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The Institute of Chartered Accountants of India

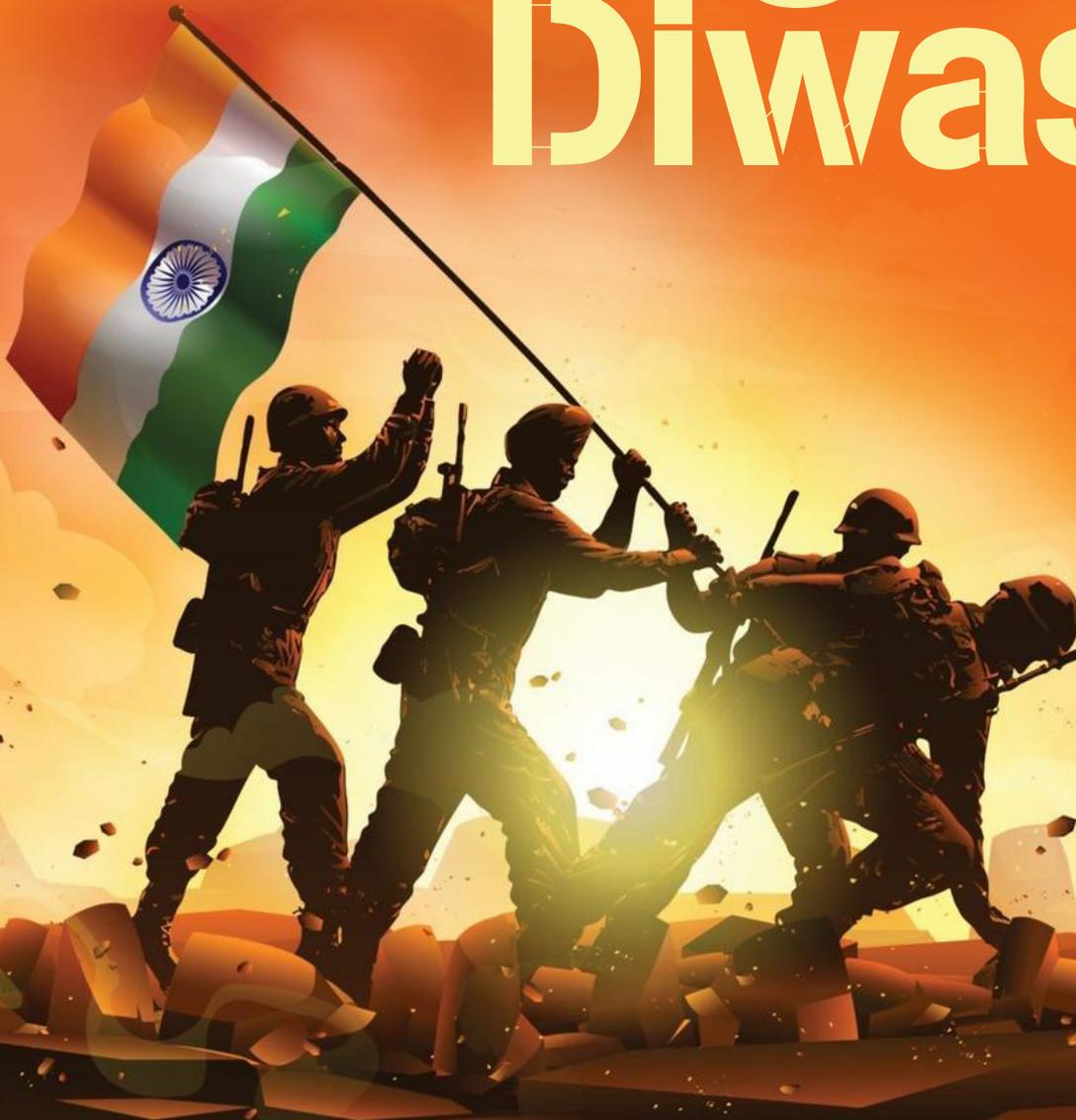
VASAI BRANCH OF WIRC NEWSLETTER

July 2021



www.vasai-icai.org

Kargil Diwas





CHAIRMAN'S COMMUNICATION

कर्मण्येवाधिकारस्ते मा फलेषु कदाचन।
मा कर्मफलहेतुर्भूर्मा ते सङ्गोऽस्त्वकर्मणि॥
(द्वितीय अध्याय, श्लोक 47)

English Translation: You have a right to perform your prescribed duties, but you are not entitled to the fruits of your actions. Never consider yourself to be the cause of the results of your activities, nor be attached to inaction.

ICAI celebrates 73rd Foundation Day on July 1 every year which is widely celebrated as Chartered Accountants Day (CA Day). A very hearty congratulation to all colleagues!

On the Occasion of 73rd CA Day, Vasai Branch of WIRC launched **E Quick Referencer to Companies Act 2013** in the presence of Chief Guest - CA Sanjay Rungta. It is our endeavor to serve our members and we have been continuously adding to Professional knowledge through our innovative and relevant Publication.

This July month is full of learning, enhance of knowledge in different field by way of National Conference, Training Session and Virtual CPE Meeting.

Branch hosted **Virtual CPE Meeting on Technology as Enabler of Internal Audit** which was organised by Internal Audit Standards Board of ICAI wherein Central Council Member - CA. Charanjot Singh Nanda shared his views and explained the importance of technology to 1071 participants in today's generation with respect to Internal Audit.

Branch also conducted **Training Programme for Peer Reviewers** organised by Peer Review Board – ICAI on 14th & 15th July 2021 wherein 94 members joined. Central Council Member – CA. Anil Bhandari graced his presence in this training session.

Branch successfully conducted **Virtual National Conference** organised by the Professional Development Committee of ICAI and hosted by Vasai Branch and co-hosted by Vapi, Akola, Amaravati, Jalgaon Branches of WIRC of ICAI from 23rd to 25th July 2021. In this Conference, Chief Guest - President CA. Nihar N Jambusaria, Guest of Honour - Vice President CA. (Dr.) Debashis Mitra graced the inaugural session and shared their views on Past, Present & Future of CA Professions. We are very much thankful to the Chairman - CA. Babu Abraham Kallivayalil and Vice Chairman - CA. Satish Kumar Gupta of the Professional Development Committee of ICAI for giving this wonderful opportunity to host such a big event in virtual mode. In this Conference approx. 7,000 members joined across the nation. Special thanks & Acknowledge to CA. Dheeraj KS Sharma and other galaxies of speakers who have shared their views on different areas.

Branch also conducted **VCM on Understanding Crypto Currencies, Latest Trends and Probable Taxation and How to use Excel formula in day to day life and pivot table understanding.**

Branch also conducted **16th Annual General Meeting** of Vasai Branch on Virtual Mode on 27th July 2021.

I greet you all on the momentous occasion of our great nation India's 75th Independence Day on August 15, 2021. Our heart fills with pride, reverence and nationalism as we reminisce the noble sacrifices of the innumerable freedom fighters. Just two years after the hard-earned independence, our institute came into existence with an objective to regulate the accountancy profession and help the fledgling economy during its evolution. Since then, ICAI has always upheld national interest, contributed in nation building throughout the past seven decades and continues to endeavour towards strengthening the nation. We are indeed proud of the legacy left by our predecessors that inspires us to strive towards ushering the nation into the coveted league of 5 trillion economies.

