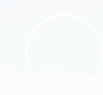




Laws related to the RWA in Tamil Nadu, Nadu, Accounts, Audit and Professional Professional Opportunity

9th November 2024
SIRC, Chennai



G Sujatha, B.Sc., CMA, FCA,LLB

Legal Journey of RWA in TN

1

25.08.1975

The Tamil Nadu Societies Registration Act, 1975.

- Promoting literary, scientific, religious, charitable

2

15.07.1983

The Tamil Nadu Co-operative Societies Act, 1983

- co-operative principles such as
 - open membership
 - democratic management
 - limited interest on capital
 - distribution of surplus based on patronage
 - co-operative education
 - self-help and mutual aid
 - better business and better living

3

06.04.1995 &
07.04.1997

The Tamil Nadu Apartment Ownership Act, 1994 & Tamil Nadu Apartment Ownership Rules, 1997

- ownership of an individual apartment in a building
- Heritable and transferable immovable property



Reasons for New Act

- “Authorities” not notified.
- Optional
- No penal provisions
- Deed of Apartment errors.
- Redevelopment
- No redressal mechanism
- RERA in 2016.
- COVID
- Repealed
- In 2022, Tamil Nadu AO Act bill was passed on 15.12.2022, and notified on 6.3.2024
- TN AO Rule is notified by Housing and Urban Development Department on 24.9.2024.

Alignment with RERA

- The definitions of “Developer” , “Promoter”
- Sec.11 of RERA
- Seamless Transfer of ownership, Occupancy certificate and formation of Association.

Applicability of TN AOA 2022

- four or more apartments
- existing & future projects
- Residential & commercial



Why builders love, owners loathe the new apartment rules

Vivek.Narayanan@timesofindia.com

The new rules governing apartments have left builders happy and residents wary. Builders hope they will make redevelopment of old buildings and day-to-day functioning of apartment complexes easier. But many residents fear some of the rules can be misused and are unhappy that a proper stakeholders' meeting was not held.

The rules, unveiled earlier this month by the housing and urban development department, for the Tamil Nadu Apartment Ownership Act say before going for redevelopment, a minimum of four apartment owners must form an association, frame bylaws and register it. And redevelopment of apartment complexes will go through if two-thirds of flat owners agree. The rules also provide for action against those who default on paying maintenance charges.

"Decision making on redevelopment will be easier," said Mohamed Ali, president, Credai Chennai. However, residents point out that the rules don't account for structurally sound buildings older than 30 years. "This leaves room for misuse, where a two-thirds majority could theoretically force redevelopment on the remaining residents, regardless of the building's actual condition. Some occupants may be retired and may not have the money to invest in the process," said V S Jayaraman of T Nagar Residents Welfare Association.

J M S Nagarajunan, general secretary of the alliance of resident welfare associations, said the 2/3rd majority rule would allow collusion for redevelopment, even if the apartment is structurally sound. "Structural stability certificate from a govt authorised firm should be made mandatory," he said. Nagarajunan, however, agreed that the 2/3rd majority

STEPS TO BE TAKEN FOR REALISATION OF MAINTENANCE

If the arrears are not paid by a member within the fixed time, the board will take appropriate steps for realisation as it may deem it fit, including prosecution of the defaulting member and withdrawal of services



Apartment Owners Fear The 2/3rd Majority Rule Can Be Misused For Redevelopment, Even If The Apartment Is Structurally Sound; Call For Rethink

KEY TAKEAWAYS FROM TN APARTMENT ACT

- > Apartment owners must establish an association, create bylaws, and register the association
- > A minimum of four apartment owners are required to form an association
- > Each association shall have a board of managers, and in the case of multiple towers in a property, the associations can form a federation, with the president and treasurer of each association serving as members



redevelopment process," said Vijaya, a resident of Royapettah.

Nagarajunan said a more detailed and clear framework, addressing the concerns of all stakeholders, is essential.

"The majority of the residents' associations were not called for the meeting. So it is not a fair representation. The rules need to be reconsidered," he said.

Harsha Koda, co-founder of FOMRRA, said the redevelopment document mentions several forms but doesn't clearly explain how they relate to each other in the overall process.

"A flowchart or diagram illustrating the sequence of form submissions and approvals would significantly improve understanding," he said.

A senior official from the housing and urban development department said they are studying the practical implementation and will address any potential issues. "Some practical issues will certainly come up as the new apartment rules are rolled out. We will also get an FAQ out soon," said the official.

PREPARATION AND PUBLICATIONS OF LIST OF DEFAULTERS

REVIEW OF REALIZATION OF COMMON EXPENSES: The Board will review the realization of common expenses at the end of each month or quarter

PUBLICATION OF DEFAULTERS' LIST: A list of defaulters will be prepared and published in the board's office, along with a notice demanding payment of arrears within seven days

ELECTRONIC NOTIFICATION: The list of defaulters will also be shared with all members through electronic means, ensuring timely notification and transparency



RESTRICTION ON CERTAIN ACTS

No owner/occupier of the apartment shall:

- > Post any advertisement or poster of any kind in or on the building comprised in such property without permission of the Board concerned
- > Make any noise or use or play musical instrument, radio, television or amplifier in such high pitch, or do any work or thing, or act or conduct himself in such way, that may reasonably cause irritation, annoyance or disturbance to any other resident or residents
- > Keep any domestic animal within the property without abiding by the relevant municipal law
- > Hang cloths and garments from windows or balconies of his apartment causing inconvenience or irritation or any annoyance to any other resident or residents
- > Throw garbage or refuse outside the dustbins provided within the common service area



