

FINAL COURSE
(UNDER REVISED SCHEME OF
EDUCATION AND TRAINING)
GROUP – I

REVISION TEST PAPERS

MAY, 2019



BOARD OF STUDIES
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)
New Delhi

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REVISION TEST PAPER, MAY 2019 – OBJECTIVE & APPROACH

(Students are advised to go through the following paragraphs carefully to derive maximum benefit out of this RTP)

I Objective of Revision Test Paper

Revision Test Papers are one among the many educational inputs provided by the Board of Studies (BOS) to its students. Popularly referred to as RTP by the students, it is one of the very old publications of the BOS whose significance and relevance from the examination perspective has stood the test of time.

RTPs provide glimpses of not only the desirable ways in which examination questions are to be answered but also of the professional quality and standard of the answers expected of students in the examination. Further, aspirants can assess their level of preparation for the examination by answering various questions given in the RTP and can also update themselves with the latest developments in the various subjects relevant from the examination point of view.

The primary objectives of the RTP are:

- To help students get an insight of their preparedness for the forthcoming examination;
- To provide an opportunity for a student to find all the latest developments relevant for the forthcoming examination at one place;
- To supplement earlier studies;
- To enhance the confidence level of the students adequately; and
- To leverage the preparation of the students by giving guidance on how to approach the examinations.

RTPs contain the following:

- (i) Planning and preparing for examination
- (ii) Subject-wise guidance – An overview
- (iii) Updates applicable for a particular exam in the relevant subjects
- (iv) Topic-wise questions and detailed answers thereof in respect of each paper
- (v) Relevant announcement applicable for the particular examination

Students must bear in mind that the RTP contains a variety of questions based on different sections of the syllabi and thus a comprehensive study of the entire syllabus is a pre-requisite before answering the questions of the RTP. In other words, in order to derive maximum benefit out of the RTPs, it is advised that before proceeding to solve the questions given in the RTP, students ought to have thoroughly read the Study Materials.

The topics on which the questions are set herein have been carefully selected and meticulous attention has been paid in framing different types of questions. Detailed answers are provided to enable the students to do a self-assessment and have a focused approach for effective preparation.

Students are welcome to send their suggestions for fine tuning the RTP to the Director, Board of Studies, The Institute of Chartered Accountants of India, A-29, Sector-62, Noida 201 309 (Uttar Pradesh). RTP is also available on the Institute's website www.icaai.org under the BOS knowledge portal in students section for downloading.

II. Planning and preparing for examination

Ideally, when the RTP reaches your hand, you must have finished reading the relevant Study Materials of all the subjects. Make sure that you have read the Study Materials thoroughly as they cover the syllabus comprehensively. Get a good grasp of the concepts/ provisions discussed therein. Solve each and every question/illustration given therein to understand the application of the concepts and provisions.

After reading the Study Materials thoroughly, you should go through the Updates provided in the RTP and then proceed to solve the questions given in the RTP on your own. RTP is an effective tool to revise and refresh the concepts and provisions discussed in the Study Material. RTPs are provided to you to help you assess your level of preparation. Hence you must solve the questions given therein on your own and thereafter compare your answers with the answers given therein.

Examination tips

How well a student fares in the examination depends upon the level and depth of his preparation. However, there are certain important points which can help a student better his performance in the examination. These useful tips are given below:

- Reach the examination hall well in time.
- As soon as you get the question paper, read it carefully and thoroughly. You are given separate 15 minutes for reading the question paper.
- Plan your time so that appropriate time is awarded for each question. Keep sometime for checking the answers as well.
- First impression is the last impression. The question which you can answer in the best manner should be attempted first.
- Always attempt to do all questions. Therefore, it is important that you must finish each question within allocated time.
- Read the question carefully more than once before starting the answer to understand very clearly as to what is required.

- Answer all parts of a question one after the other; do not answer different parts of the same question at different places.
- Write in a neat and legible hand-writing.
- Always be concise and write to the point and do not try to fill pages unnecessarily.
- There must be logical expression of the answer.
- In case a question is not clear, you may state your assumptions and then answer the question.
- Check your answers carefully and underline important points before leaving the examination hall.

III. Subject-wise Guidance – An Overview

PAPER 1: FINANCIAL REPORTING

For Paper 1 : Financial Reporting Revised November, 2018 edition of the study material is applicable. The Study Material has been divided into six modules for ease of handling by students. Module 1 deals with select Accounting Standards and Guidance Notes. Modules 2 to 5 is devoted to Ind AS and the last Module 6 is on Accounting and Reporting of contemporary topics.

For understanding the coverage of syllabus, it is important to read the Study Material along with the reference to Study Guidelines. It contains the detailed topic-wise inclusion / exclusions from the syllabus. It also covers the list of select EAC opinions relevant for the paper. The Study Guidelines is given as part of “Applicability of Standards/Guidance Notes/Legislative Amendments etc. for May, 2019 – Final Examination” appended at the end of this Revision Test Paper.

You have to read the Study Material (alongwith the corrigendum and the modified chapters, uploaded on the website) thoroughly to attain conceptual clarity. Tables, diagrams and flow charts have been extensively used to facilitate easy understanding of concepts. Examples and Illustrations given in the Study Material would help you understand the application of concepts. Thereafter, work out the questions at the end of each chapter to hone your problem solving skills. Compare your answers with the answers given to test your level of understanding.

Thereafter, solve the questions given in this RTP independently and compare the same with the answers given to assess your level of preparedness for the examination. The Revisionary Test Paper (RTP) of Financial Reporting contains twenty questions and their answers.

Answers to the questions have been given in detail along with the working notes for easy understanding and comprehending the steps in solving the problems. The answers to

the questions have been presented in the manner which is expected from the students in the examination. The students are expected to solve the questions under examination conditions and then compare their solutions with the solutions given in the Revisionary Test Paper and further strategize their preparation for scoring more marks in the examination.

Students may also note that the relevant amendments including relevant Notifications / Circulars / Rules issued by the Companies Act, 2013 and other relevant legislations up to 31st October, 2018 will be applicable for May, 2019 Examination. Reference of the same is also given in the Study Guidelines appended at the end of this Revision Test Paper.

PAPER 2: STRATEGIC FINANCIAL MANAGEMENT

Basically, the subject of Strategic Financial Management is to acquire the ability to apply financial management theories and techniques in strategic decision making. The major topics from which numerical questions are normally asked are as follows:

- Risk Management
- Security Analysis & Valuation
- Portfolio Management
- Mutual Funds
- Derivatives
- Foreign Exchange Exposure and Risk Management
- International Financial Management
- Interest Rate Risk Management
- Corporate Valuation
- Mergers and Acquisitions

Accordingly, the detail of the topics, on which questions in this Revisionary Test Paper are based, is as follows:

| Question No. | Topic |
|--------------|----------------------|
| 1 | Security Valuation |
| 2 | Security Valuation |
| 3 | Portfolio Management |
| 4 | Portfolio Management |
| 5 | Mutual Fund |
| 6 | Derivatives |
| 7 | Derivatives |

| | |
|----|--|
| 8 | Foreign Exchange Exposure and Risk Management |
| 9 | Foreign Exchange Exposure and Risk Management |
| 10 | International Financial Management |
| 11 | Interest Rate Risk Management |
| 12 | Corporate Valuation |
| 13 | Mergers and Acquisitions and Valuation of Business. |
| 14 | A blend of questions requiring a straight forward answer 'what it is' in short paragraph or a sequence of sentences explaining each other. |
| 15 | A blend of questions requiring a straight forward answer 'what it is' in short paragraph or a sequence of sentences explaining each other. |

PAPER 3: ADVANCED AUDITING AND PROFESSIONAL ETHICS

RTP is a tool to refresh your knowledge which you have acquired while doing conceptual study from Study Material, Practice Manual and other modes of knowledge like student journal, bare acts etc.

This RTP of Advanced Auditing and Professional Ethics is relevant for May, 2019 Examination. Total 25 Questions consisting of multiple choice questions and descriptive questions have been taken from the entire syllabus divided into twenty chapters along with Engagement and Quality Control Standards, Statements, Guidance Notes, etc.

These 25 questions are taken from different topics like Engagement and Quality Control Standards, Statements and Guidance Notes, Audit Planning, Strategy and Execution, Risk Assessment and Internal Control, Special Aspects of Auditing in an Automated Environment, Company Audit, CARO, 2016, Liabilities of Auditors, Audit Reports including Audit Reports and Certificates for Special Purpose Engagements, SEBI (LODR), Consolidated Financial Statements, Audit under Fiscal Laws (including Audits under direct tax laws as well as indirect tax laws), Audit of Banks, NBFCs and Insurance Companies, Due Diligence, Investigation and Forensic Audit, Professional Ethics, Peer Review and Quality Review etc. of different level. Some of the questions given in the RTP are descriptive i.e. direct theory questions (knowledge and Comprehension) based whereas some of them are practical case studies based i.e., application oriented theory question (Application and Analysis / Evaluation and Synthesis). The name of the chapter is clearly indicated before each question.

This RTP of Advanced Auditing and Professional Ethics has been divided into two parts viz Part I – Legislative Amendments / Notifications / Circulars / Rules / Guidelines issued by Regulating Authority relevant for May, 2019 examination and Part II – Questions and Answers.

The relevant notified sections of the Companies Act, 2013 and legislative amendments including relevant Notifications / Circulars / Rules / Guidelines issued by Regulating

Authority up to 31st October, 2018 are applicable for May, 2019 Examination. The questions have been answered in this RTP keeping in view latest amendments as per above mentioned dates.

PAPER 4: CORPORATE AND ECONOMIC LAWS

In the paper of Corporate and Economic Laws, students should be able to emphasise on the legal point or issue involved in any problem and synchronize the same with the relevant legal provisions in a clear and logical manner. Students needs to focus on the presentation of answer to enhance the quality of the answer. This can be improved by writing the answers under examination conditions and also undertaking self-assessment by going through Revision Test Papers (RTP).

RTP is divided into two parts:

Part I : Relevant amendments applicable for May 2019 examinations.

Part II : Multiple Choice Questions with their correct options and Descriptive Questions with detailed answers

Part I talks about the applicability of relevant amendments made vide Circulars, Notifications, Regulations issued by concerned departments for May 2019 examinations.

The relevant legislative amendments including relevant Notifications / Circulars / Rules / Guidelines issued by Regulating Authority up to 31st October 2018 are applicable for May 2019 Examination. The questions have been answered in this RTP keeping in view latest amendments as per above mentioned dates.

Part II contains 20 Questions (both MCQs and Descriptive) with their answers. Some questions are divided into sub parts. The topics amongst which these questions are divided are as follows:

| Question No. | Topic |
|--------------|--|
| 1 | Appointment and Qualifications of Directors |
| 2 | Meetings of Board and its powers |
| 3 | Appointment and Qualifications of Directors |
| 4 | Miscellaneous Provisions |
| 5 | The Insolvency and Bankruptcy Code, 2016 |
| 6 | The Prevention of Money Laundering Act, 2002 |
| 7 | Appointment and remuneration of Managerial Personnel |
| 8(i) | Miscellaneous Provisions |
| 8(ii) | Appointment and Qualifications of Directors |
| 9 | Meetings of Board and its powers |
| 10 | Miscellaneous Provisions |

| | |
|--------|---|
| 11 | Inspection, inquiry and Investigation |
| 12 | Corporate Secretarial Practice—Drafting of Notices, Resolutions, Minutes and Reports |
| 13(i) | National Company Law Tribunal and Appellate Tribunal |
| 13(ii) | Winding Up |
| 14 | Prevention of Oppression and Mismanagement |
| 15 | Companies incorporated outside India |
| 16 | The Securities Exchange Board of India Act, 1992, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 |
| 17 | The Insolvency and Bankruptcy Code, 2016 |
| 18 | The Foreign Exchange Management Act, 1999 |
| 19(i) | The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 |
| 19(ii) | The Foreign Contribution Regulation Act, 2010 |
| 20(i) | The Prevention of Money Laundering Act, 2002 |
| 20(ii) | The Arbitration and Conciliation Act, 1996 |

Guidance on Sections and Case Laws: It is imperative for Final students to remember major section numbers and relevant case laws. Extra efforts are to be made in this direction. If by any chance, students do not remember the Section numbers and Case Law while answering any question in the examination paper on the subject, they may not lose heart on this score. They may otherwise strengthen their answer by appropriate reasoning and examples. However, they may desist from citing wrong Section numbers or irrelevant Case laws.

PAPER –1: FINANCIAL REPORTING

PART – I : RELEVANT AMENDMENTS, NOTIFICATIONS AND ANNOUNCEMENTS

A. Applicable for May, 2019 Examination

1. Amendment in Schedule III notified by MCA on 12.10.2018

Following amendments have been made in Schedule III to the Companies Act, 2013

(a) In Division I which covers formats and instructions for financial statements drawn as per Accounting Standards ie Indian GAAP

Following amendments have been made

- (i) Clause (ii) of paragraph 4 under 'General instructions for preparation of Balance Sheet and Statement of Profit and Loss of a company', states uniform use of unit of measurement in the financial statements. In the given sentence the word 'shall' has been replaced with the word 'should' through this notification. Hence, now the clause (ii) of paragraph 4 shall be read as follows:

*"Once a unit of measurement is used, it **should** be used uniformly in the Financial Statements."*

- (ii) Underneath Part I in the format of Balance Sheet, under the heading "II Assets" sub-heading "Non-current assets", **the words "Fixed assets" should be replaced as "Property, Plant and Equipment"**. This amendment has been done since the title of revised AS 10 is now 'Property, Plant and Equipment' instead of 'Fixed Assets'.

Similar substitution has been done in Point W of the "Notes" under the heading "General Instructions for preparation of Balance Sheet".

- (iii) Point 6B of the "Notes", under the heading "General Instructions for preparation of Balance Sheet" deals with the classification of Reserves and Surplus. One of the category was 'Securities Premium Reserve'. As per the amendment, the word 'Reserve' after Securities Premium has been omitted. Now it should be read as '**Securities Premium**' only.

(b) In Division II which covers formats and instructions for financial statements drawn as per Indian Accounting Standards ie Ind AS

Following amendments have been made

- (i) In Part I which specifies the format of Balance Sheet, under the heading 'Equity and Liabilities', Trade Payables (both under 'non-current liabilities' and 'current liabilities') shall further be classified as

"(A) total outstanding dues of micro enterprises and small enterprises; and

- (B) total outstanding dues of creditors other than micro enterprises and small enterprises.”;
- (ii) In the table (format) for ‘Other Equity’ under the ‘Statement of Changes in Equity’, “Securities Premium Reserve” is substituted as “Securities Premium”. Also below the table on ‘Other Equity’ a note has been given which shall be renumbered as ‘(i)’ and further a note has been added as follows:
“(ii) A description of the purposes of each reserve within equity shall be disclosed in the Notes.”
- (iii) Paragraph 6A and 6B of “General Instructions for Preparation of Balance Sheet” is on ‘Non-current assets’ and ‘current assets’ respectively.
- (A) Under point ‘VI. Trade Receivables’ of 6A and ‘III. Trade Receivables’ of 6B, sub point (i) has been substituted as follows:
“(i) Trade Receivables shall be sub-classified as:
(a) Trade Receivables considered good - Secured;
(b) Trade Receivables considered good - Unsecured;
(c) Trade Receivables which have significant increase in Credit Risk; and
(d) Trade Receivables - credit impaired.”
- (B) Under point ‘VIII. Loans’ of 6A and ‘V. Loans’ of 6B, sub point (ii) is substituted as follows:
“(ii) Loans Receivables shall be sub-classified as:
(a) Loans Receivables considered good - Secured;
(b) Loans Receivables considered good - Unsecured;
(c) Loans Receivables which have significant increase in Credit Risk; and
(d) Loans Receivables - credit impaired,”
- (iv) After paragraph F of “General Instructions for Preparation of Balance Sheet” paragraph FA shall be inserted as follows:
“FA. Trade Payables
The following details relating to micro, small and medium enterprises shall be disclosed in the notes:
(a) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier at the end of each accounting year;

- (b) *the amount of interest paid by the buyer in terms of section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;*
- (c) *the amount of interest due and payable for the period of delay in making payment (which has been paid but beyond the appointed day during the year) but without adding the interest specified under the Micro, Small and Medium Enterprises Development Act, 2006;*
- (d) *the amount of interest accrued and remaining unpaid at the end of each accounting year; and*
- (e) *the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues above are actually paid to the small enterprise, for the purpose of disallowance of a deductible expenditure under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.*

Explanation- *The terms ‘appointed day’, ‘buyer’, ‘enterprise’, ‘micro enterprise’, ‘small enterprise’ and ‘supplier’, shall have the same meaning as assigned to them under clauses (b), (d), (e), (h), (m) and (n) respectively of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006.”*

- (v) In paragraph 9, after the words “For instance,”, the words “plain vanilla” has been inserted. This amendment has been done to bring clarity to the treatment of redeemable preference shares ie which redeemable preference shares should fall in the category of ‘borrowings’. Accordingly, the last sentence of para 9 will be read as follows:

*“For instance, **plain vanilla** redeemable preference shares shall be classified and presented under ‘non-current liabilities’ as ‘borrowings’ and the disclosure requirements in this regard applicable to such borrowings shall be applicable mutatis mutandis to redeemable preference shares.”*

(c) Division III (newly notified division applicable for NBFCs)

Through this notification, MCA added/notified Division III in the Schedule III which is applicable to Non-Banking Financial Company (NBFC) whose financial statements are drawn up in compliance of the Companies (Indian Accounting Standards) Rules, 2015. **However, this Division III has not been made applicable for CA Final Students.**

2. Amendment in Ind AS 20 notified by MCA in the Companies (Indian Accounting Standards) Second Amendment Rules, 2018 on 20th September 2018

Amendment has been made in Ind AS 20 ‘Accounting for Government Grants and Disclosure of Government Assistance’. The amendment provides entities the option for

recording non-monetary government grants at a nominal amount and presenting government grants related to assets by deducting the grant from the carrying amount of the asset.

3. Notification of Ind AS 115 and withdrawal of Ind AS 11 and Ind AS 18 along with the consequential amendments in other Ind AS and other amendments notified in the Companies (Indian Accounting Standards) Second Amendment Rules, 2018 on 28th March, 2018

The Rules have brought in the following significant amendments to Ind AS:

- New revenue standard Ind AS 115 has been notified which supersedes Ind AS 11, Construction Contracts and Ind AS 18, Revenue. **(Refer Chapter 5 of November, 2018 edition of the study material)**
- Appendix B, Foreign Currency Transactions and Advance Consideration to Ind AS 21, The Effects of Changes in Foreign Exchange Rates has been notified. The appendix applies where an entity either pays or receives consideration in advance for foreign currency-denominated contracts. The date of the transaction determines the exchange rate to be used for initial recognition of the related asset, expense or income. Ind AS 21 requires an entity to use the exchange rate at the 'date of the transaction', which is defined as the date when the transaction first qualifies for initial recognition.

Here, the question arises that whether the date of the transaction is the date when the asset, expense or income is initially recognised, or an earlier date on which the advance consideration is paid or received, resulting in recognition of a prepayment or deferred income.

The appendix provides guidance for when a single payment/receipt is made, as well as for situations where multiple payments/receipts are made.

- **Single payment/receipt** The appendix states that the date of the transaction, for the purpose of determining the exchange rate to use on initial recognition of the related asset, expense or income, should be the date on which an entity initially recognises the non-monetary asset or liability arising from an advance consideration paid/received.
- **Multiple receipts/payments** The appendix states that, if there are multiple payments or receipts in advance of recognising the related asset, income or expense, the entity should determine the date of the transaction for each payment or receipt.
- Amendment to Ind AS 40, Investment Property stating that when assets are transferred to, or from, investment properties. The amendment states that to transfer to, or from, investment properties there must be a change in use supported by evidence. A change in intention, in isolation is not enough to support a transfer.

The amendment has re-described the list of evidence of change in use as a non-exhaustive list of examples and scope of these examples have been expanded to include assets under construction and development and not only transfers of completed properties.

Examples of evidence of a change in use include:

- a) commencement of owner-occupation, or of development with a view to owner-occupation, for a transfer from investment property to owner-occupied property;
 - b) commencement of development with a view to sale, for a transfer from investment property to inventories;
 - c) end of owner-occupation, for a transfer from owner-occupied property to investment property;
 - d) inception of an operating lease to another party, for a transfer from inventories to investment property.
- Amendments to Ind AS 12, Income Taxes elucidate the existing guidance in Ind AS 12. They do not change the underlying principles of recognition of deferred tax asset. As per the amendment:
 - Existence of a deductible temporary difference depends solely on a comparison of the carrying amount of an asset and its tax base at the end of the reporting period, and is not affected by possible future changes in the carrying amount. Consequently, decreases below cost in the carrying amount of a fixed-rate debt instrument measured at fair value in the books of the holder for which the tax base remains at cost gives rise to a deductible temporary difference. This is regardless of whether the holder expects to collect all the contractual cash flows of the debt instrument.
 - Determining the existence and amount of temporary differences and estimating future taxable profit against which deferred tax assets can be utilised are two separate steps. Recovering assets for more than their carrying amounts is inherent in an expectation of taxable profits and should therefore be included in estimated taxable profit if there is sufficient evidence to conclude that it is probable that the entity will recover the asset for more than its carrying amount. For example, an entity should assume that a debt investment measured at fair value will be recovered for more than its carrying value when that outcome is probable even if carrying value is below its tax base (original investment cost).
 - Recoverability of deferred tax assets are assessed in combination with other deferred tax assets where the tax law does not restrict the source of taxable profits against which particular types of deferred tax assets can be recovered. Where restrictions apply (for example where capital losses can be set off

against capital gains), deferred tax assets are assessed in combination only with other deferred tax assets of the same type.

- When comparing deductible temporary differences against future taxable profits, the determination of future taxable profits shall exclude tax deductions resulting from reversal of these deductible temporary differences.
- Amendment to Ind AS 28, Investments in Associates and Joint Ventures and Ind AS 112, Disclosure of Interests in Other Entities stating that:
 - Disclosures requirement of Ind AS 112 are applicable to interest in entities classified as held for sale except for summarised financial information (para B17 of Ind AS 112).
 - In Ind AS 28, the option available with venture capital organisations, mutual funds, unit trusts and similar entities to measure their investments in associates or joint ventures at fair value through profit or loss (FVTPL) is available for each investment in an associate or joint venture.
- Consequential amendments to other Ind AS due to notification of Ind AS 115 and other amendments discussed above
 - (i) **Ind AS 101, First-time Adoption of Indian Accounting Standards:** The Rules introduce two additional exemptions in Ind AS 101 related to Ind AS 115 and Appendix B to Ind AS 21. These are:
 - Ind AS 115: A first-time adopter can apply the transition provisions in paragraphs C5 and C6 of Ind AS 115 (related to practical expedients when applying Ind AS 115 retrospectively) at the date of transition to Ind AS. Further, a first-time adopter is not required to restate contracts that were completed before the earliest period presented.
 - Appendix B to Ind AS 21: A first-time adopter need not apply Appendix B to Ind AS 21 to assets, expenses and income in the scope of the appendix initially recognised before the date of transition to Ind AS.
 - (ii) **Ind AS 2, Inventories:** Costs of services by a service provider that does not give rise to inventories will need to be accounted for as costs incurred to fulfil a contract with customer in accordance with Ind AS 115. Such costs can be capitalised under Ind AS 115 if they
 - (1) relate directly to the contract,
 - (2) enhance the resources of the entity to perform under the contract and relate to satisfying a future performance obligation, and
 - (3) are expected to be recovered.

Earlier paragraph 8 of Ind AS 2 which stated that in case of a service provider, inventories include costs of the service, for which the entity has not yet recognised the related revenue, has been deleted.

- (iii) **Ind AS 16, Property, Plant and Equipment, Ind AS 38, Intangible Assets and Ind AS 40, Investment Property:** These standards have been amended to require use of principles of Ind AS 115 for recognition of a gain or loss on the transfer of non-financial assets i.e. property, plant and equipment, intangible asset and investment property, that are not an output of an entity's ordinary activities. Although a gain or loss on this type of sale generally does not meet the definition of revenue, an entity should apply the guidance in Ind AS 115 related to the transfer of control and measurement of the transaction price including the constraint on variable consideration, to evaluate the timing and amount of the gain or loss recognised.

Further, since Ind AS 115 deals with accounting for contract assets, Ind AS 38 has been amended to add a scope exclusion for such contract assets.

- (iv) **Ind AS 37, Provisions, Contingent Assets and Contingent Liabilities:** Ind AS 115 does not have any specific requirement to address the accounting of contracts with customers that are, or have become, onerous. Previously, depending upon type of contract, such onerous contracts were accounted under Ind AS 11 or Ind AS 37. With the omission of Ind AS 11, a consequential amendment has been made to Ind AS 37 to bring all onerous revenue contracts within the scope of the Ind AS 37. Ind AS 37 defines onerous contract as a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it. If an entity has a contract that is onerous, the present obligation under the contract shall be recognised and measured as a provision.
- (v) **Ind AS 109, Financial Instruments:** Amendments to Ind AS 109 are discussed below:
- (i) The current Ind AS 109 states that an entity shall measure trade receivables at their transaction price. Due to notification of Ind AS 115, an entity is required to measure trade receivables at their transaction price if the trade receivables do not contain a significant financing component in accordance with Ind AS 115.
 - (ii) An entity shall have an accounting policy choice to measure loss allowance on trade receivables or contracts assets within the scope of Ind AS 115 containing a significant financing component at an amount equal to life time expected credit losses (simplified approach) or using the general model (3 stage).

- (iii) Entities shall now consider the principles of Ind AS 115 for subsequent measurement of financial guarantee and loan commitments.

4. Relevant Sections of the Companies Act, 2013

The relevant Sections of the Companies Act, 2013 notified up to 31st October, 2018 are applicable for May, 2019 Examination.

B. Not applicable for May, 2019 Examination

Division III of Schedule III (stating format of financial statements for NBFCs) notified by MCA on 12.10.2018 has not been made applicable for May, 2019 examination.

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

Ind AS 36

1. Elia limited is a manufacturing company which deals in to manufacturing of cold drinks and beverages. It is having various plants across India. There is a Machinery A in the Baroda plant which is used for the purpose of bottling. There is one more machinery which is Machinery B clubbed with Machinery A. Machinery A can individually have an output and also sold independently in the open market. Machinery B cannot be sold in isolation and without clubbing with Machine A it cannot produce output as well. The Company considers this group of assets as a Cash Generating Unit and an Inventory amounting to ₹ 2 Lakh and Goodwill amounting to ₹ 1.50 Lakhs is included in such CGU. Machinery A was purchased on 1st April 2013 for ₹ 10 Lakhs and residual value is ₹ 50 thousands. Machinery B was purchased on 1st April, 2015 for ₹ 5 Lakhs with no residual value. The useful life of both Machine A and B is 10 years. The Company expects following cash flows in the next 5 years pertaining to Machinery A. The incremental borrowing rate of the company is 10%.

| Year | Cash Flows from Machinery A |
|--------------|-------------------------------------|
| 1 | 1,50,000 |
| 2 | 1,00,000 |
| 3 | 1,00,000 |
| 4 | 1,50,000 |
| 5 | 1,00,000 (excluding Residual Value) |
| Total | 6,00,000 |

On 31st March, 2018, the professional valuers have estimated that the current market value of Machinery A is ₹ 7 lakhs. The valuation fee was ₹ 1 lakh. There is a need to dismantle the machinery before delivering it to the buyer. Dismantling cost is ₹ 1.50 lakhs. Specialised packaging cost would be ₹ 25 thousand and legal fees would be ₹ 75 thousand.

The Inventory has been valued in accordance with Ind AS 2. The recoverable value of CGU is ₹ 10 Lakh as on 31st March, 2018. In the next year, the company has done the assessment of recoverability of the CGU and found that the value of such CGU is ₹ 11 Lakhs ie on 31st March, 2019. The Recoverable value of Machine A is ₹ 4,50,000 and combined Machine A and B is ₹ 7,60,000 as on 31st March, 2019.

Required:

- a) Compute the impairment loss on CGU and carrying value of each asset after charging impairment loss for the year ending 31st March, 2018 by providing all the relevant working notes to arrive at such calculation.
- b) Compute the prospective depreciation for the year 2018-2019 on the above assets.
- c) Compute the carrying value of CGU as at 31st March, 2019.

Ind AS 12

2. PQR Ltd., a manufacturing company, prepares consolidated financial statements to 31st March each year. During the year ended 31st March, 2018, the following events affected the tax position of the group:
 - QPR Ltd., a wholly owned subsidiary of PQR Ltd., incurred a loss adjusted for tax purposes of ₹ 30,00,000. QPR Ltd. is unable to utilise this loss against previous tax liabilities. Income-tax Act does not allow QPR Ltd. to transfer the tax loss to other group companies. However, it allows QPR Ltd. to carry the loss forward and utilise it against company's future taxable profits. The directors of PQR Ltd. do not consider that QPR Ltd. will make taxable profits in the foreseeable future.
 - During the year ended 31st March, 2018, PQR Ltd. capitalised development costs which satisfied the criteria as per Ind AS 38 'Intangible Assets'. The total amount capitalised was ₹ 16,00,000. The development project began to generate economic benefits for PQR Ltd. from 1st January, 2018. The directors of PQR Ltd. estimated that the project would generate economic benefits for five years from that date. The development expenditure was fully deductible against taxable profits for the year ended 31st March, 2018.
 - On 1st April, 2017, PQR Ltd. borrowed ₹ 1,00,00,000. The cost to PQR Ltd. of arranging the borrowing was ₹ 2,00,000 and this cost qualified for a tax deduction on 1st April 2017. The loan was for a three-year period. No interest was payable on the loan but the amount repayable on 31st March 2020 will be ₹ 1,30,43,800. This equates to an effective annual interest rate of 10%. As per the Income-tax

Act, a further tax deduction of ₹ 30,43,800 will be claimable when the loan is repaid on 31st March, 2020.