Many of life's failures are people who did not realize how close they were to success when they gave up." - Thomas Edison

Wish you all the best for your future endeavours.

CA. Abhishek Tiwari
Chairman
Vasai Branch of WIRC of ICAI

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वसई ब्रांच ऑफ आइसीएआई ने मनाया सीए दिवस



■ प्रवासी संदेश टीम।
मुम्बई। मीरा भायंदर में निवासी वसई ब्रांच द्वारा सीए दिवस को महापर्व के रूप में मनाया गया। कोरोना को देखते हुए सभी नियम काबू का पालन भी किया गया। इस कार्यक्रम के मुख्य अतिथि सी.ए. संजय रंगटा थे, जो कि देश की पब्लिक बैंक इंडियन ओवरसीज बैंक के डायरेक्टर हैं। संस्था के युवा अध्यक्ष सी.ए. अभिषेक तिवाड़ी ने बताया कि सीए संस्था हमारी माँ है और संस्था के लिए समर्पित है। संस्था के सदस्य देश की अर्थव्यवस्था को मजबूती देने और सरकार

द्वारा कर प्रणाली को सुचारू रूप से चलाने के लिए प्रतिबद्ध है। देश में जी.एस.टी. को लागू करवाने के लिए सभी चार्टर्ड एकाउंटेंट्स ने बहुत मेहनत की और सभी बिजनेसमैन, देश के टैक्स कंसल्टेंट्स और सभी कारदाताओं को जागरूक किया।

वसई ब्रांच द्वारा सी.ए. उत्सव में कम्पनीज एक्ट 2013 का रेफरेंस का विमोचन भी मुख्य अतिथि सी.ए. संजय रंगटा द्वारा किया गया। इस पब्लिकेशन को बनाने में मुख्य भूमिका सी.ए. पंकज तिवारी ने निभाई। इस प्रोग्राम में ब्रांच के को-ऑर्डिनेटर को अच्छे कार्यों के लिए प्रशस्ति पत्र देकर नवाजा गया। ब्रांच में पूर्व चेयरमैन, पूर्व कमिटी मेंबर, को ऑर्डिनेटर्स को आमंत्रित किया गया था। कार्यक्रम को सफल बनाने में सी.ए. लोकेश कोठारी, सी.ए. अंकित राठी, सी.ए. सौरभ अग्रवाल, सी.ए. विजेंद्र जैन और अमित अग्रवाल का योगदान रहा।

सी.ए. ललित बजाज ने सी.ए. दिवस की बधाई दी। सी.ए. अंकित राठी और सी.ए. लोकेश कोठारी ने सभी को धन्यवाद किया। अध्यक्ष सी.ए. अभिषेक तिवाड़ी ने आभार हुए मुख्य अतिथि और सभी मेंबरों का जोर शोर से स्वागत किया।

नवभारत

महापर्व के रूप में मना CA दिवस

■ भायंदर, (सं) मीरा- भायंदर में स्थित वसई ब्रांच द्वारा सीए दिवस को महापर्व के रूप में मनाया गया। कोरोना को देखते हुए सभी नियमों का पालन भी किया गया। कार्यक्रम के मुख्य अतिथि इंडियन ओवरसीज बैंक के डायरेक्टर सी.ए. संजय रंगटा थे। संस्था के युवा अध्यक्ष सी.ए. अभिषेक तिवाड़ी ने बताया कि सी.ए. संस्था हमारी माँ है और संस्था के लिए समर्पित है। संस्था के सदस्यों द्वारा देश की अर्थव्यवस्था को मजबूती देने और सरकार द्वारा कर प्रणाली को सुचारू रूप से चलाने के लिए प्रतिबद्ध है। देश में जी.एस.टी. को लागू करवाने के लिए सभी चार्टर्ड एकाउंटेंट्स ने बहुत मेहनत की और सभी बिजनेसमैन, देश के टैक्स कंसल्टेंट्स और सभी कारदाताओं को जागरूक किया।

वसई ब्रांच ऑफ ICAI का कार्यक्रम



वसई ब्रांच द्वारा सी.ए. उत्सव में कम्पनीज एक्ट 2013 के रेफरेंस का विमोचन भी मुख्य अतिथि सी.ए. संजय रंगटा द्वारा किया गया। इस पब्लिकेशन को बनाने में मुख्य भूमिका सी.ए. पंकज तिवारी ने निभाई। कार्यक्रम में ब्रांच के को-ऑर्डिनेटर को अच्छे कार्यों के लिए प्रशस्ति पत्र देकर नवाजा गया। ब्रांच में पूर्व चेयरमैन, पूर्व कमिटी मेंबर, को-ऑर्डिनेटर्स को आमंत्रित किया गया था। कार्यक्रम को सफल बनाने में सी.ए. लोकेश कोठारी, सी.ए. अंकित राठी, सी.ए. सौरभ अग्रवाल, सी.ए. विजेंद्र जैन और अमित अग्रवाल का योगदान रहा। सी.ए. ललित बजाज ने सी.ए. दिवस की बधाई दी। सी.ए. अंकित राठी और सी.ए. लोकेश कोठारी ने सभी को धन्यवाद दिया।

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समय भास्कर

वसई ब्रांच के ऑफ आइ.सी.ए.आई. द्वारा मनाया गया सी.ए. दिवस



समय भास्कर/मीरा भायंदर

विगत दोनो मुम्बई से सटे मीरा भायंदर में वसई ब्रांच द्वारा सी.ए. दिवस मनाया गया। कोरोना को देखते हुए सभी नियम कायदे का पालन भी किया गया।

इस कार्यक्रम के मुख्य अतिथि सी.ए. संजय रंगटा थे (बगड निवासी) जो कि देश की पब्लिक बैंक इंडियन ओवरसीज बैंक के डायरेक्टर भी हैं। संस्था के युवा अध्यक्ष सी.ए. अभिषेक तिवाड़ी ने बताया कि सी.ए. संस्था हमारी माँ है और संस्था के लिए समर्पित है। संस्था के सदस्यों द्वारा देश की अर्थव्यवस्था को मजबूती देने और सरकार द्वारा कर प्रणाली को सुचारू रूप से चलाने के लिए प्रतिबद्ध है। देश में जी.एस.टी. को लागू करवाने के लिए सभी चार्टर्ड एकाउंटेंट्स ने बहुत मेहनत की और सभी बिजनेसमैन, देश के टैक्स कंसल्टेंट्स और सभी कारदाताओं को जागरूक किया। वसई ब्रांच द्वारा सी.ए. उत्सव में कम्पनीज एक्ट 2013 का रेफरेंस का विमोचन भी मुख्य अतिथि सी.ए. संजय रंगटा द्वारा किया गया। इस पब्लिकेशन को बनाने में मुख्य भूमिका सी.ए. पंकज तिवारी ने निभाई।

इस प्रोग्राम में ब्रांच के को-ऑर्डिनेटर को अच्छे कार्यों के लिए प्रशस्ति पत्र देकर

नवाजा गया। ब्रांच में पूर्व चेयरमैन, पूर्व कमिटी मेंबर, को ऑर्डिनेटर्स को आमंत्रित किया गया था। कार्यक्रम को सफल बनाने में सी.ए. लोकेश कोठारी, सी.ए. अंकित राठी, सी.ए. सौरभ अग्रवाल, सी.ए. विजेंद्र जैन और अमित अग्रवाल का योगदान रहा। सी.ए. ललित बजाज ने सी.ए. दिवस की बधाई दी। सी.ए. अंकित राठी और सी.ए. लोकेश कोठारी ने सभी को धन्यवाद किया। अध्यक्ष सी.ए. अभिषेक तिवाड़ी ने आभार हुए मुख्य अतिथि और सभी मेंबरों का जोर शोर से स्वागत किया।



Startup India Scheme



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Startup India Scheme:

Government is continuously working to promote entrepreneurship in India. Startup India scheme is one of those schemes for promoting entrepreneurship in India. The main object of this scheme is to provide benefit to budding entrepreneurs, visionaries and dreamers for the innovative ideas.