- 2/3rd rule for redevelopment has raised fears on builder lobbying
- Owners who own multiple flats shall be treated as one flat



Snapshot of Act, Rules & Forms

Acts

31 Sections

Rules

32 Rules

Forms

FORM A - N

Model Bye laws

Published

Highlights of Various Provisions in the Act

Act

Carpet area, common area, common facilities, Undivided interest

4 units

Compulsory Registration

Migration

Declaration only by promoter

Federation concept

Redevelopment

Penal provisions for non compliance with byelaw

Penal provision for contravention with provisions

Appeal provisions

Insurance

Disposition of property

Accounts

Binding on Owners, tenants etc

Highlights of Various Provisions in the Rules

Rules

Submission of Declaration forms for new, existing and unregistered

Registration of Byelaws

Time limit prescribed

Constitution of Board of Managers

Redevelopment related procedures

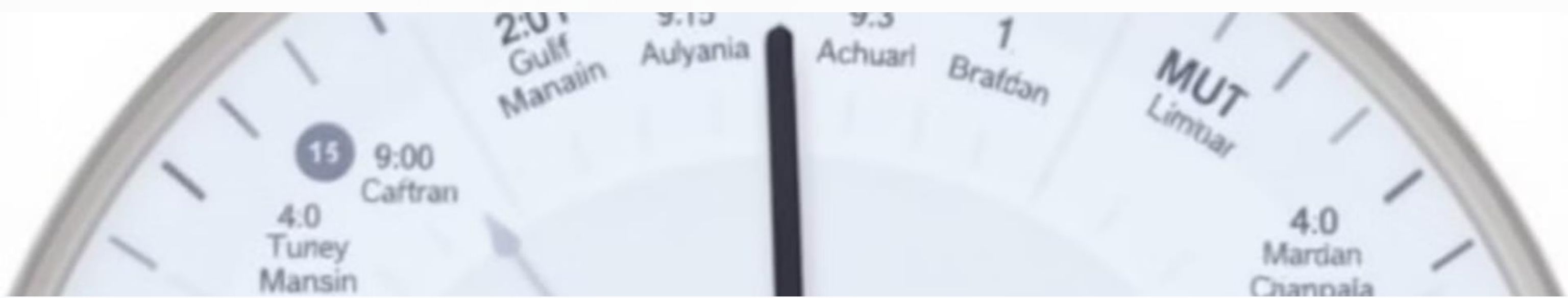
Finance and Accounts

Form and manner of filing complaint

Rate of Interest for delayed maintenance

Inspection of submitted copies of Registers by Residents

Establishment of web portal



Impact on Existing Buildings

1

With Society

Submit declaration within 180
180 days of act implementation.
implementation.

2

Without Society

Form association, submit
declaration within specified
timeframe.

3

Compliance

Ensure adherence to new act's provisions and timelines.

Key changes in compliance

- Declaration under a specific form in affidavit ,and no registration required. This procedure must be done by Developer or majority of apartment owners or an existing society only once.
- The associations are to be compulsorily registered only under this enactment.
- But the law says that once Developer has transferred common area to the owners, the apartment owners must file the Declaration
- Existing buildings and new buildings have to declare
 - Old buildings to make Declaration within 180 days (Section 4)
 - New buildings to make Declaration within 90 days of issue of completion certificate (Sec 4)
- Once the declaration is approved,
 - New buildings, the bye-laws have to be made and registered within 90 days
 - For the existing societies, once declaration is approved, the existing society details shall be submitted within 180 days
- So, the Act covers
 - existing building with society, and
 - new buildings without society

What is the status of existing buildings which are not governed by any society, and has four or more apartments ?



Comparison: 1994 vs 2022 Act

| Title | 1994 Act | 2022 Act |
|---|--|---|
| Applicability | Building having a minimum of 5 units. | Building having a minimum of 4 units. |
| Associations | Permitted to form associations under the Tamil Nadu Societies Registration Act, Co-operative Societies Act or Apartment Ownership Act. | The associations are to be compulsorily registered only under this enactment. |
| | Existence of multiple associations for each project. | Only one association is recognised for each project. |
| Deed of apartment or Declaration with respect to CAM | 'Deed of Apartment' is mandated to be filed by each apartment owner. | Only one 'Declaration' should be filed for a project by the promoter or the majority of apartment owners. |
| | No time limit prescribed. | Time limit prescribed. |

Comparison: 1994 vs 2022 Act

| | | |
|-------------------------|---|---|
| Registration | Deed of apartment to be registered under the Registration Act, 1908. | No requirement of registration of the declaration. |
| | No specific provision for non-compliance with registration requirement. | |
| Federation | No such provision exists. | The associations formed for multiple phases can join together and form a 'Federation' for effective management of the collective common areas and facilities of the project. |
| Redevelopment | No such provision exists. | Any apartment complex can be re-developed if 2/3 rd of the apartment owners are in agreement for re-developing the said building or if the appropriate authority has certified the building to be in a ruinous condition likely to endanger the occupants. |
| Penal provisions | No such provision exists. | Penal provisions prescribed for non-compliance with the provisions of the Act. |

