



# SIRC

Southern India Regional Council

# News Letter

DECEMBER 2021  
Volume 47 | Part 6

The Institute of Chartered Accountant of India



# ICAI ELECTION



**53<sup>rd</sup> REGIONAL CONFERENCE**  
of SIRC of ICAI  
Le Meridien, Coimbatore  
19th & 20th November 2021



Chief Guest Thiru. M.K. STALIN, Hon'ble Chief Minister of Tamil Nadu

Hosted by

Coimbatore Branch of SIRC of ICAI



# VITTHAKAM – 53rd Regional Conference of SIRC of ICAI

Inaugural Session – Day 1



Guest of Honour Dr. Palanivel Thiaga Rajan, Hon'ble Minister for Finance and Human Resources Management Govt. of Tamil Nadu



Release of Souvenir by CA. Nihar N. Jambusaria, President - ICAI and CA. G. Ramaswamy, Past President - ICAI

CA. Nihar N. Jambusaria, President - ICAI



CA. G. Ramaswamy, Past President - ICAI

Financial Reporting - Interplay between Schedule III, CARO and IND AS - CA. P.R. Ramesh, Hyderabad



GST on Charities - Practical Issues - Dr. Adv. CA. IP. Avinash Poddar, Surat

Expand your Business Globally with SAIF ZONE - CA. T. Ugamoorthy, Dubai





# VITTHAKAM – 53rd Regional Conference of SIRC of ICAI

Forensic Accounting, Investigation - Practical Case Studies - CA. Chetan Dalal, Mumbai



Internal Audit - A Game Changer - CA. Sivaram Subramoniam Head - Internal Audit Titan Company Limited



Panel Discussion - CA Profession in Future

Panel Discussion - CA. M.P. Vijay Kumar Central Council Member, ICAI, CA. G. Sekar Central Council Member, ICAI, CA. Guru Prasad Makam, Bengaluru and CA. Ganesh Balakrishnan Hyderabad



Moderator - CA. Chinnsamy Ganesan, Chennai

Health Session - Dr. Arun N. Palaniswami, Executive Director, Kovai Medical Center and Hospitals



Inaugural Session - Day 2

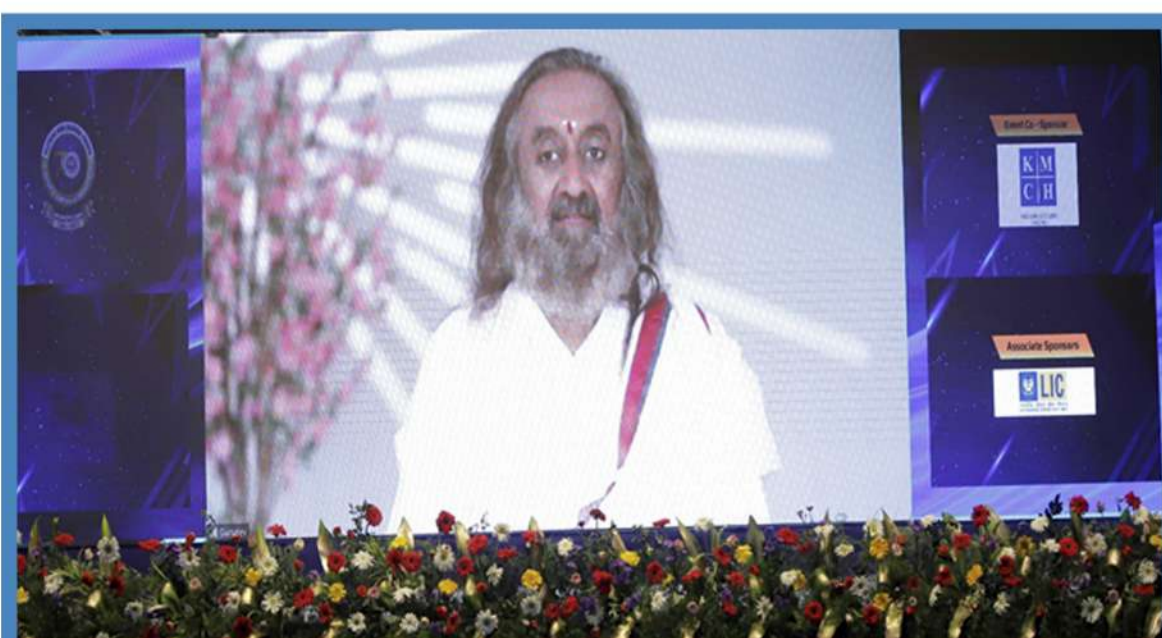
Withdrawal of assets/cash by Partners - Tax Implications - CA. Padamchand Khincha H, Bengaluru



FEMA-With reference to Indian Economy, Global Economy and Several Perspectives - CA. Rashmin Sanghvi, Mumbai



Spiritual Session - Sri Sri Ravi Shankar Founder The Art of Living



Back office Backbone - Shri. MD. Rameez Faizal, Regional Head, Zoho Corporation





## Chairman's Communique



Esteemed and Beloved Colleagues,

### Success Vs Professional Excellence:

Success and Professional Excellence always go together. They are inter-dependent. To achieve professional excellence, we need to succeed in our endeavours. Same is the case when once you succeed you attain professional excellence. What are the ingredients that determine success?

- 1 Goal Setting
- 2 Time Management
- 3 Positive Mental Attitude
- 4 Self-Confidence
- 5 Mind Set and many other factors

These five commandments determine and many others related to them determine our work culture and deliverance. We should therefore, as professional, focus our attention on these aspects before taking up any professional work. In this process we earn faith and trust from our clients, regulators and other stakeholders.

"There is no secret for success, but there is always system for success." Let us have system in place to perform our professional service with passion to success and achieve professional excellence.

It is no secret to share that SIRC and the members of the Conference Committee of the 53rd Regional Conference had these five basic principles in mind that culminated in the successful conduct of the Conference and in the process contributed for the value addition to the participants to excel in their professional field.

### 53rd Regional Conference of SIRC of ICAI:

Exactly on the completion of 9 months in office (270 Days) as Chairman of SIRC, with the support and good wishes of all, I could be part of successful conduct of the 53rd Regional Conference of SIRC of ICAI with the theme "VITTHAKAM" held on 19th and 20th November 2021. I am overwhelmed with the appreciation I receive and am receiving from different quarters. With humility I accept.

I dedicate the success of this Conference to each and every one of the members of this esteemed Institute and all those whose phenomenal contribution, many directly and some indirectly were the cause of the exceptional, extraordinary and exceedingly successful conduct of this Conference.

I can go on referring the special features of the Conference which are very extensive but I limit myself to the specifics that had contributed to the success of this Conference overall.

- **Thiru M.K. Stalin**, Hon'ble Chief Minister of Tamil Nadu inaugurated the Conference on 19th November 2021 and delivered the inaugural address.
- **Hon'ble Dr. Palanivel Thiaga Rajan**, Minister for Finance and Human Resources Management was the Guest of Honour and delivered Special Address at the Inaugural Session.
- **CA. Nihar N. Jambusaria**, President, ICAI delivered the Presidential Address at the Inaugural Session.
- **CA. G. Ramaswamy**, Past President, delivered the Special Address at the Inaugural Session.
- **Thiru T. Sathish Kumar**, Chairman and Managing Director of Milky Mist Dairy Foods Private Limited, Chief Guest at the Valedictory Session and delivered the Valedictory Address.
- The unflinching and unstinted support I received from my other Office-bearers and other colleagues in the Regional Council and the Members of the Central Council from Southern Region.
- The round-the-clock involved participation by the Chairman and the Members of the Managing Committee of the Coimbatore Branch of SIRC of ICAI and Members of Sub Committees which had hosted this Conference with minute precision and perfection.
- The Event Sponsor, Co-Event Sponsor, other sponsors by way of putting up stall, banners and advertisements in the Souvenir.
- Officers and Staff of SIRC of ICAI, SRO, Chennai and the Staff of Coimbatore Branch of SIRC.
- All the Delegates who stood by us and gave us the required strength, courage and encouragement in conducting this Conference with physical presence as well as through virtual platform by participating in large numbers.

I had reserved to record my appreciation to the delegates as the last but not the least because it is the delegates who have created a history of sorts in terms of participation in a Regional Conference. [The 53rd Regional Conference witnessed the participation of around 800 delegates in person and over 5155 delegates through virtual platform thus taking the total registration to above 5955 which is an all-time record in the annals of SIRC.](#)

On behalf of the Southern India Regional Council and on my own behalf I am beholden to express my sincere and grateful thanks from the bottom of my heart. I am sure that everyone associated in this Conference in some form or other, big or small, would have enjoyed their participation.

I will cherish for life the golden opportunity bestowed upon me to organize this wonderful 53rd Regional Conference. Any amount of expression of thanks and gratitude would not suffice but by recording my inner feelings on the successful outcome of the Conference through this column, I feel, would convey my happiness as well as gratitude to all.



## Forthcoming Programmes:

With the announcement of phased relaxation in the protocol coming up, SIRC would shortly plan for programmes with physical presence, besides virtual presentation about which we shall communicate to the members in due course. Rest assured we are confident that the New Year 2022 would beckon positivity and we all soon be meeting in person.

SIRC welcome all the members to join in all the programmes of SIRC and be enlightened and enriched as well encourage us to offer you many more programmes of professional interest in the days ahead.

## Sub-Regional Conference at Kochi:

SIRC of ICAI held its Third Sub-Regional Conference during this term 2021-2022 at Kochi on 27th November 2021. This Sub-Regional Conference was hosted by Ernakulam Branch of SIRC of ICAI. The Conference was held with physical presence with due observance of COVID Protocol and was an outstanding success.

## Programmes for Students

A skill development initiative for Undergraduate and Graduate Students has been launched as a Brand Building exercise by SIRC of ICAI called the Train & Learn Programme conducted by eminent faculties of ICAI. The programme consists five Practical modules like Personality development & Interview skills, Income tax, GST, Tally, Microsoft excel. More than 200 students have enrolled for this paid course which began on 15th November 2021 and will go on till 16th Dec 2021. The second batch of the program is scheduled to begin on January 7th, 2022.

SIRC of ICAI is proud to share that it is the first region that has launched a student page in the Digital Learning Hub (DLH) of ICAI. It has created a Students Coaching page where it has loaded sample MCQ assessment for Business Mathematics and Statistics. Students who enrol for coaching can refer support materials, attend revision tests, chapter tests once registered with DLH in the future.

ON 11th November 2021, National education day was celebrated with an Online quiz for SIRC students in the DLH Platform. Around 286 students had attended the quiz and the 12 cash prize winners have been announced on the platform.

An SIRC-SICASA COMMUNITY has also been created for student interaction and participation, feedback, notifications also in the DLH page.

For students who are writing their December 2021 examinations, we have conducted a guidance program exclusive for Intermediate and Final students' How to approach CA Inter and Final exams? As of now, YouTube views of the programme are 14,500 and 4,500 views respectively.