What is a Startup?

An entity shall be considered as a Startup:

- If it is incorporated as a private Limited Company (as defined in the Companies Act, 2013) or registered as a partnership firm (under section 59 of the Partnership Act, 1932) or a Limited Liability partnership (under the Limited Liability Partnership Act, 2008) in India.
- Up to ten years from the date of its incorporation/registration.
- If its turnover for any of the financial years since incorporation/registration has not exceeded INR 100 Crore.
- If it is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.
- Provided that any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered a 'Startup'.

Startup India Benefits:

Department for Promotion of Industry and Internal Trade (DPIIT) Recognised Startups are eligible for the following benefits:

1) Intellectual Property Rights {IPR} benefits:

Rebate on filing of application: Startups are provided an 80% rebate in filing of patents vis-a-vis other companies bringing down the cost from INR 8,000 to INR 1,600.

This helps them cut down on costs in their early years. 50% rebate is also provided in filing of Trademarks vis-a-vis other companies decreasing the cost from INR 10,000 to INR 5,000.

2) Relaxation in public procurements norms:

Government of India has authorised its Ministries, Departments and Public Sector Undertakings to relax norms in all public procurements.

Startups are entitled to avail exemption on: Prior Turnover, Prior Experience, Earnest Money Deposit etc.

DPIIT recognised Startups can now get listed as Sellers on the Government of India's largest e-procurement portal-Government e-Marketplace (gem.gov.in).

Recognised Startups can also become preferred bidders on CPPP portals (eprocure.gov.in). which sees over 2.00.000 tenders every year.

3) Self-Certification under Labour & Environment laws:

To reduce the regulatory burden on Startups, thereby allowing them to focus on their core business & keep compliance costs low. Startups are allowed to self-certify their compliance under 6 Labour and 3 Environment laws for a period of 3 to 5 years from the date of incorporation.

4) Fund of Funds for Startups {FFS}:

To provide equity funding support for development and growth of innovation driven enterprises, the Government has set aside a corpus fund of INR 10,000 crores managed by SIDBI. The Fund is in the nature of Fund of Funds, which means that the Government participates in the capital of SEBI registered Venture Funds, who invest twice the amount in Startups.

The flow of funds is Government > SIDBI > Venture Capitals > Startups

5) Faster exit for Startups:

Ministry of Corporate Affairs has notified Startups as 'fast track firms' enabling them to wind up operations within 90 days vis-a-vis 180 days for other companies. An insolvency professional shall be appointed for the Startup. Who shall be in charge of the company for liquidating its assets and paying its creditors within 6 months of filing an application in this regard.

6) Income Tax exemption:

The recognised Startups that are granted an Inter-Ministerial Board Certificate are exempted from income-tax for a period of 3 consecutive years out of 7 years since incorporation. Startups incorporated on or after 1st April 2016 can apply for income tax exemption.

Exemption for the purpose of clause (viib) of sub-section (2) of section 56 of the Act

A DPIIT recognised Startup is eligible for exemption from the provisions of section 56(2)(viib) of the Income Tax Act. The Startup has to file a duly signed declaration in Form 2 to DPIIT as per notification

G.S.R. 127 (E)I to claim the exemption from the provisions of Section 56(2)(viib) of the Income Tax Act

Department for Promotion of Industry and Internal Trade (DPIIT) Recognition:

Get DPIIT Recognised and avail benefits. Startups can apply to recognised by Department for Promotion of Industry and Internal Trade to avail numerous benefits.

What do you need for Department for Promotion of Industry and Internal Trade (DPIIT) Recognition?

Followings are required for getting Department for Promotion of Industry and Internal Trade (DPIIT) recognition.

- I. Incorporation/Registration Certificate
- II. Director details
- III. Proof of concept like pitch deck/website link/video
- IV. Patent and trademark details (If any)
- V. PAN Number
- VI. Proof of Funding
- VII. Awards and recognitions received (If any)





Banking Corner



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Analysis of Recent communication from RBI's Desk for Banking and NBFC Sector

A. Financial Stability Report (FSR)- July 2021:¹

The Reserve Bank of India issues Financial Stability Report (FSR) on half yearly basis in the context of contemporaneous issues relating to development and regulation of the financial sector. The FSR report *inter alia* has three chapters relating to various aspects of banking and other financial sector. The chapter-III on Financial Institutions: Soundness and Resilience highlights various aspects relating to Capital Adequacy, Non-performing asset, and other important parameter in Banking and NBFC sector.

Some of Key highlights of FSR report on Schedule Commercial Banks and other financial institution is as follows:

- Gross nonperforming assets (GNPA) and net NPA (NNPA) as ratios of gross advances settled at 7.5 per cent and 2.4 per cent, respectively at the end of March 2021.
- GNPA ratio of all SCBs may transition to 9.80 per cent in the baseline scenario by March 2022 and can increase to 10.36 per cent and 11.22 per cent under the two stress scenarios.
- The provisioning coverage ratio (PCR) - the proportion of provisions (without write-offs) held for NPAs to GNPA - increased from 66.2 in March 2020 to 68.9 per cent in March 2021. The PCR for PSBs increased but declined for PVBs and FBs during the year.
- Estimated GNPA** for the banks may be as follows:

	PSB GNPA	PVB GNPA	FB GNPA
Actual- March 2021	9.54%	4.78%	2.43%
Projected-March 2022 (Baseline scenario)	12.52%	5.82%	4.90%
Projected-March 2022 (Medium Stress)	13.06%	6.04%	5.35%
Projected-March 2022 (Severe Stress)	13.95%	6.46%	5.97%

- Capital adequacy ratios of seven NBFCs were below the minimum regulatory requirement of 15 per cent in March 2021.

These reports and analysis are very useful as Investor, Depositor or Auditor as they highlight the key challenges which the financial sector may face in the near future along with its impact. Even the quarterly results of the SCB are yet to be announced, however Q-1 result of the top private sector bank has already created storm in the financial market. The GNPA ratio of HDFC bank has increased from 1.32% as at March 2021 to 1.47% as on June 2021.

However, for the first time the RBI has issued the FSR report with disclaimer as *"It is emphasised that model outcomes do not amount to forecasts. They are indicative of the possible economic impairment latent in banks' portfolios, with implications for capital planning."*

In absence of any monotorium during Second ware of COVID-19 such results are expected, however we still need to watch out for the results of other PSB's and PVB's to determine future outlook of the industry.