Comparison: 2022 vs RERA

| | | |
|--------------------|--|---|
| Carpet Area | <p>means the net usable floor area of an apartment excluding the area covered by the external walls, areas under services shafts, verandah area and open terrace area, but includes the area covered by the internal partition walls of the apartment.</p> | <p>the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.</p> |
| Federation | <p>“federation” means the body formed by two or more societies or associations as per bye-laws;</p> | <p>enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable</p> |
| Promoter | <p>(i) a person who builds, constructs, develops or causes to build, construct or develop a building or an existing building or a part thereof; or</p> <p>(ii) a development authority or any other public body in respect of a building developed by such authority or body, on lands owned by it or placed at its disposal by the Government; or</p> <p>(iii) a housing society which develops buildings for its members or in respect of the allottees of such buildings.</p> | <p>(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or</p> <p>(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or</p> |



Key Changes in Compliance

| Aspect | Old Act | New Act |
|---------------------|-------------------|---|
| Declaration | Individual owners | Developer or majority owners |
| Registration | Required | Not required – Builder's responsibility |
| Timeline | Not specified | 90-180 days |

FAQ

1. If a building consists of 6 units, out of which 4 owned by a single person and other 2 by another person. Does this Act apply?
2. What is the time period for submission of Byelaws?
3. Long lease holders are now brought under the definition of apartment owners.
 1. Voting rights?
4. Tenants and employees (working in a commercial property)
 1. Bye laws are inconsistent as to the right of tenants and employees
 2. Post this act, bye laws may have to rework the provisions dealing with these class of persons .





Aspects relating to **Accounts** in **Resident Welfare Associations**

Objective of Accounting

- Objective of Accounting
 1. Transparency
 2. Integrity
 - Internally managed
 - Outsourced
 3. Control
 - Maker checker
 4. Timely Reporting
 5. Statutory Compliance