## Payment of Annual Membership Fee for the year 2021-2022

Last month we have made announcement for restoration of names of members who have missed to pay their membership/certificate of practice fee within the prescribed time. I am happy to inform you that the Council of ICAI has suo moto decided to extend the last date for payment of Membership/ COP fee for the year 2021-22 from 30th September, 2021 to 31st December, 2021. Members, who have not yet paid their fee, are requested to pay online through Self-Service Portal (SSP) at the link <https://eservices.icai.org/>.

## Elections to the 25th Central and 24th Regional Councils:

As already informed in the last newsletter the election to the Twenty-Fifth Council and Twenty-Fourth Regional Councils of ICAI are scheduled to be held on 3rd and 4th December, 2021. Members may please note the schedule of dates of polling and exercise their franchise. Detailed announcements have been made by ICAI in this regard in ICAI Website

## Payment of Membership Fee / Certificate of Practice Fee for the year 2021-22:

We have announced the extension granted by ICAI for payment of membership fee / Certificate of Practice Fee for the year 2021-2022 from 30th September to 31st December 2021.

Members who have not yet paid their prescribed fee, as applicable to them, may avail of the extension granted and remit the fee through online through Self-Service Portal (SSP) at the link <https://eservices.icai.org/>

## Nomination:

I am happy to share that the undersigned has been nominated to the State Level Audit Advisory Board by the Principal Accountant General vide No. PAG (Audit-I)Co-ord.Cell/II/06-01/2021-22/32 dated 22.10.2021. This appointment is a recognition the Government of Tamil Nadu attaches to our CA Profession and exhibits their trust and faith in the deliverance of our members to the cause of the Government.

I had the privilege of attending the meeting held on 23rd November 2021 along with the Officials of the Principal Accountant General (Audit-I) and Accountant General (Audit-II) with Dr. Palanivel Thiaga Rajan, Minister for Finance and Human Resources Management, Government of Tamil Nadu being the Chief Guest.

## Festivities:

ISIRC conveys its Christmas Greetings and Happy New Year 2022 to all our members and students and their families.

Until we meet through this column, my warm regards,

In the service of members and students forever

**CA. K. JALAPATHI**

Chairman, SIRC of ICAI



# CPE PROGRAMMES – December 2021

## Forthcoming VIRTUAL CPE

Meetings from SIRC of ICAI (Limited to 1000 members registering on first come first served basis)

Date	Topic	Timing	Speaker	CPE Hrs	Fee exclusive of GST
7th Dec 2021 (Tue)	SA 402-Audit Considerations Relating to an Entity Using a Service Organisation and 450-Evaluation of Misstatements Identified During the Audit	5PM - 8PM	CA. Gauthami, Chennai	3	200
8th Dec 2021 (Wed)	SA 510-Initial Audit Engagements – Opening Balances, 520-Analytical Procedures and 530-Audit Sampling	5PM-8PM	CA. Subramania Sharma, Chennai	3	200
9th Dec 2021 (Thu)	Standards on Auditing: SA 600:Using the Work of Another Auditor, Revised SA 610 : Using the Work of Internal Auditors SA 620 :Using the Work of an Auditor's Expert	5PM - 8PM	CA. Raghuram K, Chennai	3	200
11th Dec 2021 (Sat)	Recent Trends in Transfer Pricing	5PM-7PM	CA Mithilesh Reddy, Hyderabad	2	100
13th Dec 2021 (Mon)	Programme on Audit Maturity Model (AQMM)	5PM - 8PM	CA. Mohan Lavi, Bengaluru	3	NIL
14th Dec 2021 (Tue)	AS 7 Construction Contracts , AS 12 Accounting for Government Grants and AS 13 Accounting for Investments	5PM - 8PM	CA. Amit Garg, New Delhi	3	200
15th Dec 2021 (wed)	Ethical challenges faced by CAs	5PM-7PM	CA. K Ravi PAST CHAIRMAN OF SIRC-Chennai	2	100
27th Dec-2021 (Mon)	Harnessing Technology and Resource optimization for GST assignments	5PM-7PM	CA. Annapurna Srikanth, Mysore	2	100
29th Dec 2021 (Wed)	Investors Awareness programme	5PM-7PM	Eminent Speaker	2	Nil

Regn: <https://bit.ly/sirclogin>

Virtual CPE programmes conducted by SIRC of ICAI  
Please note the link for Resources of Past Virtual and other programmes of SIRC of ICAI  
<https://www.sirc-icai.org/past-programmes.php>



# UPDATES

Scan QR Code & Read

## Corporate Law



Contributed by:  
CA. M. Asir Raja Selvan,  
Chennai  
asir.cs@gmail.com

## FEMA



Contributed by:  
CA. G. Murali Krishna,  
Hyderabad  
murali.gottipati@gmail.com

## Goods and Services Tax



Contributed by:  
CA. G. Saravana Kumar,  
Madurai  
casaravana.82@gmail.com

## Income Tax



Contributed by:  
CA.V.K. Subramani,  
Erode  
vksintax@gmail.com

## Information Technology



Contributed by:  
CA. S. Deephika,  
Chennai  
cadeephika@gmail.com

## Karnataka VAT-GST



Contributed by:  
CA. Annapurna D Kabra,  
Bengaluru  
annapurnat@yahoo.com

## Tamil Nadu VAT



Contributed by:  
CA. V.V. Sampath Kumar,  
Chennai  
vvsampat@yahoo.com

### ICITSS Courses by SIRC of ICAI (Physical Mode).

Commencing from 03.01.2022 to 21.01.2022

#### Information Technology Training (ICITSS- IT)

BATCH NO	TIMINGS
CHN-ICITSS-IT-01-22-157	07.30 A.M TO 01.30 P.M
CHN-ICITSS-IT-01-22-158	01.45 P.M TO 07.45 P.M

#### Orientation Course (ICITSS-OC)

BATCH NO	TIMINGS
ICITSS-OC-CHE-174	07.00 A.M TO 01.30 P.M
ICITSS-OC-CHE-175	01.45 P.M TO 08.15 P.M

The enrolment of students shall be done on First come First served basis.

Please register through the link:

[https://www.icaionlineregistration.org/Admin\\_Module/login.aspx](https://www.icaionlineregistration.org/Admin_Module/login.aspx)

### AICITSS Courses by SIRC of ICAI (Physical Mode).

Commencing from 03.01.2022 to 21.01.2022

#### Advanced (ICITSS) MCS Course

BATCH NO	TIMINGS
ADVANCED-ICITSS-MCS 175	07.00 A.M TO 01.30 P.M
ADVANCED-ICITSS-MCS 176	01.45 P.M TO 08.15 P.M
ADVANCED-ICITSS-MCS 177	07.00 A.M TO 01.30 P.M
ADVANCED-ICITSS-MCS 178	01.45 P.M TO 08.15 P.M

#### Advanced Information Technology Training (AICITSS- AIT)

BATCH NO	TIMINGS
CHN-AICITSS-AIT-01-22-147	07.30 A.M TO 01.30 P.M
CHN-AICITSS-AIT-01-22-148	01.45 P.M TO 07.45 P.M

The enrolment of students shall be done on First come First served basis.

Please register through the link:

[https://www.icaionlineregistration.org/Admin\\_Module/login.aspx](https://www.icaionlineregistration.org/Admin_Module/login.aspx)

Southern India Regional Council of  
The Institute of Chartered Accountants of India  
(Setup by an Act of Parliament)

## JOIN

YOUR DREAM IS OUR VISION ! OUR DREAM IS YOUR SUCCESS !

# SIRC

## CA FOUNDATION

### Online Coaching Classes

For students appearing for June 2022 Examinations  
(+2 Students also can attend)

## 22<sup>nd</sup> December 2021

(Tentatively will end by March 31st 2022)

Last Day of  
Registration:  
20th December 2021

Principles & Practice of Accounting	Business Statistics	Business Law
 CA. S.S. Prathap	 CA. D. Suman	 Dr. P.R. Vittal
 Dr. M. Sriram	 CA. R. Magesh	 CA. Sowmya.P
Business Economics	Business and Commercial Knowledge	Business Mathematics & Logical Reasoning
 Dr. R. Vaidyanathan	 Dr. Seema Goel	 CA. Kavitha Umopathy
	 CA. G.P. Srivatsan	 Dr. Nirmala Raghavan

DAYS: ALL DAYS

Class Timings

6.00 AM to 8.00 AM  
6.00 PM to 9.00 PM

Course Fee: Rs.9,500/-

- ▶ SIRC of ICAI is your Alma mater and Leader in Grooming CA's for the past 50 Years.
- ▶ Effective, Conceptual, Exam Oriented & Economical.
- ▶ Online interactive Live Classes with doubt clearing sessions. Flash tests & Self Assessment tests.
- ▶ 12 days Free Rapid Revision Classes after the course completion.
- ▶ Experienced Faculty Team Members of SIRC Foundation Coaching Classes.
- ▶ No Coaching Fee for Govt. & Govt. Aided School Students of Southern Region States. (Tamil Nadu, Kerala, Karnataka, Andhra, Telangana and Union Territory of Pondicherry)

For further details, please contact our SIRC Coaching Classes Help Desk

Phone: 044-3021 0323    Mobile: 96771 26011    ✉ [sirc.foundation@icai.in](mailto:sirc.foundation@icai.in)

For Registration, Please visit: <https://www.sirc-icai.org/view-batches.php>

Avail this Opportunity and get through your CA Foundation June 2022 Examination

CA. Jalapathi. K

Chairman, SIRC of ICAI

## Disclaimer

The SIRC/ICAI does not accept any responsibility for the views expressed in different contributions/ advertisements published in this Newsletter.



# IMPORTANT ANNOUNCEMENTS

## Single Transferable Vote – An appraisal

As the members are aware that the elections of the Institute to the Council and Regional Councils are held by following the system of proportional representation by means of a single transferable vote and in accordance with the Chartered Accountants (Election to the Council) Rules, 2006 read with Regulation 134 of the Chartered Accountants Regulations, 1988.

The term of the current (i.e. 24<sup>th</sup>) Council of the Institute is upto 11<sup>th</sup> February 2022 while the Regional Councils will be reconstituted soon after the Council (i.e. 25<sup>th</sup>) is reconstituted in accordance with the provisions of Section 9 of the Chartered Accountants Act, 1949.

Accordingly, the next elections to the Council and Regional Councils of the Institute will be held on 3<sup>rd</sup> and 4<sup>th</sup> December, 2021 at Agra, Ahmedabad, Bengaluru, Bhayandar, Bhilwara, Bhopal, Bhubaneswar, Chandigarh, Chinchwad, Chennai, Coimbatore, Delhi/New Delhi, Dombivali, Faridabad, Ghaziabad (including Indirapuram, Sahibabad and Vaishali), Gurugram, Guwahati, Hyderabad, Indore, Jaipur, Jodhpur, Kalyan, Kanpur, Kochi, Kolkata, Kota, Lucknow, Ludhiana, Meerut, Mira Road, Mumbai, Nagpur, Nashik, Navi Mumbai, Noida, Patna, Pune, Raipur, Rajkot, Ranchi, Surat, Thane, Udaipur, Vadodara, Vijayawada and Visakhapatnam and for one day on 4<sup>th</sup> December, 2021 at all other places where polling booths have been set up.