B. Policy Circular:

1. Declaration of Dividend by NBFC- 24 June 2021:

Notification:

- The Reserve Bank of India earlier had put restriction on dividend distribution by the Scheduled Commercial Banks. In similar lines, the RBI has issued circular for putting the restriction on the dividend by the NBFC's (including HFC's). This is applicable for declaration of dividend from profits of FY 2022 and onwards.
- These restrictions are mainly based upon various financial indicators such as Capital Adequacy, Net NPA and other regulatory compliances. The circular prescribed the maximum Dividend Payout ratio (DPR)² for various class of NBFC's.

1. Full report can be accessed at <https://www.rbi.org.in/home.aspx- Home > Publication > Half-Yearly>

2. Dividend Payout ratio is ratio between the amount of dividend payable and net profit as per audited financial year



Impact:

- The above circular is clearly with a view of capital conservation in the NBFC sector which probably may have severe impact of the COVID-19 in the coming financial period.
- The circular clearly states that these restrictions are applicable for declaration of dividend from profit of the financial year March 2022. However, one view the company may take that there is no restriction on distribution of dividend out of profits of earlier period. The RBI may need to provide clarification in this regard on priority basis.
- Further, the circular indicates that any exceptional/extra ordinary profits are to be excluded or impact of qualification/EOM need to reduce from net profit while determining the DPR. This may create practical difficulty for some of the NBFC's since this will reduced the available profit for distribution to shareholder.

2. Definition of MSME- Addition of Retail & Wholesale Trade 7 July 2021:

Notification:

- The RBI after lot of discussions and deliberations have decide to include Retail and Wholesale trades within the definition of MSME. It means these businesses can now be classified as Micro, Small and Medium depending upon the revised threshold issues by the government.
- These entities/businesses are to be registered on Udyam registration portal under specified categories. The RBI has clearly indicated that these are to be considered as MSME only for the limited purpose of Priority Sector Lending.

Impact:

- The inclusion of Wholesale and Retail trader as part of MSME will benefit to significant large number of borrowers across various businesses. This will also encourage the banking and NBFC segment to sanction additional facility in the form of Priority Sector Lending.
- However, this is circular also creates a division among small businesses which are engage in manufacturing and trading segment. As the circular clearly indicates that this is only for limited purpose the other benefits which are available to the MSME sector may not be available to these wholesale and retail trade borrowers.
- Therefore, this is only half relief, the government should allow treatment of these sector at par with Other MSME segment which will definitely bring more equality and ease the pressure on businesses and banks.

3. Mandatory Leave for Employees- 9 July 2021:

Notification:

- The RBI has issued direction ot all the commercial banks to implement mandatory leave policy for the employees posted in sensitive positions or areas of operations. The leave should not be less than 10 days in single spell without any prior intimation.
- The Banks need to prepare Board approved policy and prepare list of sensitive position to be covered under mandatory leave.

Impact:

- The above circular is issued in light of the recent frauds with the collusion of the employees in the financial sector. This may not 100% remove the possibility of detection but will surely reduce the probability of these type of frauds.
- As good corporate governance, this policy should also be made applicable to large listed/unlisted entities to avoid various financial irregularities prevalent across the segment.

4. Interest on overdue domestic deposits- 2 July 2021

Notification:

- The RBI as per earlier Master Direction have clearly directed the banks that If a Term Deposit matures and proceeds are unpaid, the amount left unclaimed with the bank shall attract rate of interest as applicable to savings deposits.
- Considering the recent fall in the fixed deposit rates in the banking sector, the RBI has now amended this direction to states that *"attract rate of interest as applicable to savings account or the contracted rate of interest on the matured TD, whichever is lower."*

Impact:

- The above circular clearly brings out the effect of the reduction in the deposit rates across the banking sector. This circular was necessary on the part of banks wherein in certain products the contractual rates may also be lower than the saving bank rates.
- This circular brings clarity on such aspect and will help to reduce the interest cost of the banking industry in Q-2 onwards.



C. Key Takeaways:

a. New Opportunities for CA's in Banking Sector:

The circular of RBI on Auditor appointment has clearly increased the scope of practicing chartered accountants. This is clearly evident in the appointment of auditor of top-3 private banks. These banks have appointed mid-size CA firms to carry out the statutory audit of the banks for FY 21-22.

In similar lines, the recent circular of RBI on Appointment of Managing Director (MD) / Whole-Time Director (WTD) in Primary (Urban) Co-operative Banks has also brought lot of opportunities for CA's in the Industry. The circular clearly states that Chartered / Cost Accountant / MBA (Finance) can now be appointed as Managing Director / Whole-Time Director. This will clearly bring out newer opportunities for the CA's in Co-Operative banks at higher positions.

b. Services to Wholesale & Retail Traders: As consultant or auditor to many small businesses we should inform them about the revised inclusion in MSME sector and assist them in preparation of various financial information and other details required to be submitted to the banks for obtaining the loans from banks under Priority Sector.



Computation of Short-Term Capital Gains and written down value under Section 50 where depreciation on goodwill has been obtained



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The Finance Act, 2021 has amended the various provisions of the Income-tax Act, 1961 (ITA), to prohibit the deduction for depreciation on goodwill. Section 2(11) of the ITA, which defines the term "block of assets" was amended to remove the goodwill of business or profession from

the ambit of a block of asset.

The CBDT was empowered to specify the manner in which the written down value (WDV) and capital gains are to be computed where goodwill forms part of a block of assets. In the exercise of such powers, CBDT has inserted a new Rule 8AC to the Income-tax Rules, 1962. This Rule provides that where the goodwill of the business or profession was the only asset or one of the assets in the block of asset "intangible" for which the assessee obtained depreciation in the assessment year beginning on 01-04-2020, the WDV of this block of an asset for the previous year relevant to the assessment year commencing on 01-04-2021 shall be determined in the following steps:

Step 1:

Determine the Opening WDV of a block of assets as on 01-04-2020;

Step 2:

Add the Actual cost of the asset (other than goodwill) acquired during the previous year;

Step 3:

Reduce the money payable in respect of any asset, sold, destroyed, discarded, or demolished during the previous year together with the scrap value, if any;

Step 4:

Reduce the WDV of the assets, transferred under 'slump sale' falling under that block; and

Step 5:

Reduce the Actual cost of goodwill after reducing depreciation allowed, falling within the block.

Further, Rule also provides that if the actual cost of goodwill after reducing depreciation (amount calculated at Step 5) exceeds the aggregate of opening WDV and the actual cost of asset acquired during the year, such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

Furthermore, it also provides that if goodwill of the business or profession was the only asset in the block of asset for which assessee had obtained depreciation in the assessment year 2020-21, and the block of asset ceases to exist on account of there being no further asset acquired during the assessment year 2021-22 in that block, there will not be any capital gains or loss on account of the block of asset having ceased to exist.

We believe that start-ups preparing for initial public offering, and companies in the various sector who have opted for mergers and acquisitions in the past five years will most likely be impacted by the new rule. Further, exclusion of goodwill from the purview of intangible assets will lead to a reduction in their overall valuation, and increase their tax liabilities.

The above methodology for computing WDV and capital gains was awaited by the taxpayer after the amendment brought by the Finance Act, 2021. The same shall assist the taxpayers in computation for calculating the WDV of block of assets and STCG of the block of assets, where depreciation on goodwill has been obtained.