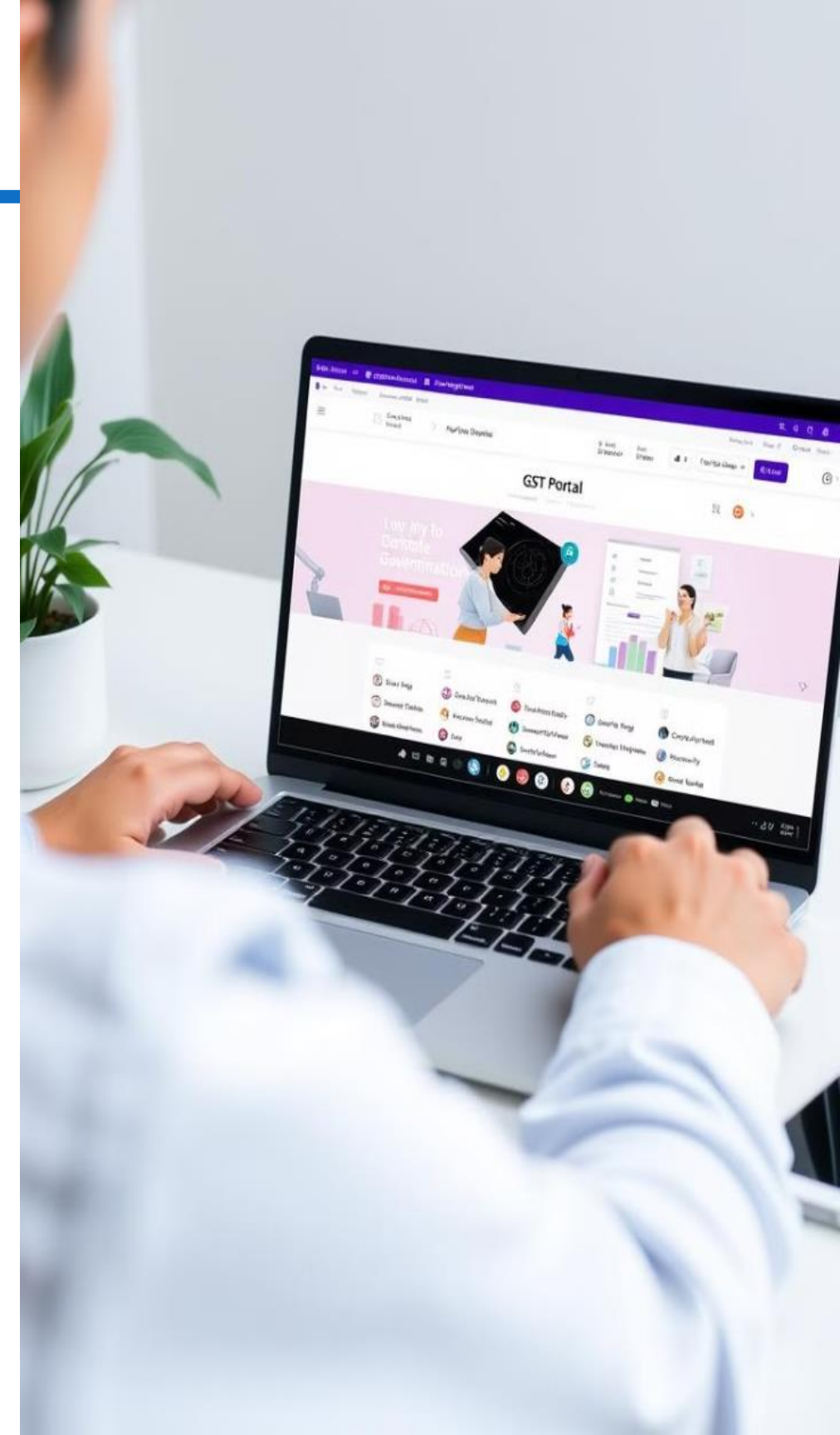
iStock
Credit: Sutad watthanakul

Best Accounting Practices

1. Book keeping
1. Documentation of SOP
2. Formulation of Accounting Policies
3. Accounting Software
 - i. Online Banking
 - i. System of Accounting
4. Mercantile system of accounting
5. Periodical Billing
6. Compliance management
7. Chart of Accounts
8. Segregation of duty
- 9 ICAI Technical Guidance Note for NPO
 - i. Preparation of Financial Statement
 - ii. Notes to Accounts
 - iii. Significant Accounting Policies

Chart of Accounts

- Member Income – CAM charges , Others
- Non-Member Income
- Other Income
- Security Services
- Garden Expenses
- Water Charges
- Electricity Charges
- Repairs and maintenance
- AMC of various assets – Lift, Gym equipment etc
- Building Insurance
- Professional services
- DG Fuel expenses
- Pest control services
- STP
- Audit fees



Records to be maintained

- Registration Certificate
- Bye Laws
- Members Register
- Minutes of Meeting Book of General, special and AGM
- Audit Reports of previous years
- Fixed Deposit Ledger
- Election related records
- Sinking fund Register
- Fixed Assets Register
- Layout Plan
- Bank Passbooks, Annual Statement Accounts, P&L reports,
- Books of Accounts
- Income tax related records
- Other Statutory records

Challenges in Accounting

- Internally managed accounts
- Incompetent Accounts team
- Manual or Hybrid
- Reconciliation mismatch
- Unorganised system of accounting heads
- Non producing of records
- Delayed Compliance
- Delayed decision making
- Non adherence to bye-laws
- Inconsistency in approach
- Delayed Reporting



Modern Practices

- MIS Report
- Publishing of Monthly Cash flow to members
- Payment Gateway Integration
- Budgeting
- Alerts on dues
- CRM
- Online-Voting
- Virtual Meetings
- AGM on Virtual Platform
- Connecting with Apartment Federation
- Mobile Apps Visitors and staff





AUDITING of Resident Welfare Associations

Scope of Audit

Verification of Transactions

- Books of Accounts
- Software integration
- Vouchers

Verification of FS

- Variance in income and Expenditure
- Reason for surplus and deficit
- Classification of Expenses

Reporting Non compliance

- Annual filing with competent authorities
- GST
- Income tax
- Secretarial practices & Governance

Detecting fraud, irregularity or fraud

- Exceptional transaction
- Staff and management collusion
- Cash transactions
- Absenteeism

Understanding Roles & Responsibilities

- Management Chart
- List of Board Managers
- List of Signatories
- Responsibility of Estate Manager
- Various Committees and approval process
- Role of Accountant

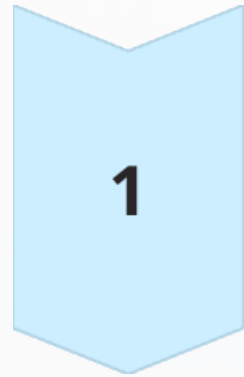


Key areas of audit

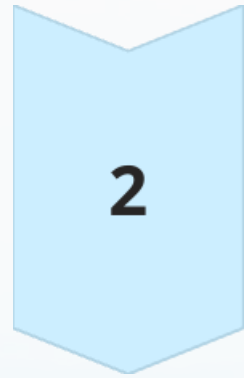
| Income | Expenses | Assets | Liabilities | Others |
|--|---|---|--|--|
| <ul style="list-style-type: none"> • Cross verification of Maintenance Income | <ul style="list-style-type: none"> • Regular Expenses with contracts | <ul style="list-style-type: none"> • Capitalisation of FA and ITC | <ul style="list-style-type: none"> • Statutory dues- Income tax, Advance tax, GST | <ul style="list-style-type: none"> • Pending legal disputes |
| <ul style="list-style-type: none"> • Cross verification of “member income-others” | <ul style="list-style-type: none"> • Utility bills with bifurcation | <ul style="list-style-type: none"> • Receivables and confirmations | <ul style="list-style-type: none"> • Payment of taxes | <ul style="list-style-type: none"> • Change in management |
| <ul style="list-style-type: none"> • Pattern of income from member, non member | <ul style="list-style-type: none"> • Classification of expenses | <ul style="list-style-type: none"> • Investments & TDS | <ul style="list-style-type: none"> • Utilisation of Sinking fund | <ul style="list-style-type: none"> • Secretarial practices |
| <ul style="list-style-type: none"> • Other income | <ul style="list-style-type: none"> • AMCs | <ul style="list-style-type: none"> • Accrued interest | <ul style="list-style-type: none"> • Sundry creditors | <ul style="list-style-type: none"> • Vendor management |

