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NEWSLETTER

VASAI BRANCH OF WIRC

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

MAY 2023

Yoga Day



June 21, 2023



CHAIRMAN'S COMMUNICATION

Dear Professional Colleagues,

I am excited to engage with you through these pages and keep you up to date on the changes happening in our industry and profession. Every time we communicate, I notice the passing of time and feel as though I have a lot to get done in the little time I have available. But I'm confident that if we work hard together this year, we'll be able to complete the mission successfully. Your words of support and encouragement would be a great source of motivation for me.

1st May is celebrated as Maharashtra day & International Worker's Day, as it is a celebration of the spirit, rights and solidarity of workers and employees.

We express our thoughts that, in order to carry on the heritage and tradition of integrity, independence, and excellence established and fostered by our predecessors and seniors through our mission to serve members and students. Let's promise to collaborate as a team with the proper mindset and optimistic approach to achieve the objectives we have established.

There were numerous Initiatives taken by the Vasai Branch of WIRC, ICAI

It's a matter of pride that we have felicitated Mr. Kiran Divekar Asst. Commissioner of Sales Tax on the occasion of "Seminar on MVAT Amnesty Scheme-2023" on 6th May, 2022 with large attendees, the seminar was supported by Mira Bhayander Small Scale Industries and I am grateful to CA. Janak Vagani, Faculty for sparing his valuable time for the members.

Vasai Branch had organized Auction Based Turf Cricket Tournament Session 2 "Vasai Branch Premier League" on 7th May, 2023 at Kasturi Garden Ground for open category, senior members and women members where 20 teams under open category, 4 teams under senior members and 4 teams under women members took participation consisting of 10 players each Team & owners of the Teams. We also thanks to our guest for the Day CA Arpit Kabra (Chairman WIRC), CA Sorabh Ajmera (Secretary WIRC), CA Ketan Saiya (Treasurer WIRC)

A Seminar on "Virtual CFO & Startup" on 21st May, 2023 and the faculty is CA. Sammir S. Choudhary, members has taken the benefit of the subject in the large.

Vasai Branch also had an interactive meeting with the Convenors and Dy. Convenors of the Bhayander, Mira Road and Vasai- Virar Study Circle for serving the members in the better way and I thanks to all the Convenors and Dy. Convenors to participating in the meeting.

I also thanks members for taking participation in large in the monthly quiz competition and winners are also announced in the subsequent month newsletter.

Finally, the monsoon season has arrived, and the abundant rains are being greeted with open arms. In India, the monsoon season has long been seen as a time for innovation and fresh starts. Indians, who live in an agrarian civilization and have milder summers than the West, look forward to and even worship rain.

I conclude by using a succinct quote:

No one who does good work will ever come to a bad end either here or in the world to come - Bhagavad Gita

With Warm Professional Regards

CA. Amit Bharat Agrawal
Chairman
Vasai Branch of WIRC of ICAI

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Upcoming Events

Date	Time	Fees	Topic(s)	Speaker(s)	Branch Committee Member (Chief Co-ordinator)	Co-Ordinators	CPE Hours
10-06-2023	5:30pm to 9:00pm	Free	Mentorship programme for Career Counsellors Session on PMLA Act	CA (Dr.) Rajkumar S. Adukia CA Purshotam Khandelwal CA Hyrudesh Pankhania	CA Aba Parab	CA Pooja Jajal CA Prem Suthar	-
11-06-2023	9:30am to 5:00pm	Rs. 590 (Incl GST)	Grow Your Practice	CA Umesh Sharma, CCM CA Rahul Dungarwal CA Kedar Pande	CA Tarun Dhandh CA Shri Krishna Purohit	CA Sandip Jain CA Kushal Mehta CA Manoj Khemka	6hrs
21-06-2023	7:00 am onwards	Free	International Yoga Day Celebration	-	CA Daya Bansal	CA Nitesh Kothari	-



Tax Column



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**Question What is the new tax regime ?
What are its benefits & disadvantages ?**

Answer The Finance Act 2023 has introduced a new tax regime which has come into effect from the financial year 2023-24 assessment year 2024-25.

The new regime can be exercised by an individual, HUF, AOP, BOI. The relevant section is 115BAC. The tax rates under the new regime are lower than the tax rates under the old tax regime. However, under the new regime, tax payers will not be able to claim most deduction and exemptions such as under section 80C, 80DD, 80G.. However, standard deduction, for salaried tax payers, would be available even under the new regime. Further, rebate scheme is increased from Rs. 5 lac to Rs.7 lac. Under the new regime, there will be saving of money or tax as the tax slabs are wider and tax rates are lower, then the old regime. By adopting new regime there will be less cash out-flow and more surplus funds.

Further, tax rebate upto Rs.25,000/- on an income of Rs. 7 lac under the new regime is available which was capped at Rs.12,500/- under the old regime upto an income of Rs. 5 lac. Further, effectively nil tax out-flow for income upto Rs. 7 lac. Therefore, new tax regime is simpler tax structure with lower tax rates since no major deductions are available as exemption which will reduce paper work and less documents for the tax payers.

The salaried employees now need to choose between the old regime and the new regime at the beginning of the financial year by communicating to the employer. If the employee does not inform, then the employer is bound to apply the new regime while deducting the tax at source.

Question Can you tell us what are new amendments relating to charitable trust in the Finance Act ?

Answer There are several amendments made in the Finance Act relating to charitable trust. The most important and major amendments are as under:

1(a) TIME LIMIT FOR FILING FORMS OF EXERCISE OF OPTION / ACCUMULATIONS

A charitable organization / society / public trust can opt to spend a part of its unspent income in a subsequent year if it cannot exercise 85% of its income during the year, then it could do so by filing form 9A online. Similarly,

if a charitable organization decide to accumulate part of its unspent income to be spent over next five years, then it can do so by filing form 10 online. At present the due date of filing both these forms was the due date to furnish the Return i.e. 31st October.

Under the amended provisions, the due date of filing these two forms is now being brought forward by two months i.e. 31st August. Since the amendment is effective 1.4.2023, it can be applied to all filing of forms after such due date including this for assessment year 2023-24. Therefore, a charitable organization would now have to keep in mind the new deadlines of filing the above forms i.e. 31st August. The consequences of not filing these forms before the due date i.e.31st August may result in denial of exemption u/s 11 of the I T Act which may result in additional tax liability.

(b) AUDIT REPORT IN FORM 10B/10BB

The due date of filing Audit Reports in forms 10B/10BB is one month before the due date of filing the Return. Therefore, all charitable organizations has to file form 10B/10BB before 30th September of the relevant assessment year. Again, failure to file the audit report online before the due date of filing the Return may result in denial of exemption u/s 11 of the I T Act.

(c) RETURN NEED TO BE FILED BEFORE THE DUE DATE OF FILING RETURN

The due date of filing the Return is 31st October. Even for one day delay, a charitable organization / trust may lose exemption u/s 11 of I T Act and accordingly may be subject to heavy tax liability.

(2) REGISTRATION OF APPLICATION BY WAY OF DONATION TO OTHER TRUSTS

Upto the assessment year 2022-23, a donation to an another charitable organization by a charitable organization was regarded as application of income for charitable purposes.

The amendment was made effective from assessment year 2018-19 where a donation towards corpus of an another charitable organization cannot be treated as application of income. The Finance Act 2023 has now further sought to discourage donation to other charitable organization by insertion of Clause III to Explanation 4 to Section 11(1). Henceforth, any amount credited or paid to another charitable organization approved u/s 10(23C) of I T Act or registered u/s 12AB of the I T Act shall be treated as an application for charitable purposes to the extent of 85% of such amount credited or paid with effect from assessment year 2024-25.



(3) CANCELLATION OF REGISTRATION U/S 12AB OF I T ACT

If form 10A had not been duly filled-in by not providing fully or partly or by providing false or incorrect information or documents required to be provided etc, the Commissioner of Income Tax can cancel the registration, after giving an opportunity of being heard. Now the Act has been further amended to add a situation where application made for registration or provisional registration is not complete or provided false or incorrect information, can result in cancellation of registration u/s 12AB of the I T Act.