All Polling booths set up across the country will be functional from 8.00 am to 8.00 pm on each day of polling. A member can know his/her polling booth by visiting [www.icaai.org](http://www.icaai.org) under link Election-2021.

The members, especially the first time voters, would naturally be interested in knowing as to how the “single transferable vote” system, under which the elections are held, operates.

The broad details of the system are given below:

(1) Each voter has only one vote for election to the Council and one vote for election to the Regional Council. The voter, in order to cast his

vote, shall place on his ballot paper the number 1 (in Arabic numerals only) against the name of the candidate for whom he desires to vote, and may, in addition, place on his ballot paper the number 2, or numbers 2 and 3, or the numbers 2, 3 and 4 and so on opposite the name of other candidates in the order of his preference. A voter has as many preferences as the total number of candidates from that Regional constituency/Regional Council.

However, for the purpose of facilitating the process of election by avoiding fractions each valid vote is notionally considered to be of the value of 100 so that if a part of the vote has subsequently to be transferred from one candidate to another (next in the order of preference), it does not become necessary to resort to fractions, which would make the counting cumbersome.

(2) At the time of counting of votes, the covers containing the postal ballot papers are opened and the voting papers are separated. To these are added the voting papers taken out from the ballot boxes used at different polling booths. The ballot papers are, in the first place, examined and invalid papers are rejected and excluded from the process of counting. The total value of the valid votes is then calculated by multiplying the number of such votes by 100, as mentioned above. This total value is then divided by the number of vacancies increased by one, and the quotient increased by one gives the value that is required for any candidate to get elected. This figure is termed as the “quota”. Thus, if in a constituency, eight members are to be elected and there are 4,500 valid votes, the quota will be:

$$\frac{4,500 \times 100}{8 + 1} + 1 = 50,001$$

In other words, a candidate should get a value of 50,001 votes to get elected. The addition of one to the quotient is explained by the fact that if it is not done, there is a possibility that more candidates may get elected than the number of vacancies.

### The first Count

(3) The valid votes are sorted out and divided into parcels according to the candidates for whom the



# IMPORTANT ANNOUNCEMENTS

first preference is marked on the respective votes. The value of the first preference votes received by each candidate is then worked out and the process is known as the first count.

(4) All the candidates, the value of whose votes is equal to or greater than the quota, are declared elected. The votes of the candidates who obtain exactly the quota are set aside as there is no question of transfer of any surplus from those votes.

## Transfer of Surplus and Subsequent Counts

(5) Then starts the process of transfer of the surplus values of the votes of those candidates who have secured more than the quota at the first count. Their cases are taken one by one in the strict order of the value of their votes, the largest surplus being dealt with first. In case no candidate obtains the quota in the first count, exclusion of candidates is resorted to (see para 12).

(6) The votes of the candidate whose surplus is to be transferred are scrutinized and all those votes which are capable of being transferred (viz., on which the next preference is marked for a candidate, who has not already been elected, or if the next preference is marked for an elected candidate, the preference marked next to that and so on) are separated. The remaining votes which are not capable of further transfer are set aside and treated as exhausted.

(7.1) Before the votes are transferred to the candidates marked next in preference, a new value of each vote is worked out. This value is arrived at by dividing the total surplus of the candidate by the number of votes to be transferred, the remainder being ignored, subject to the condition that the new value does not exceed the original value at which the vote was received by the candidate whose surplus is being transferred (viz., 100 in the case first preference votes).

(7.2) Thus, if after the first count, a candidate has a surplus of 2,962 and there are 65 votes in his parcel which are capable of being transferred each vote will be transferred at the new value of  $(2,962/65) 45$ . The remainder of 37 [ $2,962-(65 \times 45=37)$ ] is treated as loss in value.

(8) The votes under transfer are then divided into parcels according to the candidates to whom they are to be transferred. The parcels of the transferred votes are also added as sub parcels to the parcels of original (viz., first preference) votes of the candidates

concerned. The total value of the votes going to particular candidate is obtained by multiplying the new value of each vote by the number of votes going to him and is added to the value of his original votes. The result of the transfer is then struck out and the candidates who obtain at this stage the "quota" are also declared as elected.

(9) This process of transfer of the surpluses of the elected candidates continues till the required number of candidates are elected or till all the surpluses have been dealt with.

(10) As already stated, the surpluses are transferred in the strict order of their value but all surpluses arising at an earlier count are disposed off before the surpluses arising out of subsequent counts are taken up.

(11) In the case of transfer of surplus of a candidate who was not elected at the first count but only as a result of transfer of some votes to him at a subsequent count, since the surplus arises out of the last sub-parcel of his votes, it is only the last sub-parcel that is scrutinised and the unexhausted votes contained therein which are capable of further transfer are revalued, in the manner stated in para 7.1 and 7.2 above, and then transferred to the candidates marked next in order of preference. If there is no vote in the last sub-parcel which is capable of further transfer, the whole of the surplus is treated as loss in value.

## Exclusion of Candidates

(12) When there is no surplus left for transfer and the number of candidates elected is less than the number of seats, the exclusion of candidates is resorted to. The process of exclusion comprises the transfer of votes (both original and transferred) of the candidate to be excluded to the candidates marked next in order of preference and who have not already been elected or excluded.

(13) The candidate, the value of whose votes is lowest at the time of exclusion, is first excluded.

(14) The parcels and the sub-parcels of the votes of the candidates to be excluded are taken up one by one in the order in which they were received and the votes contained in each parcel and sub-parcel which are capable of further transfer are transferred to the candidates marked next in order of preference at the same value at which they were received by him. Each parcel and sub-parcel is dealt with separately. It is only after the parcel and all the sub-parcels have been duly transferred that count is completed.



## **IMPORTANT ANNOUNCEMENTS**

(15) If, as a result of transfer of votes of a parcel, or a sub-parcel, any other candidate secures the quota and is elected, the count in progress is completed but no further votes are transferred to the elected candidate from the subsequent sub-parcels. The following example would make it clear. Let us suppose that the votes of candidate "A" who is to be excluded consist of the original parcel and two sub-parcels subsequently transferred to him. Suppose as a result of the transfer of votes contained in the original parcel, another candidate "B" gets elected. Then the remaining two sub-parcels will be dealt with one by one but no vote therefrom will be transferred to candidate "B" and such of the votes as would have normally gone to "B" will now be straightaway transferred to the candidates marked next to "B" in the order of preference on the respective votes.

(16) The process of exclusion continues till the requisite number of candidates has been elected or the number of candidates left in the field (i.e., the continuing candidates) is equal to the number of vacancies still unfilled.

(17) If, as a result of any exclusion, another candidate gets the quota and is thus elected, no further exclusion is done till the surplus of the elected candidate has been transferred and it becomes necessary thereafter again to resort to exclusion. In other words, candidate is to be excluded only when there is no surplus to be transferred.

(18.1) If, at any time during the course of counting of votes, the number of candidates remaining in the field is reduced to the number vacancies not yet filled,

all those candidates are declared as elected without resorting to any further calculations.

(18.2) It, therefore, follows that a candidate may be elected even though he does not get the required quota.

(19) If at a particular time only one vacancy is unfilled and the value of votes (both original and transferred) of anyone continuing candidate at that time exceeds the total value of votes of all the other candidates left in to field, including the surplus of any candidate not yet transferred, that candidate is declared as elected.

(20) If, when there is more than one surplus to distribute, two or more surpluses are equal, or if at any time it becomes necessary to exclude a candidate and two or more candidates have the same values of votes and are lowest on the poll, regard shall be had to the original votes of each candidate, and the candidate for whom fewest original votes are recorded shall have his surplus first distributed, or shall be first excluded as the case may be. If the values of their original votes are equal, the Returning Officer shall decide by lot which candidate shall have surplus distributed or be excluded.

(21) When after counting of votes, a tie is found to exist between candidates, regard is given to the original votes and if the original votes are also equal, then the process of draw of lots is resorted to. In case of tie amongst more than two candidates, the candidate whose slip is picked up is excluded from the poll. If the tie is between two candidates, the candidate whose slip is picked remains in the poll or declared as successful, as the case may be.

### **Want to be a Faculty! For Coaching Classes of SIRC of ICAI**

Services of the Members of the Institute of Chartered Accountants of India who are academically inclined and interested to groom future Chartered Accountants by way of associating themselves with Coaching Classes (Foundation, Intermediate and Final) as Honorary / Visiting / guest Faculty are requested to send their detailed resume along with the indication of Subject. Fulfilling the Form as per criteria and send the scanned copy to the respective mail ID: [sircdean@icai.in](mailto:sircdean@icai.in) & [rahman@icai.in](mailto:rahman@icai.in) Download criteria and application from following link: <https://bit.ly/SIRCFACULTYAPPLN>

**SIRC of ICAI**



## IMPORTANT ANNOUNCEMENTS

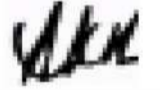
### Admissible number of votes to a Voter and Ballot paper

Each eligible member to vote (i.e. Voter) shall be given a ballot paper each for Council of the Institute and his respective Regional Council at the polling booth for recording his preference(s). The ballot paper shall be printed in English language on one side only and will contain names (in alphabetical order), membership number and photograph of the candidates.

A voter shall have one vote only, but shall have as many preferences as there are candidates. In order to cast his vote, the voter shall place on his ballot paper the number 1 (**in Arabic numerals**) in the square opposite the name of the candidate for whom

he desires to vote; and may, in addition, place the number 2 or the numbers 2 and 3 or the numbers 2, 3 and 4 and so on (**in Arabic numerals only**), in the squares opposite the name of other candidates in the order of his preference upto the maximum number of candidates standing for the election. However, a cross, i.e. 'X' mark may be put in the squares opposite the name(s) of candidate(s) to whom the voter does not desire to vote. A few illustrations of valid and invalid marking of preferences on ballot paper are given hereinafter for guidance of the voters so that marking of preference in any manner, other than permissible manner, is avoided.