Extended Accounting support

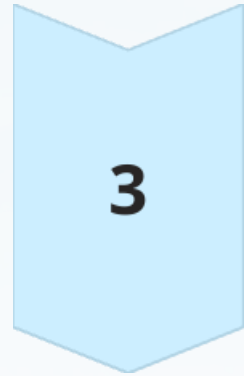
- Closure of Book entries
- BRS of all banks
- Review of GST collections and payment
- ITC reconciliation
- Treatment of R42
- Guidance for passing journal entries
- Review of non deduction of TDS
- Review of non-remittance of TDS



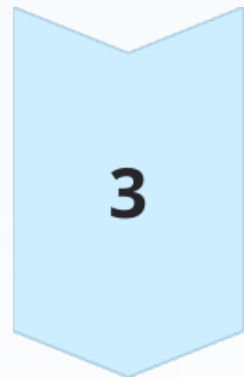
Statutory Provisions



Administrative directives



Judicial review



Best Practices



Statutory Provisions

- Sec.2(84)
 - (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
 - (i) a co-operative society registered under any law relating to co-operative societies
 - (l) society as defined under the Societies Registration Act, 1860
- Sec.7(1)(a) Supply includes
all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal
 - made or agreed to be made
 - for a consideration
 - by a person
 - in the course or furtherance of business;
- Sec.2(17)
 - (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration -The Finance Act, 2021, retrospective amendment

Statutory Provisions

- Sec.2(31) "consideration" in relation to the supply of goods or services or both includes-
 - (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
 - (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Input Tax Credit

Sec.17 Apportionment of credit and blocked credit

- (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Rule 42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof.

- (1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section(2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

Rule 43. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases.-,-

- (1) Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

Notification

- CGST (R) NN12/2017 dt.28.06.2017

| Sl. No. | Chapter, Section, Heading, Group or Service Code (Tariff) | Description of Services | Rate (per cent.) | Condition |
|---------|---|---|------------------|-----------|
| 77 | Heading 9995 | Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – (a) as a trade union; (b) for the provision of carrying out any activity which is exempt from the levy of Goods and service Tax; or (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex. | Nil | Nil |

Notification & Circular

- CGST (R) NN. 2/2018 dt.25.01.2018

against serial number 77, in the entry in column (3), in item (c), for the words “five thousand”, the words “seven thousand five hundred” shall be substituted;

Circular 109/28/2019 dt.22.7.2019, Clarification on issues related to GST on monthly subscription / contribution charged by a Residential Welfare Association from its members.

37th GST Council Meeting 20.09.2019

8.1. The Hon'ble Minister from Odisha stated that GIC had issued some clarifications which were contradictory to the express provisions of the Statute and the Rules. He observed that the provisions of the Acts and the Rules could not be overruled by a Circular (as mentioned at page 94 of the circulated Agenda note). He stated that Section 11 of the Act read with Entry 77 of the Table to Notification No. 12/2017-CT (Rate) contained different provision than the clarification issued with the approval of GIC in case of Resident Welfare Association (RWA). It was well settled that the provisions of a notification or circular could not override the Act. Hence, if the circular was challenged in the Court of Law then the position of the Council and the GSTN would be at stake. Thus, clarifications should be issued after amending the law otherwise it would be capricious and bad in law. The Chairperson stated that it was a valid point and asked Shri Manish Sinha, Joint Secretary, TRU-II (JS, TRU-II) to respond on the issue raised. JS, TRU-II stated that he would need a written brief on the issue raised by Odisha which would be examined and responded to.

8.2. The Secretary stated that the circular was issued only after the GIC had approved and at the moment, the same could not be stayed. However, a written communication might be sent to the Council's Secretariat on the issue which could be examined and if required, the circular would be suitably amended. At the moment, the Circular having already been issued, was placed before Council for information. The JS, TRU-II also stated that if a formal letter could be sent by Odisha, they would examine and respond on the issue. Shri Ashok Meena, Finance Secretary, Odisha stated that he would send a note indicating the difference between the Circular and the Statute, which might be discussed, and final view be taken thereafter.

Retrospective amendment through the Finance Act 2021, sub-clause (aa) was inserted

47th GST Council Meeting 22.6.2022

| | | | |
|-----|---|---|--|
| 96. | Request to have 3% GST (without ITC) on the monthly charges being levied by RWAs, irrespective of the amount. | <p>Rationalize the GST on the maintenance charges being levied by RWAs: Currently apartments incurring over Rs. 7500/- as maintenance are required to pay 18% GST.</p> <p>Living cost further goes up as RWA has to recruit a CA to do input output GST reconciliation and reversals.</p> <p>In this regard, it is requested to have one single rate of tax 3% for all irrespective of amount, no input tax. This arrangement will ward off unnecessary tax compliance burden on the residents.</p> | <p>New rate of 3% GST (without ITC) on the monthly charges, irrespective of amount collected, may unnecessarily put burden on the residents who are currently exempt from GST.</p> <p>Moreover, recourse to lower rated with restriction of ITC should generally be avoided in GST, as it results in blockage of credit and goes against the seamless transfer of ITC under GST.</p> <p>No change recommended.</p> |
|-----|---|---|--|