The Provision is very harsh since a simple clerical mistake while filling online forms or forgotten to attach a document, registration of the trust may be cancelled. The cancellation of registration can have severe consequences, attracting provision of tax on accreted income u/s 115TD at the maximum marginal rate of fair market value of assets of the trust less liabilities. For example - if the Commissioner of Income Tax cancel the registration u/s 12AB(4) of the I T Act and the trust's asset minus liabilities is say Rs.40 crore, then the tax u/s 115TD at maximum marginal rate i.e. 30% plus surcharge will be charged on Rs.40 crore.



Why it is important to check Form 26AS before filing Income Tax Return



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There is a great need and importance of thorough checking of Form 26AS before filing Income Tax Return, as it is an Annual tax statement which provide the details of tax paid, tax deducted or collected at source as the case may be of the respected assessee. Assessee has to

mandatorily disclose the corresponding income in his ITR which is reflecting in the Form 26AS against which TDS/TCS has been made. It acts as a statement which provides various details like as follows;

- 1) TDS/TCS Details of the Assessee: Form 26AS shows the details of tax deducted by any person or entity i.e. deductor in Part A under various sections like 194A, 194C etc. or tax collected at source u/s 206C series in Part B.
- 2) Details of high volume transactions in Part E like if any assessee has been engaged in any transaction which involved a huge amount like purchase or sale of immovable property above the transaction value of 30,00,000 INR.
- 3) Details of Tax paid by the assessee in Part C: Advance tax or self-assessment tax paid by the assessee during the relevant financial year. Also if any tax paid by the assessee for reasons

other mentioned above like tax on regular assessment u/s 143 or in pursuance of demand notice issued u/s 156.

- 4) Income tax Refund in Part D: If any amount which is refundable by the department is reflected in the Form 26AS, it is important to note that if any refund which is provided by the department, then interest will be also be a part of that refund i.e. interest on income tax refund which is separately reflected in the row which should be taken into account while filing ITR otherwise it will lead to intimation u/s 143(1) for correction later on, as such interest is taxable under the head "IFOS".

Form 26AS can also be termed as annual tax credit statement which reflects how much tax credit is accumulated during the financial year which can be used to pay taxes at the time of filing ITR.

Apart from the above, one should always check whether the income reflecting in the form is correct and best to the knowledge of assessee, as it can create problems latter on if assessee fails to show the income which is reflecting in the Form 26AS and denies the same that income does not belong to him, sometimes it happen that TDS has been made wrongly due to wrong furnishing of PAN details, therefore one should look after that Form 26AS reflects true and correct info about income and tax details.

Conclusion: At last, would like to conclude that Form 26AS is the most important statement while filing an ITR, one should always match the details with it for avoiding any notices and intimations from the department.





Disallowance for delayed Payment to MSME's U/s 43B of Income Tax Act, 1961



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In this Finance Act 2023, Clause 13 of Sec 43B of the Income Tax Act of 1961 has been amended to disallow a deduction for transactions with Micro and Small Enterprises where timely payments are not made i.e. a new addition to disallowance has been introduced and it

is made being vide Sec-43B (h) to disallow expenditures which are supplied or procured from a Micro or Small Enterprises and are not paid within the time limit prescribed U/s 15 of MSME Development Act (MSMED) 2006.

Q.1 Who are Micro , Small & Medium Enterprises (MSME)

(A) Micro Enterprise

- (i) Investment in Plant & Machinery less than INR 1 crore
- (ii) Turnover of less than INR 5 crore

(B) Small Enterprise

- (i) Investment in Plant & Machinery less than INR 10 crore
- (ii) Turnover of less than INR 50 crore

(C) Medium Enterprise

- (i) Investment in Plant & Machinery less than INR 50 crore
- (ii) Turnover of less than INR 250 crore

Q.2 What is the time limit for payment to MSME Entity as Section 15 of The MSME Act:-

Case :1 Written Agreement entered with the supplier

- (a) Time period agreed

Or

- (b) 45Days from the date of receipt of goods/ service

(Whichever is earlier)

Hence, if a buyer is entering into an agreement with an MSME supplier, the due date of payment cannot exceed 45 days from the date of actual delivery of goods or rendering of services as the case may be.

Case : 2 Written Agreement not entered with the supplier

“Within 15 Days of the receipt of goods / service”

i.e the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.”

Point to be Noted :-

- (a) Trader / Retailer/ Distributor, etc would not be classified as an Enterprise and would not be covered under the definition of Micro or Small Enterprise Definition. As per Sec-15 of MSME Development Act 2006, the due date for an invoice is to be determined as per the Terms of the Invoice or 45 days from the date of the invoice whichever is earlier.
- (b) Micro or Small Enterprise who are not registered under the Act would not be covered under the Definition of S-43B(h).
- (c) These amendments will take effect from 1 April 2024 and will, accordingly, apply in relation to the assessment year 2024-2025 and subsequent assessment years.
- (d) Disallowance u/s. 43B of the Act will be attracted in case the supplier is either Micro Enterprise or Small Enterprise. Disallowance u/s. 43B of the Act will not be attracted if the supplier is Medium Enterprise.

Action to be Taken :-

- (a) Entity who fall under MSME criteria should get themselves registered under MSME Act.
- (b) Whom TAX Audit is applicable in the FY 2023-24 should make sure of following points :-
 - (i) Take a confirmation from all vender that whether they are registered under MSME or Not.
 - (ii) If Any vender registered under MSME Act then take MSME Registration copy from each vendor should be obtained.
 - (iii) Payment should be made in time to each supplier to avoid disallowance of expenses.
 - (iv) Terms of Payment should be agreed with the supplier for each purchase (Should not exceed 45days).
- (c) Need to make payments on a timely basis in order to get a deduction within the same financial year. This will be very beneficial for MSME's development & promotion.
- (d) Clause 10 of the Tax Audit report says Tax Auditor is to report the amount of interest inadmissible u/s 23 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED, Act 2006). As per the said section, any interest for delayed payment to Micro, Small, and Medium Enterprises is not allowed as a deductible expenditure while computing the income of the Assesses under the Income Tax Act, 1961.
- (e) Any outstanding payment to MSME at end of the year needs disclosure in financials along with interest due.





FORM 10BD under Income Tax Act



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What is form 10 BD

As we know that every NGO, Trust, Institution registered under sec 12A, 10(23C) must keep records of donation received from donors, every year.

As per Income Tax Act 1961, tax benefits are provided to donor, who gives donation to such institutions, NGO, Trusts etc, u/s.80G and such done are required to file Return of donation in form 10BD to the Income Tax Department. Therefore Form 10BD is a Return of donation, which has to be filed by the donee registered u/s.12A, every year, which contains all details related to donation and Donor.

In the past:

In the past, before introducing Form 10BD, it was not in existence such type of any form. The donors were eligible for claiming deduction u/s.80G on the basis of Donation Receipt issued by the Donee and such donation receipt must contained all registration details about 12A and 80G of the Donee.

But now after introducing such Form 10BD, it is compulsory to file this Form with Department, then only Donor can claim deduction u/s.80G based on donation certificate issued by Deptt, on the basis of filing of such Form 10BD.

Now a Days:

No deduction can be claimed by donor u/s.80G, if such Form 10BD was not filed by the Donee, which contains all the details related to donor and donation.

Hence it is compulsory to file Form 10BD by every donee, so that Donor of which details are filed in this form, can get deduction u/s 80G of the Income Tax Act, 1961.

Purpose of form 10BD:

The purpose of this form 10BD is to provide details of donation received during the financial year to ensure that such donation was received genuine and donor is eligible for claiming deduction u/s.80G of the Income Tax Act,1961.

Information to be filed in form 10BD:

The following information are required to be filed in Form 10BD:

1. Name of donor
2. Address of donor
3. PAN/Adhar of donor.
4. Date of Donation received.
5. Amount of donation received.
6. Mode of donation received.

Form 10BD- its importance:

Form 10BD is a very important document, which must file by the Donee, who receive donation from individual and companies etc, for claiming deduction u/s.80G by such donors.

It is mandatory requirement as per Income Tax Act,1961.

If Donee fails to file this form, donor would not get deduction u/s.80G. The main purpose of filing this form 10BD is to record and disclose genuineness and clarity of donation received during the financial year.

How to file Form 10BD:

Normally this form has to file online on the income tax site. The procedure of filingsuch form is very easy.