#### Illustrations

	Name and Membership No. of the Candidate on the ballot paper	Valid Marking	Invalid Marking	Reason
Illustration 1	ABC ----- M.No. -----	1	T	Preference not marked in Arabic Numeral.
Illustration 2	ABC ----- M.No. -----	1	One	Preference not marked in Arabic Numeral.
Illustration 3	ABC ----- M.No. -----	1	(i)	Preference not marked in Arabic Numeral.
Illustration 4	ABC ----- M.No. -----	1		1 <sup>st</sup> preference not marked at all
Illustration 5	ABC ----- M.No. -----	1	1	Preference marked outside the box
Illustration 6	ABC ----- M.No. -----	1	1	Preference marked outside the box
Illustration 7	ABC ----- M.No. -----	1	Kumar	Name written in the box instead of marking valid preference
Illustration 8	ABC ----- M.No. -----	1		Signature used instead of marking valid preference.
Illustration 9	ABC ----- M.No. -----	1	एक	Preference not marked in Arabic Numeral.
Illustration 10	ABC ----- M.No. -----	1	<small>God is great</small> 1	Writing anything other than valid preference makes it invalid
Illustration 11	X) ABC ----- (Candidate 1) M.No. -----	1	1	Marking same preference to more than one candidate, makes that preference and all the subsequent preferences invalid.
	Y) DEF ----- (Candidate 2) M.No. -----	2	1	
	Z) GHI----- (Candidate 3) M.No. -----	3	2	
Illustration 12	ABC ----- M.No. -----	1	✓	Tick symbol is used instead marking preference in Arabic Numeral.
Illustration 13	ABC ----- M.No. -----	1	X	1 <sup>st</sup> preference is not marked



## VITTHAKAM – 53rd Regional Conference of SIRC of ICAI

Grow your business - Opportunities in Qatar - Shri. Jahongir Burhonov,  
Vice President, Business Development Qatar Financial Centre Authority



Moderator of RBI- Expectations from External Auditors of Banks - CA. Babu Abraham Kallivayil, Central Council Member, ICAI



RBI- Expectations from External Auditors of Banks - Shri. Rohit Jain  
Executive Director Reserve Bank of India, Mumbai



Recent Updates Impacting Recent Updates Impacting Tax Audit - AY 2021-22- CA. V. Ramnath, Coimbatore



### Other CPE Programme

Valedictory Session - Chief Guest Mr. T. Sathish Kumar  
Founder & Managing Director Milky Mist

Code of Conduct and Professional Ethics for CA's - 23rd  
Nov 2021



Resource person CA. R. Sundararajan, Chennai seen along with CA. Survajith Krishnan

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SA 250-Consideration of Laws and Regulations in an Audit of Financial Statements, SA 260-Communication with Those Charged with Governance and SA 265 - Communicating Deficiencies in Internal Control to Those Charged with Governance and Management - 24th Nov 2021



Resource person CA. S. K. Jegadeesan, Chennai seen along with CA. S. A. Gopala Krishnan

Recent Updates Impacting Tax Audit - AY 2021-22 - CA. V. Ramnath, Coimbatore



SA 800 - Special Considerations-Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks, SA 805 - Special Considerations-Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement and SA 810 - Engagements to Report on Summary Financial Statements - 25th Nov 2021



Resource person CA. Arun Kumar R, Chennai seen along with CA. M. Suresh Kumar

AS 1 - Disclosure of Accounting Policies, AS 4 - Contingencies and Events Occurring After the Balance Sheet Date and AS 5 - Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies - 29th Nov 2021



Resource person CA. K. Badri Narayanan, Coimbatore seen along with CA. M. Suresh Kumar.

Sub Regional Conference at Kochi inaugurated SIRC of ICAI



Sub Regional Conference at Kochi inaugurated by Hon'ble Mayor Adv. M. Anilkumar and Chief Commissioner of Income Tax Sri Manjit Singh IRS, CA. Atul Kumar Gupta, Past President, ICAI, CA Jalapathi K Chairman, SIRC of ICAI, CA. Babu Abraham Kallivayalil, Central Council Member, CA. Renjith Warriar Chairman, Ernakulam Branch of SIRC of ICAI along with other members of Ernakulam Branch held on 27th Nov 21

NSDL's e-services for Investors - 30th Nov 2021



Resource person Mr. Vikas Kumar Jain, Assistant Vice President, NSDL seen along with CA. Survajith Krishnan.



Blood Donation Camp at ICAI Bhawan - 13th Nov 2021



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Business Communication & Personality Development	2	4
Practical aspects of Income Tax	6	12
Basics of Tally Accounting	4	8
Practical aspects of GST	4	8
Knowledge of Excel - Audit Tool & Analysis	8	16
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CA. JALAPATHI. K  
 Chairman, SIRC of ICAI  
 M : 98428 96673

## Nominations for 15th ICAI Awards

CMI&B of ICAI is pleased to inform that the portal for filing online nominations for 15th ICAI Awards has been made active w.e.f. 15th September 2021 and shall remain open till 10th December 2021.

To brief, the ICAI Awards are being recognised as one of the most prestigious awards amongst the CA fraternity which aims to acknowledge the accomplishments of Chartered Accountants and to recognise the members who have demonstrated excellence and portrayed an abiding commitment to achieve heights as CA professional. Chartered Accountants across diverse fields ranging from industry to entrepreneurship to public service to Government wait eagerly to get recognized at this prestigious forum.

To invite nominations from the high calibre Chartered Accountants who can probably win the ICAI Awards, you are requested to spread the word and persuade the deserving members (not holding full time COP) in your know-how to file nominations at the earliest on or before 10th December, 2021 i.e., the last date for filing nominations by clicking on the following link-

<https://nominationforms.icai.org/>

The members may be advised to visit <https://awards.icai.org/> to read more about the ICAI Awards, category of awards, eligibility criteria and general guidelines etc.

In case of any queries, CMIB Secretariat may be contacted at 011-30110548/549 or 8448115375 or email may be sent to [icai.awards@icai.in](mailto:icai.awards@icai.in)

Committee for Members in Industry & Business (CMI&B)



## CORPORATE LAW

Contributed by: CA. M. Asir Raja Selvan, Chennai

### Corporate Law Update – November 2021

The following are the important updates in Companies Act, 2013 & SEBI LODR from 26<sup>th</sup> October to 25<sup>th</sup> of November 2021

#### I. Relaxation of levy of additional fee – reg

The Ministry of Corporate Affairs (MCA) vide its General Circular No.17/21 dated 29<sup>th</sup> October 2021 extended the due date for filing Cost Audit Report

As per the General circular, in view of the requests received from stakeholders due to the pandemic, it has been decided that no additional fees shall be levied up to 31.12.2021 for filing the following e-forms.

AOC - 4, AOC - 4 ( CFS ), AOC - 4 ( XBRL ), AOC - 4 Non XBRL, MGT - 7 & MGT - 7A

#### II. Extension for filing Cost Audit Report – reg

The Ministry of Corporate Affairs (MCA) vide its General Circular No.18/21 dated 29<sup>th</sup> October in continuation 15/21 dated 27<sup>th</sup> September 2021 extended the due date for filing Cost Audit Report

As per the General circular, in view of the extraordinary disruption caused due to the pandemic, it has been decided that if cost audit report for the financial year 2020-21 by the cost auditor to the Board of Directors of the companies is submitted by 30<sup>th</sup> November 2021 then the same would not be viewed as violation of Rule 6(5) of Companies (Cost records and Audit) Rules, 2014.

Hence, the cost audit report in e-form CRA - 4 shall be filed within 30 days from the date of receipt of the cost audit report by the company. In case a company has got extension of time for holding AGM, e-form CRA - 4 may be filed within the time provided under the proviso to rule 6(6) of the Companies (Cost Records and Audit) Rules, 2014.

#### III. Disclosure obligations of listed entities in relation to Related Party Transactions

SEBI, vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2021/662 dated 22<sup>nd</sup> November 2021, Vide notification dated November 9, 2021, Regulation 23 of the SEBI (Listing Obligations and Disclosure Requirements), Regulations 2015 ('LODR Regulations') was amended, inter-alia, mandating listed entities that have listed specified securities to submit to the stock exchanges disclosure of Related Party Transactions(RPTs) in the format specified by the Board from time to time.

Further, it has been decided to prescribe the information to be placed before the audit committee and the shareholders for consideration of RPTs.

Accordingly, the following provisions shall apply to entities that have listed specified securities on a Recognized Stock Exchange.

##### A. Information to be reviewed by the Audit Committee for approval of RPTs

The listed entity shall provide the following information, for review of the audit committee for approval of a proposed RPT:

- a. Type, material terms and particulars of the proposed transaction;
- b. Name of the related party and its relationship with the listed entity or its subsidiary, including nature of its concern or interest (financial or otherwise);
- c. Tenure of the proposed transaction (particular tenure shall be specified);
- d. Value of the proposed transaction;
- e. The percentage of the listed entity's annual consolidated turnover, for the immediately preceding financial year, that is represented by the value of the proposed transaction (and for a RPT involving a subsidiary, such percentage calculated on the basis of the subsidiary's annual turnover on a standalone basis shall be additionally provided);
- f. If the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary:
  - i) details of the source of funds in connection with the proposed transaction;



ii) where any financial indebtedness is incurred to make or give loans, inter-corporate deposits, advances or investments,

nature of indebtedness;  
cost of funds; and  
tenure;

iii) applicable terms, including covenants, tenure, interest rate and repayment schedule, whether secured or unsecured; if secured, the nature of security; and

iv) the purpose for which the funds will be utilized by the ultimate beneficiary of such funds pursuant to the RPT.

g. Justification as to why the RPT is in the interest of the listed entity;

h. A copy of the valuation or other external party report, if any such report has been relied upon;

i. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT on a voluntary basis;

j. Any other information that may be relevant. The audit committee shall also review the status of long-term (more than one year) or recurring RPTs on an annual basis.

#### B. Information to be provided to shareholders for consideration of RPTs

The notice being sent to the shareholders seeking approval for any proposed RPT shall, in addition to the requirements under the Companies Act, 2013, include the following information as a part of the explanatory statement:

- a. A summary of the information provided by the management of the listed entity to the audit committee as specified in point 4 above;
- b. Justification for why the proposed transaction is in the interest of the listed entity;
- c. Where the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary, the details specified under point 4(f) above; (The requirement of disclosing source of funds and cost of funds shall not be applicable to listed banks/NBFCs.)
- d. A statement that the valuation or other external report, if any, relied upon by the listed entity in relation to the proposed transaction will be made available through the registered email address of the shareholders;
- e. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT, on a voluntary basis;
- f. Any other information that may be relevant.

#### C. Format for reporting of RPTs to the Stock Exchange

The listed entity shall make RPT disclosures every six months in the format provided at Annex. This Circular shall come into force with effect from April 1, 2022.

The Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 101 of the LODR.

Answer to the question raised in the October Journal:

The auditor of ABC Private Limited tendered his resignation on 5<sup>th</sup> April 2021 without completing the audit for the year ended 31.3.2021. What is the procedure to be followed to appoint a new Auditor? Whether the answer will differ if the vacancy on 5<sup>th</sup> April 2021 was due to the death of the auditor?

The company's Board has to fill the casual vacancy of Statutory Auditor within 30 days from the date of the vacancy and within 3 months the members of the company need to ratify such appointment.

Yes, if the vacancy is due to the death of the auditor, then there is no need of ratification by the members within 3 months.