47th GST Council Meeting 22.6.2022

| | | | |
|-----|---|---|--|
| 97. | Request to increase the limit of contribution made to Resident welfare associations (RWA) by the members from Rs 7500 to Rs 10,000. | It is requested to increase the present limit of Rs. 7,500- to Rs. 10,000/- as several limit input costs have increased in the urban areas and with this, monthly maintenance fee has also increased. | <p>The decision to increase the limit from Rs 5000 to Rs 7500 was taken by the GST Council in its 25th meeting held on 18.01.2018 [S.N. 15, Annex –I, Vol 2] after due deliberation.</p> <p>It has revenue implication, may not be accepted.</p> <p>No change recommended.</p> |
|-----|---|---|--|

53rd GST Council Meeting 22.6.2024

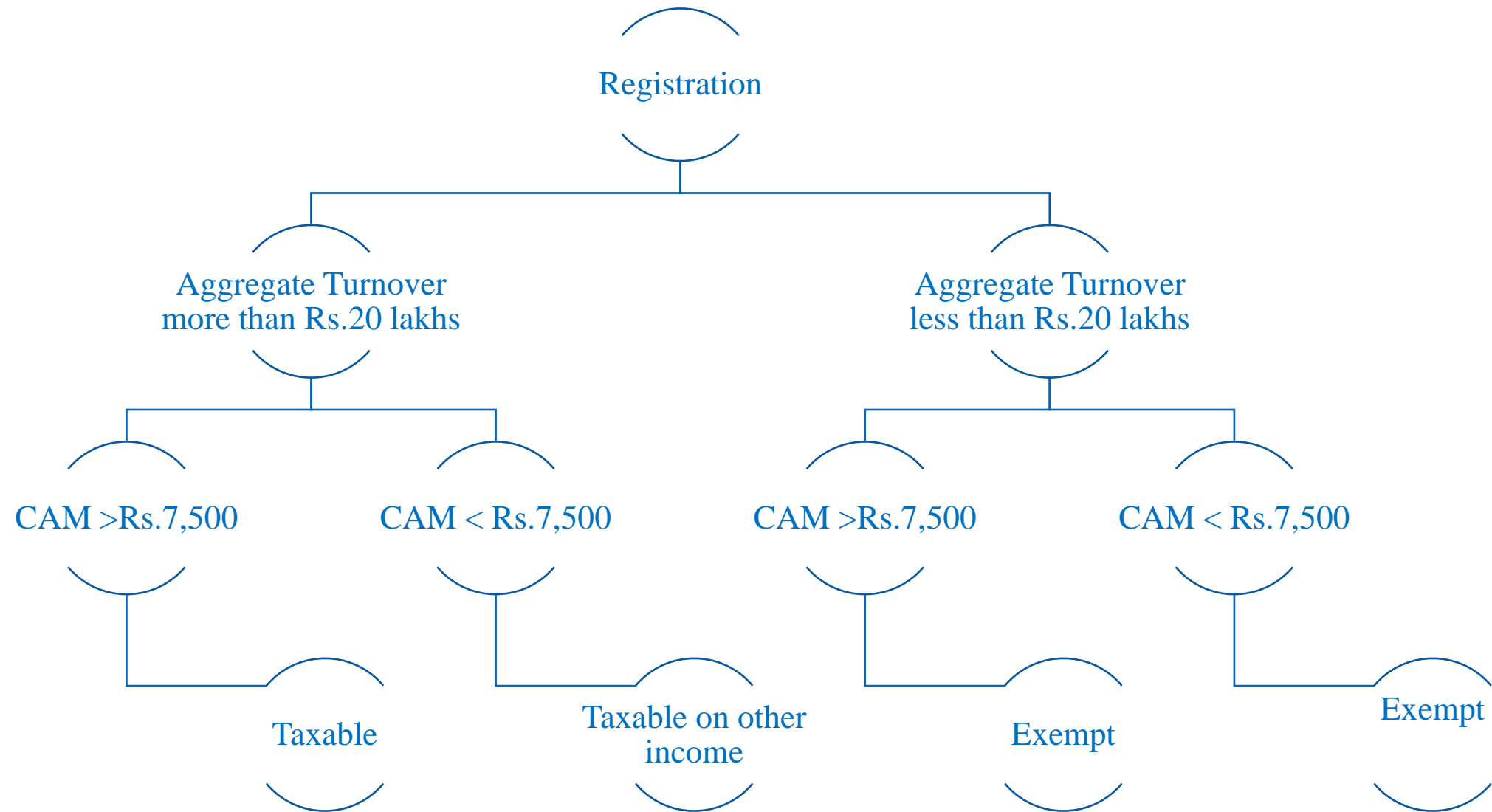
5.46 Joint Secretary, TRU presented the next item that pertained to clarification as to whether reimbursement of electricity charges received by the Real estate companies, malls, airport operators etc. from their lessees/occupants is exempt from GST. She stated that the Fitment Committee had recommended that whenever electricity was supplied bundled with other supplies such as renting of immovable property services, maintenance services, etc. it would be taxed as a composite supply even in cases where electricity bill was shown separately. However where electricity was being supplied by the RWAs or real estate owner as a pure agent, the same would not form a part of the value of supply. She further stated that the issue was discussed in the Officers' meeting and there was a request that resident welfare associations should be deemed to be pure agents for the said purpose where they charge for electricity on actual basis as they may not be able to comply with all the procedures, condition required to be a pure agent and this was agreed to by all members.

5.47 The Hon'ble Member from Maharashtra suggested that if any other charges were being collected with electricity, only those charges should be taxed and not the electricity charges as it would amount to double taxation.