The following steps must be taken for filing form 10BD:

1. Download xml utility for form 10BD, from income tax site.
2. Fill the details in such xml.
3. Create csv file from such xml.
4. Log in on Income tax site, with client password.
5. Go to file form
6. Go to file 10BD Form
7. Fill the required details in 10BD.
8. Attach csv file generated above.
9. Fill verification part.
10. Upload the same with adhar otp of client.
11. Take print of acknowledgement generated.

Due date of filing form 10BD:

The due date of filing Form 10BD is normally 31st May of the financial year immediately following financial year in which donation was received.

As per Sec 80G(5B) it is stated that every Trust, institution, organisation registered u/s.12AA, 10(23C) or 35AC, are required to furnish statement of donation in form 10BD of donor, on or before 31st May of the financial year immediately following the financial year, in which donation was received.

Late fee:

If form 10BD is filed late by 31st May, then u/s.234G a late fee of Rs.200/- per day for each day of default will be levied.

It will be applicable from the date immediately following the due date until the date on which the form is filed.

So it is important for every donee, that they must file form 10BD on time, avoid laving penalty Rs.200/- per day.

Is this Form 10BD can be revised:

Yes, Form 10BD can be revised.

In case of error is detected in original Form 10BD furnished, the entity can furnish a revised Form 10BD, to rectify such error.

The CBDT has issued rules that allow the furnishing of original or revise Form 10BD for a particular financial year.

It is important to ensure that the required information is furnished accurate and up to date in the revised Form10BD.

Disclaimer:

The above views are personal view of the author. It shall not be used for any opinion, advice. The information contained in above article is for the purpose of giving knowledge and awareness of the subject matter and shall not be treated as solicitation in any manner.





Nature & effect of Explanations, Clarifications, Proviso etc.- “Retrospective or Prospective”



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Supreme Court:- Sree Sankaracharya University of Sanskrit

16th May, 2023

- 1) Every year the government brings out and/or make provisions for introduction, amendment, deletion etc. of laws which are necessary under the circumstances then obtaining. In addition, certain explanations / clarifications /provisos are also inserted/ modified /deleted. Many a times it becomes difficult to understand if these changes of law would operate prospectively or retrospectively.
- 2) It is generally understood that clarificatory Law is issued only for the purpose of removal of ambiguities in the implementation of an earlier Law and therefore, it is to be read as a part and parcel of the original Law and must not be construed as a separate Law which seeks to modify or alter the rights already conferred by the earlier Law. When the Law itself records in no unclear terms that it has been issued as a clarification of a previous Law, it must be construed as a clarification and not as an amendment/modification. Accordingly, such a Law must be made applicable retrospectively from the date on which the Law sought to be clarified came into effect.
- 3) The SC in *S. Sundaram Pillai vs. V.R. Pattabiraman, A.I.R. 1985 SC 582* held that an explanation added to a statutory provision is not a substantive provision, but as the plain meaning of the word itself suggests, it is merely meant to explain or clarify certain ambiguities which may have crept into interpreting the statutory provision. It would make it abundantly clear that it was meant to clear ambiguity in the application of the earlier Law and not to withdraw any substantive rights. Therefore, there would be no bar to allow the said clarification to operate retrospectively.
- 4) In *K.C. Arora the SC* held that, to contend that an amendment cannot be stated to have retrospective effect unless it is expressly provided that it shall operate retrospectively (or by necessary implication). If the Law does not indicate that the same was to operate retrospectively then, it cannot be stated to have retrospective effect.
- 5) If a Law is made applicable retrospectively, it would have the effect of withdrawing vested rights of the litigants and would hence be in contravention of settled principles of law that an amendment could not be made applicable retrospectively, if such application would have the effect of nullifying vested rights.
- 6) If a subsequent Law is declared to be in the nature of a clarification of the earlier Law, it may be made applicable

retrospectively. Conversely, if the subsequent Law is held to be a modification/amendment of the earlier Law, its application would be prospective as retrospective application thereof would result in withdrawal of vested rights which is impermissible in law and the same may also entail recoveries to be made.

- 7) It is trite that any legislation or instrument having the force of law, which is clarificatory or explanatory in nature and purport and which seeks to clear doubts or correct an obvious omission in a statute, would generally be retrospective in operation, *vide Ramesh Prasad Verma*. Therefore, in Law to determine whether the Law may be made applicable retrospectively, it is necessary to consider whether the said Law was a clarification or a substantive amendment.
- 8) In the treatise, *Principles of Statutory Interpretation, 11th Edition (2008) by Justice G.P. Singh* on the sweep of a clarificatory / declaratory / explanatory provision:

“The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court: For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any Statute. Such acts are usually held to be retrospective. [...] An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended. The language 'shall be deemed always to have meant' or '**shall be deemed never to have included**' is **declaratory and is in plain terms retrospective**. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force, the amending Act also will be part of the existing law.”

For example, Explanation-2 was added to section 36(1)(va) with effect from 01-04-2021 as:-

“For the removal of doubts, it is hereby clarified that the provisions of section 43B *shall not apply and shall be deemed never to have been applied* for the purposes of determining the “due date” under this clause.”

Similarly with effect from 01-04-2021 Explanation-5 was added to section 43B as:-

“For the removal of doubts, it is hereby clarified that the provisions of this section *shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 applies.*”



What is the scope of the above amendment carried out by the Finance Act 2021? Whether these amendments applied retrospectively or only prospectively?

Well, almost all judgements of the ITATs delivered after the amendment have held these amendments to be only **prospectively** in nature on the ground that

- i) The Finance Act 2021 itself was made applicable w.e.f. 01-04-2021 and therefore any provision of the said Act can't be deemed to be applicable retrospectively.
 - ii) If the amendment was made applicable retrospectively, it had the effect of withdrawing vested rights of the assessee and would hence be in contravention of settled principles of law that an amendment could not be made applicable retrospectively, if such application would have the effect of nullifying vested rights which is impermissible in law and the same may also entail recoveries to be made.
- 9) This Court in *Commissioner of Income Tax, Bombay vs. Podar Cement Pvt. Ltd.*, (1997) 226 ITR 625 (SC) noted that circumstances under which an amendment or modification was introduced and the consequences thereof would have to be borne in mind while deciding the issue as to whether the amendment was clarificatory or substantive in its nature and whether it would have retrospective effect or not.
- 10) In *Allied Motors Pvt. Ltd. vs. Commissioner of Income Tax, Delhi*, (1997) 224 ITR 677 (SC), this Court found that certain unintended consequences flowed from a provision enacted by the Parliament. There was an obvious omission. In Law to cure the defect, a proviso was sought to be introduced through an amendment. The Court held that literal construction was liable to be avoided if it defeated the manifest object and purpose of the Act. This Court held that if the amendment was not read into the relevant provision retrospectively, it would be impossible to reasonably interpret the said provision. That since there was an obvious omission in the provision, an amendment was necessitated which would clarify/declare the law retrospectively.
- 11) An explanation/clarification may not expand or alter the scope of the original provision, vide *Bihta Cooperative Development Cane Marketing Union Ltd. vs. Bank of Bihar*, A.I.R. 1967 SC 389. Merely describing a provision as an "Explanation" or a "clarification" is not decisive of its true meaning and import. On this aspect, this Court in *Virtual Soft Systems Ltd. vs. Commissioner of Income Tax, Delhi*, (2007) 289 ITR 83 (SC) observed as under:
- 12) "Even if the statute does contain a statement to the effect that the amendment is declaratory or clarificatory, that is not the end of the matter. The Court will not regard itself as being bound by the said statement in the statute itself, but will proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory

provision or whether it is an amendment which is intended to change the law and which applies to future periods."

- 13) This position of the law has also been subscribed to in *Union of India vs. Martin Lottery Agencies Ltd.*, (2009) 12 SCC 209 wherein it was stated that when a new concept of tax is introduced so as to widen the net, the same cannot be said to be only clarificatory or declaratory and therefore be made applicable retrospectively, even though such a tax was introduced by way of an explanation to an existing provision. It was further held that even though an explanation begins with the expression "**for removal of doubts**," so long as there was no vagueness or ambiguity in the law prior to introduction of the explanation, the explanation could not be applied retrospectively by stating that it was only clarificatory.
- 14) From the aforesaid authorities, the following principles could be culled out:
 - i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.
 - ii) In Law for a subsequent Law/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.
 - iii) An explanation/clarification may not expand or alter the scope of the original provision.
 - iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.
 - v) As noted above, the law provides that a clarification must not have the effect of saddling any party with an unanticipated burden or withdrawing from any party an anticipated benefit and merely because the subsequent Law has been described as a clarification/explanation or is said to have been issued following a clarification that was sought in that regard, the Court is not bound to accept that the said Law is only clarificatory in nature.