Views expressed are personal to author.





Legal Updates



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1. **ITAT KOLKATA 22-07-21:** Exemption u/s 11 - Corpus Donation - the corpus fund donated to the assessee cannot be included in the income and expenditure account but has been rightly shown by the assessee in its liability side of the Balance Sheet since the nature of the receipt is capital in nature. Therefore, the assessee succeeds and we allow the claim of the assessee and overturn the decision of the authorities below.
2. **ITAT BANGALORE 23-06-21** Validity of reopening of assessment u/s 147 - addition of transactions in HSBC Bank - AO is not sure whether income has to be assessed in the hands of assessee or his ex-wife. Next, he was not sure in which assessment year it has to be taxed, whether AY 2002-03 or 2003-04. In addition, he is not sure who is the exact owner of this bank account. - AO reopened the assessment merely on suspicion and surmise - Reassessment orders quashed -
3. **MADRAS HIGH COURT 20-07-21:** Carry forward the unabsorbed depreciation beyond eight years - The interregnum rescission of limiting the claim for an eight-year period does not take away the right of an assessee to claim the balance of unabsorbed depreciation, forever. The balance of unabsorbed depreciation revives back into life and becomes eligible for carry forward and set off along with the other part unabsorbed depreciation available to the credit of the assessee - HC
4. **ITAT INDORE 28-06-21:** Disallowance of purchase made from sister concerns - Making disallowance of purchase just because they are from sister concerns/ related parties, Memorandum of Undertaking not prepared and "why the job was entrusted to sister concerns" merely shows that the disallowance of purchase made by the Ld. A.O was on surmises and conjectures and without any support of any evidence. -
5. **ITAT LUCKNOW 19-07-21:** Exemption u/s 54F - disallowance being long term capital gain on sale of plot - LTCG - section 54F nowhere envisages that the sale consideration obtained by assessee from the original capital asset is mandatorily required to be utilized for purposes of meeting the cost of the new asset and where the investment made by assessee, although not entirely sourced from capital gain, but, was within stipulated time and more than the capital gain earned by him, the assessee was entitled to exemption under section 54F.
6. **ITAT JAIPUR 13-07-21:** Addition u/s 56(2)(vii)(b) - difference between the stamp duty value and the actual purchase consideration - - DVO has given due consideration for the location of the property and other relevant evidences produced before him by the assessee. The DVO is expert in valuation of the property and as the valuation is based on scientific method, the same cannot be doubted. -
7. **MADRAS HIGH COURT 16-07-21:** TP Adjustment - 'arranged' pricing' - TNMM method or CUP method - the superiority of any particular method to arrive at the ALP is ruled out. The TNMM (Transactional Net Margin Method) requires establishing comparability level at a broad functional level. It requires comparison between net margin derived from operation of the uncontrolled parties and net margin derived by an associated enterprise on similar operation. The net profit margin earned by an associate enterprise is compared with net profit margin of uncontrolled transactions to arrive at arm's length price. - Thus CUP method was found to be more appropriate - HC
8. **ITAT BANGALORE 14-07-21:** Exemption u/s 54F - If the assessee has invested money in constructing the residential house, merely because the construction was not complete in all respects or such building is yet to be completed fully or the building not being in a fit condition for being occupied, would by itself not be a ground for the assessee to be denied the benefit u/s 54F -
9. **ITAT PUNE 29-06-21:** Adjustment towards foreign exchange fluctuation - non-consideration of impact of abnormal movement in the foreign exchange rates while computing the operating profit margin - the assessee treated foreign exchange fluctuation loss as non-operating and thus computed its operating margin accordingly. Such treatment has been accepted by the TPO also. Once the forex loss has itself been treated and accepted as non-operating for self and the comparables, the same become neutral qua the computation of operating margin, leaving no room for any further adjustment. -
10. **ITAT DELHI 15-07-21:** Disallowance of expenses on account of interest on late payment of service tax - CIT(A) deleted the disallowance holding that the interest on late payment of service tax is compensatory in nature - interest paid for late deposit of the service tax is a permissible deduction -
11. **ITAT MUMBAI 12-07-21:** Income from house property - Estimation of notional rent - We fail to understand as to why the CIT(A) has chosen again to exhibit his scant regard to the judicial discipline and not follow the Hon'ble Bombay High Court decision in the case of Tiptop topography. In the said decision Hon'ble Bombay High Court has expounded that municipal ratable value in an accepted norm for considering the rental value unless the AO shows by some material that the rent offered by the assessee is a manipulated figure. We are again anguished and wonder why the Ld. CIT(A) chose to ignore the Hon'ble Bombay High Court decision -
12. **ITAT HYDERABAD 13-07-21:** Forex loss - allowable business loss u/s 37(1) or not? - The assessee company has entered into transactions of buying and selling of forex and incurred a



