10% of paid up capital of Listed Indian Company is treated as FPI.

With regards to characterization of investment whether it is FDI or FPI it is necessary to check the limits qua investor and not combined for all investors.

- b. **Check whether provisions for FDI are complied with or not** - FDI is freely permitted in almost all sectors. FDI can be made either under automatic route or approval route. Entity receiving FDI must ensure that while receiving FDI all applicable entry route conditions, sectoral caps, pricing guidelines and reporting requirements are followed. However, FDI is prohibited in sectors / activities like lottery business, gambling, betting, chit funds, Nidhi Company, Transferable Development Rights, Real Estate Business or Construction of Farm Houses (Development of townships, construction of commercial / residential premises, roads or bridges is not considered as Real Estate), manufacturing of Cigars and tobacco related items, atomic energy, railway operations etc.
- c. **FDI must be in only Equity Instruments** - FDI can be made only in following Equity Instruments:
- i. Equity Shares
 - ii. Fully, compulsorily and mandatorily convertible debentures.
 - iii. Fully, compulsorily and mandatorily convertible preference shares.
 - iv. Share Warrants.

- d. **Reporting has been done** - For all FDI Transactions whether it is fresh investment or transfer of existing investment reporting forms as prescribed viz. FCGPR Form - for reporting of allotment of equity instruments, FCTRS Form - for reporting of transfer of equity instruments need to be filed. All entities having FDI are also required to file Annual FLA return every year. In case of non filing or delayed filing of reporting forms results in contravention.
- e. **No assured exit price** - In case of FDI by PROI an assured exit price cannot be agreed upon. Equity instruments can contain optionality clause subject to minimum lock in period of 1 year or as prescribed by specific sector whichever is higher but without any option or right to exit at an assured price. Classic example for this is matter of Tata Teleservices and NTT Docomo, Japan, where matter is under International arbitration.
- f. **Deferred Consideration** - In case of transfer of shares of Indian Company amount not exceeding 25% can be deferred up to 18 months from date of transfer agreement, that if resident shareholder has sold the shares, he has to receive upfront consideration of at least 75% and balance can be deferred up to a period of 18 months.
- g. **Date of transfer cannot be prior to Date of receipt of consideration in case of transfer of shares** - In case of transfer of shares of Indian Company, date of transfer of shares cannot be prior to date of receipt of consideration. Any delay in receipt of consideration even by 1 day is treated as contravention under FEMA.
- h. **Reporting of shares allotted under Demerger** - If PROI who is shareholder of an existing Indian Company is allotted shares of resulting demerged entity then Form FCGPR is to be filed for reporting of such allotment even if consideration or remittance for same is not made.
- i. **FDI through receipt of funds in EEFC account** - Indian Company cannot credit the funds received through inward remittance for purpose of FDI to its EEFC account.
- j. **Issue of Shares against pre-incorporation expenses, import of capital goods and any funds payable to foreign parent** - Indian Company having FDI can issue shares against pre-incorporation expenses incurred by overseas parent on behalf of Indian Company. An auditor has to ensure that payment of expenses has been made by overseas parent directly to vendors on behalf of Indian Company and copy of FIRC to that effect is obtained. Statutory Auditor has to issue certificate to this effect for submitting to AD Bank for converting such pre-incorporation expenses to equity instruments.

Equity Instruments can also be issued against outstanding import of capital goods or any funds payable. In case of any such transaction an auditor must ensure that all requisite documentation and reporting has been done by Indian Company and such transactions have been brought on record of RBI.

3.1.2 EXTERNAL COMMERCIAL BORROWINGS ("ECB"):

ECB is governed by FEMA Notification No. 3R/2018-RB Foreign Exchange Management (Borrowing and Lending) Regulations 2019 ("ECB Regulations"). ECB means borrowings by an eligible resident entity from outside Indian in accordance with framework decided by RBI in consultation with Government of India. ECB can be raised either under automatic route or approval route. ECB has to be comply with parameters like Eligible Borrowers, Recognized Lenders, Minimum Average Maturity Period, All-in-cost ceiling, End Use Restrictions etc. The parameters apply in totality and not on stand-alone basis.

Following are reporting requirements for ECB:

- a. **Obtaining Loan Registration Number (“LRN”):** Form ECB has to be filed for obtaining LRN for ECB. Any draw down of ECB must happen only after receipt of LRN from RBI. Chartered Accountant (be it auditor) has to ensure that proper disclosure of terms and conditions of ECB has been done in Form ECB.
- b. **Changes in Terms and Conditions of ECB:** Changes in parameter of ECB should be reported to RBI within 7 days of such change.
- c. **Prepayment requires prior RBI approval** – All ECBs must strictly comply with minimum average maturity period for which ECBs have been raised. Prepayment of ECB is not allowed and requires prior RBI approval.
- d. **Monthly Reporting:** Actual transactions are to be reported in Form ECB2 return to RBI through AD bank on monthly basis within 7 working days from close of month to which it relates. Monthly ECB 2 Return is certified by Chartered Accountant. So if any auditors are certifying monthly ECB2 return they should ensure that all terms and conditions of ECB have been complied with because ECB2 return involves reporting of utilization of funds, reporting of drawdown and actual transactions relating to ECB for any particular month.

3.1.3 EXPORT OF GOODS AND SERVICES:

Export of Goods and Services is a Current Account Transaction and governed by provisions of FEMA Notification No. 23R/2015-RB Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 (“Export Regulations”). Being a Current Account Transactions there is no restriction on same however procedures as prescribed in Export Regulation need to be followed. An auditor has to check following points while reviewing export transactions:

- a. **Declaration** - It is duty of exporter of goods or software in physical form or through any other form is required to furnish declaration for same supported by evidence containing true and correct particulars of export like full value of goods or software exported. In case of export of services same can be undertaken without furnishing any declaration.
- b. **Realization and repatriation** - Exporter is under obligation to realize and repatriate full value of proceeds of export of goods/ software/ services within 9 months from date of export. This time limit is 15 months in case goods are exported to a warehouse established outside India. In case, export dues are not received within specified period, it is obligation of exporter to seek extension.
- c. **Manner of receipts** – Payment of exported goods shall be received through AD Banks only and not through anyone else for e.g. payment cannot be received from trading houses.
- d. **Reconciliation of open export transactions with Export Data Processing and Monitoring System (EDPMS) report of RBI** – While auditing export transactions an auditor must obtain list of overdue outstanding export transactions. It is duty of auditor to ensure that client has obtained extensions for all such overdue export transactions. With regards to advance against exports which are more than 1 year old against which goods are not exported no refund of such advance can be done without obtaining prior RBI approval.

Further, an auditor must insist client to get list of all open export transactions from EDPMS system of RBI and reconcile such open transactions with client records to ensure that there is no mismatch in reporting as per books of accounts and as per EDPMS.

- e. **Export proceeds credited to special accounts** - Export proceeds can be credited by exporter to Exchange Earners Foreign Currency Account ("EEFC"), Resident Foreign Currency Domestic (RFC-D). However it is to be noted that the funds received in the account during a calendar month should be converted to rupees on or before last day of succeeding calendar month after adjusting utilization of balances for approved purposes or forward commitments. Further these accounts will be a non-interest bearing.
- f. **Write off Export Proceeds** - At times it is seen that entities who have old unrealized export proceeds usually write off in their books without following conditions of write off prescribed in Export of Goods and Services Regulation and without intimating AD Bank. This can result in shipping bill open in records of EDPMS system of RBI and can even put exporter under caution list of RBI.