5.48 The Secretary clarified in respect to agenda regarding reimbursement of electricity charges that the exemption would be available as long as actual charges were being reimbursed to Resident Welfare Association or any other body even in the absence of meters.

Decision: The Council approved the issue of clarification as recommended by the Fitment Committee and that where electricity was being supplied by the RWAs or real estate owner as a pure agent, the same would not form a part of the value of supply. The Council also approved the recommendation that a resident welfare association or real estate owner or developer etc. should be deemed to be pure agent for the said purpose, as long as it charges for electricity on actual basis the amount payable to electricity distribution company or electricity

Registration applicability



Exemption

| GST applicability for RWA | | | | | | | | | |
|---------------------------|---------------------|----------------------------|----------------|------------------------------------|---|--|-------------------------------|---------------|-----------|
| | CAM Income - Member | | | Other Income - Member & Non-Member | | Total Receipts during FY-Turnover for the purpose of GST | Applicability of Registration | GST Liable on | |
| | Upto Rs.7,500 | | Above Rs.7,500 | Taxable | Exempt | | | | |
| Scenario | CAM (p.m.) | Annual collection from CAM | CAM | Annual collection from CAM | Party hall rental, Notice Board charges, Movein-out etc | Interest on Savings & FD | | | |
| 1 | 5,500 | 19,75,000 | | | - | 50,000 | 20,25,000 | NO | - |
| 2 | 7,000 | 2,50,00,000 | | | - | - | 2,50,00,000 | NO | - |
| 3 | 6,500 | 19,75,000 | | - | 50,000 | - | 20,25,000 | YES | 50,000 |
| 4 | 7,000 | 19,75,000 | | | - | - | 19,75,000 | NO | - |
| 5 | 7,500 | 19,75,000 | | | 5,000 | 10,000 | 19,90,000 | NO | - |
| 6 | | | 7,600 | 19,75,000 | - | 50,000 | 20,25,000 | YES | 19,75,000 |
| 7 | | - | 8,500 | 19,75,000 | 50,000 | - | 20,25,000 | YES | 20,25,000 |
| 8 | | | 9,000 | 19,75,000 | 5,000 | 10,000 | 19,90,000 | NO | - |

AAR, Karnataka

M/s Prestige South Ridge Apartment owner's Association, Bengaluru vide order No.KAR ADRG 42/2019 dt.17.9.2019

Q1. What is the applicability of GST on Electricity charges that are separately recovered ?

Q2 . GST is liable on Corpus fund?

Q3. If exemption is available, whether it is available per member basis or per flat basis, as few members own more than one flat?

AAAR, Karnataka

M/s Vaishnavi Splendour Homeowners Welfare Association, Bengaluru vide order no.KAR/AAAR-10/2019-20

Q1.GST is liable on the amount of contribution received from members ?

Q2 .If so, it is not only in excess of Rs.7,500?

Exempt or Taxable Supply ???

APPELLANT

- 1.Members are governed by Principle of mutuality -SC –State of West Bengal vs Calcutta Club India
- 2.Absence of privity of contract between Association and Members.
- 3.Circular is not a speaking ruling.
- 4.Absence of consideration, the contribution is only for reimbursement
- 5.Circular should be prospective being oppressive.
- 6.Not liable for GST
- 7.Only > Rs.7500 alone is liable -SC-Commissioner of Central Excise vs Mysore Electricals Industries Ltd – any ambiguity in exemption the benefit should be given to assessee.

RESPONDENT

- 1.Calcutta club decision is in the context of service tax, finance act 1994, whereas in GST supply covers activities made in the course or furtherance of business.
- 2.For the services received the contribution paid, becomes the consideration.
- 3.Circular is clarificatory there is no reason to be prospective
- 4.Any benefit received by the member from the association can be construed as service.
- 5.Sec.2(17) (e) Business definition includes services rendered by a club or association.
- 6.Liable for GST
- 7.Entire Rs.7500 is taxable –any ambiguity in exemption notification must be interpreted in favour of Revenue- SC-Commissioner of customs (Mumbai) vs M/s Dilip Kumar & Co,

High Court of Judicature at Madras

Jurisprudence

Greenwood Owners Association vs UOI Nos.5518 & 1555 of 2020 and 27100 & 30004 of 2019 dt. 1.7.2021

Facts:

- The Petitioner is a RWA
- The CGST(R) NN.12/2017, as amended provides conditional exemption upto Rs.7,500/- per month per member.
- The Petitioner challenged the circular 109/28/2019 dt.22.7.2019 that states the entire amount is taxable

Issues:

- How to calculate GST payable where maintenance exceeds Rs.7,500/- p.m.?
- Is GST is payable only on the excess amount of Rs.7,500 or on the entire amount?

Judgment:

- As per Dilip Kumar case, the SC held that exemption Notification should be interpreted strictly.
- As mentioned in Entry 77, the term upto, an amount of Rs.7,500/- can thus be interpreted as any amount in excess of Rs.7,500/- would be liable for tax.
- The term “upto” hardly needs to be defined and connotes an upper limit. It is interchangeable with the term “till”. It means that any amount till the ceiling of Rs.7,500/- would be exempt for the purpose of GST.
- HC ruled that the AAR as well as the circular is contrary to the express language of Entry 77 of NN.12/2017.
- AAR and Circular are quashed.
- Contribution in excess of Rs.7,500/- alone would be liable for GST.