Disclaimer: Views expressed are strictly personal and meant for only academic purposes and not for any professional purpose for which expert opinion may be obtained by the readers. The information given in this article has been clued from the open sources in the public domain.



Place of Supply of Goods under GST



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In this Article we are going to learn Place of supply of Goods under GST and following are relevant sections.

Section 10 of IGST Act, 2017:- Place of supply of goods other than supply of goods imported into, or exported

from India.

Section 11 of IGST Act, 2017:- Place of supply of goods imported into, or exported from India.

First we need to learn following Definitions:-

Business:- As per Section 2(17) of CGST Act, 2017 “**Business**” includes,

- Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit.
- Any activity or transaction in connection with or incidental or ancillary to sub-clause (a).
- Any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction.
- Supply or acquisition of goods including capital goods and services in connection with commencement or closure of business.
- Provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members.
- Admission, for a consideration, of persons to any premises.
- Services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation.
- Activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club. AND
- Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

Place of Business:- As per Section 2(85) of CGST Act, 2017 “**Place of business**” includes,

- A place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods

or services or both, OR

- A place where a taxable person maintains his books of account, OR
- A place where a taxable person is engaged in business through an agent, by whatever name called.

Export of Goods:- As per Section 2(5) of IGST Act, 2017 “**Export of good**” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

Import of Goods:- As per Section 2(10) of IGST Act, 2017 “**Import of goods**” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

Recipient:- As per Section 2(93) of CGST Act, 2017 “**Recipient**” of supply of **goods or services or both**, means,

- Where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration.
- Where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available.
- Where no consideration is payable for the supply of a service, the person to whom the service is rendered.

And any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied.

Location of the supplier of Goods:- Location of **Supplier of Goods has not been defined in GST Act**, but have to take as general parlance, Location of supplier of Goods in general parlance can be considered as site or premises (geographical point) where the supplier is situated with the goods in his control ready to be supplied or in other words, it is the physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied.

Location of receiver of Goods:- Location of **Receiver of Goods has not been defined in GST Act**, but have to take as general parlance, Location of receiver of Goods in general parlance can be considered as site or premises (geographical point) where the receiver is situated with the goods in his control.

Location of the supplier of services:- As per Section 2(71) of CGST Act, 2017 “**Location of the supplier of services**” means,

- Where a supply is made from a place of business for which the registration has been obtained, the location of such place of business.
- Where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment.



- Where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply. AND
- In absence of such places, the location of the usual place of residence of the supplier.

Location of the recipient of services:- As per Section 2(70) of CGST Act, 2017 “**Location of the recipient of services**” means,

- Where a supply is received at a place of business for which the registration has been obtained, the location of such place of business.
- Where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment.
- Where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply. And
- In absence of such places, the location of the usual place of residence of the recipient.

INTRODUCTION:-

Place of supply is important to determine the kind of tax that is to be charged. When the location of supplier and the place of supply are in two different States, then it will be an **Inter-State** supply and **IGST** would be chargeable. And when they are in the same State, then it will be an **Intra-State supply** and **CGST/ SGST** would be chargeable.

The importance of place of supply (POS) is underlined based on the questions as under:-

1. Whether one has to charge IGST or CGST+SGST/UTGST?
2. Whether the recipient of goods or services would be able to claim ITC?
3. Whether there is any liability on services received from outside India (import of services)?
4. Whether the supply is export of services and zero rated?
5. Which state would be receiving the revenue from tax charged on any taxable supply?

In GST, the concept of a place of supply has been made relevant not only for the supply of services but also for the transaction of goods. In this article, we shall be discussing on provisions relating to the place of supply of goods & Services.

The purpose of the place of supply provisions is two-fold.

- In case of cross-border transactions, to determine whether tax is to be levied on a particular transaction
- In the case of domestic transactions, to determine whether a particular transaction is an inter-state supply or an intra-state supply.

Let’s Understand what is an Inter-state and an Intra-state supply.

Section 7 of IGST Act defines what a **Inter-state supply** is. Broadly, inter-state supply is when “**location of supplier**” and “**place of supply**” are not in the same state or same union territory.

Similarly, Section 8 of IGST Act speaks about **Intra-state supply**. Broadly, intra-state supply is when “**location of supplier**” and “**place of supply**” are in the same state or same union territory.

Section 10 of IGST Act, 2017:- Place of supply of goods other than supply of goods imported into, or exported from India.

Section 10	1	Supply involves movement of goods	a) Movement of Goods
			b) On Direction of Third Person
		Supply does not involve movement of goods	c) Non-Movement of Goods
		Goods are Assembled or Installed at site	d) Goods are Assembled
	Goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle	e) Supplied on Board	
2	Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.		

Supply Involve Movement of Goods:- {Section 10(1)(a) & (b)}.

- a) **Movement of Goods:-** Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

This implies that place of supplier or receiver is of no consequence to determine the place of supply when it comes to those transactions which involve the movement of goods. The place where delivery terminates i.e. where the ownership is passed on shall be critical to determine the place of supply.

Let us understand this with few examples: -

Rathi Limited of Rajasthan sells 50 cell phones to Shah Traders in Gujarat. Rathi Limited delivers the product to Shah Retailers in its warehouse in Ahmedabad. Place of supply, in this case, will be Ahmedabad and IGST will be levied as it is an Inter-State transaction.

- b) **On Direction of Third Person:-** Where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the



goods and the place of supply of such goods shall be the principal place of business of such person.

Bill To Ship to Transactions: -

When goods are delivered to a party on the direction of a third person the place of supply will be the location of such third person and not where the delivery terminates.

Example 1: -

Hanuman Traders, a dealer in furniture, located in Maharashtra, receives an order from Ram Traders, also located in Maharashtra. The order is for the supply of 50 Tables, with an instruction to ship the Tables to Prime Hardware's, located in Tamil Nadu. Prime Hardware's is a customer of Ram Traders.

There are two parts to this transaction: -

First part of the transaction between Hanuman Traders and Ram Traders: -

Hanuman Traders is the supplier of Tables, and Ram Traders is the buyer. Accordingly, Hanuman Traders bills the transaction to Ram Traders, and as per the instruction, ships the goods to Prime Hardware's in Tamil Nadu.

The second part of the transaction – between Ram Traders and Prime Hardware's: -

Ram Traders is the supplier, and Prime Hardware's is the buyer. Ram Traders bills the transaction to Prime Hardware's, and endorses the lorry receipt (goods shipped in a lorry by Hanuman Traders) in favour of Prime Hardware's. This lorry receipt (LR) will enable Prime Hardware's to take the delivery of the goods.

Over here, on the instruction from Ram Traders, Hanuman Traders ships the aluminium ladders to Prime Hardware's located in Tamil Nadu.

Here, Ram Traders is deemed as the third person. Therefore, the place of supply will be the principal place of business of the third person, i.e., Maharashtra. Accordingly, Hanuman Traders charges CGST and SGST on billing to Ram Traders. The second part of the transaction between Ram Traders and Prime Hardware's will also be interstate, and IGST will be charged.

Example 2:-

Chamunda Traders in Maharashtra receives an order from Queens Associates in London to deliver 100 cell phones at Maheshwari Dealers in Maharashtra. On application of section 10(1)(b) place of supply will be London. The question arises will this transaction be taxed even if the place of supply is London?

There will be two parts to this transaction as well: -

Between Chamunda Traders and Queens Associates: -

First, we need to understand whether the transaction between Chamunda Traders and Queens

Associates will be considered as Export? As per section 16, export of goods is a "Zero Rated Supply" and tax need not be levied on the same.

As per section 2(5), "export of goods" means taking goods out of India to a place outside India. In our case, as goods are not moving out of India hence it cannot be termed as exports.

Section 7(5)(a) states that supply of goods or services or both when the supplier is located in India and the place of supply is outside India shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce.

Above section applies to the present case, supplier (Chamunda Traders) is located in India and place of supply (London) is outside India. Hence, the transaction between Chamunda Traders and Queens Associates will be considered as an inter-state supply, and IGST shall be levied on it.