Export proceeds which remain to be unrealized despite best efforts of exporter for realizing the same may be either written off under self write off approach (5% of total exports proceeds realised in previous calendar year) or exporter may go to AD bank (10%) for allowing the write off.

The write off shall be subject to following conditions:

- i. The relevant amount has remained outstanding for more than one year;
- ii. Satisfactory documentary evidence is furnished indicating that the exporter had made all efforts to realise the export proceeds;
- iii. The exporter is a regular customer of the bank for a period of at least 6 months, is fully compliant with KYC/AML guidelines and AD Category - 1 Bank is satisfied with the bonafides of the transaction.
- iv. Overseas buyer has been insolvent or goods exported have been auctioned or destroyed by Port/Customs, overseas buyer is not traceable, cost of resorting to legal action is high etc.

Exporter seeking write off is required to submit all requisite documentary evidences AD Bank along with CA certificate indicating details of write off, amount of realization based on which write off limit is calculated.

- g. **Third Party Payments** - It can so happen that export must have been made to one party but payment for export proceeds actually are received from another party. It is to be ensured that such transactions involving third party payments i.e. wherein payments have been received from different party conditions relating to third party payments like it should be backed by tripartite agreement, name of third party who will make payment must be present on order or invoice, AD Bank must be satisfied with bonafides of transaction, it should be routed only through banking channels, it should be declared in export declaration form by exported.

3.2 TRANSACTIONS OF OUTWARD REMITTANCE:

3.2.1. OVERSEAS DIRECT INVESTMENT:

Indian Party viz. Company or Limited Liability Partnership or Registered Partnership Firms are allowed to make overseas direct investment in capital of overseas entities. The transactions of Overseas Direct Investment (“ODI”) are governed by provisions of FEMA Notification No. 120 Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations 2004 (“ODI Regulations”). Some important points which need to be checked during audit while reviewing ODI transactions are as under:

- a. **Unique Identification Number (UIN) Obtained or not** – In case of any first remittance for ODI by Indian party, UIN has to be compulsorily obtained. Any further remittance can be made only after receipt of UIN. Form ODI Part I is to be filed for obtaining UIN within 30 days of remittance.
- b. **Net worth** – ODI can be made up to 400% of net worth of Indian Party and this net worth is to be calculated based on latest audited financial statements.
- c. **First remittance always towards Equity Capital** – First remittance in overseas entity should be always towards equity capital. It cannot be in form of loan. Post contribution to equity, loan can be given.
- d. **Reporting of subsequent remittances** – All subsequent remittances towards investment in overseas entity also need to be reported to RBI in Form ODI Part I.
- e. **Annual Performance Report (APR)** – Every year APR has to be filed in Form ODI Part II with RBI based on audited financial statements of overseas entity by December.
- f. **Post Investment Changes** – Any post investment changes need to be reported within 30 days of such change.
- g. **Disinvestment** - Disinvestment involving sale / liquidation / winding up / mergers / amalgamation etc. need to be reported to RBI in Form ODI Part III within 30 days of event.
- h. **No write off without or provision without reporting to RBI** – It should be ensured that if overseas entity is incurring losses in such scenarios investment cannot be written off directly in books to the extent of diminution in value of investment without obtaining prior RBI approval in terms of ODI regulations.
- i. **Conversion of export receivable or other dues which are receivable from overseas entity into Equity Capital** – In case export receivables or any other receivables which are outstanding and time limit for realization has not yet expired same can be converted to equity under automatic route. However with regards to dues outstanding beyond prescribed period, prior approval needs to be obtained.
- j. **Investment by resident individual** – Resident individual can make ODI investment in JV/WOS abroad within limit of USD 2,50,000 of Liberalized Remittance Scheme (LRS) provided JV/WOS is an operating entity and it does not have any step down investment. Resident Individual can only invest in Equity Capital or CCPS of JV/WOS. It cannot give loan. Such investment cannot be sold or transferred within 1 year of its investment.

- k. **Certifying ODI Forms** – Statutory Auditor has to certify ODI forms filed by Indian Party or resident individual and hence auditor has to ensure that the overseas investment transactions is in compliance of ODI regulations and as per provisions of FEMA Notification 120.

3.2.2 IMPORT OF GOODS AND SERVICES:

Import of Goods and Services is a Current Account Transaction and governed by Master Direction No. 17/2016-17. Being a Current Account Transactions there is no restriction on same however procedures as prescribed in Master Direction need to be followed. An auditor has to check following points while reviewing export transactions:

- a. **Time Limit for Settlement** – Remittance against import must be made within 6 months from date of shipment. AD Banks may permit settlement of import dues due to disputes, financial difficulties etc. for a period up to 3 years.
- b. **Time Limit for Deferred Payment** - Deferred Payment Arrangements (suppliers and buyers credit) up to five years, are treated as Trade Credit and guidelines relating to same must be followed.
- c. **Change in nature of transaction due to passage of time** – One of very important thing to be taken into consideration is change in nature of transaction due to passage of time. As already discussed Import transactions are considered as Current Account Transaction. However import dues outstanding more than 3 years partake the character of Capital Account Transactions and are considered to be Deemed ECB.

Generally Trade Payables more than six months and up to 3 years are allowed by RBI. In case of Trade Payable outstanding more than 6 months extension needs to be obtained. Trade Payables which are outstanding more than 3 year are treated as Deemed ECB thereby requiring for compliance of ECB guidelines. Reference of some of Compounding Orders where RBI has treated delayed import dues as Deemed ECB are given below:

- TWI India Pvt. Ltd - CA Order No. 3945/2016 dated-31.08.2016
- AMC Diamonds - CA Order No. 3934/2016 – dated 13.07.2016
- Intercat Equipment - CA Order No. 3861/2015 - dated 02.06.2016

- d. **Merchanting Trade** – Nowadays many entities are resorting to Merchanting Trade Transactions (“MTT”). In this type of transactions goods do not enter in Domestic Tariff Area of India. Goods are imported from one country and directly exported to other country. An auditor while dealing with such type of transactions has to ensure that the transactions are bonafide and all regulations relating to import and export leg are duly complied with. Such transactions must be routed through same AD Bank only. MTT shall be completed within overall period of 9 months. Any receipt of export leg must be separately parked in EEFC account for payment of import leg and it shall be ear-marked/lien marked for import leg payments. There must be one-to-one matching of each MTT and defaults if any are reported by AD Bank to RBI. Therefore it is duty of auditor to see that there are no defaults.

Merchant traders with outstanding of 5% or more of their annual export earnings shall be liable for caution listing. The merchanting trade shall result in profit which shall be determined by subtracting import payments and related expenses from export proceeds for the specific MTT.

3.3 SET OFF OF EXPORT AND IMPORT TRANSACTIONS:

This is another important area which needs to be looked upon. There can be instance where Indian entity must be having export and import transactions with same foreign party. Usually it is tendency that if amount to be received is more than amount to be paid then net proceeds are received thereby setting off import dues against export dues of same foreign party. At times this goes unnoticed even by auditor. However it is to be noted that due procedure for such set off needs to be followed only then outstanding import dues and export dues can be set off for same foreign party. Following points need to be looked upon while dealing with such transactions of set off:

- a. Export receivable and import payables must be from/to same overseas buyer/supplier.
- b. Set off of export receivable and import payables with overseas group/associate companies will be allowed on net basis or gross basis through an in-house or outsourced centralized settlement arrangement.
- c. AD Bank must be satisfied with bonafides of transaction.
- d. Invoices must not be under investigation of Enforcement Directorate or Central Bureau of Investigation or any other investigative agency.
- e. Set off of export receivables against goods shall not be allowed against import payables for services and vice-versa.
- f. Set off of export receivable of services against import payable of services is also not allowed because it is not prescribed.
- g. Set off shall be allowed between export and import leg transaction taking place during same calendar year.
- h. AD Bank may seek Auditors/CA Certificates wherever felt necessary.
- i. AD Bank must settle transaction in EDPMS/IDPMS systems by utilizing set off indicator.