Explain and show how each of these events would affect the deferred tax assets / liabilities in the consolidated balance sheet of PQR Ltd. group at 31st March, 2018 as per Ind AS. The rate of corporate income tax is 30%.

Ind AS 103

3. How should contingent consideration payable in relation to a business combination be accounted for on initial recognition and at the subsequent measurement as per Ind AS in the following cases:
- (i) On 1 April 2016, A Ltd. acquires 100% interest in B Ltd. As per the terms of agreement the purchase consideration is payable in the following 2 tranches:
 - a. an immediate issuance of 10 lakhs shares of A Ltd. having face value of INR 10 per share;
 - b. a further issuance of 2 lakhs shares after one year if the profit before interest and tax of B Ltd. for the first year following acquisition exceeds INR 1 crore.
 - i. The fair value of the shares of A Ltd. on the date of acquisition is INR 20 per share. Further, the management has estimated that on the date of acquisition, the fair value of contingent consideration is ₹25 lakhs.
 - ii. During the year ended 31 March 2017, the profit before interest and tax of B Ltd. exceeded ₹1 crore. As on 31 March 2017, the fair value of shares of A Ltd. is ₹25 per share.
 - (ii) Continuing with the fact pattern in (a) above except for:
 - c. The number of shares to be issued after one year is not fixed.
 - d. Rather, A Ltd. agreed to issue variable number of shares having a fair value equal to ₹40 lakhs after one year, if the profit before interest and tax for the first year following acquisition exceeds ₹1 crore. A Ltd. issued shares with ₹40 lakhs after a year.

Ind AS 115

4. KK Ltd. runs a departmental store which awards 10 points for every purchase of ₹ 500 which can be discounted by the customers for further shopping with the same merchant. Each point is redeemable on any future purchases of KK Ltd.'s products within 3 years. Value of each point is ₹ 0.50. During the accounting period 2017-2018, the entity awarded 1,00,00,000 points to various customers of which 18,00,000 points remained undiscounted (to be redeemed till 31st March, 2020). The management expects only 80% of the remaining will be discounted in future.

The Company has approached your firm with the following queries and has asked you to suggest the accounting treatment (Journal Entries) under the applicable Ind AS for these award points:

| | |
|-----|---|
| (a) | How should the recognition be done for the sale of goods worth ₹ 10,00,000 on a particular day? |
| (b) | How should the redemption transaction be recorded in the year 2017-2018? The Company has requested you to present the sale of goods and redemption as independent transaction. Total sales of the entity is ₹ 5,000 lakhs. |
| (c) | How much of the deferred revenue should be recognised at the year-end (2017-2018) because of the estimation that only 80% of the outstanding points will be redeemed? |
| (d) | In the next year 2018-2019, 60% of the outstanding points were discounted. Balance 40% of the outstanding points of 2017-2018 still remained outstanding. How much of the deferred revenue should the merchant recognize in the year 2018-2019 and what will be the amount of balance deferred revenue? |
| (e) | How much revenue will the merchant recognized in the year 2019-2020, if 3,00,000 points are redeemed in the year 2019-2020? |

Ind AS 21

5. Supplier, A Ltd., enters into a contract with a customer, B Ltd., on 1st January, 2018 to deliver goods in exchange for total consideration of USD 50 million and receives an upfront payment of USD 20 million on this date. The functional currency of the supplier is INR. The goods are delivered and revenue is recognised on 31st March, 2018. USD 30 million is received on 1st April, 2018 in full and final settlement of the purchase consideration.

State the date of transaction for advance consideration and recognition of revenue. Also state the amount of revenue in INR to be recognized on the date of recognition of revenue. The exchange rates on 1st January, 2018 and 31st March, 2018 are ₹ 72 per USD and ₹ 75 per USD respectively.

Ind AS 102

6. A parent grants 200 share options to each of 100 employees of its subsidiary, conditional upon the completion of two years' service with the subsidiary. The fair value of the share options on grant date is ₹ 30 each. At grant date, the subsidiary estimates that 80 percent of the employees will complete the two-year service period. This estimate does not change during the vesting period. At the end of the vesting period, 81 employees complete the required two years of service. The parent does not require the subsidiary to pay for the shares needed to settle the grant of share options.

Pass the necessary journal entries for giving effect to the above arrangement.

Ind AS 10

7. XYZ Ltd. was formed to secure the tenders floated by a telecom company for publication of telephone directories. It bagged the tender for publishing directories for Pune circle for 5 years. It has made a profit in 2013-2014, 2014-2015, 2015-2016 and 2016-2017. It bid in tenders for publication of directories for other circles – Nagpur, Nashik, Mumbai, Hyderabad but as per the results declared on 23rd April, 2017, the company failed to bag any of these. Its only activity till date is publication of Pune directory. The contract for publication of directories for Pune will expire on 31st December 2017. The financial statements for the F.Y. 2016-17 have been approved by the Board of Directors on July 10, 2017.

Whether it is appropriate to prepare financial statements on going concern basis?

Ind AS 28 / Ind AS 110

8. Angel Ltd. has adopted Ind AS with a transition date of 1st April, 2017. Prior to Ind AS adoption, it followed Accounting Standards notified under Companies (Accounting Standards) Rules, 2006 (hereinafter referred to as "IGAAP").

It has made investments in equity shares of Pharma Ltd., a listed company engaged in the business of pharmaceuticals. The shareholding pattern of Pharma Ltd. is given below:

| Shareholders (refer Note 1) | Percentage shareholding as on 1st April, 2017 |
|---|---|
| Angel Ltd. | 21% |
| Little Angel Ltd. (refer Note 2) | 24% |
| Wealth Master Mutual Fund (refer Note 3) | 3% |
| Individual public shareholders (refer Note 4) | 52% |

Notes:

- (1) None of the shareholders have entered into any shareholders' agreement.
- (2) Little Angel Ltd. is a subsidiary of Angel Ltd. (under Ind AS) in which Angel Ltd. holds 51% voting power.
- (3) Wealth Master Mutual Fund is not related party of either Little Angel Ltd. or Pharma Ltd.
- (4) Individual public shareholders represent 17,455 individuals. None of the individual shareholders hold more than 1% of voting power in Pharma Ltd.

All commercial decisions of Pharma Ltd. are taken by its directors who are appointed by a simple majority vote of the shareholders in the annual general meetings ("AGM"). The following table shows the voting pattern of past AGMs of Pharma Ltd.:

| Shareholders | AGM for the financial year: | | |
|---------------------------|--|--|--|
| | 2013-14 | 2014-15 | 2015-16 |
| Angel Ltd. | Attended and voted in favour of all the resolutions | Attended and voted in favour of all the resolutions | Attended and voted in favour of all the resolutions |
| Little Angel Ltd. | Attended and voted as per directions of Angel Ltd. | Attended and voted as per directions of Angel Ltd | Attended and voted as per directions of Angel Ltd |
| Wealth Master Mutual Fund | Attended and voted in favour of all the resolutions except for the reappointment of the retiring directors | Attended and voted in favour of all the resolutions except for the reappointment of the retiring directors | Attended and voted in favour of all the resolutions except for the reappointment of the retiring directors |
| Individuals | 7% of the individual shareholders attended the AGM. All the individual shareholders voted in favour of all the resolutions, except that 50% of the individual Shareholders voted against the resolution to appoint the retiring directors. | 8% of the individual shareholders attended the AGM. All the individual shareholders voted in favour of all the resolutions, except that 50% of the individual Shareholders voted against the resolution to appoint the retiring directors. | 6% of the individual shareholders attended the AGM. All the individual shareholders voted in favour of all the resolutions, except that 50% of the individual Shareholders voted against the resolution to appoint the retiring directors. |

Pharma Ltd. has obtained substantial long term borrowings from a bank. The loan is payable in 20 years from 1st April, 2017. As per the terms of the borrowing, following actions by Pharma Ltd. will require prior approval of the bank:

- Payment of dividends to the shareholders in cash or kind;
- Buyback of its own equity shares;
- Issue of bonus equity shares;
- Amalgamation of Pharma Ltd. with any other entity; and
- Obtaining additional loans from any entity.

Recently, the Board of Directors of Pharma Ltd. proposed a dividend of ₹5 per share. However, when the CFO of Pharma Ltd. approached the bank for obtaining their approval, the bank rejected the proposal citing concerns over the short-term cash liquidity of Pharma Ltd. Having learned about the developments, the Directors of Angel Ltd. along with the Directors of Little Angel Ltd. approached the bank with a request to re-consider its decision. The Directors of Angel Ltd. and Little Angel Ltd. urged the bank to approve a reduced dividend of at least ₹2 per share. However, the bank categorically refused to approve any payout of dividend.

Under IGAAP, Angel Ltd. has classified Pharma Ltd. as its associate. As the CFO of Angel Ltd., you are required to comment on the correct classification of Pharma Ltd. on transition to Ind AS.

Ind AS 109

9. KK Ltd. has granted an interest free loan of ₹ 10,00,000 to its wholly owned Indian Subsidiary YK Ltd. There is no transaction cost attached to the said loan. The Company has not finalised any terms and conditions including the applicable interest rates on such loans. The Board of Directors of the Company are evaluating various options and has requested your firm to provide your views under Ind AS in following situations:
- (i) The Loan given by KK Ltd. to its wholly owned subsidiary YK Ltd. is interest free and such loan is repayable on demand.
 - (ii) The said Loan is interest free and will be repayable after 3 years from the date of granting such loan. The current market rate of interest for similar loan is 10%. Considering the same, the fair value of the loan at initial recognition is ₹ 8,10,150.
 - (iii) The said loan is interest free and will be repaid as and when the YK Ltd. has funds to repay the Loan amount.

Based on the same, KK Ltd. has requested you to suggest the accounting treatment of the above loan in the stand-alone financial statements of KK Ltd. and YK Ltd. and also in the consolidated financial statements of the group. Consider interest for only one year for the above loan.

Further the Company is also planning to grant interest free loan from YK Ltd. to KK Ltd. in the subsequent period. What will be the accounting treatment of the same under applicable Ind AS?

Ind AS 38

10. As part of its business expansion strategy, KK Ltd. is in process of setting up a pharma intermediates business which is at very initial stage. For this purpose, KK Ltd. has acquired on 1st April, 2018, 100% shares of ABR Ltd. that manufactures pharma intermediates. The purchase consideration for the same was by way of a share exchange valued at ₹ 35 crores. The fair value of ABR Ltd.'s net assets was ₹ 15 crores, but does not include:

- (i) A patent owned by ABR Ltd. for an established successful intermediate drug that has a remaining life of 8 years. A consultant has estimated the value of this patent to be ₹ 10 crores. However, the outcome of clinical trials for the same are awaited. If the trials are successful, the value of the drug would fetch the estimated ₹ 15 crores.
- (ii) ABR Ltd. has developed and patented a new drug which has been approved for clinical use. The cost of developing the drug was ₹ 12 crores. Based on early assessment of its sales success, the valuer has estimated its market value at ₹ 20 crores.
- (iii) ABR Ltd.'s manufacturing facilities have received a favourable inspection by a government department. As a result of this, the Company has been granted an exclusive five-year license to manufacture and distribute a new vaccine. Although the license has no direct cost to the Company, its directors believe that obtaining the license is a valuable asset which assures guaranteed sales and the value for the same is estimated at ₹ 10 crores.

KK Ltd. has requested you to suggest the accounting treatment of the above transaction under applicable Ind AS.

Ind AS 101

11. XYZ Pvt. Ltd. is a company registered under the Companies Act, 2013 following Accounting Standards notified under Companies (Accounting Standards) Rules, 2006. The Company has decided to voluntarily adopt Ind AS w.e.f 1st April, 2018 with a transition date of 1st April, 2017.

The Company has one Wholly Owned Subsidiary and one Joint Venture which are into manufacturing of automobile spare parts.

The consolidated financial statements of the Company under Indian GAAP are as under:

Consolidated Financial Statements

(₹ in Lakhs)

| Particulars | 31.03.2018 | 31.03.2017 |
|--------------------------------|------------|------------|
| Shareholder's Funds | | |
| Share Capital | 7,953 | 7,953 |
| Reserves & Surplus | 16,547 | 16,597 |
| Non-Current Liabilities | | |
| Long Term Borrowings | 1,000 | 1,000 |
| Long Term Provisions | 1,101 | 691 |
| Other Long-Term Liabilities | 5,202 | 5,904 |

| | | |
|--|---------------|---------------|
| Current Liabilities | | |
| Trade Payables | 9,905 | 8,455 |
| Short Term Provisions | 500 | 475 |
| Total | 42,208 | 41,075 |
| Non-Current Assets | | |
| Property Plant & Equipment | 21,488 | 22,288 |
| Goodwill on Consolidation of subsidiary and JV | 1,507 | 1,507 |
| Investment Property | 5,245 | 5,245 |
| Long Term Loans & Advances | 6,350 | 6,350 |
| Current Assets | | |
| Trade Receivables | 4,801 | 1,818 |
| Investments | 1,263 | 3,763 |
| Other Current Assets | 1,554 | 104 |
| Total | 42,208 | 41,075 |

Additional Information:

The Company has entered into a joint arrangement by acquiring 50% of the equity shares of ABC Pvt. Ltd. Presently, the same has been accounted as per the proportionate consolidated method. The proportionate share of assets and liabilities of ABC Pvt. Ltd. included in the consolidated financial statement of XYZ Pvt. Ltd. is as under:

| Particulars | ₹ in Lakhs |
|-----------------------------|------------|
| Property, Plant & Equipment | 1,200 |
| Long Term Loans & Advances | 405 |
| Trade Receivables | 280 |
| Other Current Assets | 50 |
| Trade Payables | 75 |
| Short Term Provisions | 35 |

The Investment is in the nature of Joint Venture as per Ind AS 111.

The Company has approached you to advice and suggest the accounting adjustments which are required to be made in the opening Balance Sheet as on 1st April, 2017.

Ind AS 105

12. CK Ltd. prepares the financial statement under Ind AS for the quarter year ended 30th June, 2018. During the 3 months ended 30th June, 2018 following events occurred:

On 1st April, 2018, the Company has decided to sell one of its divisions as a going concern following a recent change in its geographical focus. The proposed sale would involve the buyer acquiring the non-monetary assets (including goodwill) of the division, with the Company collecting any outstanding trade receivables relating to the division and settling any current liabilities.

On 1st April, 2018, the carrying amount of the assets of the division were as follows:

- Purchased Goodwill – ₹ 60,000
- Property, Plant & Equipment (average remaining estimated useful life two years) - ₹ 20,00,000
- Inventories - ₹ 10,00,000

From 1st April, 2018, the Company has started to actively market the division and has received number of serious enquiries. On 1st April, 2018 the directors estimated that they would receive ₹ 32,00,000 from the sale of the division. Since 1st April, 2018, market condition has improved and as on 1st August, 2018 the Company received and accepted a firm offer to purchase the division for ₹ 33,00,000.

The sale is expected to be completed on 30th September, 2018 and ₹ 33,00,000 can be assumed to be a reasonable estimate of the value of the division as on 30th June, 2018. During the period from 1st April to 30th June inventories of the division costing ₹ 8,00,000 were sold for ₹ 12,00,000. At 30th June, 2018, the total cost of the inventories of the division was ₹ 9,00,000. All of these inventories have an estimated net realisable value that is in excess of their cost.

The Company has approached you to suggest how the proposed sale will be reported in the interim financial statements for the quarter ended 30th June, 2018 giving relevant explanations.

Ind AS 8

13. ABC Ltd. changed its method adopted for inventory valuation in the year 2018-2019. Prior to the change, inventory was valued using the first in first out method (FIFO). However, it was felt that in order to match current practice and to make the financial statements more relevant and reliable, a weighted average valuation model would be more appropriate.

The effect of the change in the method of valuation of inventory was as follows:

- 31st March, 2017 - Increase of ₹ 10 million
- 31st March, 2018 - Increase of ₹ 15 million
- 31st March, 2019 - Increase of ₹ 20 million

Profit or loss under the FIFO valuation model are as follows:

| | 2018-2019 | 2017-2018 |
|---------------------|------------|------------|
| Revenue | 324 | 296 |
| Cost of goods sold | (173) | (164) |
| Gross profit | 151 | 132 |
| Expenses | (83) | (74) |
| Profit | 68 | 58 |

Retained earnings at 31st March, 2017 were ₹ 423 million

Present the change in accounting policy in the profit or loss and produce an extract of the statement of changes in equity in accordance with Ind AS 8.

AS 15 / Ind AS 19

14. ABC Limited operates a defined benefit plan which provides to the employees covered under the plan a pension benefit which is equal to 0.75% final salary for each year of completed service. An employee needs to complete minimum of five years' service for becoming eligible to the benefit. On 1st April, 2015, the entity improves the pension benefit to 1% of final salary for each year of service, including prior years. The present value of the defined benefit obligation is therefore, increased by ₹ 80 million. Given below is the composition of this amount:

| | |
|---|--------------|
| Employees with more than 5 years' of service at 1 st April, 2015 | ₹ 60 million |
| Employees with less than 5 years' of service at 1 st April, 2015 | ₹ 20 million |

The employees in the second category have completed average 2 and half years of service. Hence, they need to complete another two and half year of service until vesting.

Comment on the treatment of ₹ 80 million of the defined benefit obligation in the financial statements both as per AS 15 and Ind AS 19.

Corporate Social Responsibility Reporting

15. ABC Ltd. is a company which has a net worth of INR 200 crores, it manufactures rubber parts for automobiles. The sales of the company are affected due to low demand of its products.

The previous year's financial state:

(₹ in Crore)

| | March 31, 2019 (Current year) | March 31, 2018 | March 31, 2017 | March 31, 2016 |
|------------------|----------------------------------|----------------|----------------|----------------|
| Net Profit | 3.00 | 8.50 | 4.00 | 3.00 |
| Sales (turnover) | 850 | 950 | 900 | 800 |

Does the Company have an obligation to form a CSR committee since the applicability criteria is not satisfied in the current financial year?

Ind AS 33

16. An entity issues 2,000 convertible bonds at the beginning of Year 1. The bonds have a three-year term, and are issued at par with a face value of ₹ 1,000 per bond, giving total proceeds of ₹ 2,000,000. Interest is payable annually in arrears at a nominal annual interest rate of 6 per cent. Each bond is convertible at any time up to maturity into 250 ordinary shares. The entity has an option to settle the principal amount of the convertible bonds in ordinary shares or in cash.

When the bonds are issued, the prevailing market interest rate for similar debt without a conversion option is 9 per cent. At the issue date, the market price of one ordinary share is ₹ 3. Income tax is ignored.

Calculate basic and diluted EPS when

| | |
|--|-------------|
| Profit attributable to ordinary equity holders of the parent entity Year 1 | ₹ 1,000,000 |
| Ordinary shares outstanding | 1,200,000 |
| Convertible bonds outstanding | 2,000 |

Ind AS 7

17. Z Ltd. has no foreign currency cash flow for the year 2017. It holds some deposit in a bank in the USA. The balances as on 31.12.2017 and 31.12.2018 were US\$ 100,000 and US\$ 102,000 respectively. The exchange rate on December 31, 2017 was US\$1 = ₹ 45. The same on 31.12.2018 was US\$1 = ₹ 50. The increase in the balance was on account of interest credited on 31.12.2018. Thus, the deposit was reported at ₹ 45,00,000 in the balance sheet as on December 31, 2017. It was reported at ₹ 51,00,000 in the balance sheet as on 31.12.2018. How these transactions should be presented in cash flow for the year ended 31.12.2018 as per Ind AS 7?

Ind AS 17

18. The building, if purchased outright, would have a useful economic life of 50 years. The lease term, which would commence on 1 January 2019, is for 30 years. D Ltd would pay 40% of the asset's value upfront. At the end of each of the 30 years, there is also an annual rental payment due. This is equivalent to 6% of the asset's value as at 1 January 2019 or a contingent rent, if higher, at the year end. Legal title at the end of the lease remains with the lessor, but D Ltd can continue to lease the asset indefinitely at a rental that is substantially below its market value. If D Ltd cancels the lease, it must make a payment to the lessor to recover their remaining investment.

As per Ind AS 17 Leases, should the lease be classified as an operating lease or a finance lease?

Ind AS 16

19. Company X performed a revaluation of all of its plant and machinery at the beginning of 2018-2019. The following information relates to one of the machinery:

| | Amount ('000) |
|---|---------------|
| Gross carrying amount | ₹ 200 |
| Accumulated depreciation (straight-line method) | ₹ 80 |
| Net carrying amount | ₹ 120 |
| Fair value | ₹ 150 |

The useful life of the machinery is 10 years and the company uses Straight line method of depreciation. The revaluation was performed at the end of the 4th year.

How should the Company account for revaluation of plant and machinery and depreciation subsequent to revaluation?

Ind AS 108

20. An entity uses the weighted average cost formula to assign costs to inventories and cost of goods sold for financial reporting purposes, but the reports provided to the chief operating decision maker use the First-In, First-Out (FIFO) method for evaluating the performance of segment operations. Which cost formula should be used for Ind AS 108 disclosure purposes?

ANSWERS

1. (a) **Computation of impairment loss and carrying value of each of the asset in CGU after impairment loss**
- (i) **Calculation of carrying value of Machinery A and B before impairment**

| | | |
|---|-----|-------------------|
| <u>Machinery A</u> | | |
| Cost | (A) | ₹ 10,00,000 |
| Residual Value | | ₹ 50,000 |
| Useful life | | 10 years |
| Useful life already elapsed | | 5 years |
| Yearly depreciation | (B) | ₹ 95,000 |
| WDV as at 31st March, 2018 [A- (B x 5)] | | ₹ 5,25,000 |
| <u>Machinery B</u> | | |
| Cost | (C) | ₹ 5,00,000 |

| | | |
|---|-----|-------------------|
| Residual Value | | - |
| Useful life | | 10 years |
| Useful life already elapsed | | 3 years |
| Yearly depreciation | (D) | ₹ 50,000 |
| WDV as at 31st March, 2018 [C- (D x 3)] | | ₹ 3,50,000 |

(ii) Calculation of Value-in-use of Machinery A

| Period | Cash Flows (₹) | PVF | PV |
|---------------------|----------------|-------|------------------------|
| 1 | 1,50,000 | 0.909 | 1,36,350 |
| 2 | 1,00,000 | 0.826 | 82,600 |
| 3 | 1,00,000 | 0.751 | 75,100 |
| 4 | 1,50,000 | 0.683 | 1,02,450 |
| 5 | 1,00,000 | 0.621 | 62,100 |
| 5 | 50,000 | 0.621 | 31,050 |
| Value in use | | | <u>4,89,650</u> |

(iii) Calculation of Fair Value less cost of disposal of Machinery A

| | ₹ |
|---|------------------------|
| Fair Value | 7,00,000 |
| Less: Dismantling cost | (1,50,000) |
| Packaging cost | (25,000) |
| Legal Fees | (75,000) |
| Fair value less cost of disposal | <u>4,50,000</u> |

(iv) Calculation of Impairment loss on Machinery A

| | ₹ |
|--|----------------------|
| Carrying Value | 5,25,000 |
| Less: Recoverable Value ie higher of Value-in-use and Fair value less cost of disposal | 4,89,650 |
| Impairment Loss | <u>35,350</u> |

(v) Calculation of Impairment loss of CGU

1. First goodwill will be impaired fully and then the remaining impairment loss of ₹ 75,000 will be allocated to Machinery A and B.
2. If we allocate remaining impairment loss to Machinery A and B on pro-rata basis, it would come to ₹ 45,000 on Machinery A. However, the

Hence the impairment loss to be reversed will be limited to ₹ 62,266 only (₹ 9,30,000 – ₹ 8,67,734).

2. Impact on consolidated balance sheet of PQR Ltd. group at 31st March, 2018

- The tax loss creates a potential deferred tax asset for the PQR Ltd. group since its carrying value is nil and its tax base is ₹ 30,00,000. However, no deferred tax asset can be recognised because there is no prospect of being able to reduce tax liabilities in the foreseeable future as no taxable profits are anticipated.
- The development costs have a carrying value of ₹ 15,20,000 (₹ 16,00,000 – (₹ 16,00,000 × 1/5 × 3/12)). The tax base of the development costs is nil since the relevant tax deduction has already been claimed. The deferred tax liability will be ₹ 4,56,000 (₹ 15,20,000 × 30%). All deferred tax liabilities are shown as non-current.
- The carrying value of the loan at 31st March, 2018 is ₹ 1,07,80,000 (₹ 1,00,00,000 – ₹ 200,000 + (₹ 98,00,000 × 10%)). The tax base of the loan is 1,00,00,000. This creates a deductible temporary difference of ₹ 7,80,000 and a potential deferred tax asset of ₹ 2,34,000 (₹ 7,80,000 × 30%).

3. Paragraph 37 of Ind AS 103, inter alia, provides that the consideration transferred in a business combination should be measured at fair value, which should be calculated as the sum of (a) the acquisition-date fair values of the assets transferred by the acquirer, (b) the liabilities incurred by the acquirer to former owners of the acquiree and (c) the equity interests issued by the acquirer.

Further, paragraph 39 of Ind AS 103 provides that the consideration the acquirer transfers in exchange for the acquiree includes any asset or liability resulting from a contingent consideration arrangement. The acquirer shall recognize the acquisition-date fair value of contingent consideration as part of the consideration transferred in exchange for the acquiree.

With respect to contingent consideration, obligations of an acquirer under contingent consideration arrangements are classified as equity or a liability in accordance with Ind AS 32 or other applicable Ind AS, i.e., for the rare case of non-financial contingent consideration. Paragraph 40 provides that the acquirer shall classify an obligation to pay contingent consideration that meets the definition of a financial instrument as a financial liability or as equity on the basis of the definitions of an equity instrument and a financial liability in paragraph 11 of Ind AS 32, Financial Instruments: Presentation. The acquirer shall classify as an asset a right to the return of previously transferred consideration if specified conditions are met. Paragraph 58 of Ind AS 103 provides guidance on the subsequent accounting for contingent consideration.

- (i) In the given case the amount of purchase consideration to be recognized **on initial recognition** shall be as follows:

| | |
|---|-------------------|
| Fair value of shares issued (10,00,000 x ₹20) | ₹2,00,00,000 |
| Fair value of contingent consideration | <u>₹25,00,000</u> |
| Total purchase consideration | ₹2,25,00,000 |

Subsequent measurement of contingent consideration payable for business combination

In general, an equity instrument is any contract that evidences a residual interest in the assets of an entity after deducting all of its liabilities. Ind AS 32 describes an equity instrument as one that meets both of the following conditions:

- (a) There is no contractual obligation to deliver cash or another financial asset to another party, or to exchange financial assets or financial liabilities with another party under potentially unfavorable conditions (for the issuer of the instrument).
- (b) If the instrument will or may be settled in the issuer's own equity instruments, then it is:
 - (i) a non-derivative that comprises an obligation for the issuer to deliver a fixed number of its own equity instruments; or
 - (ii) a derivative that will be settled only by the issuer exchanging a fixed amount of cash or other financial assets for a fixed number of its own equity instruments.

In the given case, given that the acquirer has an obligation to issue fixed number of shares on fulfilment of the contingency, the contingent consideration will be classified as equity as per the requirements of Ind AS 32.

As per paragraph 58 of Ind AS 103, contingent consideration classified as equity should not be re-measured and its subsequent settlement should be accounted for within equity.

Here, the obligation to pay contingent consideration amounting to ₹25,00,000 is recognized as a part of equity and therefore not re-measured subsequently or on issuance of shares.

- (ii) The amount of purchase consideration to be recognized **on initial recognition** is shall be as follows:

| | |
|--|-------------------|
| Fair value shares issued (10,00,000 x ₹20) | ₹2,00,00,000 |
| Fair value of contingent consideration | <u>₹25,00,000</u> |
| Total purchase consideration | ₹2,25,00,000 |

Subsequent measurement of contingent consideration payable for business combination

The contingent consideration will be classified as liability as per Ind AS 32.

| | |
|--|---|
| | <p>does not have majority voting rights in Pharma Limited. Therefore, in order to determine whether Angel group have power over Pharma Limited. we will need to analyse whether Angel group, by virtue of its non-majority voting power, have <u>practical ability to unilaterally direct the relevant activities</u> of Pharma Limited. In other words, we will need to analyse whether Angel group has de facto power over Pharma Limited. Following is the analysis of <i>de facto</i> power of Angel over Pharma Limited:</p> <ul style="list-style-type: none"> - The public shareholding of Pharma Limited (that is, 52% represents thousands of shareholders none individually holding material shareholding, - The actual participation of Individual public shareholders in the general meetings is minimal (that is, in the range of 6% to 8%). - Even the public shareholders who attend the meeting do not consult with each other to vote. - Therefore, as per guidance of Ind AS 110, the public shareholders will not be able to outvote Angel group (who is the largest shareholder group) in any general meeting. <p>Based on the above-mentioned analysis, we can conclude that Angel group has <i>de facto</i> power over Pharma Limited.</p> |
| <p>Exposure, or rights, to variable returns from its involvement with the investee</p> | <p>Angel group has exposure to variable returns from its involvement with Pharma Limited by virtue of its equity stake.</p> |
| <p>Ability to use power over the investee to affect the amount of the investor's returns</p> | <p>Angel group has ability to use its power (in the capacity of a principal and not an agent) to affect the amount of returns from Pharma Limited because it is in the position to appoint directors of Pharma Limited who would take all the decisions regarding relevant activities of Pharma Limited.</p> <p>Here, it is worthwhile to evaluate whether certain rights held by the bank would prevent Angel Limited's ability to use the power over Pharma Limited to affect its returns. It is to be noted that, all the rights held by the bank in relation to Pharma Limited are protective in nature as they do not relate to the relevant activities</p> |

15. It has been clarified that 'any financial year' referred to under sub-section (1) of section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'.