CA. M. ASIR RAJA SELVAN  
[asir@arsindia.com](mailto:asir@arsindia.com)  
9500003636



# FEMA

Contributed by: CA. G. Murali Krishna, Hyderabad

## I. Investment by Foreign Portfolio Investors (FPIs) in Debt

RBI vide its A.P. (DIR Series) Circular No. 16 dated November 8, 2021 stated that FPIs can acquire debt securities issued by InvITs and REITs under the Medium-Term Framework (MTF) or the Voluntary Retention Route (VRR). Such investments shall be reckoned within the limits and shall be subject to the terms and conditions for investments by FPIs in debt securities under the respective regulations of MTF and VRR.

The above decision of RBI is an extension of amendment to FEM (Non-Debt Instruments) Rules, 2019 notified on October 21, 2021.

## II. Regulations Review Authority (RRA 2.0) – Interim Recommendations – Withdrawal of Circular

Regulations Review Authority 2 (RRA 2) was set up in April 2021 inter-alia to reduce compliance burden and other regulatory improvements. RBI vide its A.P. (DIR Series) Circular No. 18 dated November 16, 2021 stated that, as a part of the implementation of the interim recommendations of the said RRA 2.0, the A.P. (DIR Series) Circular No.6 dated July 16, 2015 providing clarification on Foreign Investment in India by Foreign Portfolio Investors in Security Receipts issued by Asset Reconstruction Companies, stands withdrawn with immediate effect.

## III. FEMA Case Law

### ASHISH JAIN VS THE ASSISTANT DIRECTOR, ENFORCEMENT DIRECTORATE, CHENNAI

#### Facts of the case:

1. The bank account of the petitioner's father was blocked by the banker based upon an instruction from Enforcement Directorate (ED) on the ground that the amounts lying in the said bank account involved violation of provisions of FEMA and that the investigation under FEMA is still under progress.
2. ED asked the banker not to debit any amount from the bank account without their knowledge.
3. After the demise of petitioner's father, the petitioner filed writ petition, in the capacity of legal heir, contending that there was no order for freezing the account was issued by ED and the ED accepted the said fact.

#### HELD that:

1. Since it is an admitted fact that the subject matter bank account is not so far issued with any order of attachment or freezing the account, it is open to the first respondent, ED, to pass any such order within a period of 30 days from the date of receipt of a copy of this order.
2. If the first respondent, ED, has not chosen to pass any attachment order as stated supra, the petitioner shall not be prevented from operating the bank account.

## IV. Update on Compounding Orders issued under FEMA Regulations:

### a. M/s Xindia Steels Limited

Regulation	Paragraph 2 of Schedule I to FEMA 20(R)/2017-RB
Contravention	Default in complying with mode of payment of consideration
Date of Order	04-10-2021
Compounding Fee	INR 94,160/-



b. M/s Rainbow Children's Medicare Pvt Ltd

Regulation	Rule 9(6)(i) of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019
Contravention	Non-compliance with payment of an amount not exceeding twenty five percent of the total consideration on deferred basis within a period not exceeding eighteen months from the date of the transfer agreement of equity instruments between a person resident in India and a person resident outside India
Date of Order	04-10-2021
Compounding Fee	INR 55,760/-

**Goods and Services Tax**  
Contributed by: CA. G. Saravana Kumar, Madurai

GST UPDATES – DECEMBER 2021

GST CIRCULAR UPDATES

1. Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017 – GST – Circular No CBEC-20/16/05/2021-GST/1552 dated 02-11-2021

Rule 86A of CGST Rules, enlists certain situations wherein the commissioner or officer authorized by him to block the amount of input tax credit available in electronic credit ledger. Above circular clarifies following points with respect to invoking the powers given in Rule 86A. Summary of them are given below:

- i. The officer exercising power under rule 86A must have a reason to believe that credit has been fraudulently availed or is ineligible. Reasons for such belief shall be based on one or more of the following grounds:
  - a. The supplier who is found to be non-existent or is found not to be conducting any business from the place declared in registration.
  - b. Credit is availed by the receiver without actually receiving any goods or services or both.
  - c. Tax declared in the invoice by the supplier has not been paid to the government.
  - d. The recipient taking credit is found to be non-existent or is found not to be conducting any business from the place declared in registration.
  - e. Credit is availed by recipient without having invoice or debit notes or any other valid document.
- ii. The commissioner exercising the power shall form an opinion for invoking Rule 86A and the same shall not be exercised mechanically.



iii. The circular lists proper authorities for the purpose of Rule 86A also lists following procedures for disallowing debit in the e-credit ledger.

- a. The officer exercising the power shall apply his mind and have reason to believe that the registered person has fraudulently availed credit or credit is ineligible. Such reasons must be recorded in the file.
- b. The amount disallowed for debit shall not be more than the credit which is believed to have been fraudulently availed or is ineligible.
- c. Details of disallowing of debit in the e-credit ledger shall be informed on the portal of the concerned registered person.

iv. The circular also circumstances wherein the proper officer may allow the debit of disallowed / restricted credits.

Where the commissioner or the officer authorized by him may either on his own or based on the submissions made by the tax payer with material evidence thereof, allow the debit of already disallowed credits in case he is satisfied that input tax credit initially considered to be fraudulently availed or ineligible is no more ineligible or wrongly availed. Reasons for this action shall be recorded on file in writing,

v. Upon expiry of one year from the date of restriction, the registered person would be able to debit input tax credit so disallowed, subject to any other action that may be taken against the registered person

2. Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020 – GST - Circular No. 165/21/2021-GST

Vide circular no 156/12/2021 dt 21.06.2021, the board has given various clarifications regarding the applicability of dynamic QR code on B2C invoices. Sl. No. 4 of above circular is substituted as below:

<p>4. " In cases, where receiver of services is located outside India, and payment is being received by the supplier of services, through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?</p>	<p>No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier."</p>
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Circular No. 156/12/2021-GST, dated 21.06.2021 stands modified to this extent.

3. Clarification on certain refund related issues – GST - Circular No. 166/22/2021-GST dated 17<sup>th</sup> Nov, 2021

Following clarifications were given by the board vide above circular relating to GST refunds.

- i. Time limit within which refund application shall be made as per section 54(1) would not be applicable for filing refund claim of excess balance in electronic cash ledger.



- ii. Furnishing of certification / declaration under rule 89(2)(l) or 89(2)(m) of the CGST Rules is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases.
- iii. Regarding, refund of TDS/TCS deposited in electronic cash ledger, following clarifications are issued:
  - a. The amount deducted/collected as TDS/TCS by TDS/ TCS deductors and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger.
  - b. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose for discharging tax liability.
  - c. Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of CGST Act.
  - d. The relevant date for purpose of filing of refund claim for refund of tax paid on deemed export supplies would be the date of filing of return, related to such supplies, by the supplier.

## **Income Tax**

**Contributed by: CA. V.K. Subramani, Erode**

### Direct Tax Updates (December, 2021)

1. Clarification regarding the expression 'price fixed or approved by the Government for the purpose of section 36(1)(xvii): The CBDT vide Circular No.18 dated 25.10.2021 has clarified regarding section 36(1)(xvii). The Finance Act, 2015 inserted the following clause (xvii) in sub-section (1) of section 36 of the Income-tax Act, 1961 to provide for deduction on account of the amount of expenditure incurred by a co-operative society engaged in the business of manufacture of sugar— "(xvii) the amount of expenditure incurred by a co-operative society engaged in the business of manufacture of sugar for purchase of sugarcane at a price which is equal to or less than the price fixed or approved by the Government;"

This clause took effect from 1-4-2016 and accordingly applied to assessment year 2016-17 and subsequent assessment years. The issue of treatment of additional payment for sugarcane price by Co-operative sugar mills as an income distribution to farmer members and the resultant tax liabilities has been brought to the notice of the Central Board of Direct Taxes . The matter has been examined by the Board and in this regard, it is clarified that the phrase 'price fixed or approved by the Government' in clause (xvii) in sub-section (1) of section 36 of the Act includes price fixation by State Governments through State-level Acts/Orders or other legal instruments that regulate the purchase price for sugarcane, including State Advised Price, which may be higher than the Statutory Minimum Price / Fair and Remunerative Price fixed by the Central Government.



2.Guidelines under section 10(23FE) regarding exemption to sovereign wealth funds and pension funds: The CBDT vide Circular No.19 of 2021 dated 26.10.2021 has given guidelines in respect of exemption under section 10(23FE) in the case of sovereign wealth funds and pension funds in respect of income in the nature of dividend, interest and long-term capital gains arising from investment in infrastructure in India made between 1-4-2020 and 31-3-2024 subject to fulfilment of certain conditions. The Finance Act, 2021, *inter alia*, inserted seventh proviso to clause (23FE) of section 10 of the Act to provide that in case the specified fund has loans or borrowings, directly or indirectly, for the purposes of making investment in India, such fund shall be deemed to be not eligible for exemption under this clause. In this regard, concerns have been raised in regard to the term 'indirectly' used in the said proviso of the clause (23FE) of section 10 of the Act that it is not defined and no clarity has been provided thereon under the extant provisions. Further, concerns have been raised that if the specified fund or its holding entity or any other entity in the chain of holding or any associate thereof (hereinafter referred to as "group concern") has any loans or borrowings, the specified fund may be ineligible to get the exemption under the said clause. First proviso to clause (23FE) of section 10 of the Act provides that if any difficulty arises regarding interpretation or implementation of the provisions of this clause, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

In exercise of the powers under this proviso, Board, with the approval of the Central Government, hereby issues the following guidelines:

In order to remove the above difficulties mentioned above of these guidelines, it is hereby clarified that eligibility of exemption under clause (23FE) of section 10 of the Act shall be as follows: –

- (a) if the loans and borrowings have been taken by the specified fund or any of its group concern, specifically for the purposes of making investment by the specified fund in India, such fund shall not be eligible for exemption under clause (23FE) of section 10 of the Act; and
- (b) if the loans and borrowings have been taken by the specified fund or any of its group concern, not specifically for the purposes of making investment in India, it shall not be presumed that the investment in India has been made out of such loans and borrowings and such specified fund shall be eligible for exemption under clause 23(FE) of section 10 of the Act, subject to the fulfilment of all other conditions under the said clause, provided that the source of the investment in India is not from such loans and borrowings.

3. Press Release to explain Annual Information Statement (AIS) for n general guidance: The CBDT vide Press release dated 01.11.2021 has given a general introduction and guidance regarding rollout of new AIS. Income Tax Department has rolled out the new Annual Information Statement (AIS) on the Compliance Portal which provides a comprehensive view of information to a taxpayer with a facility to capture online feedback. The new AIS can be accessed by clicking on the link "Annual Information Statement (AIS)" under the "Services" tab on the new Income tax e-filing portal (<https://www.incometax.gov.in>) The display of Form 26AS on TRACES portal will also continue in parallel till the new AIS is validated and completely operational.

The new AIS includes additional information relating to interest, dividend, securities transactions, mutual fund transactions, foreign remittance information etc. The reported information has been processed to remove duplicate information. Taxpayer will be able to download AIS information in PDF, JSON, CSV formats.