4. NOCLAR REPORTING - REQUIREMENT TO REPORT IN AUDIT REPORT IN CASE OF ANY QUALIFICATION:

Presently there is no requirement to report any qualification arising on account of non-compliance of any other law applicable to an entity. The Institute of Chartered Accountants of India (ICAI) in its revised Code of Ethics, 2019 has introduced for Non Compliance with Laws and Regulations (NOCLAR) reporting. This was initially to be implemented from 1st July 2020. However last year ICAI deferred the same till further notice. Recently ICAI in its council meeting announced that NOCLAR which was earlier deferred till further notice will now be made applicable and implemented effective from 1st April 2022.

What exactly NOCLAR is? Answer to this question lays in Volume I of Revised Code of Ethics, 2019. It refers to any act of omission or commission, committed by a client contrary to prevailing laws or regulations. Recognizing that such a situation of omission or commission can often be difficult for a Professional Accountant (PA) and accepting that he has prima facie responsibility not to turn a blind eye to the matter NOCLAR has been introduced to help guide Professional Accountants (PA) in dealing with situation and in deciding how best to serve the public interest in these circumstances.

Applicability of NOCLAR:

- a. As already mentioned will be made applicable and implemented effective from 1st April 2022.
- b. For now only applicable to listed entities.
- c. Applicable only to audit assignments.
- d. Scope of laws and regulations – laws and regulations that have direct effect on determination of material amounts and disclosures in financial statements, other laws and regulations compliance with which may be fundamental to entity's business and operations or to avoid material penalties.
- e. Some of examples of laws given by ICAI are Fraud, Corruption and Bribery, Money Laundering, Terrorist Financing and Proceeds of Crime, Banking and Other Financial products and services, securities market and trading, data protection, tax and pension liabilities and payments, environment protection, public health and safety.

Above laws are just some of examples give by ICAI whereby NOCLAR can be applicable. Impact due to non compliance of FEMA law also can get covered in above NOCLAR reporting and therefore while doing audit due care must be taken by auditor for review of transactions having FEMA implications.

5. WAY FORWARD FOR AUDITORS:

Clients are not well versed and aware of FEMA regulations as a result of which at times clients end up in entering into transactions which are not permitted or not allowed or miss on requisite reporting compliances. Even if at present as an auditor one is not required to report about qualifications if any arising in relation to transactions having FEMA implications, however it is important that an auditor looks into and reviews the transactions from FEMA perspective also at the time of audit. With NOCLAR coming into place responsibility of auditors will increase many fold and one must be ready for same.



GST CONSIDERATIONS WHILE FINALIZING THE AUDIT



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Finalization of Accounts

The term 'Finalization of Accounts' refers to the process of planning and control of activities relating to the preparation of the Financial Statements of a business entity. There must exist a well-defined system to ensure,

- (a) Timely preparation of the Financial Statements,
- (b) Compliance with the various statutes applicable to the entity, and
- (c) That the Financial Statements represent a true & fair view of the financial status of the entity. The procedure must encompass all the financial activities conducted or entered into, during the financial year of the business entity.

Impact of GST law on finalization of Financial Statements

The primary objectives of an auditor is to

- (a) Obtain reasonable assurance as to whether the Financial Statements, as a whole are free from material misstatement, whether due to fraud or error; and
- (b) to ensure that the Financial Statements give a true and fair view in conformity with the accounting principles generally accepted in India, of the state of affairs of the entity as at the date of closing of accounts, of its profit/ loss and other comprehensive income, consolidated changes in equity (if applicable) and cash flows for the year/ period then ended.

To achieve the above stated objective, it is imperative that an auditor should check for compliance with GST law and regulations.

Under GST there is requirement for filing of Annual return and Reconciliation in Form GSTR 9 & 9C respectively. Previously Chartered Accountant or Cost Accountant was required to certify and submit GSTR 9C. However, from FY 20-21, Assessee is required to Self-certify and submit the same. Due Date for submission for GSTR 9 & 9C is on or before the thirty-first day of December following the end of such financial year.

It is evident from the above, that the due date for filing of FORM GSTR-9 & FORM GSTR-9C is 31st of December, following the end of the financial year. The due date prescribed for submission of audited accounts under various other Acts such as Companies Act, 2013 and the Income Tax Act, 1961 is earlier to the date prescribed under the GST Act. Consequently, the business entities and the auditors generally finalize the Financial Statements and file the same with the Registrar of Companies (in the case of corporates) and the Income Tax authorities and then commence the process of preparing the Annual Return prescribed under the GST Act. This process may not be the right approach as errors of omission and commission noticed during the GST audit process may result in material misstatement of the Financial Statements affecting the 'True & Fair' view of the same.

Points to be kept under Consideration at the time of Closure of Financial Statements

Now we will discuss area wise Audit approach for finalization of accounts with GST perspective:

Sales

- I. Test of scope of supply – Sec 7 – One should check whether the Income on which GST has not been discharged does fall within the scope of supply or not.
- II. Whether Tax Invoice issued correctly – Sec 31 provides format and requirements as per which tax invoice should be issued.
- III. Applicable exemptions – Sec 2(47) Exempt Supply, Sec 2(78) – Non Taxable Supply – In case any income is not offered under GST, then whether the said income is exempt or non-taxable under GST or not is to be checked.
- IV. Determining the point of taxation in terms of the 'time of supply' provisions laid down by law – Sec 12 & Sec 13
- V. Determining the liability to tax in terms of the 'value of supply' provisions laid down by law – Sec 15
- VI. Determining the place of supply of goods and services to pay the tax correctly to either the Central or State Government
- VII. Correct classification of the goods & services as per HSN/ SAC
- VIII. Applying the correct rate of tax/ Changes in rate over the period – Sec 14
- IX. Whether rate for any product is under Inverted duty structure, if yes then refund claimed or not.
- X. Impact of Discounts on GST
- XI. Impact of GST on Advance received – There is requirement under GST wherein GST is to be discharged on advance received against supply of services.
- XII. Whether Branch Transfer correctly reported, in case of multiple registration

What is the impact of discount provided after the sales are made?

- Discount offered can be reduced from the transaction value, if there is a written agreement entered into before or at the time of supply, mentioning the discount conditions and timeline and the discount offered can be linked to the supply invoice for which it is made

Action Points for Auditor

- The auditor should review the GSTIN-wise returns filed with GST authorities in FORM GSTR-1 and ensure that the data presented are appropriate. The auditor should also understand the methods, processes and controls around preparation of data obtained for different registrations
- An auditor at the time of finalization, has to verify the impact of cross utilization of services, if any, for an entity registered in multiple States and should ensure that proper liability is accounted and discharged as per the provisions of the Act.
- The auditor must satisfy himself that the entity has classified according to the relevant Chapter the goods dealt by it. In case there is a difference in the Chapter heading, GST liability may vary and, if material, would affect the true and fair view of the Financial Statements.