Between Queens Associates and Maheshwari Dealers: -

The transaction between Queens Associates and Maheshwari Dealers cannot be considered as the import of goods as according to Section 2(11) "import of goods" means bringing goods into India from a place outside India.

This transaction will be covered under section 7(5)(c) which states that supply of goods or services or both in the taxable territory, not being an intra-state supply and not covered elsewhere in section 7 shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce.

In the present case, the supply of goods is in the taxable territory (Maharashtra), it is not an intra-state supply as a supplier (Queens Associate) is located outside the taxable territory and such a situation is not covered elsewhere in section 7. Hence, transaction between Queens Associates and Maheshwari Dealers is also an Inter-state transaction and IGST will have to be paid by Maheshwari Dealers under reverse charge mechanism {Section 5(4)} {Now Section 5(4) of IGST Act, not relevant}.

Supply does not Involve Movement of Goods:- {Section 10(1)(c)}.

Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient.

When goods are of such nature which does not require any movement, place of supply shall be the location of such goods.

Example 1:-

Bharat Limited registered in Maharashtra sold its pre-installed transmission tower (electric tower) located at Madhya Pradesh to Hindustan Limited registered in Delhi.

In this case, the location of the supplier is Maharashtra, but a place of supply will be Madhya Pradesh. Hence, IGST will be levied.

Example 2:-

Rathi Limited of Rajasthan gets an order of 100 cell phones from Patil Electronics in Maharashtra. Patil Electronics informs Rathi Limited that they will take the delivery of the cell phones from the factory of Rathi Limited at Jaipur.



Over here the location of the supplier is Rajasthan and location of the receiver are Maharashtra. However, Patil Electronics has agreed to take the delivery from Rathil Limited's Jaipur factory. This implies that the termination of the movement of the cell phones to Patil Electronics takes place at the factory of Rathil Limited, i.e., in Jaipur. Hence, the place of supply is Jaipur in Rajasthan.

This is an intra-state transaction and CGST, and SGST will be levied by Rathil Limited. It should be noted that Rathil Limited will be charging SGST and CGST in Rajasthan, the credit of which will not be available to Patil Electronics in Maharashtra. Hence, there will be a loss of credit.

Alternatively, if Patil Electronics would have asked Rathil Limited to deliver goods at its factory in Maharashtra it would have become an inter-state transaction and IGST would have been levied. The credit of IGST would have been available to Patil Electronics.

Many experts have an alternate view on this topic it says as the transaction involves the movement of goods by the buyer it should be covered under Section 10(1)(a) and not 10(1)(c). Which implies that place of supply should be Maharashtra and IGST shall be levied on the transaction.

Example 3:-

A generator that is bolted to the concrete floor in the basement of a building purchased by the tenant and being left behind at the time of terminating the tenancy, the supply of the generator by the tenant to the landlord for an agreed price is a case of supply that does not involve movement of the goods. In such cases, the place of supply will be where the generator stands bolted to the concrete floor and without requiring any movement. The landlord (recipient) confirms satisfactory completion of delivery.

Example 4:-

Where the job worker develops a mould for the production of goods for the principal and retains the mould in his place itself for production of goods. The mould developed by the job worker is sold to the principal but the same is retained by the job worker without causing the movement of mould from job worker premises to principal premises. In this case, the place of supply would be job worker premises.

Goods are Assembled or Installed at site:- {Section 10(1)(d)}.

Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

It is important to note that assembly or installation as referred to in this clause is not a "Works contract", which has been classified by law as a supply of services (in Paragraph 6(a) of Schedule II to the CGST Act, 2017). Please note that the concept of works contract would arise only in respect of services, for which the place of supply is determined under section 12 and section 13 of the IGST Act, 2017.

The supply addressed in this provision refers to only a supply of goods, being a Composite supply of goods along with some services, or A Mixed supply treated as a supply of goods in terms of

sections 2(30), 2(74) and 8 of the CGST Act. In other words, supply from the place of their origin to the site for assembly or installation is subsumed within this provision of such assembly or installation.

This provision appoints the place of supply based on the final act of assembly or installation.

Example: -

Bharat Limited registered in Maharashtra opens a new office in Delhi. It purchases 10 ACs to be installed at its Delhi office from Patil electronics in Maharashtra.

In this case, the location of the supplier is Maharashtra, but a place of supply will be Delhi. Hence, IGST will be levied.

Supplied on Board: - {Section 10(1)(e)}.

Where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

Such transactions also cover two supplies – first being the supply of goods 'to' the operator of the conveyance, and second being the supply of such goods as goods or as services, 'by' the operator to the passenger (or any other person), during the journey 'in' the conveyance.

The place of supply covered under this clause is in respect of the second limb, and particularly for the supply of goods by the operator of the conveyance during its journey to the passengers. The supply of goods being food or beverages on board a conveyance would be outside the scope of this clause, given that such supply is treated as a composite supply of services in terms of Paragraph 6(b) of Schedule II to the CGST Act, 2017. Notification No. 13/2018-Central Tax (Rate), dated 26-July-2018 states that supply of food in train/platform would be taxable @5% with restaurant services. However, clarity is awaited with respect to the place of supply of such services supplied by IRCTC is to be considered as restaurant services or goods supplied on board [10(1) (e)]. However, supply of goods like sale of merchandise etc. would be covered under this clause.

Example: -

Mr. Mehta is traveling on a cruise liner from Mumbai to Goa. He purchases a book from the in-house store in the cruise liner. These books were on-boarded from Mumbai. Registered place of business of the book shop is in Mumbai. Place of supply, in this case, will be Mumbai. This is an intrastate supply, and CGST and SGST will be charged.

Section 11 of IGST Act, 2017:- Place of supply of goods imported into, or exported from India.

1. Imports:- The place of supply of goods imported into India shall be the location of the importer.
2. Exports:- The place of supply of goods exported from India shall be the location outside India.



Whether GST is to be paid by Co-operative society?



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From ages one is if the view that a Co-operative housing society is not an entity doing any business, it is just collecting the money on behalf of third parties from the society members and making the payment on behalf of the society members for services used by them. However, this

is just a myth. Let's understand how the activity done by a Cop-operative society comes under the purview of GST.

A Society is akin to a club, which is composed of its members. So, can a service provided by a Housing Society to its members be treated as service provided by one person to another. The answer is yes. The following extracts of the GST law will make the position clear.

As per Section 9 of CGST Act, 2017, levy of GST is on the supply of goods and services. As per Section 7 expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

The definition of "person" in Section 2(84) (i) of the CGST Act, 2017 specifically includes a co-operative society registered under any law relating to co-operative societies. Thus a registered co-operative society is a person within the meaning of the term in the CGST Act.

The next question which arises is whether the activity of the society can be said to be in the course or furtherance of business. The definition of business as per section 2(17) of the CGST Act, 2017 is as under

"business" includes—

- any
-
-
-
- *provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*
-

From the above point, it is evidently clear that facility provided by society to its members would be regarded as a business and accordingly would be levied to GST on exceeding the threshold limit under GST i.e. currently Rs 10 lacs in special states and Rs 20 Lacs in other states.

Now the question comes as to what would be the amount on which GST should be charged by the society from its members. Here the value would be ascertained as per Rule 33 of CGST Rules, 2017

Value of supply of services in case of pure agent. –

*Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be **excluded from the value of supply, if all the following conditions are satisfied, namely,-***

1. *the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;*
2. *the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by tire pure agent to the recipient of service; and*
3. *the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to tire services he supplies on his own account. Explanation.-For the purposes of this rule, the expression "pure agent" means a person who-*
 - *enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*
 - *neither intends to hold nor holds any title to the goods or services or both so procured or supplied as a pure agent of the recipient of supply;*
 - *does not use for his own interest such goods or services so procured; and*
 - *receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.*

Basis of the above amount collected by society as a pure agent would be excluded from the value for the purpose of GST. Example: Property tax, Water Tax, Save trees tax etc.