A company which meets the net worth, turnover or net profits criteria in any of the preceding three financial years, but which does not meet the criteria in the relevant financial year, will still need to constitute a CSR Committee and comply with provisions of sections 135(2) to (5) read with the CSR Rules.

As per the criteria to constitute CSR committee -

- 1) Net worth greater than or equal to INR 500 Crores: This criterion is not satisfied.
- 2) Sales greater than or equal to INR 1000 Crores: This criterion is not satisfied.
- 3) Net Profit greater than or equal to INR 5 Crores: This criterion is satisfied in financial year ended March 31, 2018.

Hence, the Company will be required to form a CSR committee.

16. Allocation of proceeds of the bond issue:

| | |
|------------------------------------|--------------------|
| Liability component (Refer Note 1) | ₹ 1,848,122 |
| Equity component | <u>₹ 151,878</u> |
| | <u>₹ 2,000,000</u> |

The liability and equity components would be determined in accordance with Ind AS 32. These amounts are recognised as the initial carrying amounts of the liability and equity components. The amount assigned to the issuer conversion option equity element is an addition to equity and is not adjusted.

Basic earnings per share Year 1:

$$\frac{\text{₹ 1,000,000}}{1,200,000} = \text{₹ 0.83 per ordinary share}$$

Diluted earnings per share Year 1:

It is presumed that the issuer will settle the contract by the issue of ordinary shares. The dilutive effect is therefore calculated in accordance with the Standard.

$$\frac{\text{₹ 1,000,000} + \text{₹ 166,331}}{1,200,000 + 500,000} = \text{₹ 0.69 per ordinary share}$$

Notes:

1. This represents the present value of the principal and interest discounted at 9% – ₹ 2,000,000 payable at the end of three years; ₹ 120,000 payable annually in arrears for three years.
 2. Profit is adjusted for the accretion of ₹ 166,331 (₹ 1,848,122 × 9%) of the liability because of the passage of time. However, it is assumed that interest @ 6% for the year has already been adjusted.
 3. 500,000 ordinary shares = 250 ordinary shares × 2,000 convertible bonds
17. The profit and loss account was credited by ₹ 1,00,000 (US\$ 2000 × ₹ 50) towards interest income. It was credited by the exchange difference of US\$ 100,000 × (₹ 50 - ₹45) that is, ₹ 500,000. In preparing the cash flow statement, ₹ 500,000, the exchange difference, should be deducted from the 'net profit before taxes, and extraordinary item'. However, in order to reconcile the opening balance of the cash and cash equivalents with its closing balance, the exchange difference ₹ 500,000, should be added to the opening balance in note to cash flow statement.

Cash flows arising from transactions in a foreign currency shall be recorded in Z Ltd.'s functional currency by applying to the foreign currency amount the exchange rate between the functional currency and the foreign currency at the date of the cash flow.

18. A finance lease is a lease where the risks and rewards of ownership transfer from the lessor to the lessee.

Key indications that a lease is a finance lease are:

- The lease transfers ownership of the asset to the lessee by the end of the lease term.
- The lease term is for the major part of the asset's economic life.
- At the inception of the lease, the present value of the minimum lease payments amounts to at least substantially all of the fair value of the leased asset.
- If the lessee can cancel the lease, the lessor's losses are borne by the lessee.
- The lessee has the ability to lease the asset for a secondary period at a rent that is substantially lower than market rent.

The lease term is only for 60% (30 years/50 years) of the asset's useful life. Legal title also does not pass at the end of the lease. These factors suggest that the lease is an operating lease. However, D Ltd can continue to lease the asset at the end of the lease term for a value that is substantially below market value. This suggests that D Ltd will benefit from building over its useful life and is therefore an indication of a finance lease. D Ltd is also unable to cancel the lease without paying the lessor. This is an indication

that the lessor is guaranteed to recoup their investment and therefore that they have relinquished the risks of ownership: It also seems likely that the present value of the minimum lease payments will be substantially all of the asset's fair value. Contingent rentals should be excluded from minimum lease payments - the impact of the potential rental increase should be ignored as this is contingent upon a future event. The minimum lease payments (ignoring discounting) equate to 40% of the fair value, payable upfront, and then another 180% (30 years x 6%) of the fair value over the lease term. Therefore, this again suggests that the lease is a finance lease.

The fact that there is a contingent rental can be suggestive of an operating or a finance lease. This must be examined more closely to see whether it suggests a transfer of the risks and rewards of ownership. "In this particular case, an increase in the value of the building will mean that the lessor receives greater payments from the lessee. However, a decrease in the value of the building will mean that the rent is fixed at 6% of the fair value at inception. This appears to be guaranteeing the lessor their required return on the investment, suggesting that the risks of ownership have been transferred to the lessee.

All things considered, it appears that the lease is a finance lease.

19. According to paragraph 35 of Ind AS 16, when an item of property, plant and equipment is revalued, the carrying amount of that asset is adjusted to the revalued amount. At the date of the revaluation, the asset is treated in one of the following ways:

- (a) The gross carrying amount is adjusted in a manner that is consistent with the revaluation of the carrying amount of the asset. For example, the gross carrying amount may be restated by reference to observable market data or it may be restated proportionately to the change in the carrying amount. The accumulated depreciation at the date of the revaluation is adjusted to equal the difference between the gross carrying amount and the carrying amount of the asset after taking into account accumulated impairment losses; or
- (b) The accumulated depreciation is eliminated against the gross carrying amount of the asset.

The amount of the adjustment of accumulated depreciation forms part of the increase or decrease in carrying amount that is accounted for in accordance with the paragraphs 39 and 40 of Ind AS 16.

If the Company opts for the treatment as per option (a), then the revised carrying amount of the machinery will be:

| | | |
|--------------------------|-------|-------------------|
| Gross carrying amount | ₹ 250 | [(200/120) x 150] |
| Net carrying amount | ₹ 150 | |
| Accumulated depreciation | ₹ 100 | (₹ 250 – ₹ 150) |

Journal entry

| | | | |
|---------------------------------------|-----|------|------|
| Plant and Machinery A/c (Gross Block) | Dr. | ₹ 50 | |
| To Accumulated Depreciation | | | ₹ 20 |
| To Revaluation Reserve | | | ₹ 30 |

If the balance of accumulated depreciation is eliminated as per option (b), then the revised carrying amount of the machinery will be as follows:

Gross carrying amount is restated to ₹150 to reflect the fair value and Accumulated depreciation is set at zero.

Journal entry

| | | | |
|--|-----|------|------|
| Accumulated Depreciation | Dr. | ₹ 80 | |
| To Plant and Machinery A/c (Gross Block) | | | ₹ 80 |
| Plant and Machinery A/c (Gross Block) | Dr. | ₹ 30 | |
| To Revaluation Reserve | | | ₹ 30 |

Depreciation

Option (a) – Since the Gross Block has been restated, the depreciation charge will be ₹ 25 per annum (₹ 250 / 10 years).

Option (b) – Since the Revalued amount is the revised Gross Block, the useful life to be considered is the remaining useful life of the asset which results in the same depreciation charge of ₹ 25 per annum as per Option A (₹ 150 / 6 years).

20. The entity should use First-In, First-Out (FIFO) method for its Ind AS 108 disclosures, even though it uses the weighted average cost formula for measuring inventories for inclusion in its financial statements. Where chief operating decision maker uses only one measure of segment asset, same measure should be used to report segment information. Accordingly, in the given case, the method used in preparing the financial information for the chief operating decision maker should be used for reporting under Ind AS 108.

However, reconciliation between the segment results and results as per financial statements needs to be given by the entity in its segment report.

PAPER – 2: STRATEGIC FINANCIAL MANAGEMENT

QUESTIONS

Security Valuation

1. Based on the credit rating of bonds, Mr. Z has decided to apply the following discount rates for valuing bonds:

| Credit Rating | Discount Rate |
|---------------|---------------------------------|
| AAA | 364 day T bill rate + 3% spread |
| AA | AAA + 2% spread |
| A | AAA + 3% spread |

He is considering to invest in AA rated, ₹ 1,000 face value bond currently selling at ₹ 1,025.86. The bond has five years to maturity and the coupon rate on the bond is 15% p.a. payable annually. The next interest payment is due one year from today and the bond is redeemable at par. (Assume the 364 day T-bill rate to be 9%).

You are required to calculate the intrinsic value of the bond for Mr. Z. Should he invest in the bond? Also calculate the current yield and the Yield to Maturity (YTM) of the bond.

2. Seawell Corporation, a manufacturer of do-it-yourself hardware and housewares, reported earnings per share of € 2.10 in 2013, on which it paid dividends per share of €0.69. Earnings are expected to grow 15% a year from 2004 to 2008, during this period the dividend payout ratio is expected to remain unchanged. After 2008, the earnings growth rate is expected to drop to a stable rate of 6%, and the payout ratio is expected to increase to 65% of earnings. The firm has a beta of 1.40 currently, and is expected to have a beta of 1.10 after 2008. The market risk premium is 5.5%. The Treasury bond rate is 6.25%.
 - (a) What is the expected price of the stock at the end of 2008?
 - (b) What is the value of the stock, using the two-stage dividend discount model?

Portfolio Management

3. An investor has decided to invest ₹ 1,00,000 in the shares of two companies, namely, ABC and XYZ. The projections of returns from the shares of the two companies along with their probabilities are as follows:

| Probability | ABC(%) | XYZ(%) |
|-------------|--------|--------|
| 20 | 12 | 16 |
| 25 | 14 | 10 |
| 25 | -7 | 28 |
| 30 | 28 | -2 |

You are required to

- (i) Comment on return and risk of investment in individual shares.
 - (ii) Compare the risk and return of these two shares with a Portfolio of these shares in equal proportions.
 - (iii) Find out the proportion of each of the above shares to formulate a minimum risk portfolio.
4. X Co., Ltd., invested on 1.4.2009 in certain equity shares as below:

| Name of Co. | No. of shares | Cost (₹) |
|-------------|--------------------|----------|
| M Ltd. | 1,000 (₹ 100 each) | 2,00,000 |
| N Ltd. | 500 (₹ 10 each) | 1,50,000 |

In September, 2009, 10% dividend was paid out by M Ltd. and in October, 2009, 30% dividend paid out by N Ltd. On 31.3.2010 market quotations showed a value of ₹ 220 and ₹ 290 per share for M Ltd. and N Ltd. respectively.

On 1.4.2010, investment advisors indicate (a) that the dividends from M Ltd. and N Ltd. for the year ending 31.3.2011 are likely to be 20% and 35%, respectively and (b) that the probabilities of market quotations on 31.3.2011 are as below:

| Probability factor | Price/share of M Ltd. | Price/share of N Ltd. |
|--------------------|-----------------------|-----------------------|
| 0.2 | 220 | 290 |
| 0.5 | 250 | 310 |
| 0.3 | 280 | 330 |

You are required to:

- (i) Calculate the average return from the portfolio for the year ended 31.3.2010;
- (ii) Calculate the expected average return from the portfolio for the year 2010-11; and
- (iii) Advise X Co. Ltd., of the comparative risk in the two investments by calculating the standard deviation in each case.

Mutual Fund

5. There are two Mutual Funds viz. D Mutual Fund Ltd. and K Mutual Fund Ltd. Each having close ended equity schemes.

NAV as on 31-12-2014 of equity schemes of D Mutual Fund Ltd. is ₹ 70.71 (consisting 99% equity and remaining cash balance) and that of K Mutual Fund Ltd. is 62.50 (consisting 96% equity and balance in cash).

Following is the other information:

| Particular | Equity Schemes | |
|--------------------|--------------------|--------------------|
| | D Mutual Fund Ltd. | K Mutual Fund Ltd. |
| Sharpe Ratio | 2 | 3.3 |
| Treynor Ratio | 15 | 15 |
| Standard deviation | 11.25 | 5 |

There is no change in portfolios during the next month and annual average cost is ₹ 3 per unit for the schemes of both the Mutual Funds.

If Share Market goes down by 5% within a month, calculate expected NAV after a month for the schemes of both the Mutual Funds.

For calculation, consider 12 months in a year and ignore number of days for particular month.

Derivatives

6. The market received rumour about ABC corporation's tie-up with a multinational company. This has induced the market price to move up. If the rumour is false, the ABC corporation stock price will probably fall dramatically. To protect from this an investor has bought the call and put options.

He purchased one 3 months call with a striking price of ₹42 for ₹2 premium, and paid Re.1 per share premium for a 3 months put with a striking price of ₹40.

- (i) Determine the Investor's position if the tie up offer bids the price of ABC Corporation's stock up to ₹43 in 3 months.
 - (ii) Determine the Investor's ending position, if the tie up programme fails and the price of the stocks falls to ₹ 36 in 3 months.
7. Indira has a fund of ₹ 3 lacs which she wants to invest in share market with rebalancing target after every 10 days to start with for a period of one month from now. The present NIFTY is 5326. The minimum NIFTY within a month can at most be 4793.4. She wants to know as to how she should rebalance her portfolio under the following situations, according to the theory of Constant Proportion Portfolio Insurance Policy, using "2" as the multiplier:
- (1) Immediately to start with.
 - (2) 10 days later-being the 1st day of rebalancing if NIFTY falls to 5122.96.
 - (3) 10 days further from the above date if the NIFTY touches 5539.04.

For the sake of simplicity, assume that the value of her equity component will change in tandem with that of the NIFTY and the risk free securities in which she is going to invest will have no Beta.

Foreign Exchange Exposure and Risk Management

8. XYZ Ltd. is an export oriented business house based in Mumbai. The Company invoices in customers' currency. Its receipt of US \$ 1,00,000 is due on September 1, 2009.

Market information as at June 1, 2009 is:

| Exchange Rates | | Currency Futures | | |
|------------------|---------|------------------|---------------|-------------------------|
| US \$/₹ | | US \$/₹ | Contract size | ₹ 4,72,000 |
| Spot | 0.02140 | June | 0.02126 | |
| 1 Month Forward | 0.02136 | September | 0.02118 | |
| 3 Months Forward | 0.02127 | | | |
| | | Initial Margin | | Interest Rates in India |
| | | June | ₹ 10,000 | 7.50% |
| | | September | ₹ 15,000 | 8.00% |

On September 1, 2009 the spot rate US \$/₹ is 0.02133 and currency future rate is 0.02134. Comment which of the following methods would be most advantageous for XYZ Ltd.

- Using forward contract
- Using currency futures
- Not hedging currency risks.

It may be assumed that variation in margin would be settled on the maturity of the futures contract.

9. An exporter is a UK based company. Invoice amount is \$3,50,000. Credit period is three months. Exchange rates in London are:

Spot Rate (\$/£) 1.5865 – 1.5905
 3-month Forward Rate (\$/£) 1.6100 – 1.6140

Rates of interest in Money Market:

| | Deposit | Loan |
|----|---------|------|
| \$ | 7% | 9% |
| £ | 5% | 8% |

Compute and show how a money market hedge can be put in place. Compare and contrast the outcome with a forward contract.

International Financial Management

10. The directors of Implant Inc. wishes to make an equity issue to finance a \$10 m (million) expansion scheme which has an excepted Net Present Value of \$2.2m and to re-finance an existing \$6 m 15% Bonds due for maturity in 5 years time. For early redemption of these bonds there is a \$3,50,000 penalty charges. The Co. has also obtained approval to suspend these pre-emptive rights and make a \$15 m placement of shares which will be at a price of \$0.5 per share. The flotation cost of issue will be 4% of Gross proceeds. Any surplus funds from issue will be invested in IDRs which is currently yielding 10% per year.

The Present capital structure of Co. is as under:

| | '000 |
|-------------------------------|---------------|
| OrdinaryShare (\$1 per share) | 7,000 |
| Share Premium | 10,500 |
| Free Reserves | 25,500 |
| | 43,000 |
| 15% Term Bonds | 6,000 |
| 11% Debenture (2012-2020) | 8,000 |
| | 57,000 |

Current share price is \$2 per share and debenture price is \$ 103 per debenture. Cost of capital of Co. is 10%. It may be further presumed that stock market is semi-strong form efficient and no information about the proposed use of funds from the issue has been made available to the public. You are required to calculate expected share price of company once full details of the placement and to which the finance is to be put, are announced.

Interest Rate Risk Management

11. XYZ Inc. issues a £ 10 million floating rate loan on July 1, 2016 with resetting of coupon rate every 6 months equal to LIBOR + 50 bp. XYZ is interested in a collar strategy by selling a Floor and buying a Cap. XYZ buys the 3 years Cap and sell 3 years Floor as per the following details on July 1, 2016:

| | |
|---------------------------|-----------------------------|
| Notional Principal Amount | \$ 10 million |
| Reference Rate | 6 months LIBOR |
| Strike Rate | 4% for Floor and 7% for Cap |
| Premium | 0* |

*Since Premium paid for Cap = Premium received for Floor

Using the following data you are required to determine:

- (i) Effective interest paid out at each reset date,
- (ii) The average overall effective rate of interest p.a.

| Reset Date | LIBOR (%) |
|------------|-----------|
| 31-12-2016 | 6.00 |
| 30-06-2017 | 7.50 |
| 31-12-2017 | 5.00 |
| 30-06-2018 | 4.00 |
| 31-12-2018 | 3.75 |
| 30-06-2019 | 4.25 |

Corporate Valuation

12. The valuation of Hansel Limited has been done by an investment analyst. Based on an expected free cash flow of ₹ 54 lakhs for the following year and an expected growth rate of 9 percent, the analyst has estimated the value of Hansel Limited to be ₹ 1800 lakhs. However, he committed a mistake of using the book values of debt and equity.

The book value weights employed by the analyst are not known, but you know that Hansel Limited has a cost of equity of 20 percent and post tax cost of debt of 10 percent. The value of equity is thrice its book value, whereas the market value of its debt is nine-tenths of its book value. What is the correct value of Hansel Ltd?

Mergers, Acquisitions and Corporate Restructuring

13. Reliable Industries Ltd. (RIL) is considering a takeover of Sunflower Industries Ltd. (SIL). The particulars of 2 companies are given below:

| Particulars | Reliable Industries Ltd | Sunflower Industries Ltd. |
|--------------------------|-------------------------|---------------------------|
| Earnings After Tax (EAT) | ₹ 20,00,000 | ₹ 10,00,000 |
| Equity shares O/s | 10,00,000 | 10,00,000 |
| Earnings per share (EPS) | 2 | 1 |
| PE Ratio (Times) | 10 | 5 |

Required:

- (i) What is the market value of each Company before merger?
- (ii) Assume that the management of RIL estimates that the shareholders of SIL will accept an offer of one share of RIL for four shares of SIL. If there are no synergic effects, what is the market value of the Post-merger RIL? What is the new price per

share? Are the shareholders of RIL better or worse off than they were before the merger?

- (iii) Due to synergic effects, the management of RIL estimates that the earnings will increase by 20%. What are the new post-merger EPS and Price per share? Will the shareholders be better off or worse off than before the merger?

Theoretical Questions

- 14. (a) EXPLAIN the concept of side pocketing in mutual funds.
- (b) EXPLAIN cash settlement and physical settlement in derivative contracts and their relative advantages and disadvantages.
- (c) EXPLAIN the importance of IRDA.
- 15. (a) EXPLAIN Co-location/Proximity Hosting.
- (b) DESCRIBE the factors affecting Industry Analysis.
- (c) EXPLAIN the need for finance in case of a MSME unit. Describe the process for arrangement of finance in the case of MSME.

SUGGESTED ANSWERS/HINTS

- 1. The appropriate discount rate for valuing the bond for Mr. Z is:

$R = 9\% + 3\% + 2\% = 14\%$

| Time | CF | PVIF 14% | PV (CF) |
|--------------------------------------|------|----------|----------------|
| 1 | 150 | 0.877 | 131.55 |
| 2 | 150 | 0.769 | 115.35 |
| 3 | 150 | 0.675 | 101.25 |
| 4 | 150 | 0.592 | 88.80 |
| 5 | 1150 | 0.519 | 596.85 |
| $\Sigma PV (CF) \text{ i.e. } P_0 =$ | | | <u>1033.80</u> |

Since, the current market value is less than the intrinsic value; Mr. Z should buy the bond. Current yield = Annual Interest / Price = 150 / 1025.86 = 14.62%

The YTM of the bond is calculated as follows:

@15%

$P = 150 \times PVIFA_{15\%, 4} + 1150 \times PVIF_{15\%, 5}$
 $= 150 \times 2.855 + 1150 \times 0.497 = 428.25 + 571.55 = 999.80$

@14%

As found in sub part (a) $P_0 = 1033.80$

By interpolation we get,

$$= 14\% + \frac{7.94}{7.94 - (-26.06)} \times (15\% - 14\%) = 14\% + \frac{7.94}{34} \%$$

$$\text{YTM} = 14.23\%$$

2. The expected rate of return on equity after 2018 = $0.0625 + 1.10(0.055) = 12.3\%$

The dividends from 2013 onwards can be estimated as:

| Year | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|-------------------------|------|-------|-------|-------|-------|-------|------|
| Earnings Per Share (€) | 2.1 | 2.415 | 2.78 | 3.19 | 3.67 | 4.22 | 4.48 |
| Dividends Per Share (€) | 0.69 | 0.794 | 0.913 | 1.048 | 1.206 | 1.387 | 2.91 |

- a. The price as of 2018 = $\text{€}2.91 / (0.123 - 0.06) = \text{€}46.19$
- b. The required rate of return upto 2018 = $0.0625 + 1.4(0.055) = 13.95\%$. The dividends upto 2018 are discounted using this rate as follow:

| Year | PV of Dividend |
|-------|-----------------------------|
| 2014 | $0.794 / 1.1395 = 0.70$ |
| 2015 | $0.913 / (1.1395)^2 = 0.70$ |
| 2016 | $1.048 / (1.1395)^3 = 0.70$ |
| 2017 | $1.206 / (1.1395)^4 = 0.72$ |
| 2018 | $1.387 / (1.1395)^5 = 0.72$ |
| Total | 3.54 |

$$\text{The current price} = \text{€}3.54 + \text{€}46.19 / (1.1395)^5 = \text{€}27.58.$$

3. (i)

| Probability | ABC (%) | XYZ (%) | 1X2 (%) | 1X3 (%) |
|----------------|---------|---------|--------------|-------------|
| (1) | (2) | (3) | (4) | (5) |
| 0.20 | 12 | 16 | 2.40 | 3.2 |
| 0.25 | 14 | 10 | 3.50 | 2.5 |
| 0.25 | -7 | 28 | -1.75 | 7.0 |
| 0.30 | 28 | -2 | <u>8.40</u> | <u>-0.6</u> |
| Average return | | | <u>12.55</u> | <u>12.1</u> |

Hence the expected return from ABC = 12.55% and XYZ is 12.1%

| Probability | (ABC- \bar{ABC}) | (ABC- \bar{ABC}) ² | 1X3 | (XYZ- \bar{XYZ}) | (XYZ- \bar{XYZ}) ² | (1)X(6) |
|-------------|---------------------|----------------------------------|---------------|---------------------|----------------------------------|---------------|
| (1) | (2) | (3) | (4) | (5) | (6) | |
| 0.20 | -0.55 | 0.3025 | 0.06 | 3.9 | 15.21 | 3.04 |
| 0.25 | 1.45 | 2.1025 | 0.53 | -2.1 | 4.41 | 1.10 |
| 0.25 | -19.55 | 382.2025 | 95.55 | 15.9 | 252.81 | 63.20 |
| 0.30 | 15.45 | 238.7025 | 71.61 | -14.1 | 198.81 | 59.64 |
| | | | <u>167.75</u> | | | <u>126.98</u> |

$$\sigma^2_{ABC} = 167.75(\%)^2 ; \sigma_{ABC} = 12.95\%$$

$$\sigma^2_{XYZ} = 126.98(\%)^2 ; \sigma_{XYZ} = 11.27\%$$

- (ii) In order to find risk of portfolio of two shares, the covariance between the two is necessary here.

| Probability | (ABC- \bar{ABC}) | (XYZ- \bar{XYZ}) | 2X3 | 1X4 |
|-------------|---------------------|---------------------|----------|----------------|
| (1) | (2) | (3) | (4) | (5) |
| 0.20 | -0.55 | 3.9 | -2.145 | -0.429 |
| 0.25 | 1.45 | -2.1 | -3.045 | -0.761 |
| 0.25 | -19.55 | 15.9 | -310.845 | -77.71 |
| 0.30 | 15.45 | -14.1 | -217.845 | -65.35 |
| | | | | <u>-144.25</u> |

$$\sigma^2_P = (0.5^2 \times 167.75) + (0.5^2 \times 126.98) + 2 \times (-144.25) \times 0.5 \times 0.5$$

$$\sigma^2_P = 41.9375 + 31.745 - 72.125$$

$$\sigma^2_P = 1.5575 \text{ or } 1.56(\%)$$

$$\sigma_P = \sqrt{1.56} = 1.25\%$$

$$E(R_p) = (0.5 \times 12.55) + (0.5 \times 12.1) = 12.325\%$$

Hence, the return is 12.325% with the risk of 1.25% for the portfolio. Thus the portfolio results in the reduction of risk by the combination of two shares.

- (iii) For constructing the minimum risk portfolio the condition to be satisfied is

$$X_{ABC} = \frac{\sigma_X^2 - r_{AX} \sigma_A \sigma_X}{\sigma_A^2 + \sigma_X^2 - 2r_{AX} \sigma_A \sigma_X} \text{ or } = \frac{\sigma_X^2 - \text{Cov}_{AX}}{\sigma_A^2 + \sigma_X^2 - 2\text{Cov}_{AX}}$$

σ_X = Std. Deviation of XYZ

σ_A = Std. Deviation of ABC

r_{AX} = Coefficient of Correlation between XYZ and ABC

Cov_{AX} = Covariance between XYZ and ABC.

Therefore,

$$\% \text{ ABC} = \frac{126.98 - (-144.25)}{126.98 + 167.75 - [2 \times (-144.25)]} = \frac{271.23}{583.23} = 0.46 \text{ or } 46\%$$

% ABC = 46%, XYZ = 54%

$(1 - 0.46) = 0.54$

4.

| Calculation of return on portfolio for 2009-10 | (Calculation in ₹ / share) | | |
|---|----------------------------|----------|--------|
| | M | N | |
| Dividend received during the year | 10 | 3 | |
| Capital gain/loss by 31.03.10 | | | |
| Market value by 31.03.10 | 220 | 290 | |
| Cost of investment | 200 | 300 | |
| Gain/loss | 20 | (-)10 | |
| Yield | 30 | (-)7 | |
| Cost | 200 | 300 | |
| % return | 15% | (-)2.33% | |
| Weight in the portfolio | 57 | 43 | |
| Weighted average return | | | 7.55% |
| Calculation of estimated return for 2010-11 | | | |
| Expected dividend | 20 | 3.5 | |
| Capital gain by 31.03.11 | | | |
| $(220 \times 0.2) + (250 \times 0.5) + (280 \times 0.3) - 220 = (253 - 220)$ | 33 | - | |
| $(290 \times 0.2) + (310 \times 0.5) + (330 \times 0.3) - 290 = (312 - 290)$ | - | 22 | |
| Yield | 53 | 25.5 | |
| *Market Value 01.04.10 | 220 | 290 | |
| % return | 24.09% | 8.79% | |
| *Weight in portfolio (1,000x220): (500x290) | 60.3 | 39.7 | |
| Weighted average (Expected) return | | | 18.02% |
| (*The market value on 31.03.10 is used as the base for calculating yield for 10-11) | | | |

Calculation of Standard Deviation

M Ltd.

| Exp. market value | Exp. gain | Exp. div. | Exp Yield (1) | Prob. Factor (2) | (1) X(2) | Dev. ($P_M - \bar{P}_M$) | Square of dev. (3) | (2) X (3) |
|-------------------|-----------|-----------|---------------|------------------|----------|----------------------------|--------------------|-----------------------|
| 220 | 0 | 20 | 20 | 0.2 | 4 | -33 | 1089 | 217.80 |
| 250 | 30 | 20 | 50 | 0.5 | 25 | -3 | 9 | 4.50 |
| 280 | 60 | 20 | 80 | 0.3 | 24 | 27 | 729 | 218.70 |
| | | | | | 53 | | | $\sigma^2_M = 441.00$ |

Standard Deviation (σ_M)

21

N Ltd.

| Exp. market value | Exp. gain | Exp. div. | Exp. Yield (1) | Prob. Factor (2) | (1) X (2) | Dev. ($P_N - \bar{P}_N$) | Square of dev. (3) | (2) X (3) |
|-------------------|-----------|-----------|----------------|------------------|-----------|----------------------------|--------------------|-----------------------|
| 290 | 0 | 3.5 | 3.5 | 0.2 | 0.7 | -22 | 484 | 96.80 |
| 310 | 20 | 3.5 | 23.5 | 0.5 | 11.75 | -2 | 4 | 2.00 |
| 330 | 40 | 3.5 | 43.5 | 0.3 | 13.05 | 18 | 324 | 97.20 |
| | | | | | 25.5 | | | $\sigma^2_N = 196.00$ |

Standard Deviation (σ_N)

14

Share of company M Ltd. is more risky as the S.D. is more than company N Ltd.