- loss on the cancellation of the said contract and claimed the same as business loss and debited to P&L A/c as forex loss under the head 'manufacturing administration expenditure'. - As per accounting standard AS-11, the assessee has rightly, claimed the forex loss as business loss u/s 37(1) - The losses claimed by the assessee are not speculative loss as alleged by the AO – Tr
13. **ITAT INDORE 25-06-21:** Bogus LTCG - Disallowing exemption u/s 10(38) - penny stock - The said company held as a penny stock company by the authorities below without any corroborative evidence is uncalled for and unjustified. Such action is erroneous arbitrary whimsical and suffers from the principle of surmise and conjecture. Thus, the disallowance of the claim made by the assessee towards the Long Term Capital Gain being bogus based only on mere surmise and conjecture. Thus, the disallowance of the claim made by the assessee towards the Long Term Capital Gain is bad in law and liable to be quashed.
 14. **ITAT BANGALORE 25-06-21:** Capital gain on JDA - Transfer u/s 2(47) - There was no transfer of property under this JDA. Also without accrual of construction to the assessee, assessee was not expected to pay capital gain on the JDA entered by the assessee with the developer. The condition laid down in section 2(47)(v) of the Act r.w.s. 53A of the Transfer of Property Act is not complied with as there was no willingness of the developer to perform his part of the duty in terms of the JDA.-
 15. **CALCUTTA HIGH COURT 08-07-21 :** Constitutional validity and legality of Section 194N - Deduction of tax at source at the rate of 2% on cash withdrawals from, inter alia, a banking company exceeding ₹ 1 crore in a financial year - Considering the facts, we are inclined to grant an interim order restraining the respondents authorities concerned from deducting tax on source on the basis of the aforesaid provisions of Section 194N till 30th September, 2021. – HC
 16. **MADRAS HIGH COURT 08-07-21:** Nature of receipt - proceeds realized by the assessee on sale of Certified Emission Reduction Credit - assessee had earned it on the Clean Development Mechanism in its wind energy operations - it is capital receipt and not business income – HC
 17. **ITAT DELHI 09-07-21:** Late filing fee u/s. 234E - intimation u/s 200A - Late filing of TDS returns / statement - when there are conflicting decisions, the view taken in favour of the assessee should be followed, the impugned order passed by the Id. CIT (A) confirming the late fee levied by the AO u/s 200A read with section 234E as the defaults are prior to 01.06.2015, is not sustainable in the eyes of law, hence fee levied u/s 234E is ordered to be deleted
 18. **ITAT SURAT 30-06-21:** Capital gain computation - addition u/s. 50C of the Act on account of difference in the value adopted by the DVO and the sale consideration - The incongruity in the statute was glaring and undue hardship not in dispute. Once it is not in dispute that a statutory amendment is being made to remove an undue hardship to the assessee or to remove an apparent incongruity, such an amendment has to be treated as retrospective, effective from the date on which the law, containing such an undue hardship or incongruity, was introduced. -
 19. **ANDHRA PRADESH HIGH COURT 24-06-21:** Tax refund adjustment towards the arrears of the tax - respondent authorities have applied the refund tax towards penalty only but not towards the arrears of tax - the respondent authorities are directed to adjust the tax refundable to the petitioner for the year 1996-97 to the tax arrears instead of penalty –
 20. **ITAT AHMEDABAD 03-06-21:** Addition of profit shifted out and the loss shifted in by way of Client code modification - Profit or the loss during the time when code were modified - transactions in F & O segment through the involvement of the broker - There is no basis on the part of the AO alleging that changes in the code limited to one digit represent genuine punching errors whereas changes in the codes ranging between 4 to 5 digits do not represent the genuine punching errors. - The changes in the number of digits in the code cannot be a criteria to draw an inference against the assessee.
 21. **ITAT PUNE 24-06-21:** Exemption u/s 11 denied - anonymous donations - In present case, it is highly improbable that an organization can receive donation of identical amount of ₹ 4,501/- from total 4851 persons. Therefore, it is fit case to apply the test of human probabilities. No pleadings were made before us as to how it was prevented from filing the correct details before the lower authorities as well as before us. - the transaction of receipt of donation is a sham, a make believe story, a device adopted by the appellant society to bring on record the undisclosed income of the appellant society. - No exemption –
 22. **KARNATAKA HIGH COURT 16-06-21:** Validity of the Order of assessment passed after the death of the assessee - In the instant case, admittedly, after conclusion of the submissions, before an order was passed by the Assessing Officer, the assessee expired. Therefore, by virtue of Section 159(2) of the Act, the proceeding could not have held to have been abated and could have been continued against the legal representatives. Section 159(2)(a) of the Act creates a legal fiction therefore, full effect has to be given to the same. It is not a case where the proceedings were initiated against the assessee who had already expired.
 23. **MADRAS HIGH COURT 28-06-21:** Reopening of assessment u/s 147 - period of limitation - Once the notice under Section 148 of the Act is issued within the period of limitation by dispatching the notice in the Post-Office, the same would be sufficient to meet out the requirements. Section 149 of the Act itself contemplates time limit for notice. - It is possible in many circumstances, the addressee may receive the cover one or two days later or on account of various other reasons, the postal department may deliver after three or four days and all these circumstances are possible. - Thus, the delivery of cover is immaterial –



24. **ITAT MUMBAI 01-07-21:** Deduction u/s 54 - It is settled law that when on an issue there is no jurisdictional High Court decision other Hon'ble High Court decision has to be followed by subordinate Courts and tribunals. Hence Ld. CIT(a) should have followed the Hon'ble High Court decisions in favour of assessee. - The dismissal of S.L.P without a speaking order by Hon'ble Supreme Court does not in any manner reduce the precedential value of Hon'ble High Court decision
25. **ITAT DELHI 30-06-21:** Long term or Short term capital gain - holding period of asset - benefit of indexation - Transfer of property - Assessee has acquired a right in the asset and such right is a capital asset and payment of installments as per the terms is only a follow-up action and taking delivery of possession is only a formality. Therefore, the assessee in our opinion has correctly computed the long term capital loss.
26. **ITAT INDORE 28-06-21:** Disallowance of Short Term Capital loss incurred on trading of shares - Conclusion drawn by the Revenue authorities on the basis of the common report of Director of Investigation Calcutta which is general in nature and not specific to any assessee so far as, the assessee is concerned. Furthermore, when the assessee was not confronted with any statement and/or material alleged to be the basis of the report of the Investigation Wing of the Department on which the conclusion drawn by the Revenue on human probabilities surmise and conjectures is not sustainable in the eye of law
27. **ITAT DELHI 30-06-21:** Long term capital gain arising from transaction of sale of rights as per Joint Development Agreement (JDA) - Assessee company is in the healthcare business and not in business related to real estate and as such it cannot be said that assessee, by entering into the Joint Development Agreement, has converted the land into its stock-in-trade. Therefore, we have no hesitation in holding that there is no scope of applicability of section 45(2) of the Act to the facts of the present case. - the assessing officer is directed to allow the benefit of indexation of cost of acquisition till AY 2011-12 i.e. the year of assessment of capital gain.
28. **ITAT BANGALORE 30-06-21:** Income from other sources - difference between the fair market value and the issue price of shares at a premium as income of the Assessee - the AO can scrutinize the valuation report and he can determine a fresh valuation either by himself or by calling a determination from an independent valuer to confront the Assessee but the basis has to be DCF method and he cannot change the method of valuation which has been opted by the Assessee.



Section 7 of CGST Act, 2017: SCOPE OF SUPPLY



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The law has provided an inclusive meaning to the word 'supply' which implies that the specific transactions which are listed in the said Section are only illustrative.

- (1) For the purposes of this Act, the expression "supply" includes,**
- (a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

SALE:-

Sales is lawful, permanent and absolute transfer of ownership of property in goods for money consideration under valid contract such that no rights are left behind with the transferor.

Here Title of goods are moving.

TRANSFER:-

Transfer means to pass over, convey, relinquishment of right, abandonment of a claim lawfully. Hence in simple term transfer means Lawful convey of property from one person to another person.

Here right in goods are moving not Title.

BARTER:-

Barter means "Things or Commodity" given in return of another. In other words no value is fixed. In simple term barter means consideration is in the form of goods or service or both (not in money) for sale or transfer. Therefore, barter will cover two supplies and not one. Each of these supply would need to be examined for its respective taxability.

Here exchange of movable property.

EXCHANGE:-

Exchange is similar to the barter where consideration is not in form of money but in form of Immovable property. Similar to barter exchange also involve two supplies.

Here exchange of Immovable property.

It can be noted that law has excluded the Immovable property from the definition of the supply but exchange of Immovable property for sale or transfer considered as supply.

**LEASE:-**

Lease means transfer of possession along with right to use immovable property for consideration in the form of non-recurring premium only or along with recurring rent. Main essence of lease is delivery of possession with user right, hence lease is also used in the context of movable property.

Here supplier of lease does not have possession hence not enjoyed the right to use but retain right to repossess property subject to normal wear and tear after term of lease.

Lease can be used in case of movable property.

RENTAL:-

Rental is lease in respect of movable property. Since recurring payment in lease (of Immovable property) is called rental, transfer of possession with user rights for recurring payment of consideration is interchangeably applied for movable and immovable property.

Rental can be used in case of Immovable property.

LICENSE:-

License is similar to lease but difference is that possession of movable or Immovable property does not transfer but permission to enter and use the property is allowed. Supplier of license retains possession of the property during the term of license without right to use. (E.g. Software license or Use Copyright or Franchisee)

Here possession is not transfer but only allow to enter or use the property.

DISPOSAL:-

Disposal means distribution, transferring to new hands, extinguishment of control over, forfeit or pass over control to another but in respect of goods that are "unfit for sale".