- The auditor must verify the nature of discounts provided by the entity to its customers and review the corresponding impact on the GST liability.
- The various types of advances like Security Deposit, retention money, Advance for material and advance for services, will have different impact on GST. The auditor should carefully investigate every type of advance and review its standpoint from the perspective of GST and conclude before finalizing the financial statements

Purchase/Expense

- I. Whether the Expenditure on which ITC is claimed is for furtherance of business or not is to be checked.
 - One of the Primary conditions for claiming ITC is that the goods or services received by the company should be used in the course of furtherance of business
- II. For the purpose of claiming ITC - The entity should be in possession of the tax invoice or debit note, or any other document issued by the supplier – Sec 16(2)
- III. It should have received the goods or services or both - Sec 16(2)
 - One important aspect to be noted by the auditor is to deal with a situation where the tax authorities allege non-receipt of goods or services. There are various cases where the tax authorities allege that certain transactions of inward supplies are fictitious and that the ITC claimed by the company is not eligible. There can be instances where the company might have contested the allegation, though the credit might have been reversed under protest due to coercion from tax authorities.
- IV. Test eligibility for claiming ITC and reversal if found ineligible – Sec 17
 - Section 17 deals with two aspects, one being apportionment of ITC and the second being blocked credits. The first part, i.e., apportionment of ITC, comes into the picture when inward supplies are used for making outward supplies which are used for making taxable supplies as well as exempt supplies. In such cases, compliance with provisions of Rules 42 and 43 (already discussed in the earlier part of this article) should be analyzed. The auditor should specifically check if the compliance is done on a monthly basis, whether the true-up as mandated u/r 42 and 43 is done within the prescribed time limit and, lastly, the accounting for the apportionment u/r 42 and 43 – whether the amount of reversals / re-credit is booked to specific expense or a general expense? The auditor should also analyze the method of reporting the true-up effect of Rules 42 and 43 in the subsequent financial year – whether as prior period expense or regular expense?
 - The second part, i.e., blocked credits, is trickier. There has been a lot of controversy on this subject, be it inputs or capital goods.
- V. Discharge GST liability on certain goods and services under reverse charge mechanism – Sec 9(3)
- VI. Reverse ITC for non-payment to vendors within the stipulated time – Second Proviso to Sec 16(2)

Let us discuss some common queries at the time of finalization of accounts with respect to expenses:

Whether Interest & Penalty paid under GST are allowed as expenditure at the time of finalization of accounts?

- Penalty on late payment and interest are to be shown as part of rates and taxes in the other expenses and charged to statement of profit and loss.

Whether deduction from employee's salary towards penalty for causing deliberate damages due to wrong handling of machinery, is liable for GST levy?

- The recoveries on account of default by the employee shall not be considered as supplies under GST as the employer-employee relationship subsist and hence it will not attract GST levy.

While accounting year end provisions for services like rent, audit fee, retainer fees, etc. Should it be inclusive or exclusive of GST component?

- Section 16 of the GST Act, stipulates conditions for claiming input tax credit. As per the provisions unless the goods or services are received by the entity along with the tax invoice or any other tax documents input tax credit is not available to an entity. Input tax credit should not be accounted in case of year end entries as there are no valid tax invoice / documents. However, in case of services where RCM is attracted (e.g. import of services, legal fees, GTA, etc.,) the provision should include GST.

Whether ITC on Gold coins given to Distributor as a business promotion expenditure is allowed?

- Held no, in case of Biostadt India Ltd (GST AAR Maharashtra)

After Profit & loss now we come to Balance sheet items. Let us discuss the same in detail:

Assets

Property Plant & Equipment

- I. There are certain categories of assets for which input tax credit is not available and in certain cases input tax credit is available with restrictions, more commonly known as blocked/ ineligible credits.
- II. Ineligible credits, if any, are to be considered as part of cost of an asset and cannot be treated as input tax credit.
- III. Reverse charge mechanism on certain items of capital goods, like plant and machinery.
- IV. Impact of GST on disposal of assets on which input tax credit may or may not be already taken.
- V. Transfer of assets to related parties/ distinct persons

Sec 17(5) provides list of Input tax credit which are ineligible under GST. One of them is ITC of Motor Vehicle (with certain conditions) & ITC on Immovable Property. At the time of Audit of Fixed asset addition the above points are to be kept under consideration.

Important AAR Ruling

Whether ITC on Civil support structure to Plant & machinery is allowed as Input credit?

- Held no, in case of Maruti Ispat & Energy Private Limited (GST AAR Andhra Pradesh)

Whether ITC on Malls & building allowed, which are used for lending purpose?

- Held Yes, in case of Safari Retreats Private Limited (Orissa High court) [Appeal in supreme court pending]

Whether ITC available in case of Demo Vehicles used for furtherance of business?

- Held no, in case of Khatwani Sale and Service LLP (GST AAR Madhya Pradesh)

Whether GST Applicable on sale of Assets under Slum sale?

- Held no, in case of M/s. Innovative Textile Ltd (GST AAR Uttarakhand)

Whether GST Applicable in case of Sale of Assets by liquidator in case of Defunct Company?

- Held Yes, in case of Mansi Oils and Grains Pvt. Ltd (GST AAR West Bengal)

Note:

If Assessee is into the business of 100% Export of goods/ services then ideally he must not claim input on capital goods and must capitalize the same as same is not eligible for refund in case of Exports without payment of tax.

Inventories

- I. ITC on Goods in Transit - ITC will be available only when goods are received - Important from booking of Purchase/ Disclosure of goods in transit in financials
- II. Goods at third Party - It must be noted that the goods sent to the job worker, must be returned to the principal within prescribed time limit - Sec 19

An entity has not received goods as on 31st March for which invoice from the vendors are dated before 31st March. Whether input tax can be taken in the present scenario?

- Section 16(2)(b) of the CGST Act, mandates that input tax credit in respect of any supply of goods/ services shall be available to the registered person, after he has received such goods/ services. Therefore, input tax credit cannot be taken in the present scenario.

Whether GST is to be included in the calculation of closing stock?

- GST should not be included as part of closing stock as GST paid on purchases lying in closing inventory. The GST component is considered as input tax credit. As per AS-2: "Valuation of Inventories" any recovered/ recoverable duties will not be considered as part of cost of inventory.

Trade Receivable

- I. Export Sales - With or without payment - To be verified whether LUT availed or not
- II. Refund Claimed/ Pending to be verified - Important information as refund received are to be disclosed under clause 41 of Tax Audit Report
- III. BRC for Foreign remittance received are to be checked as same are important for claiming refund.

Liabilities

Trade Payable

- I. Foreign Creditors - One Should verify the impact of import of services and where applicable should review whether RCM has been properly discharged
- II. Domestic Creditors - To check whether Payment made within 180 days or not

Contingent Liability

In order to identify whether there is any contingent liability on account of GST or not, one must check for any Non-compliances with regards to following :

- I. Whether any Show cause notice/ Demand notice issued by GST department.
- II. Whether EWAY bill issued along with sale invoice or not.
- III. Whether Tax Invoice issued as per requirement under GST law or not.
- IV. Whether any delayed payment of GST without interest is made or not
- V. Whether any ineligible ITC credit is claimed or not
- VI. Whether ITC claimed in GSTR 3B is within limit of 5% as available in GSTR 2B or not.

Points mentioned above summarizes major common noncompliance with GST law and how to spot and rectify the same. The approach is to review the various line items in the asset and liabilities in the balance sheet and the likely impact that GST law has on them.