5. Working Notes:

(i) Decomposition of Funds in Equity and Cash Components

| | D Mutual Fund Ltd. | K Mutual Fund Ltd. |
|-----------------------|--------------------|--------------------|
| NAV on 31.12.14 | ₹ 70.71 | ₹ 62.50 |
| % of Equity | 99% | 96% |
| Equity element in NAV | ₹ 70 | ₹ 60 |
| Cash element in NAV | ₹ 0.71 | ₹ 2.50 |

(ii) Calculation of Beta

(a) D Mutual Fund Ltd.

$$\text{Sharpe Ratio} = 2 = \frac{E(R) - R_f}{\sigma_D} = \frac{E(R) - R_f}{11.25}$$

$$E(R) - R_f = 22.50$$

$$\text{Treynor Ratio} = 15 = \frac{E(R) - R_f}{\beta_D} = \frac{22.50}{\beta_D}$$

$$\beta_D = 22.50/15 = 1.50$$

(b) K Mutual Fund Ltd.

$$\text{Sharpe Ratio} = 3.3 = \frac{E(R) - R_f}{\sigma_K} = \frac{E(R) - R_f}{5}$$

$$E(R) - R_f = 16.50$$

$$\text{Treynor Ratio} = 15 = \frac{E(R) - R_f}{\beta_K} = \frac{16.50}{\beta_K}$$

$$\beta_K = 16.50/15 = 1.10$$

(iii) Decrease in the Value of Equity

| | D Mutual Fund Ltd. | K Mutual Fund Ltd. |
|----------------------------|--------------------|--------------------|
| Market goes down by | 5.00% | 5.00% |
| Beta | 1.50 | 1.10 |
| Equity component goes down | 7.50% | 5.50% |

(iv) Balance of Cash after 1 month

| | D Mutual Fund Ltd. | K Mutual Fund Ltd. |
|--------------------------|--------------------|--------------------|
| Cash in Hand on 31.12.14 | ₹ 0.71 | ₹ 2.50 |
| Less: Exp. Per month | ₹ 0.25 | ₹ 0.25 |
| Balance after 1 month | ₹ 0.46 | ₹ 2.25 |

NAV after 1 month

| | D Mutual Fund Ltd. | K Mutual Fund Ltd. |
|-------------------------------|--------------------|--------------------|
| Value of Equity after 1 month | | |
| 70 x (1 - 0.075) | ₹ 64.75 | - |
| 60 x (1 - 0.055) | - | ₹ 56.70 |
| Cash Balance | 0.46 | 2.25 |
| | 65.21 | 58.95 |

6. Cost of Call and Put Options

$$= (\text{₹ } 2 \text{ per share}) \times (100 \text{ share call}) + (\text{₹ } 1 \text{ per share}) \times (100 \text{ share put})$$

$$= \text{₹ } 2 \times 100 + 1 \times 100$$

$$= \text{₹ } 300$$

(i) Price increases to ₹43. Since the market price is higher than the strike price of the call, the investor will exercise it.

$$\text{Ending position} = (- \text{₹ } 300 \text{ cost of 2 option}) + (\text{₹ } 1 \text{ per share gain on call}) \times 100$$

$$= - \text{₹ } 300 + 100$$

$$\text{Net Loss} = - \text{₹ } 200$$

(ii) The price of the stock falls to ₹36. Since the market price is lower than the strike price, the investor may not exercise the call option.

$$\text{Ending Position} = (- \text{₹ } 300 \text{ cost of 2 options}) + (\text{₹ } 4 \text{ per stock gain on put}) \times 100$$

$$= - \text{₹ } 300 + 400$$

$$\text{Gain} = \text{₹ } 100$$

7. Maximum decline in one month = $\frac{5326 - 4793.40}{5326} \times 100 = 10\%$

(1) Immediately to start with

$$\text{Investment in equity} = \text{Multiplier} \times (\text{Portfolio value} - \text{Floor value})$$

$$= 2 (3,00,000 - 2,70,000) = \text{₹ } 60,000$$

Indira may invest ₹ 60,000 in equity and balance in risk free securities.

(2) After 10 days

| | | |
|---|---|-------------------|
| Value of equity = 60,000 x 5122.96/5326 | = | ₹ 57,713 |
| Value of risk free investment | = | <u>₹ 2,40,000</u> |
| Total value of portfolio | = | <u>₹ 2,97,713</u> |

$$\text{Investment in equity} = \text{Multiplier} \times (\text{Portfolio value} - \text{Floor value})$$

$$= 2 (2,97,713 - 2,70,000) = \text{₹ } 55,426$$

Revised Portfolio:

| | | |
|--|---|----------|
| Equity | = | ₹ 55,426 |
| Risk free Securities = ₹ 2,97,713 – ₹ 55,426 | = | 2,42,287 |

(3) After another 10 days

| | | |
|--|---|----------|
| Value of equity = 55,426 x 5539.04/5122.96 | = | ₹ 59,928 |
|--|---|----------|

(iii) Post-Merger Earnings:

| | |
|--------------------------------------|-------------|
| Increase in Earnings by 20% | |
| New Earnings: ₹ 30,00,000 x (1+0.20) | ₹ 36,00,000 |
| No .of equity shares outstanding: | 12,50,000 |
| EPS (₹ 36,00,000/12,50,000) | ₹ 2.88 |
| PE Ratio | 10 |
| Market Price Per Share: = ₹2.88 x 10 | ₹ 28.80 |

∴ Shareholders will be better-off than before the merger situation.

14. (a) In simple words, a Side Pocketing in Mutual Funds leads to separation of risky assets from other investments and cash holdings. The purpose is to make sure that money invested in a mutual fund, which is linked to stressed assets, gets locked, until the fund recovers the money from the company or could avoid distress selling of illiquid securities.

The modus operandi is simple. Whenever, the rating of a mutual fund decreases, the fund shifts the illiquid assets into a side pocket so that current shareholders can be benefitted from the liquid assets. Consequently, the Net Asset Value (NAV) of the fund will then reflect the actual value of the liquid assets.

Side Pocketing is beneficial for those investors who wish to hold on to the units of the main funds for long term. Therefore, the process of Side Pocketing ensures that liquidity is not the problem even in the circumstances of frequent allotments and redemptions.

Side Pocketing is quite common internationally. However, Side Pocketing has also been resorted to bereft the investors of genuine returns.

In India recent fiasco in the Infrastructure Leasing and Financial Services (IL&FS) has led to many discussions on the concept of side pocketing as IL&FS and its subsidiaries have failed to fulfill its repayments obligations due to severe liquidity crisis.

The Mutual Funds have given negative returns because they have completely written off their exposure to IL&FS instruments.

- (b) The physical settlement in case of derivative contracts means that underlying assets are actually delivered on the specified delivery date. In other words, traders will have to take delivery of the shares against position taken in the derivative contract.

In case of cash settlement, the seller of the derivative contract does not deliver the underlying asset but transfers the Cash. It is similar to Index Futures where the purchaser, who wants to settle the contract in cash, will have to pay or receive the difference between the Spot price of the contract on the settlement date and the

Futures price decided beforehand since it is impossible to effect the physical ownership of the underlying securities.

The main advantage of cash settlement in derivative contract is high liquidity because of more derivative volume in cash segment. Moreover, the underlying stocks in derivative contracts has constricted bid-ask spreads. And, trading in such stocks can be effected at lower impact cost. If the stock is liquid, the impact cost of bigger trades will be lower.

Further, an adverse move can be hedged. For example, the investors can take a covered short derivative position by selling the future while still holding the underlying security.

Also, a liquid derivative market facilitates the traders to do speculation. The speculative trading may worry the regulators but it is also true that without speculative trading, it will not be possible for the derivative market to stay liquid.

So, this leads to some arguments in favour of physical settlement in derivative contract. One advantage of physical settlement is that it is not subject to manipulation by both the parties to the derivative contract. This is so because the entire activity is monitored by the broker and the clearing exchange.

However, one main disadvantage of physical delivery is that it is almost impossible to short sell a stock in the Indian Market.

Therefore, in the end, it can be concluded that, though, physical settlement in derivative contract does curb manipulation it also affects the liquidity in the derivative segment.

(c) Importance of Insurance Regulatory and Development Authority (IRDA)

- (i) Regulation of Insurance Sector: IRDA has a significant effect on the overall regulation of Indian Insurance Sector. In order to keep the proper protection of the policy holder's interests, Insurance Regulatory and Development Authority (IRDA) closely observe the different activities of insurance sector in India.
- (ii) Protection of Policyholders Interests: The core objective or purpose of the Insurance Regulatory and Development Authority is to protect the interests of policyholders and IRDA is doing that with aplomb.
- (iii) Awareness to Insurance: In order to increase the awareness of insurance in the society, IRDA is trying to convince the prospective investors about the transparency of the system and the effort being put by the regulator to put this into practice.
- (iv) Insurance Market: Insurance sector has grown leap and bounds due to the concerted efforts of Insurance Regulatory and Development Authority with respect to marketing of insurance products, competition & customer awareness.

- (v) **Development of Insurance Product:** Insurance Regulatory and Development Authority (IRDA) has brought a revolution in the development of insurance products. The development of ULIPs (Unit-Linked Insurance Plans) is the result of privatization of the insurance sector.
 - (vi) **Competition in the Insurance Sector:** After the advent of privatization in the insurance sector by inviting private players, competition in the insurance sector has increased significantly leading to comparatively cheaper services and greater customer satisfaction.
 - (vii) **Saving and Investment of Individual:** Insurance Regulatory and Development Authority has made insurance a popular & profitable mode of investment and inculcate saving habits among various sections of the society.
 - (viii) **Government Responsibility:** Insurance Regulatory and Development Authority (IRDA) has made it sure that uniformity in the insurance sector is being ensured by helping in constant increase in the number of insurers, increasing competition, number of diversified products and diversification in the activities of the insurers.
 - (ix) **Banks and Post Offices:** Insurance sector is now giving security against any kind of uncertainty or risk, so the insurance sector has now become a popular medium for savings & investments and is gradually diverting the flow of funds from banks & post offices to insurance industry.
 - (x) **Individual Life's:** Insurance Regulatory and Development Authority has helped in developing an understanding of insurance by putting across a great impression over the life of a common man of the society.
 - (xi) **Stock Market:** Private players in the insurance have developed ULIPs (Unit-Linked Insurance plans) in order to attract more customers. ULIP is a byproduct of modern insurance market. Therefore, insurance products have made it simple for the companies to raise funds and have also attracted various sections of the society to invest in the stock market indirectly.
 - (xii) **Indian Economy:** Insurance Regulatory and Development Authority has an impact over the economic development of the country because money invested by investors or individuals in various types of insurance products has channelized the funds of a country for a non-economic activity to economic activity & has made available to the governments of a country in order to implement the various developmental activities in the country.
15. (a) The co-location or proximity hosting is a facility which is offered by the stock exchanges to stock brokers and data vendors whereby their trading or data-vending systems are allowed to be located within or at close proximity to the premises of the stock exchanges, and are allowed to connect to the trading platform of stock exchanges through direct and private network.

| Particulars | Notes No. | Figures as at the end of current reporting period (₹) | Figures as at the end of previous reporting period (₹) |
|--|--------------|--|---|
| (I) Trade Payables (i) total outstanding dues of micro enterprises and small enterprises (ii) total outstanding dues of creditors other than micro enterprises and small enterprises (II) Other Payables (i) total outstanding dues of micro enterprises and small enterprises (ii) total outstanding dues of creditors other than micro enterprises and small enterprises (c) Debt Securities (d) Borrowings (other than debt securities) (e) Deposits (f) Subordinated liabilities (g) Other financial liabilities (to be specified) | | | |
| (2) Non-financial Liabilities (a) Current tax liabilities (net) (b) Provisions (c) Deferred Tax Liabilities (net) (d) Other non-financial liabilities (to be specified) | | | |
| (3) Non-financial Liabilities (a) Equity share capital (b) Other equity | | | |
| Total Liabilities and Equity | | | |

- **Clause 31 (ba) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the previous year, where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account:-**
 - (i) Name, address and Permanent Account Number (if available with the assessee) of the payer;
 - (ii) Nature of transaction;
 - (iii) Amount of receipt (in ₹);
 - (iv) Date of receipt;
- **(bb) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:—**
 - (i) Name, address and Permanent Account Number (if available with the assessee) of the payer;
 - (ii) Amount of receipt (in ₹);
- **(bc) Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:-**
 - (i) Name, address and Permanent Account Number (if available with the assessee) of the payee;
 - (ii) Nature of transaction;
 - (iii) Amount of payment (in ₹);
 - (iv) Date of payment;
- **(bd) Particulars of each payment in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, made by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:—**
 - (i) Name, address and Permanent Account Number (if available with the assessee) of the payee;
 - (ii) Amount of payment (in ₹);

capital account and revenue account. Once the receipt or the payment, as the case may be, exceeds the limit specified, the particulars of such transactions will have to be reported under these clauses.

While it is comparatively simple to work out receipts or payments to or from a single person in a day, the tax auditor will have to exercise care and caution while arriving at the particulars of receipts or payments pertaining to a single transaction or relating to a single event or occasion. The tax auditor will need to link all receipts or payments, as the case may be, otherwise than by the modes specified in this section received/made in respect of a single transaction and verify if the aggregate amount exceeds the limits specified in Section 269ST. Whether the receipts or payments, as the case may be, are pertaining to a single transaction or different transaction will depend on the facts of the case. A single invoice may relate to multiple transactions and vice-versa, multiple bills may relate to a single transaction. The tax auditor will have to exercise his judgement to decide whether the receipts/payments are pertaining to a single transaction.

Similarly, the tax auditor will have to exercise judgement in deciding whether receipts/payments though pertaining to more than one transaction, pertain to a single event or occasion.

If such receipts or payments are otherwise than by account payee cheque or an account payee draft or by use of electronic clearing system through a bank account, then the tax auditor will have to verify the mode of the receipt of payment. The tax auditor will have to classify the receipt or the payment, as the case may be, as under:

- Otherwise than by the cheque or bank draft or use of electronic clearing system through a bank account
- By cheque or bank draft not being an

account payee cheque or an account payee bank draft.

Where the receipts or the payments, as the case may be, pertain to a single transaction or transactions relating to one event or occasion, such receipts/payments may be grouped together while reporting. The tax auditor may also keep in his record date of the receipts and date of the payments reported under, although the same is not required to be reported. Where payment is made by cheque or demand draft, there will be practical difficulties in verifying whether the relevant receipt or payment is by account payee cheque or account payee draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available. In the absence of satisfactory evidence, the guidance given by the Council of the ICAI in similar cases to the tax auditors is to be followed. The tax auditor, in his report, may make suggested comment while reporting.

The tax auditor should maintain the specified information in his working papers for the purpose of reporting of receipts.

- **Clause 36A:**

(a) **Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause (22) of Section 2.**

(b) **If yes, please furnish the following details :-**

In order to enable reporting under the new Clause 36A, the tax auditor should obtain from the taxpayer a certificate containing a list of closely held companies in which he is the beneficial owner of shares carrying not less than 10 per cent of the voting power and list of concerns in which he has a substantial interest.

The tax auditor should also obtain a certificate from the taxpayer giving particulars of any loans or advances received by any concern in which he has substantial interest from any closely held company in which he is a beneficial owner of shares carrying not less than 10 per cent voting power.

These certificates are necessary since the tax auditor may not be able to verify the above from the books of account of the taxpayer. The tax auditor should include appropriate remarks of his inability to independently verify the information and reliance on the certificates obtained from the taxpayer. These remarks may be included in Form No. 3CA/3CB.

The tax auditor should also verify Form 26AS in the case of the taxpayer to know if the closely held company has deducted tax at source from any payment made by it to the taxpayer or the concern under Section 194. This will indicate the view taken by the closely held company making the payment. The tax auditor may consider the same before coming to a conclusion.

So far as any payment by the closely held company made on behalf of or for the individual benefit of the taxpayer is concerned, there may not be any record available for the auditor to verify the same. In such a case auditor may make appropriate remarks in Form No. 3CA/3CB. It may be noted that if the closely held company has made payment on behalf of or for the individual benefit of the taxpayer in his capacity, say, as the managing director of the closely held company and if such payment has been considered as part of the taxpayer's remuneration, the same payment is not again chargeable to tax under Section 2(22)(e) and is not required to be reported under this clause.

Whether an amount is chargeable to tax as dividend under Section 2(22)(e) has always been a subject matter of litigation before various judicial forums. The tax auditor needs to consider various issues while reporting under this clause, e.g. wherever the beneficial shareholder is not the registered shareholder and the closely held company has given loan or advance to the beneficial shareholder or to a concern, the tax auditor should make an appropriate remark about the basis of reporting in Form No. 3CA/3CB.

Further, the tax auditor may not be able to determine the accumulated profits of the closely held company making the payment for various reasons. The tax auditor will not have

access to the records of such closely held company, the payment would often be during the course of a financial year and accounts will not have been made up as of the date of payment. The tax auditor in such a case may arrive at the accumulated profits by appropriating the profit for the year on a time basis. In such a case the auditor should include appropriate remarks in Form No. 3CA/3CB about the methodology adopted by him.

Business advance or trade advances from closely held companies to the taxpayer or concerns in which the taxpayer has a substantial interest are out of the purview of Section 2(22)(e) and need not be reported dividend under this clause of Form No. 3CD.

The taxpayer or the concern may maintain two accounts of the closely held company in its books of account. Amounts received from the closely held company and the amount receivable from the closely held company may be accounted in two separate accounts. In such a case the tax auditor will have to consider whether, for reporting under this clause only net amount should be considered.

The taxpayer or the concern may have a current account of the closely held company in its books of account. In such a case there could be various transactions accounted for in such a current account. The tax auditor will have to consider if all the transactions in such a current account are on account of normal business transactions or the transactions are in the nature of loans or advances received by the taxpayer or the concern.

Considering various judicial decisions, the tax auditor will have to take a considered view while reporting under this clause. If reliance has been placed on any judicial decision, a reference of the same may be given by the tax auditor as observations in Form No. 3CA/3CB.

It may be noted that any payment made after 1 April 2018 which satisfies the conditions of Section 2(22)(e), would be subject to Dividend Distribution Tax (DDT) under Section 115-O in the hands of the company making the payment and not in the hands of the shareholder.

- **Clause 42 (a) Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? (Yes/No)**

(b) If yes, please furnish:

| S. No. | Income Tax Department Reporting entity Identification No. | Type of Form | Due date for furnishing | Date of furnishing, if furnished | Whether the form contains information about all details/transactions which are required to be reported | If not please furnish list of the details/transactions which are not reported |
|--------|---|--------------|-------------------------|----------------------------------|--|---|
| | | | | | | |

New Clause 42 has been introduced where the tax auditor has to report that whether the taxpayer is required to furnish a statement of the specified financial transaction (in Form No.61 or Form No. 61A or Form No. 61B).

With respect to Form 61, the tax auditor should verify whether the taxpayer has entered into any transaction where the other party was required to quote PAN. He should verify whether the taxpayer has obtained declaration in Form No. 60 where the other party has not furnished his PAN. Wherever the taxpayer has received declarations in Form No. 60, the auditor should verify if the taxpayer has filed Form No. 61 including therein all the necessary particulars.

With respect to Form 61A, the tax auditor should ascertain whether the taxpayer is required to report any transactions under Section 285BA read with Rule 114E. It may be noted that specified transactions under Section 285BA include the issue of bonds, issue of shares, buy-back of shares by a listed company, etc. These transactions may not happen every year and hence special attention should be given in the year when a company taxpayer issues any security or a listed company undertakes buyback of shares.

While verifying the same, the tax auditor should ensure that the provisions of Rule 114E(3) have been properly considered and applied.

Failure to do so may result in a certain transaction not being reported. It may be noted that the payment may be received for various transactions and on different dates, and hence these may not be covered under Section 269ST but will have to be reported under Section 285BA.

With respect to Form 61B14, the tax auditor should review the due diligence procedures carried out by the taxpayer in accordance with provisions of Rule 114H and the results of such procedures. The tax auditor should review the list of Reportable Accounts identified by the due diligence process and the information to be maintained and reported by the taxpayer.

In case any reportable account has been omitted, or there is any error or omission in Form 61B, the same may be reported under the Form No. 3CD. The auditor should verify if the taxpayer has filed Form No. 61B for correcting errors or omissions in the form filed originally. In such a case the auditor should give details of both the forms filed. The errors in the original Form 61B which are corrected in the revised Form 61B need not be reported under Form No. 3CD.

The tax auditor should verify that Form 61B is duly signed by the designated director and filed.

- **Clause 43 (a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in subsection (2) of section 286 (Yes/No)**
 - (b) if yes, please furnish the following details:**
 - (i) Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity**
 - (ii) Name of parent entity**

(iii) Name of alternate reporting entity (if applicable)**(iv) Date of furnishing of report**

Clause 43 has been newly introduced in Form No. 3CD. The Finance Act, 2016 by introducing Section 286 in the Act, has introduced provisions relating to the Country by Country Report (CbCR) and Master File pursuant to the adoption of OECD's Base Erosion and Profit Shifting (BEPS), Action Plan 13 in India.

Under Section 286, an international group has to furnish CbCR containing information about the whole group comprising of various constituent entities.

Such a report is to be filed in India if the parent entity is resident of India or the international group has appointed a constituent entity which is resident in India to file CbCR on behalf of the whole group.

The report under Section 286(2) is filed by the parent entity which is resident in India or the alternate reporting entity which is resident in India.

For tax audit for the assessment year 2018-19, the tax auditor should comment upon report Section 286(2) that was required to be filed on or before 31 March 2018.

The tax auditor should verify if the taxpayer is required to file the Form 3CEAC based on the satisfaction of the conditions prescribed

The tax auditor should also verify if the taxpayer whose parent is a non-resident has filed Form No. 3CEAC.

The tax auditor may obtain a necessary certificate from the taxpayer in respect of constitution of the international.

- **Clause 44*. Break-up of total expenditure of entities registered or not registered under the GST:**

| Sl. No. | Total amount of Expenditure incurred during the year | Expenditure in respect of entities registered under GST | | | | Expenditure in respect of entities registered under GST Expenditure |
|---------|--|---|---|---------------------------------------|--------------------------------------|---|
| | | Relating to goods or services exempt from GST | Relating to entities falling under composition scheme | Relating to other registered entities | Total payment to registered entities | |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| | | | | | | |

***Note: Applicability of Clause 44 is deferred till April 1, 2019.**

B. AUDIT PROVISIONS UNDER INDIRECT TAX LAWS



The GST roll out on 1st July 2017 has paved the way for realization of the goal of “one nation-one tax-one market”. GST is expected to benefit Indian economy overall with most tax compliant businesses getting favourably impacted. It is a trust based taxation regime

wherein the assessee is required to self-assess his returns and determine tax liability without any intervention by the tax official. Therefore, a tax regime that relies on self-assessment has to put in place a robust audit mechanism to measure and ensure compliance of the provisions of law by the taxable person.

Objective of GST Audit: The objective of the GST audit can be ascertained from the definition of Audit given in Section 2(13) of Central Goods and Services Tax Act, 2017 (CGST Act). The said definition reads as follows:

“audit means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made there under.”

From the above, it can be deduced that:

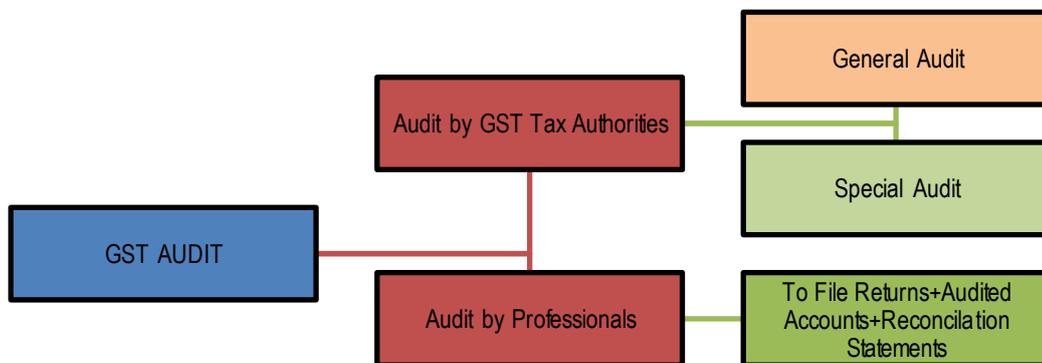
- (a) Audit is examination of records, returns and other documents;
- (b) Those records, returns and documents might have been maintained or furnished under GST Law or any other law;
- (c) The examination is to verify the correctness of
 - (i) Turnover declared;
 - (ii) Taxes paid;
 - (iii) Refund claimed; and
 - (iv) Input tax credit availed;
- (d) The examination is also to assess auditee’s compliance with the provisions of GST Act and Rules.

All this makes it clear that the objective of GST is to ensure the correctness of Turnover declared, Taxes paid, Refund claimed, and Input Tax Credit availed in addition to compliance of the GST Act and Rules. The intent is that the compliance of the GST law has to be confirmed by the GST audit.

1 Types of Audit under GST

GST envisages three types of Audit.

- (1) Audit of accounts [Section 35(5) read alongwith section 44(2) and rule 80]
- (2) Audit by Tax Authorities wherein the Commissioner or any officer authorised by him, can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed. [Section 65 and rule 101]
- (3) Special Audit wherein the registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. [Section 66 and rule 102]



1.1 Threshold for Audit:

Section 35(5) begins with the expression “every registered person whose **turnover** during a financial year exceeds the prescribed limit” whereas the relevant Rule 80(3) uses the expression “every registered person whose **aggregate turnover** during a financial year exceeds **two crore rupees**”. It must be noted that the word **turnover** has not been defined whereas the expression **aggregate turnover** has been defined. One may note that the expression **turnover in State or turnover in the Union territory** is defined. In this backdrop the following understanding is relevant:

- (a) Aggregate turnover is PAN based while turnover in a State/UT, though similarly worded, is limited to turnover in a State / UT, which is limited to a State;
- (b) It is therefore, reasonable to interpret that the word turnover used in Section 35(5) ought to be understood as aggregate turnover.
- (c) For the financial year 2017-18, the GST period consists of 9 months whereas the relevant Section 35(5) uses the expression financial year; Therefore, in the absence of clarification from the government, and to avoid any cases of default, it is reasonable to understand that to reckon the turnover limits prescribed for audit i.e., ₹ 2 crores one has to reckon the turnovers for the

whole of the financial year which would also include the first quarter of the financial year 2017-18.

1.2. Audit of Accounts [Section 35(5) read alongwith section 44(2) and rule 80]

As per sub-section 5 of section 35 read alongwith section 44(2) and rule 80 of the CGST Rules, 2017 stipulates as follows:

| | |
|--|---|
| (i) Every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a FY exceeds ₹ 2 crores. | Such registered person is required to furnish electronically through the common portal alongwith Annual Return a copy of: <input type="checkbox"/> Audited annual accounts <input type="checkbox"/> A Reconciliation Statement, duly certified, in prescribed FORM GSTR-9C. |
|--|---|

Reconciliation Statement will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement and such other particulars, as may be prescribed.



Value of supplies declared in Annual return

reconciliation



Value of supplies declared in audited Annual Financial Statement

1.3. Audit under section 65:

| Section | Description | Remarks |
|------------|--------------------------|---|
| Section 65 | Audit by tax authorities | The audit under Section 66 is a special audit to be conducted by a Chartered Accountant or Cost Accountant nominated by the Commissioner whereas the audit under Section 65 is a routine audit by the tax office. |

1.4. Special Audit under section 66:

Availing the services of experts is an age old practice of due process of law. These experts have done yeoman service to the process of delivering justice. One such facility extended by the Act is in Section 66 where an officer not below the rank of Assistant Commissioner, duly approved, may avail the services of a Chartered Accountant or Cost Accountant to conduct a detailed examination of specific areas of operations of a registered person. Availing the services of the expert by a Chartered Accountant or Cost Accountant is permitted by this section only when the officer

considering the nature & complexity of the business and in the interest of revenue is of the opinion that:

- ☛ Value has not been correctly declared; or
- ☛ Credit availed is not within the normal limits.

It would be interesting to know how these 'subjective' conclusions will be drawn and how the proper officers determines what is the normal limit of input credit availed.

Circumstances for Notice for Special Audit: An Assistant Commissioner who nurses an opinion on the above two aspects, after commencement and before completion of any scrutiny, enquiry, investigation or any other proceedings under the Act, may direct a registered person to get his books of accounts audited by an expert. Such direction is to be issued in accordance with the provision of Rule 102 (1) FORM GST ADT -03

The Assistant Commissioner needs to obtain prior permission of the Commissioner to issue such direction to the taxable person.

Identifying the expert is not left to the registered person whose audit is to be conducted but the expert is to be nominated by the Commissioner.