Further as per Notification no 12/2017 – Central Tax (Rate) dated 28 June 17 as amended from time to time, the following service is exempt from GST:

Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –

- (a) *as a trade union;*
- (b) *for the provision of carrying out any activity which is exempt from the levy of Goods and service Tax; or*
- (c) *up to an amount of five thousand rupees (Rs Seven Thousand Five Hundred w.e.f. 25 Jan 2018) per month per member for sourcing of goods or services from a third person for the*



common use of its members in a housing society or a residential complex

Accordingly, the society is not required to charge tax if the total bill excluding the amounts received as a pure agent is below Rs 7500 per month per member.

Questions related to chargeability of GST by Co-operative societies on its members is also clarified by Government in Circular No.109/28/2019-GST dated 22 July 2019 and same is reproduced as under:

Sl. No.	Issue	Clarification													
1.	Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?	<p>Supply of service by RWA (unincorporated body or a non- profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500 per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.</p> <p>Prior to 25th January 2018, the exemption was available if the charges or share of contribution did not exceed Rs 5000/- per month per member. The limit was increased to Rs. 7500/- per month per member with effect from 25th January 2018. [Refer clause (c) of Sl. No. 77 to the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 as amended vide notification No. 2/2018- Central Tax (Rate), dated 25.01.2018]</p>													
2.	A RWA has aggregate turnover of Rs.20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?	<p>No. If aggregate turnover of an RWA does not exceed Rs.20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs. 7500/- per month per member.</p> <p>RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than Rs. 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also Rs. 20 lakhs or more.</p> <table border="1"> <thead> <tr> <th>Annual t/o of RWA</th> <th>Monthly maintenance charge</th> <th>Whether exempt?</th> </tr> </thead> <tbody> <tr> <td rowspan="2">More than Rs 20 Lacs</td> <td>More than Rs. 7500/-</td> <td>NO</td> </tr> <tr> <td>Rs. 7500/- or less</td> <td>YES</td> </tr> <tr> <td rowspan="2">Rs. 20 lakhs or less</td> <td>More than Rs. 7500/-</td> <td>YES</td> </tr> <tr> <td>Rs. 7500/- or less</td> <td>YES</td> </tr> </tbody> </table>	Annual t/o of RWA	Monthly maintenance charge	Whether exempt?	More than Rs 20 Lacs	More than Rs. 7500/-	NO	Rs. 7500/- or less	YES	Rs. 20 lakhs or less	More than Rs. 7500/-	YES	Rs. 7500/- or less	YES
Annual t/o of RWA	Monthly maintenance charge	Whether exempt?													
More than Rs 20 Lacs	More than Rs. 7500/-	NO													
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	Rs. 7500/- or less	YES													
3.	Is the RWA entitled to take input tax credit of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs. 7,500/- per month per member?	RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.													
4.	Where a person owns two or more flats in the housing society or residential complex, whether the ceiling of Rs. 7500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?	<p>As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of Rs. 7500/- per month per member shall be applied separately for each residential apartment owned by him.</p> <p>For example, if a person owns two residential apartments in a residential complex and pays Rs. 15000/- per month as maintenance charges towards maintenance of each apartment to the RWA (Rs. 7500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.</p>													



Sl. No.	Issue	Clarification
5.	How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/- per month per member? Is the GST payable only on the amount exceeding Rs. 7500/- or on the entire amount of maintenance charges?	The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST @18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/-

Conclusion:

Every society considering the items billed for and the exemptions available should analyse whether the amount exceeds Rs 7500 per member per month. Where the amounts exceeds, further evaluate if the total amount exceeds Rs 20 lacs in a year or not. If answer to both the questions are affirmative then the society is required to register itself under GST and charge GST on bills issued. Levy of GST may be regarded as an additional burden, however as per my view it is not as the society once registered would also be eligible to claim GST paid on procurements made of goods or services which earlier was added to the cost of running the society.



Deferment of second phase of Peer Review Mandate - (10-05-2023)

Peer Review Board
The Institute of Chartered Accountants of India
10th May, 2023

ANNOUNCEMENT

Deferment of second phase of Peer Review Mandate

The Council at its 407th Meeting held from 7th – 9th January 2022 decided to mandate the Peer Review process for coverage of more firms under Peer Review process. An Announcement dated 12.02.2022 in this regard was hosted on the website at <https://www.icai.org/post/peer-review-mandate-roll-out>. Further clarifications on the mandate were issued by the Council at its 410th Meeting held on 24th – 25th March 2022. An Announcement dated 11.04.2022 in this regard was hosted on the website at <https://www.icai.org/post/peer-review-mandate-roll-out-revised>.

Considering that some Practice Units which require to get themselves Peer Reviewed under the 2nd phase of the Peer Review mandate are not ready for the same, the Council at its 420th Meeting held on 23rd - 24th March, 2023 decided to defer the applicability of the second phase of the mandate by three months to be made effective from July 1, 2023 as one time measure.

Accordingly, the second phase of the mandate is applicable **wef July 1, 2023** for the following Practice Units:

Practice Units which propose to undertake Statutory Audit of unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year; For these Practice Units, there is a pre-requisite of having Peer Review Certificate.

OR

Practice Units rendering attestation services and having 5 or more partners; For these Practice Units, there is a pre-requisite of having Peer Review Certificate before accepting any Statutory audit.

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

Chairman,
Peer Review Board



Field investigation and its Importance in Forensic Audit



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Introduction

A specialised area of accounting called forensic audit deals with the investigation and prosecution of financial fraud and other financial crimes. To find and look into financial anomalies and fraudulent acts, it entails putting accounting, auditing,

and investigative skills to use. **In order to gather and examine evidence from the field, field investigations are a crucial part of a forensic audit.** We'll talk about the value of fieldwork in forensic auditing in this article.

What is Field Investigation in Forensic Audit?

The process of gathering data and information from the field is known as field investigation. Field investigations in the context of a forensic audit include travelling to the company's physical locations, speaking with witnesses, performing site inspections, and compiling pertinent data and documentation. Finding and recording evidence of financial fraud, embezzlement, and other financial crimes is the goal of a field investigation.



The Importance of Field Investigation in Forensic Audit

Some of the key reasons why field investigation is critical in forensic audit:

- **Field investigation helps to determine whether the company is an actual company or shell companies:**

Field investigation plays a crucial role in discerning the authenticity of a company by examining its operations, infrastructure, and physical presence. Through diligent research and on-site assessments, investigators can identify whether a company is a legitimate entity or merely a front for illicit activities.

- **Identification of Fraudulent Activities:**

During field investigations, the crucial task of identifying fraudulent activities becomes paramount. Through meticulous scrutiny, comprehensive evidence gathering, and data analysis, we can detect and expose deceptive practices, protecting stakeholders from financial loss and ensuring

justice prevails.

- **Gathering Relevant Evidence:**

Field investigation is critical in gathering relevant evidence in forensic audit.

By interviewing witnesses and collecting documents and records from the field, forensic auditors can gather evidence that is admissible in court. Forensic



auditors can also use forensic technology to analyse the data collected during the field investigation to identify patterns and anomalies that may indicate fraudulent activities.

- **Assessing the Adequacy of Internal Control:**

Field investigation is essential in assessing the adequacy of internal controls in an organization. By visiting the physical locations of the business, forensic auditors can observe the company's operations and identify weaknesses in the company's internal controls. Field investigation can also help forensic auditors to determine whether the company's internal controls are being followed by the employees.

Aids to Field Investigation

There are various tools available to facilitate field inquiries. When used with legal advice, proper authorization from the concerned authorities the following tools are very useful:

- **Mobile cell phones for taking photographs, voice and video recordings of any of field visits**

With their ability to take pictures, record audio, and upload videos, mobile phones have transformed field visits. These portable tools enable users to record their views and experiences in real time, advancing journalism, research, and memory.

- **Computer laptops during interview of witnesses and suspects.:**

During field investigations, laptop





computers are essential for questioning witnesses and suspects. These portable gadgets make it easier to take notes, record evidence, and quickly access information. Laptops' flexibility and connection increase productivity and accuracy, assisting law enforcement in acquiring important data and bolstering case-building efforts.

- **Wide range of electronic gadgets concealed in pens, clocks, wearing apparel to record information as when such field visits are carried out.**

A broad variety of electronic devices are used during field investigations to covertly record information. These devices enable clandestine data collecting during such visits and are deftly hid in commonplace things like pens, watches, and even clothing. With the use of this covert technology, investigators may gather crucial data while keeping a low profile and assuring the success of their operations.