Here no requirement of another person in case of disposal i.e. Discard or Destroyed.

Supply should be in the course or furtherance of business:- For a transaction to qualify as 'supply', it is essential that the same is 'in the course' or 'furtherance of business'. This implies that it is only such of those supplies of goods and / or services by a business entity would be liable to tax, so long as it is 'in the course' or 'furtherance of business'. Supplies that are not in the course of business or in furtherance of business will not qualify as 'supply' for the purpose of levy of tax, except in case of import of service for consideration, where the service is treated as a supply even if it is not made in the course or furtherance of business

Consideration:- As per Section 2(31) of CGST Act, "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

- (aa) Activities or transactions involving supply of goods or Service by any person, Other than an individual, to its member or constituent or vice-versa, for cash, deferred payment, or other valuable consideration. (Inserted wide Finance Bill 2021.)
- (b) Import of services for a consideration whether or not in the course or furtherance of business AND

The word 'supply' includes import of a service, made for a consideration (as defined in Section 2(31)) and whether or not in the course or furtherance of business. This implies that import of services even for personal consumption would qualify as 'supply' and therefore, would be liable to tax. This would not be subject to the threshold limit for registration, as tax would be payable in case of import of services on reverse charge basis, requiring the importer of service to compulsorily obtain registration in terms of Section 24(iii) of the Act. Although import for personal purposes is included in the definition of supply, entry 10(a) to Notification No. 9/2017-Int (Rate), dated 28.6.2017 exempts import of services under entire Chapter 99 from payment of GST. However, the GST law has ensured that persons who are not engaged in any business activities will not be required to obtain registration and pay tax under reverse charge mechanism, and in turn, requires the supplier of services located outside India, to obtain registration for the OIDAR (online information and database access and retrieval) services only.

- (c) The activities specified in Schedule I, made or agreed to be made without a consideration.

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),

- (a) Activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.



- (3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as,
- (a) A supply of goods and not as a supply of services; or
 - (b) A supply of services and not as a supply of goods.

SCHEDULE I:-ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION.

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

Analysis:- Out of 8 terms of Supply only “Transfer” & “Disposal” are qualify as a supply under this category and others are excluded as a reason the terms “Sales”, “Barter”, “Exchange” involves element of consideration and the terms “Lease”, “Rental”, “Licence” does not involve business assets.

Ordinarily, there can be no permanent transfer in case of goods sent for job work. The aspect of sending goods on job work is not a supply, has been clarified vide Circular No.38/12/2018 dated 26.03.2018. However, where a

Registered person has purchased any moulds, tools, etc. and has sent the same to the job worker, there is a good chance that the goods are never returned, given that the time limits specified in Section 143 for good sent for job work does not apply to moulds, tools and other specified goods.

In the above context, business asset need not always be goods, it can as well be service that could be permanently transferred which could attract the above provisions Eg: - unexpired right in a business franchise permanently transferred to another person.

While the word ‘transfer’ in this entry suggests that there should be another person who would receive the business assets, there is no requirement of another person in the case of ‘disposal’. Therefore, if a business asset on which credit is claimed has been discarded, the transaction shall be regarded as a supply.

Business assets procured for the purpose of serving the requirements of ‘Corporate Social Responsibility’, being a statutorily imposed obligation’ may be contended to be a procurement made in the course or furtherance of business, and an attempt can be made to avail input tax credit. The issue would however remain contentious and there are no precedents. However, there would be no escape from the levy of tax on the transaction, if the asset is permanently transferred. The treatment would be no different even in the case of a donation.

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business: Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an

employee shall not be treated as supply of goods or services or both.

Analysis:- The supplies covered under this paragraph are deemed supplies covered which is based on a relationship between the supplier and recipient.

Now understand meaning of “Related Person” & “Distinct Person”

As per Section 15 of CGST Act, 2017 Persons shall be deemed to be “related persons” if,

- (i) Such persons are officers or directors of one another’s businesses.
- (ii) Such persons are legally recognised partners in business.
- (iii) Such persons are employer and employee.
- (iv) Any person directly or indirectly owns, controls or holds twenty-five per cent. Or more of the outstanding voting stock or shares of both of them.
- (v) One of them directly or indirectly controls the other.
- (vi) Both of them are directly or indirectly controlled by a third person.
- (vii) Together they directly or indirectly control a third person.
- (viii) They are members of the same family.

As per Section 25(4) and 25(5) of CGST Act, 2017 “**Distinct Person**” means

A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

Transactions with distinct persons are normally without consideration since they are part of the same entity located in different geographies, unless the accounting system is so sophisticated or so devised, that it treats the locations

In each State as a separate / independent entity even for book-keeping purposes and effects payments in monetary terms. Let us take instances of transactions between distinct persons that are not traceable in the books of account, but requires attention from the perspective of this paragraph in the Schedule.

- (i) Stock transfers e.g., transfer of sub-assemblies, semi-finished goods or finished goods.



- (ii) Transfer of new or used capital goods/ fixed assets – including movement of laptops when employees are transferred from one location to another.
- (iii) Bill-to ship-to transactions wherein the vendor issues the invoice to the corporate office and ships the goods to the branch office.
- (iv) Centralized management function like Board of Directors, Finance, Accounts, HR, Legal, procurement functions and other corporate functions at one location say corporate office and the entity having multiple registrations in various States results in supply of management services by the Corporate Office to distinct persons.
- (v) A transaction of sale of goods from one registration and providing after sales support or warranty services/ replacement services by another registration of the same entity.
- (vi) Contract awarded by a customer to an entity at the corporate office from where the centralized billing to the customer is made but the execution of the contract is carried out through various registrations of the same entity located in other / multiple States.
- (vii) Permitting employees to make use of the office assets for personal use-say usage of motor vehicles, laptops, printers, scanners, etc.

It appears that this paragraph, has an overriding effect on the first paragraph of the Schedule relating to transfer or disposal. In other words, in case a business asset is permanently transferred to a distinct person, the transaction although out of scope of paragraph 1, would be treated as a supply in terms of this paragraph. The provisions would equally apply even in the case of assets procured in the pre-GST regime.

As per the definition of “Related Person” an employer and employee will be deemed to be “related persons”. Accordingly, supplies by employer to employees would be liable to tax, if made in the course or furtherance of business, even though these supplies are made without consideration, except:-

- Gifts by an employer to an employee of value up to Rs 50,000.
- Cash gifts of any value, given that the ‘transaction in money’ is not a subject matter of supply as the same receives treatment as a taxable salary in the hands of the employee.
- Services by employee to the employer in the course of or in relation to his employment-treated as neither a supply of goods nor a supply of services.
- Another question which arises that is on what value will the GST liability be calculated in case the gift amount exceeds Rs.50,000/-. Although it is not expressly mentioned in the GST Act. But a reasonable construction

can be drawn that GST shall be levied on the whole amount in case the gift amount exceeds Rs. 50,000/-.

- The credit restriction on membership of a club, health and fitness center [under Section 17(5)(b)(ii)] would not apply where the employer provides the facilities to its employees, whether or not for a consideration, given that such a supply without consideration, would also be deemed to be an outward supply under this paragraph of the Schedule.
- Where gifts are liable to tax under this Schedule, it would be fair and proper to treat such gifts as taxable outward supplies, and therefore, credit thereon may not be required to be restricted under Section 17(5) (h).
- It may also be noted that a gift need not always be in terms of goods. A service can also constitute a gift, such as gift vouchers for a beauty treatment.