Time Limit to Submit the Audit Report: The Chartered Accountant or the Cost Accountant so appointed shall submit the audit report, mentioning the specified particulars therein, within a period of 90 days, to the Assistant Commissioner in accordance with provision of Rule 102(2) FORM GST ADT -04.

Extension in Submission of Audit Report: In the event of an application to the Assistant Commissioner by Chartered Accountant or the Cost Accountant or the registered person seeking an extension, or for any material or sufficient reason, the due date of submission of audit report may be extended by another 90 days.

Considering the special nature of this audit, i.e. audit having been conducted under other proceedings or under other laws; this does not preclude the proper officer from exercising this option.

While the report in respect of the special audit under this section is to be submitted directly to the Assistant Commissioner, the registered person is to be provided an opportunity of being heard in respect of any material gathered in the special audit which is proposed to be used in any proceedings under this Act. This provision does not appear to clearly state whether the registered person is entitled to receive a copy of the entire audit report or only extracts or merely inferences from the audit. However, the observance of the principles of natural justice in the proceedings arising from this audit would not fail the taxable person on this aspect.

1.5 Preparation for the GST Audit:

To start with, the following (among others) are the various steps an auditor can take in connection with the forthcoming GST audit:

- (a) Inform the concerned assessee about the applicability of the GST audit;

- (b) Confirm the eligibility to be the GST auditor under the related legislation;
- (c) Understand the nature of business, the products or services, requirements of records to be maintained, and advise the auditee to maintain accounts and records so required, beforehand;
- (d) Prepare a questionnaire to understand the operations / activities of the auditee, and specifically develop questions on those issues on which the GST law would have a bearing
- (e) Preparation of the detailed audit program and list of records to be verified;
- (f) Host of relevant reconciliations.

Expenses for Examination and Remuneration for Audit: The expenses for examination and audit including the remuneration payable to the auditor will be determined and borne by the Commissioner.

As in the case of audit under section 65, no demand of tax, even *ad interim*, is permitted on completion of the special audit under this section. In case any possible tax liability is identified during the audit, procedure under section 73 or 74 as the case may be is to be followed.

During the course of audit, the registered person to afford the auditor with the necessary facility to verify the books of account and also to furnish the required information and render assistance for timely completion of the audit. As per the CGST Rules on Assessment and Audit Rules, the auditor shall verify the documents on the basis of which the accounts are maintained and the periodical returns/statements are furnished. While conducting the audit, the auditor is authorized to:

- Verify books & records
- Returns & statements
- Correctness of turnover, exemptions & deductions
- Rate of tax applicable in respect of supply of goods and/or services
- The input tax credit claimed/availed/unutilized and refund claimed.

Some of the best practices to be adopted for GST audit among others could be:

The evaluation of the internal control *viz-a-viz* GST would indicate the area to be focused.

This could be done by verifying:

- (a) The Statutory Audit report which has specific disclosure needs in regard to maintenance of record, stock and fixed assets.
- (b) The Information System Audit report and the internal audit report.
- (c) Internal Control questionnaire designed for GST compliance.
 - (i) The use of generalised audit software to aid the GST audit would ensure modern practice of risk based audit are adopted.
 - (ii) The reconciliation of the books of account or reports from the ERP's to the return is imperative.
 - (iii) The review of the gross trial balance for detecting any incomes being set off with

expenses.

- (iv) Review of purchases/expenses to examine applicability of reverse charge applicable to goods/services. The foreign exchange outgo reconciliation would also be necessary for identifying the liability of import of services.
- (v) Quantitative reconciliation of stock transfer within the State or for supplies to job workers under exemption.
- (vi) Ratio analysis could provide vital clues on areas of non-compliance.

Consequences of failure to submit the annual return and not getting the accounts audited:

Section 47(2) provides that in case of failure to submit the annual return within the specified time, a late fee shall be leviable. The said late fee would be ₹ 100 per day during which such failure continues subject to a maximum of a quarter percent of the turnover in the State/UT. There would be an equal amount of late fee under the respective State/UT GST law.

However, there is no specific penalty prescribed in the GST Law for not getting the accounts audited by a Chartered Accountant or a Cost Accountant. Therefore, in terms of Section 125 of CGST Act he shall be subjected to a penalty of up to 25,000/-. This section deals with the general penalty that gets attracted where any person, who contravenes any of the provisions this Act, or any rules made thereunder for which no penalty is separately provided. Similar provision also exists under the State/UT GST law as well. It is possible that since the return is to be accompanied with the report, if not done it may amount to non-filing of return and late fee also may be levied.

1.6. Audit Approach

There are no prescribed or specified approaches for conducting audit under the GST laws. Similarities can be drawn between a GST Audit and / or Tax Audit under Section 44AB of the Income-tax Act and audit under the Companies Act. The GST Auditor is not required to express his opinion on truth and fairness of the financials when it is audited by others. In any case, he is required to certify the correctness and completeness of certain reconciled data. The verification would necessarily have to be substantially more than the opinion on truth and fairness.

In this background certain time-tested methods of conducting an audit have evolved into guidelines, which among others are as follows:

- (a) Obtaining prior knowledge of the business and comparing them with similar businesses;
- (b) Preparing a master file of the clients (permanent master file);
- (c) Discussing on with the audit team on the methodology to proceed with the audit;
- (d) Studying and evaluating systems (including business systems) and internal control of the business entity;
- (e) Assessing the audit risks and deploying of suitable personnel;
- (f) Assessing the risk appetite of the business entity;

- (g) Preparing of an audit plan / audit program and conducting the audit accordingly;
- (h) Reviewing meetings with the audit team;
- (i) Drawing conclusions on the basis of audit evidence obtained in the course of conducting the audit and a discussion with the client on the observations and findings;
- (j) Discussing with the registered person and obtaining various management certificates;
- (k) Reporting the observations in the prescribed statutory format, if any, or evolving a suitable format of reporting;
- (l) Maintaining Audit working papers file (Filing of documents either in permanent file or working papers file);
- (m) Concluding the audit and intimating the management.

1.7. Accounting Standard Vs. GST

The auditor should also take into account the accounting standards followed at the time of preparation of financial statements. There could be differences in the manner of accounting treatment of certain transactions as per Accounting Standard in the financial statements vis-à-vis the treatment under GST. Some of the differences are:

- Supplies on behalf of the principal are not reflected in the financial statements of the agent and only commission is shown as the revenue of the agent. Under the GST Law, such turnover would be treated as part of the agent's turnover.
- Under the Accounting Standard 19 in the case of finance lease, in the books of the lessor, the cost of the asset is recorded as a receivable whereas in the books of the lessee, it would be recorded as an asset purchased. However, under the GST, the cost of the asset would be recorded as a purchase and the fair value of the asset would not be recorded in the books of the lessee as a purchase. In the case of the lessor, only the financial charges would be treated as revenue as per the AS, whereas under the GST, the entire amount would be treated as revenue. Similarly, as per the Accounting Standard, in the case of lessee, the amount of lease rentals would be bifurcated into interest charges and liability, whereas under the GST, the entire amount would be treated as expense.

The above is only illustrative and there could be many more cases of differences in the turnovers between the financial statements and the GST Law.

1.8. GST Audit in Computerised Environment

Compliances under the GST law are dependent upon technology because transactions are numerous. It is not only the Government which has adopted technology; businesses too have adopted technology at different levels to meet the compliance requirement.

In the GST regime, Information Systems have become an integral part of enterprise day-to-day operation, such as return filing, payment of taxes, rectification of returns filed, reconciliation of multiple returns GSTR 1, GSTR 2A, GSTR 3B, e-Way Bill, GSTR 9 etc. The increased usage of technology has pitfalls when sufficient controls are not built within. The primary responsibility of the

GST Auditor is to assess the entire Computerized Information System (CIS) environment and get macro perspective of data availability and systems reliability.

Unlike the traditional audit methodology which involved manual process of checking and verification, the GST audit processes for larger assesses is carried out by using Computer Systems and Technology. For example, verification for the matching of Input Tax Credit availed with the Outward Supply declared by the supplier being large in numbers, cannot be done manually. Hence different computerized tools and methods have to be used for the purpose.

Though it is clear that computerized tools and methods have to be used for conducting the audit, at the same time it is important that the Auditor is aware of such computerized environment which can be called Computerized Information System (CIS) Environment, and the audit risks involved therein.

GST Auditor should also try to know whether the computer of any type or size used by the entity for processing financial information is important for the purposes of audit, and if it is operated by the entity or by a third party.

Controls can be classified based on whether they are, preventive, detective or corrective or based on some other parameters like physical, logical or environmental. More classifications are also possible, based on the assets they protect.

1.9 Audit Planning

The auditors should obtain an understanding of the organization Internal Process of

- (a) accounting of Transactions
- (b) reporting to the GSTN Portal
- (c) reconciliation of filed data and
- (d) internal control systems implemented

To plan the audit and develop an effective audit approach to meet audit requirements.

In planning the portions of the audit which may be affected by the client's CIS environment, the auditors should obtain an understanding of the significance and complexity of the CIS activities and the availability of data for use in the audit.

Preliminary Review

Before starting his work, the GST Auditor shall conduct a preliminary review to assess the CIS controls and the risks that could impact his work by considering the following points:

- Knowledge of the Business
- Understanding the technology deployed
- Understanding Internal Control System
- Risk assessment and Materiality

1.10. Various Returns Under GST

Following are the various forms to be filed under GST Act

- **GSTR 9** :GSTR 9 should be filed by the regular taxpayers filing GSTR 1, GSTR 2, GSTR 3
- **GSTR 9A** : GSTR 9A should be filed by the persons registered under composition scheme under GST.
- **GSTR 9B**:To be filed by e-commerce operators
- **GSTR 9C**:Should be by the taxpayers whose annual turnover exceeds ₹ 2 Crores during the financial year. All such taxpayers are also required to get their accounts audited and file a copy of audited annual accounts and reconciliation statement of tax already paid and tax payable as per audited accounts alongwith GSTR 9C.

GSTR 9 - Annual Return Filing, Format, Eligibility & Rules

GSTR 9 form is an annual return to be filed once in a year by the registered taxpayers under GST including those registered under composition levy scheme. It consists of details regarding the supplies made and received during the year under different tax heads i.e. CGST , SGST and IGST. It consolidates the information furnished in the monthly/quarterly returns during the year.

All the registered taxable persons under GST must file GSTR9 form. However, the following persons are **not** required to file GSTR 9

- Casual Taxable Person
- Input service distributors
- Non-resident taxable persons
- Persons paying TDS under section 51 of GST Act.

Details required in the GSTR 9

| Sr. No. | Parts of GSTR – 9 | Information Required |
|---------|-------------------|--|
| 1. | Part – I | Basic details of the taxpayer. This detail will be auto-populated. |
| 2. | Part – II | Details of Outward and Inward supplies declared during the financial year(FY). This detail must be picked up by consolidating summary from all GST returns filed in previous FY. |
| 3. | Part – III | Details of ITC declared in returns filed during the FY. This will be summarised values picked up from all the GST returns filed in previous FY. |
| 4. | Part – IV | Details of tax paid as declared in returns filed during the FY. |
| 5. | Part – V | Particulars of the transactions for the previous FY declared in returns of April to September of current FY or up to the date of filing of annual returns of previous FY whichever is earlier. Usually, the summary of |

| | | |
|---|-----------|---|
| | | amendment or omission entries belonging to previous FY but reported in Current FY would be segregated and declared here. |
| 6 | Part – VI | Other information comprising details of : GST demands and refunds, HSN wise summary of the quantity of goods supplied and received with its corresponding Tax details against each HSN code, Late Fees payable and paid details, segregation of inwards supplies received from different categories of taxpayers like Composition dealers, deemed supply and goods supplied on approval basis. |

Analysis of GSTR 9C

Form GSTR 9C is the relevant form prescribed in terms of Rule 80(3) of the CGST Rules. This has two parts to it: Part A titled the "Reconciliation Statement" and Part B is the Certification portion. Part I captures the basic details of the Registered Person under Part A (Reconciliation Statement) which has 4 Sl. Nos. Each of the Sl. Nos is significant in terms of the disclosure requirement.

Comparative view of Form GSTR-9 and GSTR 9C

| Sr. No. | Return in GSTR 9 | Return in GSTR 9C |
|---------|---|---|
| 1. | It is the report of a formal or official character giving information | Means the formal statement to be made under the provisions of the Act the veracity of which needs an enquiry as to its correctness |
| 2. | Prescribed under a Statute | Prescribed under a Statute |
| 3. | To be filed by all registered persons | To be filed only if the aggregate turnover in a financial year exceeds ₹ 2 Crores. |
| 4. | Not required to be filed by a Casual Taxable Person, Non-Resident Taxable Person, Input Service Distributor, Unique Identification Number Holders, Online Information and Database Access Retrieval Service, Composition Dealers, persons required to deduct taxes under Section 51 and persons required to collect taxes under Section 52. | Not required to be filed by a Casual Taxable Person, Non-Resident Taxable Person, Input Service Distributor, Unique Identification Number Holders, Online Information and Database Access Retrieval Service, Composition Dealers, persons required to deduct taxes under Section 51 and persons required to collect taxes under Section 52. |
| 5. | No need to annex financials | Financials to be annexed |
| 6. | A plain reading of the relevant provisions indicate that the said Annual Return in GSTR 9 and the Reconciliation Statement in GSTR 9C must be filed together. However, if one were to peruse GSTR 9C there are certain tables which state that | |

| | |
|--|--|
| | "turnover as declared in annual return" indicating thereby that GSTR 9C is dependent on GSTR 9. This anomaly can be addressed only on the basis of the finalized annual return initialled and presented to the GST auditor by the registered person. |
|--|--|

Analysis of Form GSTR 9C

PART-I - Sl. No. 1 : Financial Year

This Sl. No. requires disclosure of the "financial year" to which the Reconciliation Statement in Part A relates to. The expression financial year has not been defined under the GST laws. However, in terms of the General Clauses Act "financial year" shall mean the year commencing on the 1st day of April and closing on the 31st day of March.

Part I - Sl. No. 2 : GSTIN

GSTIN means the "Goods and Services tax Identification Number" of the tax payer or the Registered Person. Each tax payer, on his successful registration, would be assigned a State-wise PAN based 15-digit GSTIN. The first 2 digits of the said GSTIN would represent the State code, as per the Indian Census 2011 viz, Karnataka 29, Delhi 07 etc. The next 10 digits would be the PAN of the tax payer. It implies that if one is not allotted a PAN, he cannot be registered under the GST Laws. The 13th digit would be based on the number of registrations within a State, while the 14th digit would be assigned based on the nature of the business of the Registered person. The 15th digit is a check code which can be a "numeral" or an "alphabet".

In the case of a Non-resident taxable person ("NRTP"), Rule 13 of the CGST Rules permits registration even without PAN. In such case, registration shall be granted based on the tax identification number or unique number on the basis of which the entity is identified by the Government where the said entity is based.

GSTIN based on PAN ought to be validated. As and when such errors are noticed during the GST audit, the GST Auditor should disclose such information appropriately. He must also consider other implications due to such errors.

Part I - Sl. No. 3A and 3B: Legal Name and Trade Name

The word "trade" used in Sl.No. 3B of Part A may not be limited to occupation or business. It could be a connotation. The word "trade" ought to be understood in its ordinary sense, without any reference to "business". For instance, "Indigo" could be a trade name while the legal name is "InterGlobe Aviation Limited".

Therefore, understood, trade name is used by trade and industry to identify their businesses symbolizing their reputation. Caution must be exercised in listing the trade name and legal name in Sl. Nos. 3A and 3B.

It is possible that some Registered Persons may not have a trade name. In such situations, Sl.No. 3B of Part A would not be applicable. Therefore, NOT APPLICABLE is to be stated in Part A which could be verified from the <<auto populated>> data.

The legal name and trade name ought to be verified with the certificate of registration issued by the tax department in Form GST REG – 06. Similarly, if the Registered Person is a company registered under the Companies Act, 2013, the legal name / trade name can be verified with the Certificate of Incorporation and in case of partnership firm by the certificate issued by the Registrar of Firms.

Therefore, the distinction between a trade name and a legal name must be clearly understood and borne out in Sl.No. 3A and 3B of Part A, and should not be used interchangeably.

Part I - Sl. No. 4 : Are you liable to audit under any Act?

The Sl. No. “Are you liable to audit under any Act?” mentioned in GSTR 9C needs elaboration. It is possible that an entity could be subjected to audit under several statutes. For instance a Proprietary Concern could be subject to audit under the Income tax Act, 1961 and a Private Limited Company could be subject to the

statutory audit under the Companies Act, 2013 as well as under the Income tax Act. Similarly, a society registered under the Societies Registration Act may be subject to audit under that Act as well as under the Income tax Act. This fact must be specified in Sl. No. 4. It is currently not clear if the response to this question would be YES / NO or would be to select from a drop-down menu the statute under which the tax payer has been subjected to audit.

Part II - Sl. No. 5A: turnover (including exports) as per audited financial statements for the State / UT (For multi-GSTIN units under same PAN the turnover shall be derived from the audited Annual Financial Statement)

Sl. No. 5A is intended to report the turnover as per the audited Annual Financial Statement for a GSTIN. There may be cases where multiple GSTINs (State-wise) registrations exist for the same PAN. This is common for persons/entities with presence over multiple States or in respect of multiple registration in a single State/UT. The Government vide its instructions has indicated that such persons/entities would have to internally derive their GSTIN wise turnover and provide to the Auditor to verify and declare in this Sl. No.

The Auditor must bear in mind that in a real business environment several entities may not be in a position to provide such derived turnovers. In such a situation, the Auditor has to engage suitably himself and carry out this exercise.

Checks and balances to validate correctness and completeness:

To ensure completeness and correctness of the details of turnover to be declared under this Sl.No., the following checks could be used:

1. turnover in State/UT (in case of single registration) must reconcile to the turnover disclosed in the audited financial statements;
2. turnover in State/UT (in case of multiple registration) must reconcile to the turnover as recorded in the books of accounts of each registration;

3. Master reconciliation to ensure that the details of turnover declared for different registrations (in case of multiple registrations either due to presence in multiple States/UT s' or due to unit(s) in SEZ) with the total turnover of the entity

List of documents

The following list of documents could be obtained by the Auditor for the purpose of declaring the details of turnover under this Sl. No.:

- a. Annual Financial Statements
- b. Registrant wise Trial Balance to facilitate furnishing the Form GSTR 9C for each registrant;
- c. Communication with the other Auditor to obtain details of the turnover declared by them to ensure completeness and holistic reconciliation of turnover of the Registered Person;
- d. Form GSTR 9C, if already filed by a different Auditor, in case of multiple registrations of the Registered Person;
- e. GST (Viz Form GSTR 3B and Form GSTR 1) returns filed by the Registered Person to ensure that the turnover declared in the returns match the turnover captured in the audited financial statements
- f. Income tax Returns (ITR) to ensure that the turnover details are reconciled with the turnover per GST.

Sl. No. 5B. Unbilled revenue at the beginning of Financial Year

To comprehend the scope of these Sl. Nos, there is need to understand the concept of 'Unbilled revenue'. In simple terms, unbilled revenue is the revenue recognized in the books of accounts before the issue of an invoice at the end of a particular period. Accounting Standard-9/IND AS 115 provides for recognition of revenue on full completion / partial completion of the services though the due date for issuing invoice as per the contract would be on a later date. It is advisable to refer to AS-9 / IND AS 115 for a better understanding of the concept.

Clause 5B requires the addition of unbilled revenue at the beginning of a Financial Year. Unbilled revenue which was recorded in the books of accounts on the basis of accrual system of accounting in the earlier financial year for which the invoice is issued under the GST law is required to be declared here. In other words, when GST is payable during the financial year on such revenue (which was recognized as income in the earlier year), the value of such revenue is to be declared here.

Unbilled revenue would appear in the profit and loss account of the previous year. For information of unbilled revenue at the beginning of a Financial Year, reference may be made to previous year's audited financial statements. However, as the GST was introduced from 1st July 2017 one needs to be careful to exclude invoices raised during the period April 2017 to June 2017 from the computation.

Sl. No. 5C Add: Unadjusted advances at the end of the Financial Year

The scope of Part II Sl No. 5C and 5I is to make adjustment of Unadjusted Advances to Audited Financials for arriving towards the GSTR 9 turnover.

It is a business practice to collect advances from customers before effecting supplies. When an advance is received, since the goods and / or services would not have been delivered / rendered, the revenue is not yet earned, whereby this advance would be recorded as a liability (either as current liability or long-term liability) in the balance sheet as at the end of the financial year.

For Supply of Goods

Sec 12(2): The time of supply of goods shall be the earlier of the following dates, namely: —

- (a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-Section (1) of Section 31, to issue the invoice with respect to the supply; or
- (b) **the date on which the supplier receives payment with respect to the supply:**

The Government issued NN 40/2017-CT dated 13th October 2017 in terms of Section 148 of CGST Act to relax Registered Persons having aggregate turnover less than ₹ 1.5 crores from paying tax on such advances. This facility was extended to all Registered Persons without threshold limit vide NN 66/2017-Central tax, dated 15th Nov 2017 but only in the case of supply of goods.

In terms of the above notifications, an Auditor has to examine whether the Registered Person has paid tax on advances till 15th Nov 2017.

For Supply of Services

CGST Section 13 (2):

The time of supply of services shall be the earliest of the following dates, namely: —

- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under Section 31 or the date of receipt of payment, whichever is earlier; or
- (b) the date of provision of service, if the invoice is not issued within the period prescribed under Section 31 or the **date of receipt of payment**, whichever is earlier; or
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply.

Explanation—For the purposes of clauses (a) and (b)—

- the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;
- “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

Therefore, any advances received from customers before the date of supply, on receipt of advance GST, have to be discharged.

Sl. No. 5D. Deemed Supply under Schedule I

Clause 5D seeks to cover aggregate value of four classes of deemed supplies transactions specified under Schedule I of the CGST Act. Any deemed supply which is already reported as part of the turnover in the audited Annual Financial Statements is not required to be included in this Sl. No.

As the requirement of this Sl. No. is to report the transactions which were not reported in the financial statements, though the same are reported in the returns filed since they are treated as deemed supplies under the GST law, there is no direct source will indicate the value of deemed supplies under any part of the returns or statement filed. Details regarding this have to be extracted from the books/records.

E-Way bills raised would be a good guiding factor to identify such instances in respect of goods while an Auditor may have to delve deeper to understand the transactions relating to services. For instance, transactions relating to stock transfer of goods may be extracted from delivery challans or on an analysis of e-way bills, whereas transactions of service transfers will be based on an understanding of the nature business. It is better to take proper management representation for the completeness of these transactions.

The Auditor should look beyond the books of accounts and look for alternative evidence and information for reporting in Sl.No. 5D. Such as

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

Disclosure by Auditor

1. The Auditor has to assess the systems and processes adopted by the entity with a view to identifying such transactions. Suitable disclosure may need to be provided by the Auditor for the basis of such identification and its treatment under the GST Laws.
2. If there is any system / methodology for such an identification, then the Audit has to assess the completeness and correctness of the said system so as to cover all the aspects;
3. To examine records and to confirm if the system is followed consistently.
4. If there is no proper system, to consider the possibility of any transactions that may have escaped attention.
5. In cases of deemed supply transactions, it would be relevant to include suitable disclosures even in the management representation letter.

Sl. No.5E. Credit notes issued after the end of the financial year but reflected in the annual return.

This Sl. No. mandates reporting of the aggregate value of credit notes which were issued after Mar 31, 2018 in respect of any supply accounted in the current financial year (2018-19) but for credit

notes were reflected in the annual return (GSTR –9 for the financial year 2017-18). But, it is uncommon, although not impossible, for credit notes dated beyond Apr 1, 2018 to be given effect in the financial accounts. This Sl. No. applies only in such rare cases. For the most part, this Sl. No. may well be 'nil'.

5E of GSTR 9C contains information pertaining to credit notes which were issued after 31st of March for any supply accounted in the current financial year but such credit notes were reflected in the annual return (GSTR–9).

Sl. No. 5F. Trade discounts accounted for in the audited Annual Financial Statement but are not permissible under GST

Clause 5F requires disclosure of trade discounts which have been given effect to, in the audited financial statements but which are not permissible as part of deductions from the value of supply under the GST Laws.

This data / information can generally be obtained from the credit side of the Profit and Loss account. It is also a business practice that trade discounts would be netted off against the turnover of outward supplies. In the case of entities with multiple registration, a separate statement is to be obtained for each GST IN reconciling the total with the amount disclosed in the financials.

Non-allowance of the same has to be identified on the basis of the documents maintained by looking into the conditions of allowance as deduction against the supply made as per Section 15(3) of the CGST Act.

Since it may be difficult to verify all the cases of trade discounts by the Auditor to consider the eligibility for deduction, it may have to adopt some other audit techniques to ascertain the same. Also, it would be important to obtain the appropriate management representation letter from the entity.

The following are the control checks that a person should perform for validation of the amounts reported under this head:

- (a) The valuation of trade discounts for the purposes of disclosures under this head, has to be clearly documented.
- (b) The input tax credit reflected in GSTR-2A attributable to such trade discounts has to be maintained.
- (c) The trade discount has to be demarcated between the supplies made in the erstwhile law and the GST regime.
- (d) The customer agreements have to be scrutinised to determine the quantum of nonallowable discounts.

Sl. No. 5G: turnover from April 2017 to June 2017

In terms of this Sl. No. the turnovers included in the audited financial statement for the period April 2017 to June 2017 shall be declared and deducted from the annual turnover to arrive at the turnover as per the GST Laws.

There could be cases where the books of accounts are closed quarterly, or financial statements are drawn up quarterly. In such cases, the quarterly turnovers can be adopted, and adjustments can be made relating to the point of taxation under the excise law, State level vat law and service tax law to arrive at taxable values as per the erstwhile laws. The said value must be entered under this head.

Turnovers forming part of the tax periods 1.4.17 to 30.06.17, which were *liable* to tax under the erstwhile laws as per the provisions relating to the point of taxation rules should be deducted from the turnover.

It may be noted that tax is liable to be paid on removal in case of excise/on sale under VAT law/on provision of service or issue of invoice as the case may be under service tax law provisions and not on accrual basis or cash basis (which is the basis of accounting and hence basis of annual turnover as per financial statements). Thus, the criteria for reducing turnover for the period April 2017 to June 2017 is not when the revenue was recognised as per relevant accounting standards, but whether or not the said amounts were liable to tax under the erstwhile laws as per the point of taxation under the said laws.

Amounts forming part of turnover relating to works contracts, where consideration was received during the period April 2017 to June 2017, but supplies were effected or services were rendered after June 2017, needs to be deducted under this Sl. No. because the said consideration was liable to tax on receipt basis as per the service tax law and State level VAT laws. However, the self-same value needs to be added back in Sl. No. 5(O), since the aforesaid supplies would be liable to tax under the GST law also as per Section 142(11)(c). At this juncture, it is important to note that the relevant service tax and value added tax paid on such advances for which supplies are effected during the GST regime would be available as CGST / SGST credit as per section 142(11)(c) of the CGST Act.

It is opportune to mention at this stage that there is a saving clause in section 142(11)(a) and (b) of CGST/SGST Act, which states that transactions liable to VAT/ service tax would not be exigible to GST in case the provision of time of supply under the GST also stands attracted to the very same transaction. There is no such saving clause mentioned for excise duty (i.e. for goods manufactured and *cleared* from April 2017 to June 2017) but sold after June 2017 (e.g.: clearances made on sale or approval basis prior to July 2017, sold after July 2017). However, N.No.12/17 CE dt.30.6.17 grants exemption in the case of goods manufactured prior to 30.6.2017 but cleared/ supplied after 1.7.2017, provided GST is leviable on such goods.

Illustration

Please specify which of the following supplies would form part of reporting under turnover for the period April 2017 to June 2017

- (a) Services were provided during the period June 2017. The service was completed on 20.6.2017, but invoice for the service was raised only on 1.8.2017.

Reply: Since the invoice was raised after a period of thirty days, service tax is liable to be paid for the period ending June 2017 as per the proviso to Rule 3(a) of the Clause of Taxation Rules. Since the said transaction is liable to service tax, it is not liable to GST as per Section 142(11)(b)

of the CGST Act, though the invoice is raised during the GST regime. Therefore, the said value of invoice must be deducted for the period April 17 to June 2017.

- (b) Service has been provided in the month of May 17 amounting to ₹ 1,00,000/-. Invoice has been raised within 30 days. There was a deficiency in the provision of service. The customer has paid only ₹ 20,000/-. The company has issued credit note amounting to ₹ 80,000/- on 31.3.2018 and closed the customer's account. Should any amount be reduced for the period April 2017 to June 2017. Are any adjustments required to be made for the period July 2017 to March 2018?

Reply: As per S.142(2)(b) of the GST Act, where in pursuance of contract entered into prior to the appointed date, where the price of service is revised downwards after 1.7.2017 and the provider issues a credit note within 30 days of such price revision, such credit note shall be deemed to have been issued in respect of outward supply, provided the recipient has reduced his input tax credit. Assuming the input tax credit is reduced by the recipient, the credit note shall be reduced from outward supply for the tax period March 2018. Thus ₹ 80,000/- would be reduced from the GST turnover for the period of March 2018. The said amount of ₹ 80,000/- would be reduced from the turnover in the month of March 2018 because credit note is issued in the month of March 2018. Thus, only ₹ 20,000/- is required to be reduced for the period April 2017 to June 2017, though invoice for ₹ 1,00,000/- is issued in the month of May 2017 and service tax is paid on ₹ 1,00,000/- in the month of May 2017.