Now after discussing Area-wise key points with respect to Finalization of Accounts GST perspective, let us now discuss points to be kept under consideration at the time Tax Audit report with GST perspective.

GST & Tax Audit Report

Tax audit report has a considerable amount of disclosure to be made in relation to GST.

Following disclosures are to be made under tax audit report:

- The auditor should ensure proper disclosure of registrations under Part A clause 4 i.e. all registrations taken by an entity across all States including input service distributor registration. – Clause 4
- The auditor should have a reconciliation of GST on the various items mentioned as part of inclusive accounting under Income Tax Act. – Clause 14
- The auditor should verify whether the cost of addition to asset has been properly disclosed in the tax audit report. The cost of the asset disclosed in the tax audit report should be in line with the capitalization policy followed for tangible and intangible assets, in the books. – Clause 18
- Review FORM GST DRC-07, FORM GST PMT-06 and FORM GST DRC-03 forms/ chalans from the GST portal to ascertain if any penalties/ demands had been paid by the entity. – Clause 21(a)
- The auditor should review the payments made after the year end to ascertain if the liability at the end of the year is discharged completely – Sec 43B under Clause 26
- Reconciliation of Input tax credit claimed during the year – Clause 27
- Details of Demand raise/ Refund received during the year – Clause 41

To ensure that there are no major/ material misstatements, it is imperative that an auditor checks compliance with GST laws and rules during the finalization of accounts.

The Common list of reconciliations which takes care of the points/common mistake mentioned above which is to be carried out before finalization of accounts is set out below:

- I. Balance of Electronic Credit ledger with ITC in books
- II. Balance of Electronic Cash ledger with excess cash paid in books
- III. GST paid in cash in March return, with payables as per books
- IV. Refund claimed in GST portal with GST ITC refund receivable in books
- V. Refund rejected in GST portal with Rates and taxes in books
- VI. Turnover and output liability in GST returns and books
- VII. Adjustments of previous year, done in subsequent GST returns
- VIII. Review of Previous year GSTR 9 & 9C
- IX. RCM, TDS and TCS compliances
- X. ITC Reconciliation in FORM GSTR-2A v. in Books
- XI. Point of Taxation for Cut off entries of March.

Conclusion:

It is often said that tax and accounting are strangers. However, they invariably overlap since both of them are based on underlying transactions. Since the scope of the auditor also includes ensuring correct compliance with various laws including tax laws, in cases where the treatments under the two domains are different, statutory auditors may be required to do a balancing act and suitably customize their audit processes to ensure that the auditors have reasonable confidence in the true and fair nature of the financial statements.

CRITICAL AREAS WHILE AUDITING UNDER RERA



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Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "Act") has been enacted on 1st May, 2016 and the procedural part viz registration of project, quarterly updation, complaint process, certification and audit is being notified i.e. 1st May, 2017.

As of July, 2021, nearly 29,898 projects are registered by Maharashtra Real Estate Regulatory Authority (hereinafter referred to as "Authority") of which 7210 projects have submitted Form 4 i.e certificate of completion of project leaving nearly 22688 projects which are currently going on in the State of Maharashtra.

The Salient Features of Preamble of the Act are:-

- Regulation & promotion of Real Estate Sector
- Efficient and transparent operation
- Protection of interest of consumers
- Speedy dispute redressal mechanism

Real Estate Sector has been under tremendous pressure and there are instances of delay in project completions owing to various reasons including diversion of funds from one project to another. As of now nearly, 5000 projects are termed as stalled projects in Maharashtra and Authority has now started displaying list of lapsed projects in terms of expired revised timeline on maharera portal in the interest of general public.

It is for this reasons, Central Government while enacting Act has put more emphasis on the following attributes in the interest of real estate project and to ensure that projects are completed in time bound manner.

- Restriction on withdrawal of funds received from allottee
- Use of project fund received from allottee for that project only
- Maintenance of separate bank account with schedule bank for deposit of allottee fund
- Certification by professional like Architect, Engineer and Chartered Accountant for the purpose of withdrawal from designated separate bank account

Role of Chartered Accountants cannot be undermined since the credit back up is most essential for completion of real estate project of voluminous nature which involves many stakeholders.

The certificate issued by chartered accountants has been under close monitor and scrutiny by Authority more particularly for the projects

- a. Having many complaints on account of delay in possession in spite of heavy collection from allottee
- b. Stalled projects where promoter have not been active since many years and certificates are issued by chartered accountants
- c. Complaint u/s 31 read with section 7 for revocation of registration of project is filed
- d. Multiple projects in the same lay out registered and where there are question on diversion of funds from one project to another

Section 4(2)(1)(D) requires promoter to file declaration supported by affidavit concerning following financial aspects namely: -

- 70 % or 100%, as the case may be, (based on feasibility while registering ongoing project) shall be deposited in separate bank account with schedule bank.
- Withdrawal would be to cover cost of project and in proportion to the percentage completion of the project.
- Withdrawal would be after it is duly certified by three professional i.e Architect, Engineer and Chartered Accountants.
- Promoter shall get its account audited within six month from end of financial year and shall produce statement of account duly certified by chartered accountant
- During the course of such audit, chartered accountant is required to verify
 - That amount collected for particular project is utilized for that project only and if not amount of diversion of funds
 - That withdrawal are in proportion to the percentage completion of the project
- Chartered Accountants need to study the provisions of Act, Rules and Regulations and orders/circulars issued from time to time while issuing Certificates and Audit Report under the Act.
- Section 4(2) (1) (D) of the Act requiring promoters to get certificate and audit report.
- Rule 4 of Registration of Real Estate Project.. Rules, 2017 requiring promoter to have additional disclosure for ongoing projects.
- Rule 5 of Registration of Real Estate Project.. Rules, 2017 for withdrawal from separate bank account for ongoing and new projects.
- Regulation 3 and 4 of Authority Regulation, 2017 dealing with format of certificate and report and content thereof
- Office order dated 11th May, 2017 defining co-promoter
- Circular No.4/04-07-2017 for clarification on CA certificate
- Circular No.5 /28-06-2017 for clarification on operating designated separate bank account

- Revised Circular No. 12 and 13 dated 4th December ,2017 substituting co-promoter as promoter
- Circular No. 28 dt 08-03-2021 for reconciliation of sold inventory with Form 3
- Circular No.24Adt 23-07-2021 for financial information on assignment of rights and approval u/s 15 of the Act
- Order No.8/2019 28th March, 2019 for participation in preparation of financial blue print for projects which are revoked

Understanding modality of Business Enterprise:-

Real Estate Industry has complex nature of business operation wherein various kinds of arrangement and rearrangement are done by various stakeholders. It is utmost important for auditor to analyze the cost and revenue sharing arrangement between two or more promoters. Real Estate Development can emerge from any of the following situations:-

- Greenfield Purchase of Land
- Joint Development under area or revenue sharing
- Redevelopment of Housing Societies
- Slum Rehabilitation
- Development Manager Module

The following table illustrates various situations and applicable cost to the relevant promoters. Auditor should closely monitor the cost incurred qua promoter as the Form 3 and Form 5 i.e CA Certificate and Annual Audit relates to promoter but in overall it is to be kept in mind that project is registered with maharera wherein various promoters are having their respective stake.