Actual Case –

Factory Dilapidated Condition

On physical verification it was unearthed that said plant was totally not in operation though was financed and on documents all was reflected as operational.

Conclusion

In conclusion, field investigation is not only important aspect of forensic audit but a critical activity in any audit to conclude. It



Solvent Plant (On lease)

helps in collecting evidence from various sources and establishing a chain of custody for the evidence. Field investigation helps in identifying the nature and scope of the fraud, the parties involved and the methods used to commit the fraud. Without field investigation, forensic auditors may miss critical evidence and information that is not available in the company's financial records. This will help in ensuring that financial fraud is detected and dealt with in a timely and efficient manner.



Empanelment with the O/o C&AG of India for the year 2023-2024 from May 30, 2023 to June 8, 2023 - (30-05-2023)

Professional Development Committee
The Institute of Chartered Accountants of India
30th May, 2023

**Empanelment with the O/o C&AG of India for the year 2023-2024
FROM MAY 30, 2023 TO JUNE 8, 2023**

Provisional empanelment status of the firm along with provisional point score for the year 2023-2024 will be available on the website www.care.cag.gov.in from 30th May 2023 to 8th June 2023. Representations, if any, for rectification of clerical mistakes in the data filed by the firm in the online application, may be sent by email at sao2ca5@cag.gov.in by 8th June 2023. The representation will be considered on merit and on case to case basis by them. It may be noted that no request for fresh data entry of any kind will be entertained by them.

The final empanelment status and/or final point score may vary in comparison to status shown in provisional panel on account of information which is pending from different investigating authorities, representations made by the firms, other bonafide reasons etc. No representation will be entertained after the period of 10 days as mentioned above.

**Chairman & Vice Chairman
Professional Development Committee**



Speedy Restructuring with Fast Track Mergers



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Background

In case of a merger, 2 or more companies merge or amalgamate together and form a new company with the approval of the National Company Law Tribunal ("NCLT"). The consideration to shareholders of target company is usually offered in

the form of exchange of shares for getting benefits under Indian Tax laws. Besides approval of shareholders, it is essential to take clearance from the Securities & Exchange Board of India ("SEBI") as well as stock exchanges if any of the companies which is getting amalgamated is listed on recognised stock exchanges in India. In view of the ever increasing workload on NCLT, the Government of India had introduced 'Fast Track Merger' scheme in 2016 and now, certain categories of companies are allowed to be directly amalgamated with the approval of Regional Director instead of approaching the NCLT. Accordingly, simplified mergers have been permitted on fast track basis u/s 233 of the Companies Act, 2013 read with Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 which came into force w.e.f. 15th December 2016. It not only saves huge costs but also puts entire restructuring process on fast track. Quite a few listed companies have already taken benefit of this scheme in order to consolidate their position.

Eligible Categories:

Following categories of companies would be eligible under "Fast Track Merger" scheme:

1. Holding company with its one or more wholly owned subsidiaries
2. Merger between 2 or more small companies
3. Merger between 2 or more recognised start-ups
4. Merger between a recognised start-up and a small company
5. Merger between such other class of companies as may be notified by the Government

Originally, small company meant a company having paid-up capital of less than Rs 50 Lakhs and turnover of less than Rs 10 crores. However, after budget 2021 these limits were increased to Rs 2 crore for paid-up share capital and Rs 20 crores for turnover.

Existing Process & Proposed Changes:

1. Check whether Articles of Association of both the companies have provided for merger or else they need to be duly updated.
2. Conduct a Board meeting for approving the scheme of merger



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3. Send 21 days notice to convene meeting to all shareholders and creditors for inviting their objections / suggestions within 30 days

4. Submit draft of the scheme to the Regional Director, Registrar of Companies, Official Liquidator and any

other person affected by the scheme

5. File declaration of solvency for both the companies involved in merger process with the Registrar of Companies under whose jurisdiction the registered office is situated
6. Hold shareholders' general meeting and obtain approval from minimum 90% of shareholders
7. Hold creditors' meeting and obtain approval from minimum 90% of creditors
8. Submit copies of resolution passed by the shareholders as well as creditors with the Regional Director along with copy of the approved scheme
9. Resolve the objections on the scheme, if any raised by the Registrar of Companies and Official Liquidator.
10. Resolve queries of the Regional Director and get his final approval after satisfying all requirements
11. File the copy of confirmation order allowing merger with the Registrar of Companies within 30 days of such approval.
12. The confirmation order filed in form INC-28 shall be deemed to have the effect of dissolution of the transferor company without undergoing winding up process.

Proposed Changes w.e.f. 15-6-2023 onwards

Companies (Compromise, Arrangements & Amalgamations) Amendment Rules, 2023 had been introduced which will be effective from 15-6-2023 onwards. Accordingly, following measures have been taken to expedite the overall process:

1. Where no objection or suggestion is received within a period of 30 days of the receipt of copy of scheme u/s 233(2) from the Registrar of Companies and / or Official Liquidator by the Central Government; and if the Central Government is of the opinion that the scheme is in the public interest or in the interest of the creditors then it may within a period of 15 days after completion of aforesaid period of 30 days, issue a confirmation order of such scheme of merger in Form No. CAA. 12.

It is, however, provided that if the Central Government does not issue any confirmation order within a period of 60 days of



the receipt of scheme u/s 233(2) then it shall be deemed that it has no objection for the scheme and a confirmation order shall be issued accordingly.

2. Where objections or suggestions are received within a period of 30 days of the receipt of copy of scheme u/s 233(2) from the Registrar of Companies or Official Liquidator or both by the Central Government, then following 2 situations will arise:
 - a. Such objections or suggestions of the Registrar of Companies or Official Liquidator, are not sustainable and the Central Government is of the opinion that the scheme is in the public interest or in the interest of the creditors, then it may within a period of 30 days after completion of aforesaid period of 30 days, issue a confirmation order of such scheme of merger in Form No. CAA. 12
 - b. The Central Government is of the opinion, whether on the basis of objections or otherwise, that the scheme is not in the public interest or in the interest of the creditors, then it may within 60 days from the receipt of the scheme, file an application before NCLT in Form CAA. 13 stating the objections or opinions and requesting the NCLT to consider the scheme u/s 232 of the Act.

It is, however, provided that if the Central Government does not issue any confirmation order under clause (a) or does not file an

application under clause (b) within a period of 60 days of the receipt of scheme u/s 233(2) then it shall be deemed that it has no objection for the scheme and a confirmation order shall be issued accordingly.

Impact of Proposed Amendment

Given the long-time taken for merging companies with the approval of NCLT, Fast Track Mergers should have gained popularity since the process was expected to be completed in a short span of 3 months, however, there was a lesser momentum due to longer time needed by the Official Liquidator as well as Registrar of Companies to give their objections and suggestions. However, the situation will change after 15-6-2023 with new regulations in place and beyond 60 days, the confirmation order is deemed to be issued in the absence of any communication.

Simplified process will not only help the companies to save their time, energy & resources but also help them to utilise these savings for future growth. With proposed changes, even listed companies may like to tap this opportunity to simplify their business structure in an efficient manner. Being the partners in nation building, Chartered Accountants need to pro-actively guide the corporates about new avenues in the light of these new developments while restructuring their businesses and help them to save time and use it effectively while preparing for growth.

Afterall, Brian Tracy is rightly said – “Your greatest asset is your earning ability. Your greatest resource is your time.”

5



Valuation : One Approach or Multiple?



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In today's highly competitive business environment accentuated by evolving business models and economic liberalization, mergers and acquisitions (M&A) have become a common strategic tool for achieving growth. M&A/strategy teams are perpetually faced with challenges while ascertaining the value of a potential acquisition target.

There are three globally accepted valuation approaches – Income approach, Market approach, and Cost approach. The three approaches rely on different criteria for valuation and have their own advantages and short comings. Income approach factors the future cash generating potential of the asset/business. Market approach indicates the value of an asset/business based on a comparison with market prices or historical transactions. Cost approach ascertains value of an asset based on the amount realizable from sale or amount required to replace the asset – for an operating business/company, this is usually based on the net assets on the balance sheet.