Sl. No. 5H. Unbilled revenue at the end of Financial Year

Unbilled revenue which was recorded in the books of accounts on the basis of accrual system of accounting during the current financial year, but GST was not payable on such revenue in the same financial year shall be declared here.

Sl. No. 5I Less: Unadjusted Advances at the beginning of the Financial Year

Value of all advances for which GST has not been paid but the same has been recognized as revenue in the audited Annual Financial Statement shall be declared here.

Sl. No. - 5J. Credit notes accounted for in the audited Annual Financial Statement but are not permissible under GST

This Sl. No. has to be filled up with the information available in the audited Financial Statements whereas such amounts have not been adjusted against the supplies in the GST returns. All the adjustments made to the turnover where there is an effect of reduction due to a Credit Note issued have to be quantified for the purpose of reconciliation between the books of accounts and the GST returns to be filed. There could be an adjustment made to the receivable and payable in the books of accounts. Care should be exercised to extract the information of credit note that only calls for reduction of the turnover.

Auditor has to disclose the practice adopted for collating relevant information from the books of accounts and the basis for determining the adjustments eligible for reconciliation purposes.

Sl. No. 5K. Adjustments on account of supply of goods by SEZ units to DTA Units

Such outward supplies are not required to be reported by SEZ units in their GST Returns and hence the data cannot be retrieved from the returns filed by such SEZ units.

SEZ units are required to maintain records of the assets / goods admitted into the SEZ unit and also the details of disposal of such goods. Such records can assist an Auditor in identifying the outward supply made by the SEZ unit. Additionally, disposal of capital goods would be disclosed as deletion in the Fixed Asset Registers.

Sl. No. 5L. Turnover for the period under composition scheme

There may be cases where Registered Persons might have opted out of the composition scheme during the year. Their turnover as per the audited Annual Financial Statement would include turnover both as composition taxpayer as well as normal taxpayer. Therefore, the turnover for which GST was paid under the composition scheme shall be declared under this Sl. No. 5L.

A person registered under the composition scheme who has opted out of the scheme should file both GSTR 9 and GSTR 9A. An Auditor may note that even a person violating the conditions stipulated in Section 10 of the CGST Act or Rule 5 of the CGST Rules or Notification CT 8/2017 dated 27/06/2017 would stand to exit the scheme. In such cases, the composition person should file Form COMP-4 and opt out of the scheme.

Sl. No. 5M. Adjustments in turnover under section 15 and rules thereunder

There may be cases where the taxable value and the invoice value differ due to valuation principles under section 15 of the CGST Act, 2017 and rules thereunder. Therefore, any difference between the turnover reported in the Annual Return (GSTR 9) and turnover reported in the audited Annual Financial Statement due to difference in valuation of supplies shall be declared here.

In terms of Section 9 of the CGST Act, GST is applicable on supplies of goods or services on the value of supply as determined under Section 15. Section 15 of the CGST, 2017 provides that the transaction value (value at which the supply has been transacted) would be the basis for the computation of tax when two conditions are satisfied

1. The price actually paid or payable should be the sole consideration for the supply; and
2. The supplier and the recipient are not related.

Even if the price for a supply is agreed to be the transaction value, few adjustments (provided for under Section 15 itself) are required to be carried out to such price for the purpose of the computation of value on which GST is required to be paid.

Valuation Rules also provide instances where the value of a transaction as per the financial records can be significantly different from the value to be considered for discharge of taxes under the GST.

There may be cases where the taxable value and the invoice value differ due to valuation principles under Section 15 of the CGST Act and rules thereunder. Therefore, any difference between the turnover reported in the Annual Return (GSTR 9) and turnover reported in the audited Annual Financial Statement due to differences in the valuation of supplies shall be declared here.

Sl. No. 5N. Adjustments in turnover due to foreign exchange fluctuations (+/-)

Any difference between the turnover reported in the Annual Return (GSTR9) and turnover reported in the audited Annual Financial Statement due to foreign exchange fluctuations shall be declared here.

Illustration

1. PQR Limited has exported goods to a Company located in USA. The value of goods is \$100,000. The exchange rate (Rs/\$) on the date of filing Shipping Bill is

CBEC Notified ₹ 65

RBI Reference Rate ₹ 68

At the time of receiving money, the bank exchanged the foreign currency at ₹ 70.

Solution

For the purpose of GST Returns, the exchange rate would be ₹ 65 and the exports to be disclosed in the GST Returns would be ₹ 65,00,000. For the purpose of accounting records, the exchange rate would be ₹ 68 and the exports recorded in the books would be ₹ 68,00,000. The difference in revenue being ₹ 300,000 would have to be **reduced** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

Additionally, difference in the amount booked in the accounts and actual amount received being ₹ 70 – ₹ 68 = ₹ 2 x \$100,000 = ₹ 200,000 would be credited to the Profit and Loss Account as Forex Gain which again needs to be **reduced** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

2. PQR Limited has exported goods to a Company located in USA. The value of goods is \$100,000. The exchange rate (Rs/\$) on the date of filing Shipping Bill is

CBEC Notified ₹ 65

RBI Reference Rate ₹ 68

At the time of receiving money, the bank exchanged the foreign currency at ₹ 66.

Solution: For the purpose of GST Returns, the exchange rate would be ₹ 65 and the exports to be disclosed in the GST Returns would be ₹ 65,00,000. For the purpose of accounting records, the exchange rate would be ₹ 68 and the exports recorded in the books would be ₹ 68,00,000. The difference in revenue being ₹ 300,000 would have to be **reduced** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

Additionally, the difference in the amount booked in the accounts and actual amount received being ₹ 66 – ₹ 68 = (-) ₹ 2 x \$100,000 = (-) ₹ 200,000 would be debited to the Profit and Loss Account as Forex Loss which again needs to be **added** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

Sl. No. 5O. Adjustments in turnover due to reasons not listed above (+/-)

Clause 5O is a residuary Sl.No. which requires disclosure of reconciliation details relating to adjustments for which specific column is not provided under any other Sl.No.s under Item No. 5. This Sl.No. may contain an option to insert multiple line items to add / reduce the amount from the gross turnover declared in the audited Annual Financial Statements so as to reconcile the same with the turnover declared in Form GSTR 9.

Sl. No. 5P: Annual turnover after adjustments as above

The reconciliation statement in Sl.No.5P is auto-populated and based on the values declared against Sl. Nos. 5B to 5O.

Sl. No.5Q: turnover as declared in Annual Return (GSTR 9)

Clause 5Q requires a taxable person to disclose his turnover as per the Annual Return i.e., GSTR 9 filed for the relevant financial year. Therefore, the turnover arrived at Sl.No. 5N as per the Annual Return in GSTR – 9 should be declared under Sl.No. 5Q. Accordingly, the Annual Return in GSTR – 9 should be filed along with or before filing the reconciliation statement in Form GSTR – 9C.

The turnover arrived at Sl.No. 5P of Form GSTR 9C as stated earlier, should match with the turnover as declared in the Annual Return if the turnover is reckoned appropriately as per the GST law and declared in the returns filed in GSTR – 3B and the annual return in GSTR – 9. The turnover as arrived at Sl.No. 5N of the Annual Return in Form GSTR 9 shall be the turnover to be declared against Sl.No. 5Q.

The turnover as declared in the monthly return in GSTR – 1 by virtue of which the same is declared in the annual return in GSTR – 9 may not include all the taxable outward supplies on account of omissions or errors. Such differences in the turnover should not be adjusted under Sl.No. 5O for the purpose of matching the turnover between the annual return and the audited annual financial statements. The turnover as arrived at Sl.No. 5N of the Annual Return in Form GSTR 9 shall be declared against Sl.No. 5Q of GSTR 9C. The differences in turnover as per the audited annual financial statement and the turnover as per the annual return in GSTR – 9 should be reconciled and the reasons thereof should be mentioned at Part II Sl. No. 6.

Sl. No. 5R: non-reconciled turnover (Q-P)

The un-reconciled turnover at Sl. No. 5R is the difference between the 'Annual turnover after adjustments as above' at Sl.No. 5P and 'turnover as declared in the Annual Returns (GSTR 9)' as declared at Sl.No. 5Q. The difference would be auto generated.

The value of supplies either taxable, exempted or non-GST outward supplies not declared in the monthly returns and annual returns would form part of the auto-generated value at Sl.No.

5R. The reasons for such un-reconciled turnover should be given under Part II Sl. No. 6 of the reconciliation statement in GSTR – 9C. This could lead to any one of the following two situations:

(i) **The ‘Annual turnover after adjustments as above’ at Sl.No. 5P is higher than the ‘turnover as declared in the Annual Return (GSTR 9)’ at Sl.No. 5Q:**

This situation arises if a taxable person has not declared some taxable outward supplies, exempted supplies and non-GST outward supplies. The value of taxable supplies forming part of the differences should be declared under Part III Sl. No. 11 and the applicable taxes thereon shall be paid appropriately by cash. The differences in exempt supplies and non-GST outward supplies shall be declared against Part II Sl. No. 7B or 7C *as the case may be* and reduction from the total turnover may be sought.

(ii) **The ‘Annual turnover after adjustments as above’ at Sl.No. 5P is lower than the ‘turnover as declared in the Annual Return (GSTR 9)’ at Sl.No. 5Q:**

This situation may arise if a taxable person has erroneously declared a higher turnover in the monthly return in GSTR – 3B and the annual return in GSTR – 9. The reconciliation statement in GSTR – 9C does not specifically provide to claim the benefit of tax paid erroneously. The statement which would be made available on the GST portal should be checked to verify whether the taxable value at Sl. No. 11 may be declared in the negative so that refund of tax remitted on such turnover can be claimed. Clarification on this issue is awaited.

Sl. No. 6- Reasons for Un - Reconciled difference in Annual Gross turnover

This portion of GSTR 9C identifies the turnover differences to be placed on record for explaining the differences between the GST Returns and the Audited Financials. All the information filled up in the GST returns has to be flown from the Books of Accounts. However, the un-reconciled turnover on account of disclosure norms as per the Accounting Standard issued by the ICAI or other statutory provisions or practices adopted by the Registered Person on a special approval basis, which are not reconciled at turnover level should be disclosed in this Sl.No..

For instance, the mechanism for the determination of Revenue in case of Sale of a Capital Asset shall differ for the value to be disclosed in the GST Returns compared with that of the practice adopted in the Book of Accounts

Examine the turnover available as per the Audited Financial Statements with that of the Annual turnover determined as per GSTR 9. Information available in Notes to Accounts as per the Audited Financial statements gives the additional information for the Exceptions if any to the regular practice of maintenance of the Books of Accounts.

Information has to be compared on equitable basis for clarity on what is to be compared as turnover considered in the Financial Statements with that of the turnover compared in the GST Returns. For instance, turnover on the sale of Fixed Assets should be considered for the whole consideration value in the GST Returns. However, only Profit/ Loss on such sale shall be considered in the Books of Accounts. For having an equitable basis for both the turnovers, we

need to gross up the Profit/Loss in the Books of Accounts for a matching comparison with the GST Returns.

The Auditor shall make a reference to the basis for reconciliation of the turnover related adjustments called for on the basis of the information available in the Notes to Accounts and any special adjustments caused by reference to other statutory requirements.

The Auditor needs to report whether the Books and Returns can be compared and quantify the reasons duly justifiable for the discrepancies reported, if any.

The Auditor should make a disclosure regarding the reasons that come in the way of the reconciliation process or concluded for sake of clarity on taxable nature.

Sl. No. 7B. Value of Exempted, Nil rated, Non-GST supplies, No-Supply turnover

| | | |
|----|--|--------|
| 7 | RECONCILIATION OF TAXABLE TURNOVER | |
| 7A | Annual Turnover after Adjustments (From 5P Above) | <Auto> |
| 7B | Value of Exempted, Nil Rated, Non-GST supplies, No-Supply Turnover | |

Clause 7B requires reduction of value of Exempted, Nil rated, Non-GST supplies, No-Supply turnover from the Annual turnover after adjustments to arrive at taxable turnover.

All the supplies on which tax has not been charged except for exports and reverse charge supplies should be reported under Clause 7B. The information can generally be obtained from the credit side of the Profit and Loss account. In case of a barter transaction, the sale of fixed assets at loss etc would not appear in the profit and loss account. Therefore, that information shall be obtained from the Fixed assets schedule or the stock register. The value of No-supply can be taken as reported in the Books.

Clause 7B essentially comprises the following 4 classes / types of supplies:

- Supplies taxable at a 'NIL' rate of tax; currently there are no goods / services under 'NIL' rate category
- Supplies that are wholly or partially exempted from CGST, SGST or IGST, by way of a notification; E.g.: Milk, water, education service, health care services, etc.,
- Non-taxable supplies as defined under Section 2(78) of the CGST Act – supplies that are not taxable under the Act (viz. alcoholic liquor for human consumption).
- No supplies include the activities covered under Schedule III which are neither a supply of goods nor a supply of services. Examples- Sale of land or completed building, actionable claims, other than lottery, betting, and gambling.

Illustration

The following supplies would form part of the reporting under value of Exempted, Nil rated, Non-GST supplies, No-Supply turnover in the case of a hospital:

- Consultation fees received by the hospital ₹ 2,50,00,000/- (Exempted supply)

- (b) Diagnostic services provided by the hospital ₹ 40,00,000/- (Exempted supply)
- (c) Excess petrol available in the hospital sold to a related party ₹ 10,000/- (Non-GST supply)
- (d) Land sold by the hospital ₹ 5,00,00,000/- (No-supply)

Sl. No. 7C. Zero rated supplies without payment of tax

| | | |
|----|--|--|
| 7C | Zero rated supplies without payment of tax | |
|----|--|--|

Clause 7C of GSTR 9C requires disclosure of value of zero-rated supplies without the payment of tax which forms part of the 'Annual turnover after adjustments (from 5P above)' at Sl.No. 5P. This should also consist of the value of zero-rated supplies which have not been declared in the monthly return / annual return erroneously for the reason that the adjusted turnover at Sl.No. 5P contains even such zero-rated supplies. Therefore, such value of zero-rated supplies should be deducted from the adjusted annual turnover arrived at Sl.No. 5P so as to claim exemption. In short, the zero-rated supplies as recorded in the audited annual financial statements should be declared against Sl.No. 7C provided such zero-rated supplies have also not been declared in monthly returns filed for the period April to September following the relevant financial year.

Zero rated supply under the provisions of GST law means:

- (a) Exports of goods or services or both.
- (b) Supply of goods or services or both to Special Economic Zone developer /Special Economic Zone unit.

The source of information for zero-rated supplies shall be obtained from the outward supply statement in GSTR – 1 and revenue register forming part of books of accounts. The outward supply statement filed in GSTR -1 shall be correlated with the zero-rated supplies declared in the monthly returns in GSTR – 3B.

Sl No. 7D - Supplies on which tax is to be paid by recipient on reverse charge

| | | |
|----|--|--|
| 7D | Supplies on which tax is to be paid by the recipient on reverse charge basis | |
|----|--|--|

Section 2(98) defines reverse charge to mean a case where liability to pay tax is on recipient of supply of goods or service instead of supplier u/s 9(3) and 9(4) of CGST /SGST Act or S.5(3) or 5(4) of IGST Act.

The Auditor has to verify if the supplier has more than one vertical. One of them vertical must be on forward charge and one on reverse charge. The vertical on reverse charge should be taken under '*supplies on which tax is to be paid by recipient on reverse charge basis*'.

Data entered Table 4B of GSTR 1 (Supplies attracting tax on reverse charge) should be taken as the source for this information. The data would have been entered in Table 4B providing invoice level details.

The aforesaid information should be also entered in Table 3.1(c) (Other outward supplies – Nil rated, exempted) of GSTR 3B.

Table 7 provides for 'Reconciliation of taxable turnover'. Table 7A starts from the Annual turnover after adjustments. The data in Table 7A is auto populated from entries in Table 5P, which refers to 'Annual turnover after adjustments. From the said turnover, the following turnovers are reduced:

- (a) value of the exempted turnover
- (b) nil rated turnover
- (c) Non-GST turnovers
- (d) No Supply turnovers
- (e) Zero rated turnover made without payment of tax

In light of the above, it can be inferred and concluded that the data to be entered under Sl.No. 7D is supplies made by the supplier, on which tax is to be paid by the recipient.

It is reiterated at the sake of repetition that expenses on which tax is paid by Registered person as recipient of service should not be inserted in this column and reduced from Annual Adjusted turnover since table 7 is seeking to reduce items from Annual turnover after adjustments to arrive at turnover of Registered person which is liable to tax.

In case the invoice does not contain the declaration required under Rule 46 or credit has not been reversed under Rule 39, 42 or 43 or tax has been wrongly collected by the supplier on services liable for reverse charge (and retained by the supplier), then such infractions should be reported in the Audit Report because the Audit Report has to have disclosures regarding non-maintenance of records and documents/ observations and inconsistencies relating to reversals of credit.

Illustration

Please state which of the following are liable to reverse charge

- (a) GTA issued a consignment note on 1.1.18. The consignment note charges GST @ 12%. The consignor has booked the GTA. The recipient has paid the freight to GTA on 'to collect' basis. Would this turnover be mentioned in Table 7D?
- (b) GTA issued a consignment note on 1.1.18. The consignment note does not charge GST. The consignor has booked the GTA. The recipient has paid the freight to GTA on 'to collect' basis. Would this turnover be mentioned in Table 7D?
- (c) Advocate Mr. X has provided legal service and charged GST of ₹ 18 on his invoice of ₹ 100. The advocate's client has paid ₹ 118 to the advocate. The advocate has remitted ₹ 18 to government and is of the opinion that the aforesaid transaction should not be reduced in Table 7D. Is the stand taken by the advocate correct?

Solution

1. The Consignment note contains GST @ 12%, so reverse charge does not attract as per N.No.13/17 CT (R) w.e.f 22.8.10. Hence tax has to be paid by GTA under forward charge, and this transaction should not be entered in Table 7D.

2. Since consignment note has not charged GST @ 12%, reverse charge provisions would apply. Tax is to be paid by the person liable to pay freight, that is, the recipient and not the GTA under forward charge. Because of this, the impugned transaction has to be entered in Table 7D.
3. Supplies by a Registered Person, whose suppliers are liable for reverse charge, are to be inserted in Table 7D. Legal service provided by the advocate to his client is liable for reverse charge (assuming all other conditions in reverse charge notification stand satisfied). Hence the impugned transaction should be inserted in Table 7D. GST wrongly collected and paid by the advocate under forward charge will not change the fact that the aforesaid service is liable to reverse charge and hence merits insertion in Table 7D.

It must be ensured that if the supplier has turnover which is liable to both forward charge and reverse charge then the turnover liable to reverse charge should be accounted in FORM 7D. It may be ensured for purposes of control that the aggregate of turnover under forward charge and reverse charge is the total turnover.

Sl. No. 7F - taxable turnover as per liability declared in Annual Return

| | | |
|----|---|--|
| 7F | Taxable turnover as per liability declared in Annual Return (GSTR9) | |
|----|---|--|

Clause 7F of GSTR 9C requires that the taxable turnover as per the liability should be declared in the Annual Return (GSTR 9).

Instruction as per GSTR 9C - taxable turnover as declared in Table 4N of the Annual Return (GSTR 9) shall be declared here. The information must flow from GSTR 9 which contains supplies and advances on which tax is paid. The turnover arrived at Part II Sl. No. 8F of Form GSTR 9C should match the turnover as declared in the Annual Return.

Sl. No.8 Reasons for Un - Reconciled difference in Taxable Turnover

| 8 | Reasons for Un - Reconciled difference in Taxable Turnover | |
|---|--|----------|
| A | Reason 1 | <<Text>> |
| B | Reason 2 | <<Text>> |
| C | Reason 3 | <<Text>> |

This part of GSTR 9C identifies the taxable turnover differences to be placed on record for explaining the differences between the GST Returns and the Audited Financials. All the information filled up in the GST returns has to flow from the Books of Accounts. However, the un-reconciled turnover on account of disclosure norms as per the Accounting Standard issued by the ICAI or other statutory provisions or practices adopted by the Registered Person on special approval basis, which are not reconciled at turnover level should be disclosed in this Sl. No.

For instance, the mechanism for the determination of Revenue in case of Sale of a Capital Asset shall differ for the value to be disclosed in the GST Returns compared with that of the practice adopted in the Book of Accounts.

The data which has to be filled up in this table is drawn out of Sl. No.s 5, 6, 7. Further, review of the transactions effected through the E-Way Bill gives details about the exceptional transactions, if any, to be reported through the above reconciliation

Illustration

The following illustrations can be considered for reporting the reconciliation differences:

- Zero-rated supply made by the Registered person during the previous year. If the conditions relevant for the supply have not been complied by the Registered person, then the supplies can be construed to be regular supplies.
- Transaction reported in a delivery challan during the financial year for supply on sale or approval basis beyond a period of six months shall be deemed to be supply under the GST. However, that may not be a sale for revenue recognition in the books of accounts for such a transaction. Assuming the GST returns carry the supply details and no revenue recognition has been done in the books of accounts, this shall call for reconciliation.
- Exemption conditions not fulfilled by the Registered person while exercising the option to supply either a Nil rated or Exemption, shall be reported as Regular Supply.

Part III: Reconciliation of tax Paid

After reconciling the turnover declared and reported in the Audited Financial Statement with turnover declared in Annual Return along with reasons for reconciliation if any, the relevant Part III of Form 9C requires an Auditor to reconcile the rate-wise liability of tax, total amount payable thereon with tax actually paid as declared in the Annual Return and recommendation of additional tax payable due to non-reconciliation of the taxable value.

| Pt. III | Reconciliation of tax paid | | | | | |
|---------|--|---------------|-------------|-------------------|----------------|---------------------|
| 9 | Reconciliation of rate wise liability and amount payable thereon | | | | | |
| | | | Tax payable | | | |
| | Description | Taxable Value | Central tax | State tax/ UT tax | Integrated Tax | Cess, if applicable |
| | 1 | 2 | 3 | 4 | 5 | 6 |
| A | 5% | | | | | |
| B | 5% (RC) | | | | | |
| C | 12% | | | | | |
| D | 12% (RC) | | | | | |

| | | | | | | |
|---|---|--|--------|--------|--------|-------------|
| E | 18% | | | | | |
| F | 18% (RC) | | | | | |
| G | 28% | | | | | |
| H | 28% (RC) | | | | | |
| I | 3% | | | | | |
| J | 0.25% | | | | | |
| K | 0.10% | | | | | |
| L | Interest | | | | | |
| M | Late Fee | | | | | |
| N | Penalty | | | | | |
| O | Others | | | | | |
| P | Total amount to be paid as per tables above | | <Auto> | <Auto> | <Auto> | <Auto> |
| Q | Total amount paid as declared in Annual Return (GSTR 9) | | | | | |
| R | Un-reconciled payment of amount | | | | | PT 1 |

The relevant Table 9 requires the Auditor to provide details of taxable value along with the Gross tax Liability booked by the Registered Person whose Form 9C is being filed by him. The said tax liability needs to be reported rate wise in Table 9. Further, the taxable value and liability of tax on which the given Registered Person is required to pay tax under Reverse Charge Mechanism are also required to be reported rate-wise separately. After reporting of the same, the details of Total tax payable for the Financial Year 2017-18 as declared in GSTR 9 i.e. under the Annual Return is also required to be disclosed. The given table also requires the disclosure of Interest, Late Fees and Penalty Payable.

From the scheme of Table 9 it is clear that the Auditor is required to report the GST payable rate wise dissected total taxable turnover calculated in Table 7E under Part II of GSTR 9C. Once the taxable value is reported under various rates as specified in sub-parts A, C, E, G, I, J, and K, the relevant amount of tax shall be calculated by the system.

The values that are to be reported in Table 9 should be taxable value as reported under Table 7E of GSTR 9C, i.e. Adjusted Total turnover for the FY 2017-18 under the GST and the amount of tax (rate wise) should be derived mathematically.

| | | |
|----|---|--------|
| 7E | Taxable turnover as per adjustments above (A-B-C-D) | <Auto> |
|----|---|--------|

The details of adjusted Total turnover needs to be broken down in accordance with the GST rates based on the reports generated from the books of accounts and necessary adjustments made in Part II of GSTR 9C which have not impacted the books of accounts of the Registered Person should also be considered rate-wise for the purpose of finding the taxable value.

Once all the details are entered, and the difference in tax payable as per the books with actual tax payable is identified, the amounts of non-reconciliation shall be raised as per CGST, SGST, IGST and Cess wise. On these amounts the Auditor shall be required to disclose the reasons in Table 10.

Sl. No.10: Reasons for un-reconciled payment of amount

| 10 | Reasons for un-reconciled payment of amount | |
|----|---|----------|
| A | Reason 1 | <<Text>> |
| B | Reason 2 | <<Text>> |
| C | Reason 3 | <<Text>> |

The given table mandates the Auditor to identify and disclose the reasons for un-reconciled payment of amount of tax, Interest, Penalty, Cess and Others. Reasons, amounts along with description of reason needs to be disclosed.

The Auditor needs to identify the reasons due to which some amount is reflected in Table 9R.

The various reasons can be as under

(A) GSTR 3B shows less/more tax paid

- GSTR 1 matches with the audited financials with regard to the tax payable
- GSTR 3B shows the tax paid differently from the books of accounts.

In this situation, even though Table 6 and 8 may not show any differences as given in point (i) above, Table 10 would show a difference of the amount of tax to be paid and tax actually paid. So, any tax payable occurring due to this would automatically form part of Table 11 and the Auditor's recommendations in Part V.

In case any excess tax has been paid, there will be no reporting in Table 11. There is also no provision of negative reporting in Table 11.

(B) GSTR 1 and GSTR 3B inter se matching but not with the Audited Financials

- GSTR 3B and GSTR 1 match with each other
- Matched GSTR 1 and GSTR 3B are different with regard to the audited financial statements.

Such differences would be depicted in Table 6, 8 and 10. If the turnover is lesser than what it is in the audited financials, they could indicate a short payment of tax, if differences thereof are not explained. The cause of the differences needs to be clearly identified. Taking the values after considering the audited financial statements Table 10 will be compared with the actual tax paid as per GSTR 3B. As there is a difference between the audited financial statements and GSTR 3B, an unreconciled difference would be shown in Table 10.

(C) Taxable turnover as per the books matching in GSTR 1 and GSTR 3B but tax is not

matching.

- The value of taxable supply in Form GSTR 3B matches with that in GSTR 1
- Tax payable as self-assessed in GSTR 3B is different from what is shown in GSTR 1.

The possible reason for the same can be because of the difference in the classification of supply in GSTR 1 and GSTR 3B. The reporting shall be required in Table 10 only in such cases where an error has occurred in Form GSTR 3B due to reasons of classification like the following

- HSN Disputes
- GST rate disputes
- Inter State vs Intra State Supply
- Place of Supply
- Type of Supply Dispute- taxable, Exempt, Nil rated

As the amount of tax in Table 9P shall be calculated on the basis of turnover reported and shall be treated as correct. Any deviation from the same shall be disclosed in Table 10.

It has to be ensured that for the whole amount of non-reconciliation reported in Table 9, the reason wise quantification of the same is done in Table 10.

Sl. No. 11: Additional amount payable but not paid (due to reasons specified under Tables 6, 8 and 10 above)

| 11 | Additional amount payable but not paid (due to reasons specified under Tables 6,8 and 10 above) | | | | | |
|----|---|---------------|-------------------------|------------------|----------------|---------------------|
| | | | To be paid through Cash | | | |
| | Description | Taxable Value | Central tax | State tax/UT tax | Integrated tax | Cess, if applicable |
| | 1 | 2 | 3 | 4 | 5 | 6 |
| | 5% | | | | | |
| | 12% | | | | | |
| | 18% | | | | | |
| | 28% | | | | | |
| | 3% | | | | | |
| | 0.25% | | | | | |
| | 0.10% | | | | | |
| | Interest | | | | | |

| | | | | | |
|----------------------------|--|--|--|--|--|
| Late Fee | | | | | |
| Penalty | | | | | |
| Others (please specify) | | | | | |

In the Table 11 under Part III of the GSTR 9C, the amount of tax, interest, penalty, late fees and their dues which are payable in accordance with the non-reconciliation reported under Table 6, 8 and 10 but not actually paid as declared in Annual Return in GSTR 9 are to be reported with rate-wise bifurcation.

A) For Additional tax Payable

After due verification and analysis of the amounts along with reasons reported in Table 6, 8 and 10 in the GSTR 9C pertaining to non-reconciliation of Annual Gross turnover, taxable turnover and tax payable, the details of taxable value needs to be identified GST rate-wise which should be reported in Table 11 on which appropriate tax has not been paid as declared in the Annual Return i.e. Form GSTR 9.

There may be several reasons due to which amounts may be reported in Table 6 and 8.

However, in the case of amounts reported in Table 6, reasons for non-reconciliation may be due to difference in timing or due to a permanent difference in turnover as per the books of accounts and the GST Returns. However, every non-reconciliation might not lead to a situation where there is a requirement to pay GST on the said difference.