			FORM 3					
			CLASSIFICATION OF LAND COST					
SR NO			NATURE OF COST	LAND	JOINT	SOCIETY	SRA	LAND
				PURCHASE	DEVELOPMENT	REDEVELOPMENT	DEVELOPMENT	OWNER
1	i	a	LAND COST					
			PURCHASE PRICE	YES	NA	NA	NA	YES
			PREMIUM FOR DEVELOPMENT RIGHTS	NA	YES	YES	YES	NA #
			LEGAL COST AND PREACQUISITION OF LAND TITLE	YES	YES	YES	YES	YES
			COST OF CLEARANCE OF LAND , CORPUS FUND , RENTETC	YES	YES	YES	NA	YES ##
			BROKERAGE	YES	YES	YES	YES	YES
			INTEREST COST	YES	YES	YES	YES	YES
		b	FSI COST					
			ADDITIONAL FSI PREMIUM	YES	YES	YES	YES	YES ##
			FUNGIBLE FSI PREMIUM	YES	YES	YES	YES	YES ##
		c	TDR COST	YES	YES	YES	YES	YES ##
		d	STAMP DUTY AND REGN CHARGES	YES	YES	YES	YES	YES ##
			LAND PREMIUM AS PER ASR FOR PUBLIC AUTH LAND					
		e		YES	YES	YES	YES	YES ##
		f	UNDERSRA					
		(i)	COST OF REHAB BUILDING AND RELATED INFRA COST	NA	NA	NA	YES	NA
		(iii)	COST OF CLEARANCE OF LAND , REHABILITATION COSTETC	NA	NA	NA	YES	NA
		(iv)	APPROVAL COST , DEPOSIT ETC	NA	NA	NA	YES	NA
			TOTAL LAND COST					
			CLASSIFICATION OF DEVELOPMENT COST					
SR. NO			NATURE OF COST	LAND	JOINT	SOCIETY	SRA	LAND
				PURCHASE	DEVELOPMENT	REDEVELOPMENT	DEVELOPMENT	OWNER
		iii a	DEVELOPMENT COST COST OF CONSTRUCTION					
		I & ii	MATERIAL COST, LABOUR CHARGES					
				YES	YES	YES	YES-SALEBLDG	NA
		iii	ALL OTHER EXPENDITURE	YES	YES	YES	YES-SALEBLDG	NA
			(Excluding Marketing cost) Salaries Offsite Staff Architect Fee, Engg Fee. Site overheads Water, Electricity, Sewerage , Drainage etc consumables					
			Hiring Cost of machineries all Such Direct & Indirect cost					
		b	APPROVAL COST	YES	YES	YES	YES-SALEBLDG	##
		c	INTEREST COST FOR LAND & DEVELOPMENT EXP	YES	YES	YES	YES-SALEBLDG	##

- subject to agreed terms

Apportionment of cost on various projects:-

Promoter enterprise may carry on multiple projects in same entity and there could be common expenditure which are incurred for various project going on at a point of time. It is utmost important to apportion common cost based on various scientific parameters viz. FSI consumed, stages of construction, no. of units etc

The prime objective of RERA law is to ensure that there is no diversion of funds from one project to another and therefore cost allocation to respective projects demands utmost care and scientific basis to ensure that project funds are used for that specific project only.

Issues before Auditor on cost incurred and operation of separate bank account are namely:-

- **Interest paid to partners on their capital** – The amended rules now provides that interest for money borrowed for construction can be taken into consideration in total cost incurred. Here, emphasis is on *money borrowed for construction* whereas capital contribution falls in equity basket. Therefore, it is difficult for auditor to consider interest paid on capital contribution as part of cost incurred for the project. However, if the terms of partnership provides for borrowing from partners in excess of agreed capital contribution, view can be taken that it is being borrowing cost is part of total cost incurred.
- **Remuneration paid to working partners** – Though it is termed as appropriation of profit under other law but still one can argue on the ground that if cost is incurred on salary to working partner devoting his time and energy for the project development is nothing but project cost. In case Engineer is taken to partnership and his core duty is to monitor the construction activities then remuneration paid for such services falls in the category of cost incurred for the project. *Estimated cost of real estate project is defined under Section 2(v) which means the total cost involved in developing the real estate project and includes land cost, taxes, cess, development and other charges.* The definition is inclusive definition and emphasize on total development of project.
- **Marketing cost and Selling cost** – Initially Authority by way of circular instructed that marketing cost cannot be part of project development cost. Later on , State Government vide amendment in rules in 2019 made specific rule stating that marketing cost cannot be part of project development cost and should not be considered for the purpose of withdrawal from separate bank account.

Central Legislation very clearly outlined that estimated cost of project **means total cost involved in developing real estate project** as per section 2(v) of the Act. The terminology **development of real estate project** needs to be analyzed in larger perspective and one need to answer the following questions before coming to conclusion.

- Whether project can be developed without marketing cost?
- Whether development means only actual progress of construction in limited sense or it suggests smooth development of activities?
- Whether there is any need to advertise the under construction projects for searching prospective buyers?
- Whether sources of funding projects comprise of allottee fund, borrowing and capital infusion?

If we closely analyze the development of real estate market in India, it can be observed that promoters primarily were relying upon allottee fund and have been incurring huge cost on advertisement and marketing etc and sometime it goes up to 15 % of the total project cost.

As of now, there is no challenge raised on any judicial forum on this aspect of marketing cost. It is well settled principle that Rules cannot go beyond the provisions of the Act. Further, business cannot be made law centric but laws of the country should be business centric. Management may take its view that marketing cost is also part of project development cost.

- **Barter Transactions with contractors:** - There has been trend in realty industry that contractors carry out development work based on barter allotment of units instead of monetary flow of funds. Here, separate bank account does not reflect the routing of transactions and therefore auditors should suitably disclose the facts in certificate as well audit report by grossing up transactions.
- **Conversion of loans into Sales:** - The lenders and promoters do sometime convert their loan transaction into equity by allotment of apartment in the project. Here also no monetary transaction gets routed through separate bank account and accordingly auditor needs to disclose the facts in certificate as well audit report by grossing up transactions.
- **Financials of Land Owner / Assignor of Development rights:**-It is to be noted that project is registered with maharera and therefore the financial data and other data should reflect project details and not only of particular promoter. There may be more than one promoter namely developer promoter, land owner promoter, assignor promoter , development manager promoter etc. It is , therefore, important to disclose the facts of certification relating to particular promoter and consolidated Form 3 and Form 5 needs to be prepared and uploaded which reflect project financial data.
- **Replacement of ASR value for Land Cost:** - As per Amended Rules, now promoter is allowed to have benefit of replacing actual cost with ASR value for land cost. It is to be noted that interest paid on acquisition cost is also allowed to the promoter for consideration of cost incurred. There could be doubling effect when actual cost is replaced with ASR value. Auditor needs to take care of such situation and disclose the relevant facts while certifying Form 3 and Form 5. The Central Legislation definition of estimated cost requires cost involved on land cost which is different from replacement of ASR value of land.