Of the above three approaches, is the Cost approach really relevant? – It is not forward looking and historical costs or the current asset base may not reflect the future cash generating potential of the asset/ business. Moreover, the relevance would be rather limited in case of businesses which are primarily driven by intangible assets – for example technology companies, brand holding companies, license holding companies. The value of such companies would be driven largely by the earnings /cash flow potential of the technology/intellectual property, which may not be reflected in the Balance Sheet, and the tangible asset (fixed asset and working capital) base is likely to be relatively small. However for asset heavy businesses, such as land/investment holding companies, infrastructure companies, etc., the tangible asset value would be of greater relevance. This approach is also relevant when valuing certain intangibles such as internally developed software or workforce which are not primary revenue drivers for the business and for which, the costs of replacement can be reasonably estimated. The Income and Market approaches would be more relevant for determining the fair value of most stable and profitable businesses (as well as cash generating assets). However, application of both the Income and Market approaches can involve a significant amount of subjectivity. Valuation, though backed by research and analysis, involves significant amount of judgement. With respect to the Discounted Cash Flow method ("DCF") an application of the Income approach, the future cash flows projections form a key input – the business forecasts invariably involve subjectivity. For example, consider a scenario where the revenues of the company being valued have grown by 15%, 5% and 12% per annum in the last three financial years. The projected financials forecast that the revenues will grow at 20% per annum over the next five years. Prima facie, based on past trends alone, this appears an optimistic forecast rather than the most realistic one. The valuer will need to exercise judgement based on his or her analysis of the achievability of the forecasts and accordingly factor this in the valuation, either by moderating the projections or by factoring in a suitable risk premium in the discount rate derivation. Similarly estimation of valuation parameters such as discount rate and terminal value also involve subjective assessments. The discount rate can vary based on various parameters, such as selection of risk free

rate (e.g. 10 year vs 20 year treasury yields), selection of comparable companies for beta estimation, horizon for beta estimation (e.g. 3 year vs 5 year, daily vs weekly vs monthly betas), debt equity ratio, equity risk premium as well as any company specific risk premium (for risks related to achievability of forecasts, small size, client concentration etc.). Similarly, the estimation of terminal growth rate as well as the normalized margins, capital expenditure and working capital in the terminal year also involve judgement.

The application of Market approach also involves significant subjectivity - selection/weightage of chosen multiples (revenue vs EBITDA/ PAT multiples, listed company multiples vs transaction multiples), selection of comparable companies or methodology in computation (for e.g. whether to rely on current market capitalization or an average over 3 or 6 months) etc. Moreover, no two companies are identical and application of premia/ discounts to reflect differences (in size, operating performance, client concentration etc.) also involves subjective assessments.

Accordingly, given the same set of data, at any given point in time, the probability of two valuation professionals assigning different values to any asset/ business is probable. It is the Valuer's expertise and experience based on which a value conclusion is assessed. Although, the Valuer would ideally maximize the use of factual inputs and minimize the use of assumptions, considering the number of subjective parameters in the valuation, rationalization of results from different approaches is essential. The following illustration may help to make this clearer – Say, one is valuing a company in an industry where the comparable listed companies are trading in the range of 10 -15 times earnings. On applying the DCF methodology, the value translates into 25 times earnings, much higher than the value indication from the Market approach. There could be multiple reasons for this –the projections could be overly optimistic, the discount rate could be too low or the terminal value assumptions could be exceptionally optimistic – it could be a combination of the above as well. It could also be that the stock markets at the given time are depressed. But it is important to carry out a rationalization prior to concluding at a valuation, which would be reasonable from various perspectives.

It is possible that there may be a paucity of listed companies or transactions in companies that are closely comparable to the company being valued. Even in such cases, it is generally possible to use market multiples of a broader industry set to do broad rationalizations. As a best practice, valuation professionals should adopt secondary approaches to corroborate the findings of the primary approach. For asset heavy industries, the net asset value (as per books or replacement costs) should also be used for validation, even if not relied on directly in the value assessment.

As a best practice, the values under the different approaches adopted should not be at a significant variance from each other. If the initial workings are not meeting this criterion, the Valuer should revisit his or her analysis before concluding. If required the Valuer may need to re-consider the subjective assumptions in the Income approach including the cash flow projections, discount rate and terminal value along with the selection of comparable companies, weightages and discounts/premia with respect to the Market approach; and analyze whether any changes needs to be made in the light of the divergence in values. For asset-heavy industries, the Valuer should also check whether the value conclusion reflects a reasonable return on the capital employed. In conclusion, given the subjectivity involved, a Valuer should look at the valuation from multiple angles and ensure that the results under different methods converge so as to minimize potential errors or bias



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- 1) Which document is used as the base for generating e-invoices under GST?
 - a) Purchase order
 - b) Proforma invoice
 - c) Delivery challan
 - d) Tax invoice
- 2) What is an inverted duty refund under the GST Act of India?
 - a) A refund of excess tax paid on goods imported into India
 - b) A refund of tax paid on inputs when the tax rate on output supplies is lower
 - c) A refund of tax paid on goods consumed domestically
 - d) A refund of tax paid on services availed by exporters
- 3) Who is responsible for paying GST under RCM on import of services?
 - a) The importer of services
 - b) The exporter of services
 - c) The customs authority
 - d) The tax department
- 4) Which goods and services are exempt from GST?
 - a) All goods and services are subject to GST
 - b) Essential goods like food grains and healthcare services
 - c) Luxury goods and high-end services
 - d) Imported goods and services
- 5) What are the different GST rate slabs in India?
 - a) 5%, 10%, 15%, 20%
 - b) 5%, 12%, 18%, 28%
 - c) 10%, 15%, 20%, 25%
 - d) 12%, 18%, 24%, 30%
- 6) Which of the following is considered as non-agriculture income?
 - a) Income from agriculture in Nepal
 - b) income from sale of shares in Kisan Agro Ltd.
 - c) Option 3: Income from letting out agricultural machinery
 - d) All of the above
- 7) Which of the following is considered as agriculture income
 - a) Income from live stock living
 - b) Income from cattle breeding
 - c) Income from juice centre
 - d) Rent received from agriculture land
- 8) Tax is computed on agriculture income when,
 - a) Agriculture income is more than Rs 5,000
 - b) Total non-agriculture income is more than exemption limit
 - c) on hapenning of both (a) and (b)
 - d) None of the above
- 9) Which of the following is non-agriculture income?
 - a) Income from leasing out land being used for agricultural purposes
 - b) Income from sale of hybrid/germ plasm seeds after research
 - c) Amount received in reward by a farmer for growing more crops in his field
 - d) Income from sale of tobacco after drying it
- 10) Exemption on capital gains from transfer of land used for agriculture purpose can be claimed under which section :
 - a) 54EE
 - b) 54B
 - c) 54G
 - d) all of the above





Physical Seminar on “MVAT Amnesty Scheme 2023”, on 6th May 2023



CA. Amit Agarwal, Chairman – Vasai Branch greeted to Shri Kiran Divekar Sir with a bouquet.



CA. Amit Agarwal, Chairman – Vasai Branch greeted to CA. Janak Vagani with a Memento.

Physical Seminar on “Virtual CFO & Startup on 21st May 2023



From Left to right : CA Dhameshtha Asara CA Siddharth Dwivedi, CA Akshay Mhatre, CA Tarun Dhandh - Vice Chairman Vasai Branch, CA Samir S Chaudhary Speaker, CA Amit Agarwal Chairman Vasai Branch, CA Dinesh Jain, CA Kishore Mehta, CA Sheetal Sharma & CA Daya Bansal Secretary Vasai Branch



CA. Amit Agarwal, Chairman – Vasai Branch greeted to CA. Sammir S. Choudhary, Speaker with a bouquet.



CA. Abhishek Tiwari, Former Chairman – Vasai Branch greeted to CA. Sammir Choudhury with a Memento.



Vasai Branch Premier League 2023



CA Amit Agarwal- Chairman Vasai Branch & CA Arpit Kabra Chairman WIRC Greeted to Mrs Geeta Jain MLA Meera-Bhayander



CA Amit Agarwal Chairman Vasai Branch Greeted to CA Ravi Vyas with Flower Bouquet.



Winner Team Daya & Associates, Female Member Category



Winner Team Khemka Warriors, Senior Member Category



Winner Team NROSE Strikers, Male Open Category



Vasai Branch Premier League 2023



Runner Team Cric Addicts, Male Open Category



Runnerup Team CA Super Queen, Female Member Category



Runnerup Team Sandy's Striker, Senior Member Category

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