FAQ

1. What is the general practice followed by majority of Associations - > Rs.7,500 or entire sum?
2. Whether Electricity and water be separately invoiced?
3. Is the Corpus fund collection liable for GST?
4. How is R42 is applied for T1, T4 ?
5. Does the concept of mutuality still prevail?

RWA as AOP

- Sec.4(1) is the under the Income Tax Act, 1961 and it imposes income tax in respect of the total income of the previous year of every 'person'.
- Sec.2(31) (v) defines "Person" to include an association of persons or a body of individuals, whether incorporated or not,
- Income falling under the definition of Sec.2(24) are subject to tax.
- The AOP is formed for the mutual benefit of members with no intention to make profit.
- The doctrine of mutuality is applicable on the income collected from its group of people, called "members".
- The basic principle being "A person cannot make profit from himself". Any amount received from oneself is not regarded as income.
- The contributories to the fund and the beneficiaries are one and the same.
- RWA has four types of income
 - Maintenance income
 - Other income from Members
 - Non Member Income
 - Interest Income

Taxability

| Exempted Member Income | Taxable Non member income | Taxable other income |
|--|---------------------------|-----------------------------|
| Maintenance charges (CAM) | Advertisement charges | Interest on Savings account |
| Interest on delayed payment of maintenance | Notice board charges | Interest on FD |
| Move in-out charges | Rental income | Dividend Income |
| Car parking charges | Sponsorship fee | Sale of Scrap |
| Ownership transfer fee | Stall rentals | Capital gain |

Sec. 167B - MMR

- Charge of tax where shares of members in association of persons or body of individuals unknown, etc
- 167B. (1) Where the individual shares of the members of an association of persons or body of individuals (other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India) in the whole or any part of the income of such association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate :
- Provided that, where the total income of any member of such association or body is chargeable to tax at a rate which is higher than the maximum marginal rate, tax shall be charged on the total income of the association or body at such higher rate.

It is assumed that the total income of atleast one member of the association exceeds the basic exemption limit i.e. Rs. 2,50,000/- in terms of section 167B(2)(i) of the Act.

Sec. 115BAC (1A) w.e.f. 1.4.2024 by Finance Act, 2023

Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, the income-tax payable in respect of the total income of a person, being an individual or Hindu undivided family or **association of persons** (other than a co-operative society), or body of individuals, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2, other than a person who has exercised an option under sub-section (6), for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2024, shall be computed at the rate of tax given in the following Table, namely:—

| Sl.No. | Total income | Rate of tax |
|--------|-------------------------------------|-------------|
| 1 | Upto Rs. 3,00,000 | Nil |
| 2 | From Rs. 3,00,001 to Rs. 6,00,000 | 5% |
| 3 | From Rs. 6,00,001 to Rs. 9,00,000 | 10% |
| 4 | From Rs. 9,00,001 to Rs. 12,00,000 | 15% |
| 5 | From Rs. 12,00,001 to Rs. 15,00,000 | 20% |
| 6 | Above Rs. 15,00,000 | 30% |

Surcharge

| Income | Rate of Surcharge |
|----------------------------|-------------------|
| Less than Rs 50 Lakhs | Nil |
| Rs.50 Lakhs to Rs. 1 Crore | 10% |
| Rs.1 Crore to Rs 2 crore | 15% |
| Rs.2 Crore to Rs 5 crore | 25% |
| More than Rs.5 Crore | 37% |

Health & Education cess @ 4% on income tax + surcharge

Computation of total income

| Particulars | Amount |
|---|------------|
| Income from maintenance charges | |
| Gross Receipts | xxx |
| Less: Expenses | xx |
| Net surplus (Exempted) | xxx |
| Income from other sources | |
| 1. Member income - others | xx |
| 2. Non Member Income | xx |
| 3. Interest income | xx |
| Total taxable income | xx |
| Less: Expenses directly relating to member income –others | xx |
| Net taxable income | xx |
| Tax @MMR / slab rate Add: Surcharge & Education cess | x |

Filing of tax returns

- ITR 5 to be filed
- Due date is 31st July 2024.
- Principle of mutuality.
- Applicability of Sec. 44AB of the Income tax Act, 1961
- Reported as exempt income
- The Schedules relating to Depreciation, P&L & BS to be filled
- Other incomes are taxable under the head
 - House Property
 - Capital Gain
 - Other Sources
- Declaration to be signed by the person authorised – Treasurer / Secretary / President

Other applicable provisions

- Sec.234 F- Failure to file income tax return within due date
- Sec.194 – TDS
- Sec.208 – Payment of Advance tax
- Sec.234 A,B &C- Delayed and nonpayment of Advance Tax
- Sec.234 E - Late filing fee for delayed filing of TDS Returns
- Sec.201(1A) – interest on delayed payment of TDS
- Sec.270 A- Penalty for under reporting or misreporting of income
- Sec.271 C – Penalty for failure to deduct TDS
- Sec.276B -Prosecution relating to failure to remit deducted TDS amount

Professional opportunity

- Drafting Bye-laws
- HOTO Services
- Reconciliation of Receivables
- Integration of accounts with software
- Bookkeeping services
- Litigation management
- Board advisor
- Election officer
- Compliance services
- Internal Audit

Thank you

sujatha@sujathaassociates.in

99455 98565