Now we will deal with respective forms to be issued by chartered accountants:-

FORM 3 - CERTIFICATE FOR PROJECT REGISTRATION AND WITHDRAWAL FROM SEPARATE BANK ACCOUNT:-

The objectives of Form 3 are:-

- **To ascertain cost incurred till date**
- **To understand feasibility of the project in terms of balance cost to incur and balance receivable from sold and units**
- **To know the withdrawal limit of the promoter**

Form 3 is in two parts:-**1. Estimated Cost and cost incurred till date, withdrawal limit considering amount withdrawn till date.****This mainly covers:-**

- Land Cost including legal cost but excluding marketing cost
- Additional FSI cost in nature of Premium, TDR etc
- Slum Rehabilitation cost of development including ancillary cost
- Development cost as certified by Engineer in Form 2
- All other project cost including on site and off site expenditure for the development of project
- Approval charges payable to competent authority
- Interest on borrowed fund

2. Additional information on project feasibility i.e matching of future receivable with balance cost to incur.**It comprises of:-**

- Receivable from sold units
- ASR value of unsold units
- Total receivable of the project
- Balance cost to incur i.e estimated cost – cost incurred till date
- If receivable > balance cost to incur – 70% deposit ratio applicable
- If receivable < balance cost to incur – 100 % deposit ratio applicable
- Gross withdrawal limit = cost incurred
- Amount that can be withdrawn = Gross withdrawal limit – amount already withdrawn

It is to be noted that additional information on project feasibility applies only to those project which are termed as ongoing within the meaning of section 3 of the Act which has not obtained completion certificate as of 1st May, 2017.

Further, the deposit ratio once fixed i.e 70% or 100 % cannot go on changing every time when Form 3 is issued.

This requirement of feasibility study does not apply to project registered as New Project. However, recent circular of maharera as made reference to reconciliation with Form 3 for disclosure requirement of sold/unsold units unit number wise.

The issue remains whether Form 3 issued for New Project should contain additional information?

Chartered Accountants are facing challenges on the following technical issue on Form 3:-

- Whether Form 3 is required to be obtained compulsorily on quarterly basis in spite of fact that promoter has not exhausted its withdrawal limit? Recent circular on Quarterly Progress Report (QPR) requires Form 3 to be uploaded on quarterly basis but rules and regulation are silent on this issue.
- Whether Form 3 with additional information for feasibility data should be uploaded even for Form 3 for new project?
- Whether to certify change in deposit ratio i.e 70% or 100 % every time Form 3 is certified or it should be based on 1st certificate issued while registering the project?
- Whether to upload standalone Form 3 of developer promoter or consolidated Form 3 of all promoters?
- Whether cost incurred till date should be taken net of outstanding liabilities for such cost incurred?
- Whether project finance from FI/others is also relevant for computation of amount already withdrawn?
- What is amount withdrawn till date? - Ideally amount withdrawn means cost incurred which is actually paid off. The issue arises for computation of amount withdrawn till date for ongoing projects which were registered owing to requirement of section 3 of the Act for non-receipt of completion certificate. Here, we have two period namely

Period prior to 1st May, 2017 – there was no concept of 70% or 100 % of deposit ratio and hence maharera circular specifies that 100 % to be considered or the purpose.

Period after 1st May, 2017 – 70 % or 100 % of deposit ratio to be considered.

The relevant portion of maharera circular dated 4th July, 2017 for clarification on CA certificate for 1st certificate for ongoing project is reproduced herewith.

“Amount withdrawn till date of this certificate as per books and Bank statement shall be **100 % of amount realized from allottee or cost incurred till date**, whichever is lower.”

The concept of separate bank account started with the notion that promoter shall deposit 70% of allottee fund in separate bank account (100 % if feasibility is negative).

Hence, amount withdrawn till date should have been 70 % of amount realized from allottee or cost incurred whichever is lower.

Reading of circular results in lower withdrawal limit for future.

We will understand this difference by suitable example:- Promoter received allottee fund say 5 crore , Cost incurred till date is 6 crore

Amount withdrawn till date would be

- a. As per maharera circular – 100 % of 5 crore or 6 crore whichever is lower i.e 5 crore
- b. Ideally and logically – 70% of 5 crore i.e 3.5 crore or 6 crore whichever is lower i.e 3.5 crore

Thus, the future withdrawal limit would get curtailed by 1.5 crore reading the maharera circular which itself is ambiguous in nature.

FORM 5 – ANNUAL REPORT ON STATEMENT OF ACCOUNTS

The Objective of asking promoter to obtain Form 5 within six month of end of the financial year is to find out whether :-

- Project funds are used for that project only
- To cross check the certification done by another CA for Form 3
- To ascertain diversion of funds by the Promoter

The current format of Form 5 involves reporting of :-

- a. Amount collected till date
- b. Amount collected during particular financial year
- c. Amount withdrawn till date
- d. Amount withdrawn during particular financial year
- e. Diversion of funds, if any

However, the format prescribed fails to bring the desired result and data pertaining to collection and withdrawal during financial year are irrelevant for the purpose of determining diversion of funds.

The Central Legislation requires promoter to give account of 70% or 100%, as the case may be, of amount realized from the allottees and out of this amount if promoter has diverted funds for other purposes then the same is required to be reported by the chartered accountants. It is further to be noted that on the principle of independence the CA signing Form 3 cannot sign Form 5 and vice versa.

Whether it is Audit or Certification: -

Section 4(2)(l)(D) which prescribes the requirement that

- Promoter shall get his account audited
- Promoter shall produce statement of accounts duly certified by CA
- During the course of audit, it shall be verified that project funds are used for particular project and withdrawal are in proportion to the percentage completion of the project.

It, therefore, follows from above provisions that Form 5 is Certificate but emerging from the audit carried out by chartered accountant. Thus, it is one kind of statutory audit requirement in line with other statutes like Companies Act, Co-operative Societies etc. Therefore, the benefit of extended submission of Return of

Income will be available to promoter by virtue of provisions of section 4(2)(D) on account of statutory audit under statute i.e RERA law.

In line with Form 3, Form 5 needs to be uploaded for the project and not promoter and therefore consolidation of Form 5 for all the promoter needs to be done.

Form 3 and 5 needs to be redesigned to cover the following anomalies viz: -

- Incorporation of Project Finance used for cost incurred
- Outstanding liabilities for cost incurred
- Cost incurred formula should be based on central legislation section 4 of the Act i.e withdrawal is in proportion to the percentage of completion for the project and not on entire cost incurred which allows promoter to enjoy more withdrawal than due based on percentage of completion.

Maharera have not extended the due dates of uploading Form 5 since outbreak of covid 19 in spite of the facts that relevant audit dates under direct and indirect tax have been extended from time to time. However, maharera is not taking any coercive action against promoter for delay in uploading but whenever any new application like application for change, extension etc are filed, the same are withheld unless all the required compliances are fulfilled by the promoters.

There have been cases in other States calling for forensic audit of the project and thereby matters have been referred to disciplinary committee of ICAI but till now no such action is undertaken by maharera. However, looking at quantum of stalled project in Maharashtra, chartered accountant would be in first scanner list wherever there are complaints or matters coming before maharera question utilization of proceeds of allottees.

Challenges before Chartered Accountants owing to complex nature of realty industry: -

- Cost allocation for multiple projects carried out in one entity.
- Disclosure of contingent liabilities in statutory audit based on order concluded against promoter.
- Coordination amongst the other promoters for consolidation of certificate and audit report.
- Facing hearing from maharera for complaint against stalled project and enquiry for forensic audit.
- Participation in Designated Resolution Panel upon revocation of project u/s 7 or 8 of the Act in terms of Maharera order no.8/2019 dated 28th March, 2019 for preparing financial blue print for completion of remaining development work of stalled project etc
- Reporting of barter transactions
- Reporting of conversion of debt to equity/sales

Conclusion and way forward: -

Maharera is carrying out enquiry and exercises as to modification of Form 3 and Form 5 based on past experiences and representation received from accounting bodies, Builders Association etc. RERA law since 2017 has evolved with various judicial pronouncement of Tribunal, High Court and Supreme Court and this evolution will continue owing to complex nature of realty sector.