If the taxpayer feels that the information is incorrect, relates to other person/year, duplicate etc., a facility has been provided to submit online feedback. Feedback can also be furnished by submitting multiple information in bulk. An AIS Utility has also been provided for taxpayers to view AIS and upload feedback in offline manner. The reported value and value after feedback will be shown separately in the AIS. In case the information is modified/denied, the information source may be contacted for confirmation.



A simplified Taxpayer Information Summary (TIS) has also been generated for each taxpayer which shows aggregated value for the taxpayer for ease of filing return. TIS shows the processed value (i.e. the value generated after de-duplication of information based on pre-defined rules) and derived value (i.e. the value derived after considering the taxpayer feedback and processed value). If the taxpayer submits feedback on AIS, the derived information in TIS will be automatically updated in real time. The derived information in TIS will be used for pre-filing of Return (pre-filing will be enabled in a phased manner).

Taxpayers should remember that Annual Information Statement (AIS) includes information presently available with the Income Tax Department. There may be other transactions relating to the taxpayer which are not presently displayed in Annual Information Statement (AIS). Taxpayers should check all related information and report complete and accurate information in the Income Tax Return.

The taxpayers are requested to view the information shown in Annual Information Statement (AIS) and provide feedback if the information needs modification. The value shown in Taxpayer Information Summary (TIS) may be considered while filing the ITR. In case the ITR has already been filed and some information has not been included in the ITR, the return may be revised to reflect the correct information.

In case there is a variation between the TDS/TCS information or the details of tax paid as displayed in Form 26AS on TRACES portal and the TDS/TCS information or the information relating to tax payment as displayed in AIS on Compliance Portal, the taxpayer may rely on the information displayed on TRACES portal for the purpose of filing of ITR and for other tax compliance purposes.

Taxpayers may refer to the AIS documents (AIS Handbook, Presentation, User Guide and FAQs) provided in "Resources" section or connect with the helpdesk for any queries through "Help" section on the AIS Homepage.

4. Authorisation to specified officer for additional information to be uploaded in TRACES in the light of AIS: The CBDT in exercise of the powers conferred under section 285BB read with rule 114-I(2) vide order F.No.225/155/2020/ITA-II dated 26.10.2021 has authorized DGIT (Systems) to upload information relating to following sources, which is in her/his possession, in the Annual Information Statement in Form 26AS in the electronic filing account registered by the assessee in designated portal, within three months from the end of the month in which the information is received by her/him: (i) Foreign remittance information reported in Form 15CC; (ii) Information in Annexure II of the 24Q TDS Statement of the last quarter; (iii) Information in ITR of other taxpayer; (iv) Interest on Income Tax Refund; (v) information in Form 61/61A where PAN could be populated; (vi) Off-Market Transactions Reported by Depository/ Registrar and Transfer Agent (RTA); (vii) Information about dividend of mutual fund reported by Registrar and Transfer Agent (RTA); and (viii) Information about purchase of mutual fund reported by Registrar and Transfer Agent (RTA). The Director General of Income-Tax (Systems) shall specify the procedures, formats and standards for the purposes of uploading the information referred to in para above in Annual Information Statement in Form 26 AS.

5. Bandwidth for variation between ALP and price of international transaction notified for tolerance range: The CBDT in exercise of the powers conferred by third proviso to section 92C(2) has notified through Notification No.4586(E) dated 29.10.2021 for the variation limit between ALP and international transaction in respect of wholesale trade and other transactions. Where the variation between the arm's length price determined under section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed 1% of the latter in respect of wholesale trading and 3% of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for Assessment Year 2021-22.



*Explanation.*—For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:—

- (i) purchase cost of finished goods is eighty per cent. or more of the total cost pertaining to such trading activities; and
- (ii) average monthly closing inventory of such goods is ten per cent. or less of sales pertaining to such trading activities.

6. E-Settlement Scheme, 2021 notified: The Central Government in exercise of the powers conferred by section 245D(11) and section 245D(12) has notified E-Settlement Scheme vide Notification No.4584 dated 01.11.2021. The salient features of the scheme are given below:

Short title and commencement.

1(1) This Scheme may be called the e-Settlement Scheme, 2021.

(2) It shall come into force on the date of its publication in the Official Gazette.

Definitions.

2. (1) In this Scheme, unless the context otherwise requires,—

- (a) "Act" means the Income-tax Act, 1961 (43 of 1961);
- (b) "addressee" shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (c) "applicant" means the assessee who had filed an application under section 245C of the Act and such application is a pending application;
- (d) "authorised representative" shall have the same meaning as assigned to it in sub-section (2) of section 288 of the Act;
- (e) "automated allocation system" means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to eliminate discretion and optimise the use of resources;
- (f) "computer resource" shall have the same meaning as assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (g) "computer system" shall have the same meaning as assigned to it in clause (l) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (h) "designated portal" means the web portal designated as such by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be;
- (i) "digital signature" shall have the same meaning as assigned to it in clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (j) "electronic mode" means any communication by way of an e-mail, video-telephony or video conferencing or any other electronic media;
- (k) "electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (l) "email" or "electronic mail" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device



including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;

- (m) "e-Settlement" means the settlement where proceedings are conducted electronically;
- (n) "Interim Board" means the Interim Board for Settlement constituted by the Central Government under section 245AA of the Act;
- (o) "pending application" shall have the meaning as assigned to it in clause (eb) of section 245A of the Act;
- (p) "registered e-mail address" means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including—
  - (i) the email address available in the electronic filing account of the addressee registered in the designated portal; or
  - (ii) the e-mail address available in the last income-tax return furnished by the addressee; or
  - (iii) the e-mail address available in the Permanent Account Number database relating to the addressee; or
  - (iv) in the case of addressee being an individual who possesses the Aadhaar number, the email address of addressee available in the database of Unique Identification Authority of India; or
  - (v) in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or
  - (vi) any e-mail address made available by the addressee to the income-tax authority or any person authorised by such authority;
- (q) "settlement" means the settlement under Chapter XIX-A of the Act;
- (r) "Rules" means the Income-tax Rules, 1962;
- (s) "video conferencing or video telephony" means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.

(2) Words and expressions used herein and not defined but defined in the Act shall have the meaning respectively assigned to them in the Act.

Scope of the Scheme.

3. This Scheme shall be applicable to pending applications in respect of which the applicant has not exercised the option under sub-section (1) of section 245M of the Act and which has been allotted or transferred by Central Board of Direct Taxes to an Interim Board.

Interim Board.

4. (1) The Interim Board shall conduct e-settlement of pending applications allocated or transferred to it under paragraph 3, in accordance with the provisions of this Scheme.

(2) The Interim Board shall have such income-tax authority, ministerial staff, executive or consultant to assist the members of the Interim Board, as considered necessary by Central Board of Direct Taxes.

Allocation of pending applications.

5. The Principal Director General of Income-tax (Systems) or the Director General of Income tax (Systems), as the case may be, shall, with the approval of Central Board of Direct Taxes, devise a process to randomly allocate or transfer the pending applications, referred to in paragraph 3, to the Interim Boards.



Procedure for settlement.

6. The procedure for settlement of pending applications allotted or transferred to an Interim Board shall be as per the following, namely:—

- (i) the Interim Board shall intimate the applicant about the allocation or transfer, as the case may be, of his case to it;
- (ii) the Interim Board may call for the records from the Principal Commissioner or the Commissioner and may forward the necessary information, document, evidence, report and additional facts referred to in paragraph 7 to the Principal Commissioner or the Commissioner and direct it to make or cause to be made further enquiry or investigation and furnish a report in accordance with and within the time allowed under sub-section (3) of section 245D of the Act;
- (iii) where the Principal Commissioner or the Commissioner fails to furnish the report as referred to in clause (ii), within the time, the Interim Board may proceed to pass the order under sub-section (4) of section 245D of the Act, without waiting for that report;
- (iv) where the report as referred to in clause (ii) has been furnished by the Principal Commissioner or the Commissioner, the Interim Board shall forward such report to the applicant and request the applicant to submit written response to such report within the date and time specified or such extended date and time as may be allowed on the basis of an application made in this behalf;
- (v) where the applicant fails to furnish the response as referred to in clause (iv) within the specified time, or within the extended time, the Interim Board may proceed to pass the order under subsection (4) of section 245D of the Act, without waiting for that response;
- (vi) the opportunity referred to in sub-section (4) of section 245D of the Act shall be provided by the Interim Board through video conferencing or video telephony;
- (vii) the Interim Board shall before providing opportunity referred to in clause (vi), forward the response referred to in clause (iv), if received from the applicant, to the Principal Commissioner or the Commissioner;
- (viii) an authorised representative appearing for the applicant at the time of hearing of an application shall file before the commencement of the hearing a document authorising him to appear for the applicant and if he is a relative of the applicant, the document shall state the nature of his relationship with the applicant, or if he is a person regularly employed by the applicant, the capacity in which he is employed at that point in time;
- (ix) the Interim Board may, on such terms as it thinks fit and at any stage of the proceedings, adjourn the hearing of the application or any matter arising therefrom;
- (x) after hearing the applicant and the Principal Commissioner or the Commissioner, through video conferencing or video telephony, and after examination of all the information, document, record, report and evidence with it, the Interim Board shall pass order under sub-section (4) of section 245D of the Act;
- (xi) the order passed under clause (x) shall be delivered to the applicant vide the registered e-mail address along with a copy to the Principal Commissioner or the Commissioner;
- (xii) the order passed under clause (x) may be rectified by the Interim Board under sub-section (6B) of section 245D of the Act either *suo motu* or on an application made by the applicant or the Principal Commissioner or the Commissioner;
- (xiii) the provisions of Chapter XIX-A of the Act shall *mutatis mutandis* apply to pending applications allotted or transferred, to the Interim Boards.



Verification of additional facts.

7. Where in the course of any proceedings before the Interim Board any facts not contained in the settlement application (including the annexure and the statements and other documents accompanying such annexure) are sought to be relied upon, they shall be submitted to the Interim Board in writing and shall be verified in the same manner as provided for in the settlement application.

Proceedings not open to the public.

8. The proceedings before the Interim Board shall not be open to the public and no person (other than the applicant, his employee, the concerned officers of the Interim Board or the Income-tax authority or the authorised representatives) shall, without the permission of the Interim Board, remain present during such proceedings, even on video conferencing or video telephony.

Communication on behalf of the Interim Board.

9. (1) The opportunity for hearing through video conferencing or video telephony shall be facilitated by any Income-tax Authority as authorised by the Interim Board, who will provide the link and password to the applicant and concerned parties in advance.

(2) All communication of the Interim Board inward and outward shall be carried out by any Income-tax Authority as authorised by the Interim Board.

Communication exclusively by electronic mode.