Some examples where non-reconciliation is reported in Table 6 in Form GSTR 9C but shall not require any additional tax payment are illustrated as under:

- Difference in turnover where the time of Supply is postponed but revenue is recognized in books of accounts (Supply between Developer and Landlord in light of Notification No 04/2018-CT rate)
- Difference in the value of Export turnover reported in the books of accounts on the basis of Invoice value shown in the Shipping Bill whereas turnover reported in GSTR 1 on the basis of Invoice prepared in INR on the basis of Exchange rate applicable on the date of preparation of Invoice.
- Difference in turnover of Services due to tax paid on advances and shown in GSTR 1 but not required to be disclosed as turnover in the Audited Financial Statements.
- Difference in turnover due to disclosure of Profit / Loss on Sale of Fixed Assets in the Audited Financial Statements and disclosure of whole sale proceeds in GST Returns.

In the given cases, no reporting is required to be done in Table 11.

Further, in other types of non-reconciliations reported in Table 6, there can be an impact on the tax Liability to be paid. The instances for the same shall principally cover such cases

12B. ITC booked in earlier Financial Years claimed in current Financial Year

| | | | |
|-----|---|-----|--|
| 12B | ITC booked in earlier Financial Years claimed in current Financial Year | (+) | |
|-----|---|-----|--|

Any ITC which was booked in the audited Annual Financial Statement of the earlier financial year(s) but availed in the ITC ledger in the financial year for which the reconciliation statement is being filed shall be declared here. Since this is the first year of the GST, this column should ideally be zero. However, as per the instruction related to the form, transitional credit which was booked in earlier years but availed during Financial Year 2017-18, the same would not be required to be reported here. This would leave the Registered person with ITC which are carry forward balances of the earlier taxes.

However, from next year onwards, this column would have the same amount as is reported in column 12C of Form 9C of the previous financial year. Hopefully, the same should be auto populated by the system. There can be a scenario also where an Input tax credit which related to FY 2017-18 was not booked in the books in FY 2017-18 inadvertently and was also not claimed in GSTR 3B of FY 2017-18. However, during reconciliation of returns during FY 2018- 19 the claim was taken in both the books of accounts as well as GSTR 3B filed during FY 2018-19, such cases would not be reported in this column.

12C. ITC booked in current Financial Year to be claimed in subsequent Financial Years

| | | | |
|-----|--|-----|--|
| 12C | ITC booked in current Financial Year to be claimed in subsequent Financial Years | (-) | |
|-----|--|-----|--|

Clause 12C of GSTR 9C is the Input tax Credit which is booked in the current financial year but claimed in the returns of GSTR 3B filed during FY 2018-19. This includes all credits which were for any reason (inadvertent or conditions not being fulfilled) were not taken in returns as filed from July 2017- March 2018.

All amounts which are debited in the books of accounts but not claimed as Credit should be reported here. The Auditor must run a check to arrive at Input tax Credits which appear in the GST receivable ledgers but do not find place in the Input tax register providing amounts as reported in GSTR 3B of FY 2017-18. The difference of such unclaimed balance shall be reported here.

Value in this Sl.No. should be equal to the amount reported in Clause 13 of GSTR 9. However, amount of Credits relating to FY 2017-18 which are booked in FY 2018-19 only in the books of accounts shall be subtracted from such reported amount in Clause 13 of GSTR 9.

Illustration

The Input tax credit as booked in the GST receivable ledger for the month of August 2017 includes the following:

- Input tax credit on purchase of inputs claimed in GSTR 3B of August 2017: ₹ 3,00,000
- Input tax credit on purchase of inputs claimed in GSTR 3B of December 2017: ₹ 150,000

Audit Report

16. Whilst the Audit team has identified various matters, they need your advice to include the same in your audit report in view of CARO 2016:-
- (a) The long term borrowings from the parent has no agreed terms and neither the interest nor the principal has been repaid so far.
 - (b) The Company is in the process of selling its office along with the freehold land available at Chandigarh and is actively on the lookout for potential buyers. Whilst the same was purchased at ₹ 25 Lakhs in 2008, the current market value is ₹ 250 Lakhs, This property is pending to be registered in the name of the Company, due to certain procedural issues associated with the Registration though the Company is having a valid possession and has paid its purchase cost in full. The Company has disclosed this amount under Fixed Assets though no disclosure of non-registration is made in the notes forming part of the accounts.
 - (c) An amount of ₹ 3.25 Lakhs per month is paid to M/s. WE CARE Associates, a partnership firm, which is a 'related party' in accordance with the provisions of the Companies Act, 2013 for the marketing services rendered by them. Based on an independent assessment, the consideration paid is higher than the arm's length pricing by ₹ 0.25 Lakhs per month. Whilst the transaction was accounted in the financial statements based on the amounts' paid, no separate disclosure has been made in the notes forming part of the accounts highlighting the same as a 'related party' transaction.
 - (d) The Internal Auditor of the Company has identified a fraud in the recruitment of employees by the HR department wherein certain sums were alleged to have been taken as kick-back from the employees for taking them on board with the Company. After due investigation, the concerned HR Manager was sacked. The amount of such kickbacks is expected to be in the range of ₹12 Lakhs.

Liabilities of Auditor

17. Indicate the precise nature of auditor's liability in the following situations and support your views with authority, if any:
- (i) Certain weaknesses in the internal control procedure in the payment of wages in a large construction company were noticed by the statutory auditor who in turn brought the same to the knowledge of the Managing Director of the company. In the subsequent year huge defalcation came to the notice of the management. The origin of the same was traced to the earlier year. The management wants to sue the auditor for negligence and also plans to file a complaint with the Institute.
 - (ii) Based upon the legal opinion of a leading advocate, X Ltd. made a provision of ₹ 3.5 crores towards Income Tax liability. The assessing authority has worked out the

representations relating to the prior periods by addressing whether there are any changes to such written representations and, if so, what they are.

Situations may arise where current management were not present during all periods referred to in the auditor's report. Such persons may assert that they are not in a position to provide some or all of the written representations because they were not in place during the period. This fact, however, does not diminish such persons' responsibilities for the financial statements as a whole. Accordingly, the requirement for the auditor to request from them written representations that cover the whole of the relevant period(s) still applies.

- (b) The firm should obtain such information as it considers necessary in the circumstances before accepting an engagement with a new client, when deciding whether to continue an existing engagement, and when considering acceptance of a new engagement with an existing client. Where issues have been identified, and the firm decides to accept or continue the client relationship or a specific engagement, it should document how the issues were resolved.

With regard to the integrity of a client, matters that the firm considers include, for example:

- The identity and business reputation of the client's principal owners, key management, related parties and those charged with its governance.
- The nature of the client's operations, including its business practices.
- Information concerning the attitude of the client's principal owners, key management and those charged with its governance towards such matters as aggressive interpretation of accounting standards and the internal control environment.
- Whether the client is aggressively concerned with maintaining the firm's fees as low as possible.
- Indications of an inappropriate limitation in the scope of work.
- Indications that the client might be involved in money laundering or other criminal activities.
- The reasons for the proposed appointment of the firm and non-reappointment of the previous firm.

The extent of knowledge a firm will have regarding the integrity of a client will generally grow within the context of an ongoing relationship with that client.

- (c) As per SA 220, Engagement Partner shall form a conclusion on compliance with independence requirements that apply to the audit engagement. In doing so, Engagement Partner shall:

- (i) Method of settlement of accounts between partners at the time of admission, retirement, admission etc.
 - (j) Any loans advanced by the partners
 - (k) Profit sharing ratio.
- (b) The Auditor should obtain appropriate audit evidence as regard to audit of payment of dividends. The procedures include the following:
- (i) Check that all the rules and regulations concerning the declaration or payment of dividends have been complied with.
 - (ii) Examine that the accounting and disclosure procedure has been complied with related to the declaration and payment of dividend like depreciation has been provided before declaration, disclosure has been made by way of notes to the accounts etc.
 - (iii) Scrutinize that the dividends have been declared or paid only out of distributable profit i.e. profits for the current year for which dividend is declared, or accumulated profits of the previous years, or money provided by the Central or State Government as per Section 123(1) of the Companies Act, 2013.
 - (iv) Inspect that the dividend has been paid only out of “free reserves” i.e. the reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend except- any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or any change in carrying amount of an asset or of a liability recognized in equity, including surplus in statement of profit and loss on measurement of the asset or the liability at fair value, as laid down under third proviso to Section 123(1) read with Section 2(43) of the Companies Act, 2013.
 - (v) If dividend has been paid out of accumulated profits, earned by it in previous years and transferred to the reserves, in case of inadequacy or absence of profits in any financial years, verify that the rules related to such distribution has been complied i.e. the maximum amount allowable to be distributed as a dividend in case of inadequate or no profit as required by second proviso to Section 123(1) of the Companies Act, 2013.
 - (vi) Verify that the dividend recommended by the Board has been approved by the members at the annual general meeting.
 - (vii) Verify that the dividend has been transferred to the separate scheduled bank account within 5 days from the declaration of such dividend as required by Section 123(4) of the Companies Act, 2013.
 - (viii) Verify that the dividend has been paid within 30 days from the declaration. If in case the dividend has not been claimed or paid within 30 days from the declaration, verify that the unpaid or unclaimed dividend amount has been

transferred to a special account called unpaid dividend account as per Section 124(1) of the Companies Act, 2013.

- (ix) Verify that the company has prepared a statement within a period of 90 days of making any transfer of an amount to the Unpaid Dividend Account containing the names, their last known addresses and the unpaid dividend to be paid to each person, and have placed it on the website of the company, if any, and also on any other website approved by the Central Government for this purpose as required under Section 124(2) of the Companies Act, 2013.
 - (x) Check the procedures that have been followed for the payment of unclaimed dividend out of unpaid dividend account.
 - (xi) Verify that, if any money transferred to Unpaid Dividend Account has remained unpaid or unclaimed for a period of 7 years from the date of such transfer then, whether it has been transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund established under section 125(1) of the Companies Act, 2013 and a statement regarding such transfer has also been sent to the authority which administers such fund.
 - (xii) In case the company has outsourced the activity to the Service Organisation, check that all the compliances with laws, regulations, accounting and disclosure related to the dividends have been made appropriately.
16. (a) As per clause (xiii) of para 3 of CARO 2016 the auditor is required to report, "whether all transactions with the related parties are in compliance with sections 177 and 188 of Companies Act, 2013 where applicable and the details have been disclosed in the Financial Statements etc., as required by the applicable accounting standards".
- In the present case, the auditor is required to report as per clause xiii of para 3 of CARO 2016 regarding receipt of long term borrowing from Parent Company which qualifies as a transaction with the related party.
- (b) As per clause (i) (c) of para 3 of CARO 2016 the auditor is required to report, "whether the title deeds of immovable properties are held in the name of the company. If not, provide the details thereof."
- In the present case, the Company has office along with freehold land in Chandigarh. Though company has paid its purchase cost in full however, this property is pending to be registered in the name of the company i.e. title deed is not in the name of Company since 2008. Therefore, the auditor is required to report the same in accordance with clause (i)(c) of para 3 of CARO 2016.
- The reporting under this clause, where the title deeds of the immovable property are not held in the name of the Company, may be made incorporating following details, in the form of a table or otherwise **in case of land:-**
- total number of cases,

- whether leasehold / freehold,
- gross block and net block, (as at Balance Sheet date), and
- remarks, if any.

- (c) As per clause (xiii) of para 3 of CARO 2016, the auditor is required to report, “whether all transactions with the related parties are in compliance with sections 177 and 188 of Companies Act, 2013 where applicable and the details have been disclosed in the Financial Statements etc., as required by the applicable accounting standards;”

Therefore, the duty of the auditor, under this clause is to report (i) Whether all transactions with the related parties are in compliance with section 177 and 188 of the Companies Act, 2013 (“Act”); (ii) Whether related party disclosures as required by relevant Accounting Standards (AS 18, as may be applicable) are disclosed in the financial statements.

In the present case, the auditor is required to report as per clause xiii of para 3 of CARO 2016, as one of related party transaction amounting 3.25 lakhs per month i.e. in lieu of marketing services has been noticed of which amount ₹ 0.25 lakh per month is exceeding the arm’s length price has not been disclosed highlighting the same as related party transactions as per AS 18. Thus, the auditor is required to report accordingly.

- (d) As per clause Clause (x) of para 3 of CARO 2016 the auditor is required to report, “whether any fraud by the company or any fraud on the Company by its officers or employees has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated.”

In the instant case, a fraud has been identified in recruitment of employees by the HR Department wherein certain sums were alleged to have been taken as kickback from the company of amounting rupees approx. 12 lakh. The auditor is required to report on the same in accordance with clause (x) of para 3 of CARO 2016.

17. (i) In the given case, certain weaknesses in the internal control procedure in the payment of wages in a large construction company were noticed by the statutory auditor and brought the same to the knowledge of the Managing Director of the company. In the subsequent year, a huge defalcation took place, the ramification of which stretched to the earlier year. The management of the company desires to sue the statutory auditor for negligence. The precise nature of auditor's liability in the case can be ascertained on the basis of the under noted considerations:
- (a) Whether the defalcation emanated from the weaknesses noticed by the statutory auditor, the information regarding which was passed on to the management; and
 - (b) Whether the statutory auditor properly and adequately extended the audit programme of the previous year having regard to the weaknesses noticed.

SA 265 on "Communicating Deficiencies in Internal Control to Those Charged with Governance and Management" clearly mentions that, "The auditor shall determine whether, on the basis of the audit work performed, the auditor has identified one or more deficiencies in internal control. If the auditor has identified one or more deficiencies in internal control, the auditor shall determine, on the basis of the audit work performed, whether, individually or in combination, they constitute significant deficiencies. The auditor shall communicate in writing significant deficiencies in internal control identified during the audit to those charged with governance on a timely basis. The auditor shall also communicate to management at an appropriate level of responsibility on a timely basis". The fact, however, remains that, weaknesses in the design of the internal control system and non-compliance with identified control procedures increase the risk of fraud or error. If circumstances indicate the possible existence of fraud or error, the auditor should consider the potential effect of the suspected fraud or error on the financial information. If the auditor believes the suspected fraud or error could have a material effect on the financial information, he should perform such modified or additional procedures as he determines to be appropriate. Thus, normally speaking, as long as the auditor took due care in performing the audit work, he cannot be held liable.

The fact that the matter was brought to the notice of the managing director may be a good defence for the auditor as well. According to the judgement of the classic case. In *re Kingston Cotton Mills Ltd.*, (1896) it is the duty of the auditor to probe into the depth only when his suspicion is aroused. The statutory auditor, by bringing the weakness to the notice of the managing director had alerted the management which is judicially held to be primarily responsible for protection of the assets of the company and can put forth this as defence against any claim arising subsequent to passing of the information to the management. In a similar case *S.P. Catterson & Sons Ltd.* (81 Acct. L. R.68), the auditor was acquitted of the charge.

- (ii) SA 500 on "Audit Evidence" discusses the auditor's responsibility in relation to and the procedures the auditor should consider in, using the work of an expert as audit evidence. During the audit, the auditor may seek to obtain, in conjunction with the client or independently, audit evidence in the form of reports, opinions, valuations and statements of an expert, e.g., legal opinions concerning interpretations of agreements, statutes, regulations, notifications, circulars, etc. Before relying on advocate's opinion, the auditor should have seen that opinion given by the management's expert is *prima facie* dependable. The question states very clearly that the opinion of the advocate was inconsistent with legal position with regard to certain items. It is, perhaps, quite possible that auditor did not seek reasonable assurance as to the appropriateness of the source data, assumptions and methods used by the expert properly.

In fact, SA 500 makes it incumbent upon the part of the auditor to resolve the inconsistency by discussion with the management and the expert. In case, the

expert's' work does not support the related representation in the financial information the inconsistency in legal opinions could have been detected by the auditor if he had gone through the same. This seems apparent having regard to wide difference in the liability worked out by the assessing authority. Under the circumstance, the auditor should have rejected the opinion and insisted upon making proper provision.

18. (a) Verification of Advances as a Concurrent Auditor:

- (i) Ensure that loans and advances have been sanctioned properly (i.e. after due scrutiny and at the appropriate level).
- (ii) Verify whether the sanctions are in accordance with delegated authority.
- (iii) Ensure that securities and documents have been received and properly charged/ registered.
- (iv) Ensure that post disbursement supervision and follow-up is proper, such as receipt of stock statements, instalments, renewal of limits, etc.
- (v) Verify whether there is any mis utilisation of the loans and whether there are instances indicative of diversion of funds.
- (vi) Check whether the letters of credit issued by the branch are within the delegated power and ensure that they are for genuine trade transactions.
- (vii) Check the bank guarantees issued, whether they have been properly worded and recorded in the register of the bank. Whether they have been promptly renewed on the due dates.
- (viii) Ensure proper follow-up of overdue bills of exchange.
- (ix) Verify whether the classification of advances has been done as per RBI guidelines.
- (x) Verify whether the submission of claims to DICGC and ECGC is in time.
- (xi) Verify that instances of exceeding delegated powers have been promptly reported to controlling/Head Office by the branch and have been got confirmed or ratified at the required level.
- (xii) Verify the frequency and genuineness of such exercise of authority beyond the delegated powers by the concerned officials.

- (b) Reversal of Income:** If any advance, including bills purchased and discounted, becomes Non-Performing Assets as at the close of any year, the entire interest accrued and credited to income account in the past periods, should be reversed or provided for if the same is not realised. This will apply to Government guaranteed accounts also.

In respect of NPAs, fees, commission and similar income that have accrued should cease to accrue in the current period and should be reversed or provided for with respect to past periods, if uncollected.

Further, in case of banks which have wrongly recognised income in the past should reverse the interest if it was recognised as income during the current year or make a provision for an equivalent amount if it was recognised as income in the previous year(s).

19. (a) Since the goods were not approved and returned after the stipulated period of 6 months, the value of the said supplies would not be included in turnover in the audited financial statements. However, as per the 2nd proviso to Section 142(12) of the CGST Act since the goods were returned after 6 months from appointed date (i.e. 1.6.2017), GST would be payable for the tax period December 2017. Though the transaction originated in the period April 2017 to June 2017, the turnover will not be reflected under this Sl.No. However, one may reflect such adjustment under Part II, sl. No. 5 Clause O – ‘Adjustments in turnover due to reasons not listed above’ as addition.
- (b) The said goods are liable to excise duty since the goods have been cleared on 30.4.2017. The goods would not form part of turnover as per the financial statements since it is a branch transfer. It would stand reflected as branch transfers under the State Level VAT laws. Since audit is being conducted for Bangalore GSTIN and since supply has occurred from Hyderabad GSTIN, it would not be necessary to make adjustments for the period April 2017 to June 2017.
- (c) As per proviso to Rule 3(b) of the Clause of Taxation Rules, 2011, the point of taxation in the impugned case would be the date on which bill has been raised i.e. 3.7.2017. Though invoice has been raised in the GST regime, service tax is payable since service has been provided during the currency of the Finance Act, 1994. The date for payment of service tax as per the machinery provision i.e. POTR, 2011 may be 3.7.2017 but the said service would be liable to service tax because the charge u/s 66B gets attracted for the period June 2017. Further as per S.142(11)(b) since if a transaction is *liable* for service tax, then tax would not be payable under the GST Laws. Hence the said amount should be deducted as turnover under this Sl. No. for the period April 2017 to June 2017.
20. **Provision for Claim:** No risk can be assumed by the insurer unless the premium is received. According to section 64VB of the Insurance Act, 1938, no insurer should assume any risk in India in respect of any insurance business on which premium is ordinarily payable in India unless and until the premium payable is received or is guaranteed to be paid by such person in such manner and within such time, as may be prescribed, or unless and until deposit of such amount, as may be prescribed, is made in advance in the prescribed manner. The premium receipt of insurance companies carrying on general insurance business normally arise out of three sources, viz., premium received from direct

business, premium received from reinsurance business and the share of co-insurance premium.

In view of the above, the insurance company is not liable to pay the claim and hence no provision for claim is required.

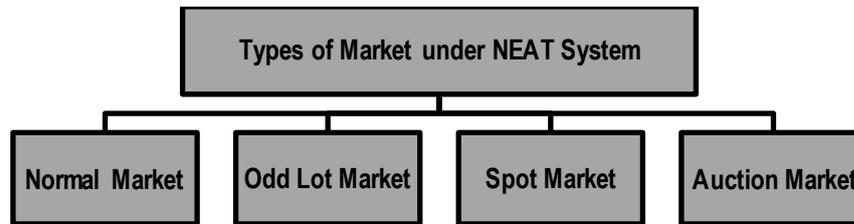
21. (a) **Energy Audit** is defined as “the verification, monitoring and analysis of use of energy including submission of technical report containing recommendations for improving energy efficiency with cost benefit analysis and an action plan to reduce energy consumption.

The following are some of the key functions of the energy auditor:

- (i) Quantify energy costs and quantities.
 - (ii) Correlate trends of production or activity to energy costs.
 - (iii) Devise energy database formats to ensure they depict the correct picture – by product, department, consumer, etc.
 - (iv) Advise and check the compliance of the organisation for policy and regulation aspects.
 - (v) Highlight areas that need attention for detailed investigations.
 - (vi) Conduct preliminary and detailed energy audits which should include the following:
 - (a) Data collection and analysis.
 - (b) Measurements, mass and energy balances.
 - (c) Reviewing energy procurement practices.
 - (d) Identification of energy efficiency projects and techno-economic evaluation.
 - (e) Establishing action plan including energy saving targets, staffing requirements, implementation time requirements, procurement issues, details and cost estimates.
 - (f) Recommendations on goal setting for energy saving, record keeping, reporting and energy accounting, organisation requirements, communications and public relations.
- (b) (i) **Margins:** Margin refers to deposit made by members with the stock exchange authorities. There can be wide fluctuations at the time of settlement in the prices of securities since the closing rate of the earlier settlement. In order to restrict excessive speculation and also to safeguard the interests of the investors, members are required to keep certain deposits with the stock exchange authorities. These deposits are termed ‘margins’. The members are required to collect the margin from their clients, wherever applicable, and deposit the

amount collected with the Clearing House. Margin is intended to protect the members by providing them with funds to cover anticipated fluctuations in prices of securities, particularly, if the client delays in paying the amount or is unable to meet his commitments. Margins also help prevent excessive speculation as clients would be required to invest some funds and not indulge in speculation without adequate resources. A member is required to pay or deposit different margins such as Gross Exposure Margin, Mark to Market (MTM) Margin, Volatility Margin (VM), Additional Volatility Margin (AVM), Special Margin and Adhoc Margin. The members are required to compute margin payable for all securities traded by them and make the margin payments on the due date to the Stock Exchange authorities. Different types of margins are payable at stipulated time, as decided by the Exchange or Clearing House of the Exchange.

- (ii) **Type of markets under NEAT:** The NEAT system has four main types of market. They are:



Normal Market: All orders which are of regular lot size or multiples thereof are traded in the normal market. For shares which are traded in the compulsory dematerialised mode the market lot of these shares is one. Normal market consists of various book types wherein orders are segregated as regular lot orders, special term orders, negotiated trade orders and stop loss orders, depending on their order attributes.

Odd Lot Market: An order is called an odd lot order if the order size is less than regular lot size; such orders are traded in the odd-lot market. These orders do not have any special terms or attributes attached to them. In an odd-lot market, both the price and quantity of both the orders (buy and sell) should exactly match for the trade to take place.

Spot Market: Spot orders are similar to the normal market orders except that spot orders have different settlement periods vis-à-vis normal market. These orders do not have any special terms or attributes attached to them.

Auction Market: In the auction market, auctions are initiated by the Exchange on behalf of trading members for completing the settlement process.

22. (a) **Operational audit**, (functional audit) as it is the audit for the management and involves verifying the effectiveness, efficiency and economy of operations done by the Simony travels for the organisation.

The operational auditor should possess some very essential personal qualities to be effective in his work:

1. In areas beyond accounting and finance, his knowledge ordinarily would be rather scanty and this is a reason which should make him even more inquisitive.
 2. He should ask the who, why, how of everything. He should try to visualise whether simpler alternative means are available to do a particular work.
 3. He should try to see everything as to whether that properly fits in the business frame and organisational policy. He should be persistent and should possess an attitude of skepticism.
 4. He should not give up or feel satisfied easily. He should imbibe a constructive approach rather than a fault-finding approach and should give a feeling that his efforts are to help attaining an improved operation and not merely fault finding.
 5. If the auditor succeeds in giving a feeling of help and assistance through constructive criticism, he will be able to obtain co-operation of the persons who are involved in the operations. This will itself be a tremendous achievement of the operational auditor. He should try to develop a team comprised of people of different backgrounds. Involvement of technical people in operational auditing is generally helpful.
- (b) As per SA 610 Using the Work of Internal Auditor, the external auditor (Statutory Auditor) shall not use internal auditors to provide direct assistance to perform procedures that:
- (a) Involve making significant judgments in the audit;
 - (b) Relate to higher assessed risks of material misstatement where the judgment required in performing the relevant audit procedures or evaluating the audit evidence gathered is more than limited;
 - (c) Relate to work with which the internal auditors have been involved and which has already been, or will be, reported to management or those charged with governance by the internal audit function; or
 - (d) Relate to decisions the external auditor makes in accordance with this SA regarding the internal audit function and the use of its work or direct assistance.

In the given case where the valuation of accounts receivable is assessed as an area of higher risk, the statutory auditor could assign the checking of the accuracy of the aging to an internal auditor providing direct assistance. However, because the evaluation of the adequacy of the provision based on the aging would involve more than limited judgment, it would not be appropriate to assign that latter procedure to an internal auditor providing direct assistance.

23. Inventory frauds - Inventory frauds are many and varied but here we are concerned with misappropriation of goods and their concealment.

- (i) Employees may simply remove goods from the premises.
- (ii) Theft of goods may be concealed by writing them off as damaged goods, etc.
- (iii) Inventory records may be manipulated by employees who have committed theft so that book quantities tally with the actual quantities of inventories in hand.

Verification Procedure for Defalcation of inventory - It may be of trading stock, raw materials, manufacturing stores, tools or of other similar items (readily) capable of conversion into cash. The loss may be the result of a theft by an employee once or repeatedly over a long period, when the same have not been detected. Such thefts usually are possible through collusion among a number of persons. Therefore, for their detection, the entire system of receipts, storage and despatch of all goods, etc. should be reviewed to localise the weakness in the system.

The determination of factors which have been responsible for the theft and the establishment of guilt would be difficult in the absence of:

- (a) a system of inventory control, and existence of detailed record of the movement of inventory, or
- (b) availability of sufficient data from which such a record can be constructed.

The first step in such an investigation is to establish the different items of inventory defalcated and their quantities by checking physically the quantities in inventory held and those shown by the Inventory Book.

Afterwards, all the receipts and issues of inventory recorded in the Inventory Book should be verified by reference to entries in the Goods Inward and Outward Registers and the documentary evidence as regards purchases and sales. This would reveal the particulars of inventory not received but paid for as well as that issued but not charged to customers. Further, entries in respect of returns, both inward and outward, recorded in the financial books should be checked with corresponding entries in the Inventory Book. Also, the totals of the Inventory Book should be checked. Finally, the shortages observed on physical verification of inventory should be reconciled with the discrepancies observed on checking the books in the manner mentioned above. In the case of an industrial concern, issue of raw materials, stores and tools to the factory and receipts of manufactured goods in the godown also should be verified with relative source documents.

Defalcations of inventory, sometimes, also are committed by the management, by diverting a part of production and the consequent shortages in production being adjusted by inflating the wastage in production; similar defalcations of inventories and stores are covered up by inflating quantities issued for production. For detecting such shortages, the investigating accountant should take assistance of an engineer. For that he will be more conversant with factors which are responsible for shortage in production and thus will be able to correctly

determine the extent to which the shortage in production has been inflated. In this regard, guidance can also be taken from past records showing the extent of wastage in production in the past. Similarly, he would be able to better judge whether the material issued for production was excessive and, if so to what extent. The per hour capacity of the machine and the time that it took to complete one cycle of production, also would show whether the issues have been larger than those required.

24. (a) **Circulating Information Contained in Own Website:** As per Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.

However, the guidelines approved by the Council of the Institute of Chartered Accountants of India permit creation of own website by a chartered accountant in his or his firm name and no standard format or restriction on colours is there. The chartered accountant or firm, as per the guidelines, should ensure that none of the information contained in the website be circulated on their own or through E-mail or by any other mode except on a specific "Pull" request.

Further, members are not required to intimate the Website address to the Institute. Members are only required to comply with the Website Guidelines issued by the Institute in this regard.

In the given case, Mr. Bold has circulated the information contained in the website through E-mail to public at large. Therefore, he is guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the said Act. However, there is no such misconduct for not intimating website address to the Institute.

- (b) **Issuing Certificate without having Certificate of Practice:** As per Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council.

This clause requires every member of the Institute to act within the framework of the Chartered Accountants Act and the Regulations made thereunder. Any violation either of the Act or the Regulations by a member would amount to misconduct.

In the given case, CA Vineet has issued a certificate in respect of a consumption statement of raw material to the manager of ZedEx (P) Ltd., as a Chartered Accountant in practice when he had not even applied for the CoP to the Institute, thereby contravening the provisions of section 6 of the Chartered Accountants Act, 1949.

Therefore, CA Vineet will be held guilty of professional misconduct in terms of Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949 for contravention of provisions of this Act.

- (c) The Council of the Institute, while considering the issue whether an internal auditor of an entity can also undertake GST Audit of the same entity as required under the Central Goods and Service Act, 2017, decided, that internal auditor of an assessee, whether working with the organization or independently practising Chartered Accountant being an individual chartered accountant or a firm of chartered accountants, cannot be appointed as his Tax auditor (under the Income Tax Act, 1961). Upon consideration, the Council decided that based on the conflict in roles as statutory and internal auditor simultaneously, the bar on internal auditor of an entity to accept tax audit (under Income Tax Act, 1961) will also be applicable to GST Audit (under the Central Goods and Service Act, 2017). Accordingly, an Internal Auditor of an entity cannot undertake GST Audit of the same entity.