MahaRera is under process in revamping Form 3 and 5 on following propositions: -

- Removing concept of ASR valuation of land
- Outstanding liabilities while considering cost incurred
- Cost incurred formula redesigning to being in parity cost in proportion of percentage completion of work
- Separate Bank Account summary disclosure
- Application and sources of fund for the project while applying for registration of the project
- Clarification on amount withdrawn till date
- Quantification of diversion of funds and so on

It is, therefore, of utmost importance for accounting bodies like ICAI to represent on various front and suggest better way of financial disclosures to bring out clarification to enable chartered accountants to carry out certification and audit function without any ambiguity or confusion and in transparent manner.



"DREAMZZ UNLIMITED": STORIES THAT INSPIRE



CA Riddhi Gangar
(CFO - Tata Motors Finance Ltd.)

Mantra of my life:

Build a foundation Grow Sustain Repeat

Before I walk you through my journey of climbing, let me first take you back to my journey of reaching base camp.

Jan 2006, I cleared my CA PE II securing rank 7th In India. Naturally my inclination was to get into one of the BIG 4 for my articleship and accordingly I was invited for the interview. Was given a topic for a group discussion, "Cricket", boom, bold on first ball!, Why? Forget about talking about a sport of which I had no idea, I didn't even have a working TV at my home to even see a glimpse of this sport. Of course, I wasn't rejected, but they didn't have enough ground to select me either as others did better than keeping mum. Failure? not really, joined a nice midsized firm, spent 3 months and then I got a call from PWC. Well yes I was hired as this time the topic was manageable :)

Journey started, corporate environment, meeting and dealing with even bigger corporate clients, working under the shadow of a smart bunch of team members and amazingly intelligent managers, life took direction for the perfect grooming. Let me take a pause and salute all those great people who gave me a strong foundation and grooming for the next stage of my life.

Day of my CA final result - July 12, 2008, my hubby (then best friend) woke me up and told me that sadly I couldn't progress much from the last time and again ended up securing 7th Rank only. At the cost of sounding overly humble, I had absolutely no regard for the rank but the potential of being rewarded with a promotion with a decent financial prospect turned my world, yes I needed it badly!

I continued my journey with PWC for another year and having served unforgettable 4 years, I moved to the Industry and Joined Essar Group. Luck was in my favour and I was entrusted with an opportunity to be the part of the team responsible for installing the system for the implementation of IFRS, which was patented for being first of its kind. Spent 2 years full of knowledge, guidance and an even stronger base to push myself for more.

May 2012, got a call from Tata Motors Finance Limited. The brand "Tata" needed no introduction of what it stands for and I would be lying if I say I wasn't nervous. Came for an interview, had a couple of rounds of discussion and got a call from HR. Yes, I was being hired as a subject matter expert - IFRS as a Senior manager. Phew!!

To be honest, It was tough to start off to establish my identity as IFRS in India was still a distant thought and although I was treated with the right level of respect, my profile had its own limitations. To thrive in an environment that didn't really see much change in a long time was an arduous task.

6 months back I was told by our CEO that I'm being considered for the role of CFO and I had no freaking idea where that came from. For me more than capability to perform the role, it was all about an element of depth of responsibility of being a CFO of a regulated entity with book size of ~5 Bn \$. Yes I had exposure and experience of 13 years but I still was 34 and had never dreamt of being considered for the elevation so fast. I pinched myself, filled myself with all the questions?

Is it a dream?

What if I fail?

Do I have enough in me to justify the role?

When I look back, I realise one thing, all that one ever has to focus on is in being excellent in whatever one does, rest all will fall in place. Of course, it wouldn't have been possible without having the right people giving me valuable direction and I can thank all those amazing people and my wonderful team who made me strong every single day that passed by in this journey and continuing further.



EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Speaker	Attendance / Views
26 th July to 13 th August 2021	Publication Representation & Training Committee	GST COURSE		
		a. Beginner's Course (26 - 30 July)	Faculty: CA Chintan Saiya, CA Jay Maru, CA Akash Gogri, CA Deep Chheda, CA Henik Shah Mentors: CA Chintan Rambhia, CA Nihar Dharod, CA Mehul Gala, CA Deep Chheda	90
		b. Learner's Course (2 - 6 August)	Faculty: CA Pratik Maru, CA Henik Shah, CA Rinki Lapasia, CA Akash Gogri, CA Chintan Rambhia, CA Grishma Mentors: CA Nihar Dharod, CA Chintan Saiya, CA Deep Chheda, CA Rupal Haria, CA Mehul Gala	84
		c. Advanced Course (9 - 13 August)	Faculty: CA Deep Chheda, CA Chintan Saiya, CA Nihar Dharod, CA Mehul Gala, CA Chintan Rambhia	74
30 th and 31 st July 2021	Membership & Recreation Committee	Monsoon Picnic for CVOCA Members and their Family at "THE UPPERDECK RESORT, LONAVALA"	N.A.	93
8 th August 2021	Program Committee	Public Program in Hindi on RECOVERY OF BUSINESS DUES	Adv. Lalit Jain	1991 *

EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Speaker	Attendance / Views
13 th to 27 th August 2021	Young & Industry Members Empowerment Committee	15 Days Fitness Challenge	Supported by CA Anant Vora - Your Digital Lift	149
		15 th August - Yoga Session (Part of 15 Days Fitness Challenge)	CA Kishor Gada	
		21 st August - Workout and Nutrition Session	Ca Kaushik Gada	
23 rd August 2021	Students Committee	Webinar on How to Pursue CA for 10 th and 12 th Students	CA Priti Savla (Keynote Speaker) CA Harsh Dedhia (Session Speaker)	90
23 rd to 28 th August 2021	Publication Representation & Training Committee	TDS/TCS Online Course		67
		a. Beginner's Course (23 - 24 August)	Faculty: CA Henik Shah and CA Jai Savla Mentors: CA Gautam Mota and CA Hetal Gada	
		b. Learner's Course (25 - 26 August)	Faculty: CA Ami Chheda and CA Heenal Furia Mentors: CA Vishesh Sangoi	
		c. Advanced Course (27 - 28 August)	Faculty: CA Pooja Maru and CA Shreya Nagda and CA Rinki Lapasia Mentors: CA Bhavin Dedhia and CA Rakesh Vora	60

EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Speaker	Attendance / Views
27 th and 28 th August 2021	Young & Industry Members Empowerment Committee	UDAAN - BEYOND ETERNITY (Online Youth RRC)	Dr. Dhaval Shah, Co-Founder PharmEasy	58
		a. Keynote Session -Journey of Startup - JOURNEY OF START-UP		
		b. Unleash Your Potential - Group Discussion		
		c. Flourish with Friends		
		d. Online Board Games	CA Krunal Veera, Founder - The Board Game Co.	
28 th August 2021	Capital Market Committee	Industrial Visit at TIME TECHNOPLAST LIMITED, Daman and Silvassa	N.A.	46
29 th August 2021	Program Committee	Public Program in Gujarati on KNOW YOUR REAL ESTATE (KYRE)	Adv. Dhiren Nandu	2428*

* YouTube Views as on 30-08-2021.

Monsoon Picnic for CVOCA Members and their Family at "THE UPPERDECK RESORT, LONAVALA"



Industrial Visit at TIME TECHNOPLAST LIMITED, Daman and Silvassa



Public Program in Hindi on RECOVERY OF BUSINESS DUES



Public Program in Gujarati on KNOW YOUR REAL ESTATE (KYRE)