10. (1) For the purposes of this Scheme,—

- (a) all communications between the Interim Board and the applicant, or his authorised representative, shall be exchanged by electronic mode;
- (b) all communications between the Interim Board and the Principal Commissioner or the Commissioner shall be exchanged by electronic mode:

Provided that any application received in a mode other than electronic mode by the Interim Board may be forwarded to the Principal Commissioner or the Commissioner electronically, to the extent technologically feasible.

- (c) every notice or order or any other electronic communication under this Scheme from the Interim Board shall be delivered to the addressee, being the applicant by sending an e-mail to the registered email address of the applicant or his authorised representative;
- (d) the applicant or the authorised representative shall file his response to any notice or order or any other electronic communication, under this Scheme, to the Interim Board through his registered email address; and
- (e) the Principal Commissioner or the Commissioner shall file his response to any notice or order or any other electronic communication, under this Scheme, to the Interim Board through official electronic mail facility.

Authentication of electronic record.

11. For the purposes of this Scheme, an electronic record shall be authenticated by the--

- (i) the Interim Board, the Principal Commissioner or the Commissioner, by affixing its digital signature;
- (ii) the applicant or his authorised representative, by affixing his digital signature if he is required under the Rules to furnish his return of income under digital signature, and in any other case, by communicating through his registered e-mail address.

No personal appearance before the Interim Board.

12. (1) The applicant shall not be required to appear either personally or through authorised representative in connection with any proceedings under this Scheme before the Interim Board or before any Income-tax Authority or ministerial staff posted with the Interim Board.

(2) Central Board of Direct Taxes shall establish suitable facilities for video conferencing including telecommunication application software which supports video telephony at such locations as may be necessary, so as to ensure that the applicant, or his authorised representative, is not denied the benefit of this Scheme merely on the ground that such applicant or his authorised representative, or any other person does not have access to video conferencing at his end.



Language of the Interim Board.

13. (1) All pleadings before the Interim Board may, at the option of the applicant, be in Hindi or in English.

(2) All orders and other proceedings of the Interim Board may, at the option of the Interim Board, be in Hindi or in English

Publication of orders of the Interim Board.

14. The Interim Board, at its discretion, direct the publication of orders or portions containing the rulings of the Interim Board with such modifications as to names and other particulars therein, as it may deem fit.

## Information Technology

Contributed by: CA. Deephika S, Chennai

Information Technology Bulletin – November 2021

This section of updates will provide you updates on the following.

1. Solana Blockchain, aka Ethereum (ETH) Killer.
2. Nanoantenna that will enhance the utility of quantum repeater technology currently under development for advanced communication and data storage.
3. Summary of Evolution of 5G.
4. Updates on RBI's Digital Currency

1.Solana officially launched in March 2020. Its founder, Anatoly Yakovenko, designed Solana to support smart contracts and the creation of decentralized applications, or dapps.

The blockchain operates on both a proof of history (PoH) and proof of stake (PoS) model. PoS allows validators to verify transactions according to how many coins they hold, while PoH allows for those transactions to be timestamped and verified more quickly, Yakovenko wrote in the Solana white paper.

The cryptocurrency has grown about 16,000 percent since January. At the start of this year, one SOL cost \$1.51 (roughly ₹ 112) and Solana's market cap was around \$86 million (roughly ₹ 639 crores). Today, it is trading around \$241 (roughly ₹ 17,900) and has gained a market capitalisation of \$73 billion (roughly ₹ 54 lakh crores), according to CoinMarketCap.

A key measure of the battle between Ethereum and its competitors is the number of projects running on each network. While Ethereum has the first-mover advantage, its competitors, including Solana, are catching up. Solana reportedly has over 350 projects in its ecosystem.

Bloomberg considers Solana to be "a potential long-term rival for Ethereum"

CRITERIA	SOLANA	ETHEREUM
Transactions per second	65,000	15
Avg fees per transaction	\$ 0.0015	\$ 15
Transaction latency	0.4 seconds	~5minutes
Number of validators	702	11,000 +
Total transactions so far	41 Billion	1.2 Billion

2.Researchers have improved the transfer efficiency between quantum information carriers, in a manner that's based on well-established nanoscience and is compatible with upcoming advanced communication technologies



Information storage and transfer in the manner of simple ones and zeros as in today's classical computer technologies is insufficient for quantum technologies under development. Now, researchers from Japan have fabricated a nanoantenna that will help bring quantum information networks closer to practical use.

In a study recently published in *Applied Physics Express*, researchers from Osaka University and collaborating partners have substantially enhanced photon-to-electron conversion through a metal nanostructure, which is an important step forward in the development of advanced technologies for sharing and processing data.

Classical computer information is based on simple on/off readouts. It's straightforward to use a technology known as a repeater to amplify and retransmit this information over long distances.

Quantum information is based on comparatively more complex and secure readouts, such as photon polarization and electron spin. Semiconductor nanoboxes known as quantum dots are materials that researchers have proposed for storing and transferring quantum information. However, quantum repeater technologies have some limitations -- for example, current ways to convert photon-based information to electron-based information are highly inefficient. Overcoming this information conversion and transfer challenge is what the researchers at Osaka University aimed to address.

"The efficiency of converting single photons into single electrons in gallium arsenide quantum dots -- common materials in quantum communication research -- is currently too low," explains lead author Rio Fukai. "Accordingly, we designed a nanoantenna -- consisting of ultra-small concentric rings of gold to focus light onto a single quantum dot, resulting in a voltage readout from our device."

3.5G is the 5th generation mobile network. It is a new global wireless standard after 1G, 2G, 3G, and 4G networks. 5G enables a new kind of network that is designed to connect virtually everyone and everything together including machines, objects, and devices. Up to 100 times faster than 4G, 5G is creating never-before-seen opportunities for people and businesses.

5G wireless technology is meant to deliver higher multi-Gbps peak data speeds, ultra low latency, more reliability, massive network capacity, increased availability, and a more uniform user experience to more users. Higher performance and improved efficiency empower new user experiences and connects new industries.

5G is based on OFDM (Orthogonal frequency-division multiplexing), a method of modulating a digital signal across several different channels to reduce interference. 5G uses 5G NR air interface alongside OFDM principles. 5G also uses wider bandwidth technologies such as sub-6 GHz and mmWave.

Like 4G LTE, 5G OFDM operates based on the same mobile networking principles. However, the new 5G NR air interface can further enhance OFDM to deliver a much higher degree of flexibility and scalability. This could provide more 5G access to more people and things for a variety of different use cases.

5G will bring wider bandwidths by expanding the usage of spectrum resources, from sub-3 GHz used in 4G to 100 GHz and beyond. 5G can operate in both lower bands (e.g., sub-6 GHz) as well as mmWave (e.g., 24 GHz and up), which will bring extreme capacity, multi-Gbps throughput, and low latency.

4. The Reserve Bank of India's digital currency may see its pilot launch in the first quarter of the next fiscal year, a senior central bank officer said at the State Bank of India's Banking and Economic Conclave as reported by a local newspaper.

"I think somewhere it was said that at least by the first quarter of next year a pilot could be launched. So we are bullish on that," the *Business Standard* newspaper quoted P. Vasudevan, chief general manager at the Department of Payment & Settlement of the RBI as having said.

Central bank digital currencies, or (CBDCs) are digital or virtual currencies are basically the digital version of fiat currencies, for India that would be its domestic currency rupee.

"The central bank is also checking if intermediaries can be bypassed altogether, and most importantly, checking if the technology should be decentralized or should be semi-centralised," the RBI CGM said.

The RBI has repeatedly raised concerns over cryptocurrencies posing macro-economic and financial stability risks.



## Karnataka VAT-GST

Contributed by: CA. Annapurna D Kabra, Bengaluru

### Retrospective Amendments- GST Law

A statute which takes away or impairs vested rights acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect of transaction already past alone is called a Retrospective legislation.

The Government has the power to make the retrospective amendment. If there is inherent power in law, then the legislation can amend the law retrospective. Section 164 of CGST Act shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of the Act came into force. Section 168A deals with power of Government to extend time limit in special circumstances. The power to issue notifications shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

The principle of legal presumptions states that all laws will apply prospectively. The general rule is that a statute is *prima facie* prospective and that no retrospective effect is to be given to it unless by express words or necessary implication it appears that this was the intention of the Legislature. This does not apply to a statute concerned with matters of procedure. In simple terms, a procedural law is to be given retrospective effect in the absence of a clear indication that it was not the intention of the legislature. The power to retrospective is very inherent in nature. If the clarification is curative in nature and for the benefit of assessee, then it can be treated as retrospective.

The retrospective amendments can be struck down if such amendment creating any unreasonable restrictions which violate the right to carry on business or the right to hold and dispose of the property. The instant case of retrospective amendment shall pass through the judicial test. The Hon'ble SC in *Eicher Motors Ltd. v. UOI* (S.C.) held that accrued Input Tax Credit is vested right and cannot be taken by the retrospective amendment. It is not that every substitution of original provision leads to retrospective amendment, but one can gather that the substitution can be read retrospectively. If the words used in amendment statute is due to mischief or lacuna there is the power under the GST law.

In the case of *WNS Global Services (P) Ltd. - 2008 (10) S.T.R. 273* (Tri.-Mumbai) wherein Hon'ble Tribunal held that the alleged omission cannot be considered as an obvious mistake in printing/drafting, nor can the amended provisions be considered to be clarificatory in nature and cannot therefore have retrospective effect.

It is also settled law that retrospective amendment specifying the new law of limitation cannot suddenly extinguish the vested right of action by providing for a shorter period of limitation.

The Author highlights the retrospective relevant amendments under the GST law.

#### 1. Interest- Retrospective Amendments (Section 50(1)):

The matter was under litigation as whether interest should be paid on gross tax liability basis or net tax liability basis. Generally, the taxpayer reduces the eligible credit from the output tax and pay the tax on net tax liability basis. The department contended that interest should be charged on gross tax liability basis. The Proviso under section 50(1) is amended retrospectively vide Finance Act 2021 and shall deemed to have been substituted with effect from 1<sup>st</sup> day of July 2017 to charge interest on net tax liability. This may expectedly lay to rest all such redundant litigations on interest liabilities under GST. It has saved the taxpayers who has paid taxes on net tax liability basis. There are certain scenario's where interest is payable on gross tax liability basis or net tax liability basis and such retrospective amendment is made applicable to tax payable on net tax liability basis accordingly. The taxpayers who have already paid interest on gross tax liability basis where they were liable to pay on net tax liability basis can apply for refund of differential interest.