3. Supply of goods,

- (a) By a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
- (b) By an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

Analysis:- First we will Understand Definition of “Agent” & “Principal”.

Section 2(5) of the Act “Agent” means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

Section 2(88) of the Act “Principal” means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

There are Two Type of Agent One is “Normal Agent” and another is “Del-Credere Agent” (DCA).

The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier. In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent. In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer. Concerns have been expressed regarding the valuation of supplies from Principal to recipient where the payment for such supply is being discharged by the recipient through the loan provided by DCA or by the DCA himself.



Where an Agent receives goods directly from the Principal, or if the Principal's vendor directly dispatches goods to the location of the agent, the Principal shall be required to treat the movement as an outward supply of goods by virtue of this clause.

Two Circular issued by government to clarify the supply between principal & Agent.

- **Circular No. 57/31/2018-GST Dt. 4th Sep. 2018.**
- **Circular No. 73/47/2018-GST Dt. 5th Nov. 2018.**

Analysis of Circulars:-

The key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

Examples:-

Scenario 1:-

Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A. In this scenario, Mr. B is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr. B is not an agent of Mr. A for supply of goods in terms of Schedule I.

Scenario 2:-

M/s XYZ, a banking company, appoints Mr. B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s XYZ. The invoice for the supply of the goods is issued by M/s XYZ to the successful bidder. In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr. B is not an agent of M/s XYZ for the supply of goods in terms of Schedule I.

Scenario 3:-

Mr. A, an artist, appoints M/s B (auctioneer) to auction his painting. M/s B arranges for the auction and identifies the potential bidders.

The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s B on the behalf of Mr. A but in his own name and the painting is delivered to the successful bidder. In this scenario, M/s B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Schedule.

A similar situation can exist in case of supply of goods as well where the C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F/commission agent is an agent of the principal for the supply of goods in terms of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.

Scenario 4:-

Mr A sells agricultural produce by utilizing the services of Mr B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Mr B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A. As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.

In cases where the invoice is issued by Mr. B to the buyer, the former is an agent covered under Schedule I. However, in cases where the invoice is issued directly by Mr. A to the buyer, the commission agent (Mr. B) doesn't fall under the category of agent covered under Schedule I.

Scenario 5:-

Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?

Answer:-

- In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent.
- In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.

Scenario 6:-

Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?

**Answer:-**

In such a scenario following activities are taking place:-

- Supply of goods from supplier (principal) to recipient.
- Supply of agency services from DCA to the supplier or the recipient or both
- Supply of extension of loan services by the DCA to the recipient.

It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply.

Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier. It may be noted that vide notification No. 12/2017-Central Tax (Rate) dated 28th

June, 2017 (S. No. 27), services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) has been exempted.

Scenario 7:-

Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?

Answer:-

In such a scenario following activities are taking place:-

- Supply of goods by the supplier (principal) to the DCA.
- Further supply of goods by the DCA to the recipient.

- Supply of agency services by the DCA to the supplier or the recipient or both.
- Extension of credit by the DCA to the recipient.

It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasized that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient.

It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per clause (d) of sub-section (2) of section 15 of the CGST Act.

As per Notification No. 15/2018- Central Tax (Rate) dated 26.07.2018 services supplied by Direct Selling Agents (Other than Body Corporate, Partnership or LLP) to Bank or NBFC shall be covered under Reverse Charge.

4. Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

For instance, say A Ltd is a holding company in USA and B Ltd a subsidiary in India. Many business operations are centralized in the USA such as accounting, ERP and other software, servers for the backup, legal function, etc. For the purpose of this clause, the back-end support provided by the holding company to the subsidiary company in India shall be regarded as a supply, whether or not there is a cross charge, even if the same is not recognised in the books, or any contracts, since it is categorized as an import of service by a person from a related person without consideration, in the course of business.

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Vasai Branch of WIRC

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Launched of Publication on Quick Referencer on Companies Act 2013 on the occasion of CA Day 2021 at Branch Premises, Bhayandar (West)





July 2021

56th Virtual CPE Meeting (VCM) on Technology as Enabler of Internal Audit organised by Internal Audit Standards Board of ICAI and hosted by Vasai Branch of WIRC on 10th July 2021



Welcome Address & Keynote Session: CA. Charanjot Singh Nanda (Central Council Member and Chairman, Internal Audit Standards Board, ICAI) **Session Chairman:** CA. Abhishek Tiwari (Chairman – Vasai Branch), **Speakers:** Mr. Nitesh Mehrotra & CA. Shalin Parikh **Session Moderator:** CA Uditi Jain

57th Virtual CPE Meeting on Understanding Crypto Currencies, Latest Trends and Probable Taxation held on 11th July 2021

Guest of Honor: CA. Ramawatar Sharma Speaker: CA. Aankit Kumar Jain Session Chairman: CA Abhishek Tiwari (Chairman, Vasai Branch) Committee Members: CA. Vijendra Jain (Committee Member) & CA. Amit Agarwal (Committee Member) Other Guest: CA. Nitesh Kothari (Past Chairman – Vasai Branch)





58th & 59th Virtual CPE Meeting on Training Programme for Peer Reviewers organised by Peer Review Board – ICAI held on 14th & 15th July 2021



Chief Guest: CA. Anil Bhandari (Central Council Member, ICAI) **Speaker:** CA. Abhay Kamat, CA. Abhijit Kelkar, CA. Satbhai Vasantryao, CA. Shashi Gupta **Session Chairman:** CA. Ankit Rathi (Immediate Past Chairman – Vasai Branch)

60th Virtual CPE Meeting on How to use Excel formula in day to day life and pivot table understanding held on 18th July 2021



Chief Guest: CA. R D Lukad **Speaker:** Dharmendra Lunawat **Session Chairman:** CA. Abhishek Tiwari (Chairman – Vasai Branch), **Committee Members:** CA. Lokesh Kothari (Secretary & Treasurer), CA. Vijendra Jain (Committee Member), CA. Amit Agarwal (Committee Member), **Coordinators:** CA. Mayur Kothari & CA. Sumithra



July 2021

Virtual National Conference organised by Professional Development Committee and hosted by Vasai Branch and co-hosted by Vapi, Akola, Amaravati, Jalgaon Branches of WIRC of ICAI from 23rd to 25th July 2021



Chief Guest: CA. Nihar N Jambusaria (President of ICAI), **Guest of Honour:** CA. (Dr.) Debashis Mitra (Vice President of ICAI), **Speaker:** CA Prafulla P Chhajer (Past President of ICAI) **Session Chairmen:** CA. Babu Abraham Kallivayalil (Chairman, PDC & CCM of ICAI) & CA. Satish Kumar Gupta (Vice-Chairman, PDC & CCM of ICAI).

CA. Abhishek Tiwari (Chairman, Vasai Branch), CA. Sunil D. Salampuriya (Chairman, Amravati Branch), CA. Prashant Agrawal (Chairman, Jalgaon Branch), CA. Vinayak Bafana (Chairman, Vapi Branch), CA. Keyur S Dedhia (Chairman, Akola Branch)

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The Institute of Chartered Accountants of India,
Vasai Branch of WIRC

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