#### 2. 'Interest on deposits' (Rule 42)

Notification No. 03/2018 Central Tax dated 23.01.2018 provides that for the purpose of Rule 42 of the CGST Rules, 2017 'Interest on deposits' shall not be considered as exempt supply. Is this explanation retrospective or prospective? The general rule of interpretation is that a notification would be effective from the date it is issued in the official gazette. The notification employs the term 'it is hereby clarified' and further this amendment is made by way of explanation. Both these amendments could point towards retrospective amendment. It has been stated in certain judicial pronouncements that a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. An Explanation to a statutory provision may fulfil



the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section. If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force. If it changes the law, it is not presumed to be retrospective irrespective of the fact that the phrase used are 'it is declared' or "for the removal of doubts". In the impugned case, the explanation is not seeking to clear the ambiguity in the main rule. The main rule states that credit on exempt service must be reversed and since interest on loan was exempt, corresponding credit attributable ought to have been reversed. Hence there is no scope for ambiguity as the law existed prior to insertion of explanation. The explanation is seeking to 'reduce the quantum of reversal'. The explanation is seeking to change the law by stating that even though exempt service is received, the credit need not to be reversed. The explanation is creating an exception to the main rule. Hence the explanation must be read as prospective in nature, though the word clarified is used. Hence depending on the context, certain Explanations will apply retrospectively (which are clarificatory in nature) whereas certain Explanations (which expand the scope) will apply only prospectively from the date they are notified

### 3. Definition of Supply- Second Schedule:

There is retrospective amendment in section 7(1) (d) of the CGST Act 2017. which is applicable from 01.7.2017. Since such sub section was part of scope of supply there was an interpretation that whether the activities specified in schedule II tantamount to supply even though it is made without consideration like Entry 4(b) which has been retrospectively amended vide 01.7.2017. Therefore, to remove this anomaly, vide amendment, the clause (d) s deleted and inserted by sub section 7(1A) of CGST Act 2017. Therefore, vide amendment, the activities referred under schedule II are only for the purpose of classification as to whether the said activities shall be regarded as supply of goods or as supply of services. There is also retrospective addition of the term 'transactions in the heading of the schedule II, as it includes the activities and transactions listed therein.

### 4. Transitional Credit

Notification No. 43/2020-C.T., dated 16-5-2020 was issued notifying the effect of Retrospective Amendment in section 140 which inserted the words 'within such time' (w.e.f. 1-7-2017). The consequence of the amendment is that the government has the power to prescribe the time-limit for claiming transitional credit through the rules. The retrospective amendment in section 140(1) attempts to remove the benefits granted by courts with respect to restricted time limit for availment of input tax credit. The courts have decided that the time limit prescribed under Rule 117 is directory and not mandatory. It is challenged before the Courts on the constitutionality of the retrospective amendments.

The CENVAT credit of cess was lying unutilised under the earlier regime and was allowed to be transferred under the GST regime. The transitional arrangement for taking input tax credit in the case of cess has been taken away by a retrospective amendment in the GST law. The appellant accordingly reversed the credit and filed a refund claim. The refund was rejected on the ground of time bar. It can be argued on the contention that date of notifying the retrospective amendment can be the relevant date for determining the time limit based on the decision of *Sunrays Engineers Pvt limited Vs Commissioner - 2015(318) ELT 583 (SC)*.

### 5. GSTR 3B- Return

The Honorable High Court in the case of *AAP and Co Vs Union of India 2019 ITL(GST) 687* wherein it is held that GSTR 3B is not a return as per section 39 of the CGST Act 2017. The Government recognized the error and consequence to the judgement the retrospective amendment was given to Rule 61(5) of the CGST Rules 2017. Consequently, the input tax credit unclaimed but subsequently claimed based on the Gujrat High Court judgement will suffer challenges. The rights relating to claim of input tax credit is challenged in constitutional forum.

### 6. Input Tax Credit- Service

Rule 89(5) originally provided for refund of Input Tax credit paid both on inputs and input services, but it was amended with retrospective effect to restrict refund only to input tax credit availed on input goods. This was subject matter of challenge, and it was upheld by Gujrat High Court (*VKC Footsteps India Pvt Ltd Vs Union of India*) and but Madras High Court (*Tvl. Transtonnelstroy Afcons Joint venture Vs Union of India*) dismissed the challenge to the provisions and restricted the claim of refund under Inverted duty structure to inputs alone. The Supreme Court in case of *Union of India & Ors. Vs VKC Footsteps India Pvt Ltd 2021* affirmed the Madras HC judgement restricting the refund of unutilized input tax credit only to input goods in cases of inverted duty structure.



There are various amendments which is yet to be notified like section 7 section 16(2) (aa)..... Section 7 of CGST Act has been amended by Finance Act, 2021 to expressly include the activities or transactions of clubs and associations to its members within the scope of supply with retrospective effect which is not yet notified. Even section 16(2) (aa) is yet to be notified which may not be a retrospective amendment therefore whether GSTR 2A/GSTR2B reconciliation is to be done prior to this date of amendment will be a matter of challenge if such amendment is prospective in nature. The retrospective operation should not be given to a statute to take away or impair an existing right. In many instances, the retrospective amendments to GST law will either deny the benefits granted to assessee or overturn the court judgements. As per the settled legal principles, Parliament is empowered to make the retrospective amendment with respect to provisions beneficial to the taxpayers. No retrospective amendment can be made which restricts the rights of the taxpayers. Therefore, the Author believes that any retrospective amendments should not be made which impacts the taxpayer's rights.

## **Tamil Nadu VAT**

**Contributed by: CA. V.V. Sampath Kumar, Chennai**

### Recent Judgments in VAT CST GST

**Objections :** The Impugned orders being orders dated 23.10.2020 for 2013-14 and dated 31.08.2021 for 2014-15 are set aside solely on the ground that it proceeds on the basis that writ petitioner/dealer has not filed objections, whereas objections in fact have been filed and the same have been duly acknowledged by respondent; Tvl.South India Engg Corpn Vs. AC (ST), Broadway Assessment Circle, Chennai-3. W.P.Nos.21588 & 21591 of 2021 DATED: 06.10.2021

**C forms :** The photocopies of C Forms cannot be accepted but duplicates of the originals have to be obtained by giving an indemnity to earn and grant the concession in rate of CST.M/s.Coimbatore Popular Spinnings Mills Ltd., Vs AC (ST), Rural I Tiruppur, W.P.No.19222 of 2021 DT: 07.10.2021

**Penalty :** As regards the dispute relating to levy of penalty, this Court carefully considered Section 16(2) of TNGST Act, in the light of the oft-quoted Sri Ram Packages case law rendered by a Hon'ble Division Bench of this Court. This oft quoted case law makes it clear that penalty can be imposed in cases of escaped turnover assessment also but that will be limited to cases where best judgment method is adopted and not in cases where Section 16 assessment is made by placing reliance on the accounts furnished by the dealer and hence, the impugned order is set aside. M/s.Eureka Systems and Electrodes (P) Ltd., Coimbatore. Vs AC (ST), Palladam-2 Assessment Circle, W.P.No.22074 of 2021 DT : 22.10.2021

**Reasonable opportunity:** The impugned order being order dated 15.07.2021 bearing reference CST 642012/2014~2015 is set aside solely on the ground that the writ petitioner has not been given an opportunity to show cause, much less a reasonable opportunity to show cause before the impugned order was made; M/s.Vetal Textiles Electronic Vs AC (ST) (FAC), P.N.Palayam Circle, Coimbatore. W.P.No.21975 of 2021 DT : 20.10.2021

**Alternative remedy :** Alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. Tvl.F.M.Sales & Marketing, Vs STO, Vallalar Nagar Assessment Circle, Chennai-3 W.P.No.21643 of 2021 DT: 06.10.2021

**Penalty :** As regards the dispute relating to levy of penalty, this Court carefully considered Section 16(2) of TNGST Act, in the light of the oft-quoted Sri Ram Packages case law rendered by a Hon'ble Division Bench of this Court. This oft quoted case law makes it clear that penalty can be imposed in cases of escaped turnover assessment also but that will be limited to cases where best judgment method is adopted and not in cases where Section 16 assessment is made by placing reliance on the accounts furnished by the dealer and hence, the impugned order is set aside. M/s.Eureka Systems and Electrodes (P) Ltd., Coimbatore. Vs AC (ST), Palladam-2 Assessment Circle, W.P.No.22074 of 2021 DT : 22.10.2021



GST registration : Writ petitioner submits that, somebody has misused Aadhar and PAN cards of writ petitioner and got fake registration saying business has been carried on in the name and style of MMM Enterprises. This Court is of the view that owing to the nature of the stand taken by the writ petitioner and noticing that a criminal complaint has been lodged by the writ petitioner and investigation is under-way, it would only be appropriate to set aside the impugned order without expressing any view or opinion on the merits of the matter, leaving it open to respondents to proceed afresh either against writ petitioner or any other entity or person depending on the outcome of investigation that is under-way qua alleged misuse of writ petitioners' Aadhar and PAN cards to obtain a fake registration. Manisha Arunraj Vs (1) CCT (GST), Chennai-5. (2). STO, Group II / Inspection, Intelligence Chennai-6. W.P.No.22536 of 2021 DT : 26.10.2021

Writ of Mandamus: WP filed under Article 226 of the Constitution praying to issue a Writ of Mandamus, directing the respondent to extend the time till 30.11.2021 to enable the petitioner to obtain and file the balance C forms and export documents in respect of the assessment years 2014-2015 and 2015-2016 under the CST Act as requested in the letter dated 10.08.2021. The writ petitioner abridges and restricts the prayer to Mandamus the lone respondent to consider and dispose of writ petitioners' representation dated 10.08.2021. The main WP is disposed of with a simple Mandamus/directive to lone respondent to consider the writ petitioner-s representation dated 10.08.2021 on its own merits and in accordance with law expeditiously. M/s. India Pistons Ltd., Vs. AC(ST) (FAC) Villivakkam Assessment Circle, Chennai. W.P.No.21787 of 2021 DT: 20.10.2021

Export Documents: This Court, in the earlier WP, gave an opportunity to establish that he is entitled for the benefit under the export documents already filed and remitted the matter back to the respondent. One error qua impugned order is that the respondent in the impugned order has again held that dealer has not produced any documentary evidence, though the documentary evidence is already before the respondent and this Court has captured this factum in the earlier order and sent the matter back to respondent for considering the same. Stating so, the impugned order is set aside and remanded. M/s.Phoenix Medical Systems Pvt. Ltd Vs. AC (ST) (FAC), K.K.Nagar Assessment Circle, W.P.No.21690 of 2021 DT: 07.10.2021

Personal hearing is statutorily imperative: "A reasonable opportunity of being heard" occurring in this proviso to section 22 (4) and the expression "a reasonable opportunity to show cause" occurring in the common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act was considered in the case of SBIOA (CC) Vs. AC, Chennai-1 vide order dt 01.08.2019 in W.P.No.22634 of 2019 and held that for assessment u/s 27 of TNVAT Act, personal hearing is not statutorily imperative, it will suffice if "a reasonable opportunity to show cause" is given u/s 22(4). SBI Officers case was carried in appeal vide W.A.No.4073 of 2019 and a Hon'ble Division Bench of this Court dismissed the writ appeal vide order dated 16.12.2019. Therefore, for 22(4) proceedings personal hearing is statutorily imperative owing to the proviso. Sri Lakshmi Balaji Enterprises Vs STO, Medavakkam Assessment Circle, W.P.No.18442 of 2021 DT: 28.10.2021

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