In the instant case, WCP & Co LLP are the internal auditors of DEF Ltd. and it also agreed to undertake Goods and Service Tax (GST) Audit of DEF Ltd simultaneously. WCP & Co LLP will be held guilty for misconduct.

- (d) **Printing of QR Code on Visiting Cards: As per Clause (7) of Part I of First Schedule** to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he advertises his professional attainments or services.

Ethical Standards Board has also clarified that a member in practice is allowed to print Quick Response Code (QR Code) on the visiting Card, provided that the Code does not contain information that is not otherwise permissible to be printed on a visiting Card.

In the given case, Mr. M has printed visiting cards which carries Quick Response Code (QR Code) besides other details. The visiting card as well as the QR Code contains his name, office and residential address, contact details, e-mail id and name of the firm's website which are otherwise allowed to be printed on the visiting cards of a Chartered Accountant in practice.

Thus, Mr. M is not guilty under Clause (7) of Part I of First Schedule to the Chartered Accountants Act, 1949.

25. (a) **Technical, Ethical and Professional Standards as per Statement on Peer Review: As per the Statement, Technical, Professional and Ethical Standards means-**

1. Accounting Standards issued by ICAI and /or prescribed and notified by the Central Government of India;
2. Standards issued by the Institute of Chartered Accountants of India including-

- (i) Engagement standards
 - (ii) Statements
 - (iii) Guidance notes
 - (iv) Standards on Internal Audit
 - (v) Statements on Quality Control
 - (vi) Notifications / Directions / Announcements / Guidelines / Pronouncements/ Professional standards issued from time to time by the Council or any of its committees.
3. Framework for the Preparation and presentation of financial statements, framework of statements and Standard on Auditing, Standard on Assurance Engagements, Standards on Quality Control and Guidance Notes on related services issued, from time to time, by the Institute of Chartered Accountants of India and framework for assurance engagements;
4. Provisions of the various relevant statutes and / or regulations which are applicable in the context of the specific engagements being reviewed including instructions, guidelines, notifications, directions issued by regulatory bodies as covered in the scope of assurance engagements.
- (b) The areas covered in comprehensive audit will naturally vary from enterprise to enterprise depending on the nature of the enterprise, its objectives and operations. Some of the broad areas are listed below:
- ◆ Comparison of overall capital cost of the project with the approved planned costs.
 - ◆ Production or operational outputs vis-a-vis under-utilisation of the installed capacity.
 - ◆ Systems of project formulation and implementation.
 - ◆ Planned rate of return.
 - ◆ Cost control measures.
 - ◆ Research and development programmes.
 - ◆ System of repairs and maintenance.
 - ◆ adequate purchase policies.
 - ◆ Effective and economical procedures.
 - ◆ Project planning.
 - ◆ Undue waste, unproductive time for men and machines, wasteful utilisation or even non-utilisation of resources.

Cases of 'negligence and cash shortages' and 'irregularities in foreign exchange transactions' referred to in items (d) and (f) above are to be reported as fraud if the intention to cheat/ defraud is suspected/ proved. However, the following cases where fraudulent intention is not suspected/ proved, at the time of detection, will be treated as fraud and reported accordingly:

- (i) cases of cash shortages more than ₹ 10,000/- and
- (ii) cases of cash shortages more than ₹ 5000/- if detected by management/ auditor/ inspecting officer and not reported on the occurrence by the persons handling cash.

NBFCs having overseas branches/offices should report all frauds perpetrated at such branches/offices also to the Reserve Bank as per the prescribed format and procedures.

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| | <p>(iii) after the second proviso, the following proviso shall be inserted, namely:— "Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.";</p> <p>(b) in sub-section (3), the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted;</p> <p>(c) for sub-section (9), the following sub-section shall be substituted, namely:— "(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.";</p> <p>(d) in sub-section (10),— (i) for the words "permitted by the Central Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted; (ii) the following proviso shall be inserted, namely:— "Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.";</p> |
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| | <p>(e) in sub-section (11), the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted;</p> <p>(f) after sub-section (15), the following sub-sections shall be inserted, namely:—</p> <p>"(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.</p> <p>(17) On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended."</p> |
| Amendment of Section 198 | <p>In section 198 of the principal Act,—</p> <p>(i) in sub-section (3),—</p> <p>(a) in clause (a), after the words "sold by the company", the words, letter, brackets and figures "unless the company is an investment company as referred to in clause (a) of the Explanation to section 186" shall be inserted;</p> <p>(b) after clause (e), the following clause shall be inserted, namely:—</p> <p>"(f) any amount representing unrealised gains, notional gains or revaluation of assets.";</p> <p>(ii) in sub-section (4), in clause (l), the words "which begins at or after the commencement of this Act" shall be omitted.</p> |
| Amendment of section 200. | In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted. |
| Amendment of section 201. | In section 201 of the principal Act,— |

CHAPTER 9: COMPANIES INCORPORATED OUTSIDE INDIA**Amendments through the Companies (Amendment) Act, 2017**

| Relevant sections | Amendment |
|---------------------------|--|
| Amendment of section 379. | Section 379 of the principal Act shall be renumbered as sub-section (2) thereof and before sub-section (2) as so renumbered, the following sub-section shall be inserted, namely:— “(1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies: Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such Order shall, as soon as may be after it is made, be laid before both Houses of Parliament.” |
| Amendment of section 384. | In section 384 of the principal Act, in sub-section (2), after the word and figures "section 92", the words and figures "and section 135" shall be inserted. |
| Amendment of section 391. | In section 391 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— “(2) Subject to the provisions of section 376, the provisions of Chapter XX shall apply <i>mutatis mutandis</i> for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed.” |

CHAPTER 10: MISCELLANEOUS PROVISIONS**1. Notification of Section 247 vide Notification S.O. 3393(E) dated 18th October 2017**

The Central Government hereby appoints the 18th October, 2017 as the date on which the provisions of section 247 of the said Act shall come into force.

Section 247: Valuation by Registered Valuers

- (1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by ¹a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be

¹ Substituted by the Companies (Removal of Difficulties) Second Order 2017

"asset class" means a distinct group of assets, such as land and building, machinery and equipment, displaying similar characteristics, that can be classified and requires separate set of valuers for valuation;

"certificate of recognition" means the certificate of recognition granted to a registered valuers organisation under sub-rule (5) of rule 13 and the term "recognition" shall be construed accordingly;

"certificate of registration" means the certificate of registration granted to a valuer under sub-rule (6) of rule 6 and the term "registration" shall be construed accordingly;

"registered valuers organisation" means a registered valuers organization recognised under sub-rule (5) of rule 13;

"valuer" means a person registered with the authority in accordance with these rules and the term "registered valuer" shall be construed accordingly.

3. Eligibility for registered valuers

(1) A person shall be eligible to be a registered valuer if he-

(a) Is a valuer member of a registered valuers organisation;

Explanation.- For the purposes of this clause, "a valuer member" is a member of a registered valuers organisation who possesses the requisite educational qualifications and experience for being registered as a valuer;

(b) Is recommended by the registered valuers organisation of which he is a valuer member for registration as a valuer;

(c) Has passed the valuation examination under rule 5 within three years preceding the date of making an application for registration under rule 6;

(d) Possesses the qualifications and experience as specified in rule 4;

(e) Is not a minor;

(f) Has not been declared to be of unsound mind;

(g) Is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;

(h) Is a person resident in India;

Explanation.- For the purposes of these rules 'person resident in India' shall have the same meaning as defined in clause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) as far as it is applicable to an individual;

(i) Has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

- (j) Has not been levied a penalty under section 271J of Income-tax Act, 1961 (43 of 1961) and time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have not elapsed after levy of such penalty; and
- (k) Is a fit and proper person:

Explanation. - For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

- (i) Integrity, reputation and character,
 - (ii) Absence of convictions and restraint orders, and
 - (iii) Competence and financial solvency.
- (2) No partnership entity or company shall be eligible to be a registered valuer if-
 - (a) It has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is not a subsidiary, joint venture or associate of another company or body corporate;
 - (b) It is undergoing an insolvency resolution or is an undischarged bankrupt;
 - (c) All the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (g), (h), (i), (j) and (k) of sub-rule (1);
 - (d) Three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or
 - (e) None of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

4. Qualifications and experience

An individual shall have the following qualifications and experience to be eligible for registration under rule 3, namely:-

- (a) post-graduate degree or post-graduate diploma, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or
- (b) a Bachelor's degree or equivalent, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or

- (c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession with at least three years' experience after such membership and having qualification mentioned at clause (a) or (b).

Explanation-I- For the purposes of this clause the 'specified discipline' shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

Explanation-II- Qualifying education and experience and examination or training for various asset classes, is given in an indicative manner in **Annexure-IV** of these rules.

6. Application for certificate of registration

- (1) An individual eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-A of Annexure-II along with a non-refundable application fee of five thousand rupees in favour of the authority.
- (2) A partnership entity or company eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-B of Annexure-II along with a non-refundable application fee of ten thousand rupees in favour of the authority.
- (3) The authority shall examine the application, and may grant twenty one days to the applicant to remove the deficiencies, if any, in the application.
- (4) The authority may require the applicant to submit additional documents or clarification within twenty- one days.
- (5) The authority may require the applicant to appear, within twenty one days, before the authority in person, or through its authorised representative for explanation or clarifications required for processing the application.
- (6) If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary, that the applicant is eligible under these rules, it may grant a certificate of registration to the applicant to carry on the activities of a registered valuer for the relevant asset class or classes in Form-C of the Annexure-II within sixty days of receipt of the application, excluding the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.
- (7) If, after considering an application made under this rule, the authority is of the prima facie opinion that the registration ought not be granted, it shall communicate the reasons for forming such an opinion within forty-five days of receipt of the application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing in person, as the case may be.

- (8) The applicant shall submit an explanation as to why his/its application should be accepted within fifteen days of the receipt of the communication under sub- rule (7), to enable the authority to form a final opinion.
- (9) After considering the explanation, if any, given by the applicant under sub-rule (8), the authority shall either -
 - (a) accept the application and grant the certificate of registration; or
 - (b) reject the application by an order, giving reasons thereof.
- (10) The authority shall communicate its decision to the applicant within thirty days of receipt of explanation.

7. Conditions of Registration

The registration granted under rule 6 shall be subject to the conditions that the valuer shall -

- (a) at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4;
- (b) at all times comply with the provisions of the Act, these rules and the Bye-laws or internal regulations, as the case may be, of the respective registered valuers organisation;
- (c) in his capacity as a registered valuer, not conduct valuation of the assets or class(es) of assets other than for which he/it has been registered by the authority;
- (d) take prior permission of the authority for shifting his/ its membership from one registered valuers organisation to another;
- (e) take adequate steps for redressal of grievances;
- (f) maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;
- (g) comply with the Code of Conduct of the registered valuers organisation of which he is a member;
- (h) in case a partnership entity or company is the registered valuer, allow only the partner or director who is a registered valuer for the asset class(es) that is being valued to sign and act on behalf of it;
- (i) in case a partnership entity or company is the registered valuer, it shall disclose to the company concerned, the extent of capital employed or contributed in the partnership entity or the company by the partner or director, as the case may be, who would sign and act in respect of relevant valuation assignment for the company;

- (j) in case a partnership entity is the registered valuer, be liable jointly and severally along with the partner who signs and acts in respect of a valuation assignment on behalf of the partnership entity;
- (k) in case a company is the registered valuer, be liable along with director who signs and acts in respect of a valuation assignment on behalf of the company;
- (l) in case a partnership entity or company is the registered valuer, immediately inform the authority on the removal of a partner or director, as the case may be, who is a registered valuer along with detailed reasons for such removal; and
- (m) comply with such other conditions as may be imposed by the authority.

8. Conduct of Valuation

- (1) The registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified under rule 18:
 Provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per-
 - (a) internationally accepted valuation standards;
 - (b) valuation standards adopted by any registered valuers organisation.
- (2) The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.
- (3) The valuer shall, in his report, state the following:-
 - (a) background information of the asset being valued;
 - (b) purpose of valuation and appointing authority;
 - (c) identity of the valuer and any other experts involved in the valuation;
 - (d) disclosure of valuer interest or conflict, if any;
 - (e) date of appointment, valuation date and date of report;
 - (f) inspections and/or investigations undertaken;
 - (g) nature and sources of the information used or relied upon;
 - (h) procedures adopted in carrying out the valuation and valuation standards followed;
 - (i) restrictions on use of the report, if any;
 - (j) major factors that were taken into account during the valuation;

- (k) conclusion; and
- (l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

9. Temporary surrender

- (1) A registered valuer may temporarily surrender his registration certificate in accordance with the bye-laws or regulations, as the case may be, of the registered valuers organisation and on such surrender, the valuer shall inform the authority for taking such information on record.
- (2) A registered valuers organisation shall inform the authority if any valuer member has temporarily surrendered his/its membership or revived his/ its membership after temporary surrender, not later than seven days from approval of the application for temporary surrender or revival, as the case may be.
- (3) Every registered valuers organisation shall place, on its website, in a searchable format, the names and other details of its valuers members who have surrendered or revived their memberships.

10. Functions of a Valuer

A valuer shall conduct valuation required under the Act as per these rules and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority.

12. Eligibility for registered valuers organisations

- (1) An organisation that meets requirements under sub-rule (2) may be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes if -
 - (i) it has been registered under section 25 of the Companies Act, 1956 (1 of 1956) or section 8 of the Companies Act, 2013 (18 of 2013) with the sole object of dealing with matters relating to regulation of valuers of an asset class or asset classes and has in its bye laws the requirements specified in **Annexure-III**;
 - (ii) a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession;

Provided that, subject to sub-rule (3), the following organisations may also be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes, namely:-

- (a) an organisation registered as a society under the Societies Registration Act, 1860 (21 of 1860) or any relevant state law, or;
- (b) an organisation set up as a trust governed by the Indian Trust Act, 1882 (2 of 1882).

- (2) The organisation referred to in sub-rule (1) shall be recognised if it –
- (a) conducts educational courses in valuation, in accordance with the syllabus determined by the authority, under rule 5, for individuals who may be its valuers members, and delivered in class room or through distance education modules and which includes practical training;
 - (b) grants membership or certificate of practice to individuals, who possess the qualifications and experience as specified in rule 4, in respect of valuation of asset class for which it is recognised as a registered valuers organisation ;
 - (c) conducts training for the individual members before a certificate of practice is issued to them;
 - (d) lays down and enforces a code of conduct for valuers who are its members, which includes all the provisions specified in **Annexure-I**;
 - (e) provides for continuing education of individuals who are its members;
 - (f) monitors and reviews the functioning, including quality of service, of valuers who are its members; and
 - (g) has a mechanism to address grievances and conduct disciplinary proceedings against valuers who are its members.
- (3) A registered valuers organisation, being an entity under proviso to sub-rule (1), shall convert into or register itself as a company under section 8 of the Companies Act, 2013, and include in its bye laws the requirements specified in **Annexure-III**, within one year from the date of commencement of these rules.

14. Conditions of Recognition

The recognition granted under rule 13 shall be subject to the conditions that the registered valuers organisation shall-

- (a) at all times continue to satisfy the eligibility requirements specified under rule 12;
- (b) maintain a register of members who are registered valuers, which shall be publicly available;
- (c) admits only individuals who possess the educational qualifications and experience requirements, in accordance with rule 4 and as specified in its recognition certificate, as members;
- (d) make such reports to the authority as may be required by it;
- (e) comply with any directions, including with regard to course to be conducted by valuation organisation under clause (a) of sub-rule (2) of rule 12, issued by the authority;

- (f) be converted or registered as company under section 8 of the Act, with governance structure and bye laws specified in **Annexure-III**, within a period of one year from the date of commencement of these rules if it is an organisation referred to in proviso to sub-rule (1) of rule 12;
- (g) shall have the governance structure and incorporate in its bye laws the requirements specified in **Annexure-III** within one year of commencement of these rules if it is an organisation referred to in clause (i) of sub-rule (1) of rule 12 and existing on the date of commencement of these rules;
- (h) display on its website, the status and specified details of every registered valuer being its valuer members including action under rule 17 being taken against him; and
- (i) comply with such other conditions as maybe specified by authority.

15. Cancellation or suspension of certificate of registration or recognition

The authority may cancel or suspend the registration of a valuer or recognition of a registered valuers organisation for violation of the provisions of the Act, any other law allowing him to perform valuation, these rules or any condition of registration or recognition, as the case may be in the manner specified in rule 17.

16. Complaint against a registered valuer or registered valuers organisation

A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fees of rupees one thousand in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit:

Provided that in case of a complaint against a registered valuer, who is a partner of a partnership entity or director of a company, the authority may refer the complaint to the relevant registered valuers organisation and such organisation shall handle the complaint in accordance with its bye laws.

18. Valuation Standards

The Central Government shall notify and may modify (from time to time) the valuation standards on the recommendations of the Committee set up under rule 19.

20. Punishment for contravention

Without prejudice to any other liabilities where a person contravenes any of the provision of these rules he shall be punishable in accordance with sub-section (3) of section 469 of the Act.

21. Punishment for false statement

If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement,—

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material, he shall be liable under section 448 of the Act.

3. Enforcement of the *Companies (Registered Valuers and Valuation) Amendment Rules, 2018* vide Notification No. G.S.R. 155 (E) dated 9th February, 2018

In exercise of the powers conferred by section 247 read with section 469 of the Companies Act, 2013, the Central Government makes the *Companies (Registered Valuers and Valuation) Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017*, namely:-

In the *Companies (Registered Valuers and Valuation) Rules, 2017*, in rule 11, for the figures, letters and word "31st March, 2018", occurring at both the places, the figures, letters and word "30th September, 2018" shall be substituted.

4. Enforcement of the *Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018* vide Notification G.S.R. 559(E) dated 13th June, 2018

The Central Government makes the *Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017*.

In *Companies (Registered Valuers and Valuation) Rules, 2017*, in rule 19, in sub-rule 2, after clause (g), the following clause shall be inserted, namely:-

"(h) Presidents of, the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, the Institute of Cost Accountants of India as ex-officio members."

5. Enforcement of the *Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018* vide Notification G.S.R. G.S.R. 925(E) dated 25th September, 2018

The Central Government makes the *Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017*.

In the *Companies (Registered Valuers and Valuation) Rules, 2017*,

(i) in rule 11, for the figures, letters and word "30th September, 2018" occurring at both the places, the figures, letters and word "31st January, 2019" shall be substituted.

(ii) In the said rules, in rule 14, in clause (f), for the words "one year", the words "two years" shall be substituted.

6. Amendments through the *Companies (Amendment) Act, 2017*

| Relevant sections | Amendment |
|--------------------------|--|
| Amendment of Section 247 | In section 247 of the principal Act, in sub-section (2), in clause (d), for the words "during or after the valuation of assets", the |

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| | | words "during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him" shall be substituted. |
| Amendment section 366. | of | In section 366 of the principal Act, in sub-section (2),— (i) for the words "seven or more members", the words "two or more members" shall be substituted; (ii) in the proviso, after clause (vi), the following clause shall be inserted, namely:— "(vi) a company with less than seven members shall register as a private company." |
| Amendment section 374. | of | In section 374 of the principal Act, after clause (d), the following proviso shall be inserted, namely:— "Provided that upon registration as a company under this Part a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008 shall be deemed to have been dissolved under that Act without any further act or deed." |
| Amendment section 403. | of | In section 403 of the principal Act,— (i) in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:— "Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 92 or 137 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies: (ii) for sub-section (2), the following sub-section shall be substituted, namely:— "(2) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the relevant section, the company and the officers of the company who are in default, shall, without prejudice to the liability for the payment of fee and additional |

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| | | fee, be liable for the penalty or punishment provided under this Act for such failure or default." |
| Amendment of section 447. | | In section 447 of the principal Act,— (i) after the words "guilty of fraud", the words "involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower" shall be inserted; (ii) after the proviso, the following proviso shall be inserted, namely:— "Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both." |
| Amendment of section 458 | | In section 458 of the principal Act, in sub-section (1), the proviso shall be omitted. |

CHAPTER 11: COMPOUNDING OF OFFENCES, ADJUDICATION, SPECIAL COURTS

Amendments through the Companies (Amendment) Act, 2017

| Relevant sections | Amendment |
|---|--|
| Amendment of section 435. Establishment of Special Courts | For section 435 of the principal Act, the following shall be substituted, namely:— 435. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. (2) A Special Court shall consist of— (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working." |
| Amendment of section 438. | In section 438 of the principal Act, for the words "deemed to be a Court of Session", the words "deemed to be a Court of Session or the court of |

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| | Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be," shall be substituted. |
| Amendment of section 439. | In section 439 of the principal Act, in sub-section (2), after the words "a shareholder", the words "or a member" shall be inserted. |
| Amendment of section 440. | In section 440 of the principal Act, for the words "Court of Session", at both the places, the words "Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be" shall be substituted. |
| Amendment of section 441. | In section 441 of the principal Act, in sub-section (1), for the words "with fine only", the words "not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine" shall be substituted. |
| Insertion of new section 446A. Factors for determining level of punishment. | After section 446 of the principal Act, the following sections shall be inserted, namely:— "446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:— (a) size of the company; (b) nature of business carried on by the company; (c) injury to public interest; (d) nature of the default; and (e) repetition of the default. |
| Lesser penalties for One Person Companies or small companies. | 446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections." |

CHAPTER 12: NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL**1. Enforcement of the Companies (Removal of Difficulties) Orders, 2017 Vide Order S.O. 2042(E) dated 29th June , 2017**

In the Companies Act, 2013, in section 434, in sub-section (1), in clause (c),-

- (a) in the third proviso, for "Provided further that-", the following shall be substituted, namely:- "Provided also that-";

(b) after the third proviso, the following proviso shall be inserted, namely:-

“Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.”

2. Amendments through the Companies (Amendment) Act, 2017

| Relevant sections | Amendment |
|---------------------------|---|
| Amendment section 409 | of In section 409 of the principal Act, in sub-section (3),— (i) in clause (a), for the words "out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service", the words "and has been holding the rank of Secretary or Additional Secretary to the Government of India" shall be substituted; (ii) for clause (e), the following clause shall be substituted, namely:— "(e) is a person of proven ability, integrity and standing having special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy." |
| Amendment section 410 | of In section 410 of the principal Act, for the words "orders of the Tribunal", the words "orders of the Tribunal or of the National Financial Reporting Authority" shall be substituted. |
| Amendment section 411. | of In section 411 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— "(3) A technical member shall be a person of proven ability, integrity and standing having special knowledge and professional experience of not less than twenty-five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy." |
| Amendment section 412 | of In section 412 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:— "(2) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed |

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| | <p>on the recommendation of a Selection Committee consisting of—</p> <p>(a) Chief Justice of India or his nominee—Chairperson;</p> <p>(b) a senior Judge of the Supreme Court or Chief Justice of High Court— Member;</p> <p>(c) Secretary in the Ministry of Corporate Affairs— Member; and</p> <p>(d) Secretary in the Ministry of Law and Justice— Member.</p> <p>(2A) Where in a meeting of the Selection Committee, there is equality of votes on any matter, the Chairperson shall have a casting vote."</p> |
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SECTION B: SECURITIES LAWS

CHAPTER 2: The Securities Exchange Board of India Act, 1992, SEBI (ICDR) REGULATIONS, 2009 & SEBI (LODR) REGULATIONS, 2015

1. SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2018 w.e.f. 12.02.2018

Vide this amendment regulation, Clause (c) of the Regulation 82 which dealt with the conditions for qualified institutions placement has been omitted. Following was the clause prior to the omission.

"(c) it is in compliance with the requirement of minimum public shareholding specified in the Securities Contracts (Regulation) Rules, 1957;"

PART II: ECONOMIC LAWS

CHAPTER 1: The Foreign Exchange and Management Act, 1999

1. Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018

As per the Notification dated 26th of March, 2018, the Reserve Bank of India makes the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 with the enforcement from the date of their publication in the Official Gazette i.e., 26th of March, 2018.

2. Relevant Definitions:- In these Regulations, unless the context otherwise requires- 'Non-Resident Indian (NRI)' means a person resident outside India who is a citizen of India;

'Overseas Citizen of India (OCI)' means a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955;

'Repatriation outside India' means the buying or drawing of foreign exchange from an authorised dealer in India and remitting it outside India through banking channels or crediting it to an account denominated in foreign currency or to an account in Indian currency maintained with an authorised dealer from which it can be converted in foreign currency;

3. Acquisition and Transfer of Property in India by a Non-Resident Indian or an Overseas Citizen of India:-

An NRI or an OCI may-

- (a) acquire immovable property in India other than agricultural land/ farm house/ plantation property:

Provided that the consideration, if any, for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any nonresident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder.

Provided further that no payment for any transfer of immovable property shall be made either by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause.

- (b) acquire any immovable property in India other than agricultural land/ farm house/ plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in section 2(77) of the Companies Act, 2013;
- (c) acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property (a) in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations or (b) from a person resident in India;
- (d) transfer any immovable property in India to a person resident in India;
- (e) transfer any immovable property other than agricultural land/ farm house/ plantation property to an NRI or an OCI.

4. Acquisition of Immovable Property for carrying on a permitted activity:-

A person resident outside India who has established in India in accordance with the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016, as amended from time to time, a branch, office or other place of business for carrying on in India any activity, excluding a liaison office, may -

- (a) acquire any immovable property in India, which is necessary for or incidental to carrying on such activity;

Provided that

- i all applicable laws, rules, regulations or directions for the time being in force are duly complied with; and
 - ii the person files with the Reserve Bank a declaration in the form IPI as prescribed by Reserve Bank from time to time, not later than ninety days from the date of such acquisition.
- (b) transfer by way of mortgage to an authorised dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a).

Provided no person of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Democratic People's Republic of Korea (DPRK) shall acquire immovable property, other than on lease not exceeding five years, without prior approval of the Reserve Bank.

5. Purchase/ sale of Immovable Property by Foreign Embassies/ Diplomats/ Consulate Generals:-

A Foreign Embassy/ Diplomat/ Consulate General may purchase/ sell immovable property in India other than agricultural land/ plantation property/ farm house provided (i) clearance from Government of India, Ministry of External Affairs is obtained for such purchase/ sale, and (ii) the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channels.

6. Joint acquisition by the spouse of an NRI or an OCI:-

A person resident outside India, not being a Non-Resident Indian or an Overseas Citizen of India, who is a spouse of a Non-Resident Indian or an Overseas Citizen of India may acquire one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse.

Provided that

- (i) The consideration for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank;
- (ii) No payment for any transfer of immovable property shall be made either by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause;
- (iii) Provided that the marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property;

- (iv) Provided further that the non-resident spouse is not otherwise prohibited from such acquisition.

7. Acquisition by a Long-Term Visa holder:-

A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who is residing in India and has been granted a Long Term Visa (LTV) by the Central Government may purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for carrying out self-employment subject to the following conditions:

- the property should not be located in and around restricted/ protected areas so notified by the Central Government and cantonment areas;
- the person submits a declaration to the Revenue Authority of the district where the property is located, specifying the source of funds and that he/ she is residing in India on LTV;
- the registration documents of the property should mention the nationality and the fact that such person is on LTV;
- the property of such person may be attached/ confiscated in the event of his/ her indulgence in anti-India activities;
- a copy of the documents of the purchased property shall be submitted to the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned and to the Ministry of Home Affairs (Foreigners Division);
- such person shall be eligible to sell the property only after acquiring Indian citizenship. However, transfer of the property before acquiring Indian citizenship shall require prior approval of DCP/FRO/FRRO concerned.

8. Repatriation of sale proceeds:-

- A person referred to in sub-section (5) of Section 6 of the Act, or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section;
- In the event of sale of immovable property other than agricultural land/ farm house/ plantation property in India by an NRI or an OCI, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:
 - the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of his acquisition or the provisions of these Regulations;

- (ii) the amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in Foreign Currency Non-Resident Account or out of funds held in Non-Resident External account;
 - (iii) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.
- (c) In the event of failure in repayment of external commercial borrowing availed by a person resident in India under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time, a bank which is an authorised dealer may permit the overseas lender or the security trustee (in whose favour the charge on immovable property has been created to secure the ECB) to sell the immovable property on which the said loan has been secured only to a (by the) person resident in India and to repatriate the sale proceeds towards outstanding dues in respect of the said loan and not any other loan.

9. Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries:-

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or Democratic People's Republic of Korea (DPRK) without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.

Provided this prohibition shall not apply to an OCI.

Explanation: For the purpose of this regulation the term "citizen" shall include natural persons and legal entities.

10. Prohibition on transfer of immovable property in India:-

Save as otherwise provided in the Act or Regulations, no person resident outside India shall transfer any immovable property in India:-

Provided that

- (i) The Reserve Bank may, for sufficient reasons, permit the transfer, subject to such conditions as may be considered necessary.
- (ii) A bank which is an authorised dealer may, subject to the directions issued by the Reserve Bank in this behalf, permit a person resident in India or on behalf of such person to create charge on his immovable property in India in favour an overseas lender or security trustee, to secure an external commercial borrowing availed under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time.
- (iii) An Authorized Dealer in India being the Indian correspondent of an overseas lender may, subject to the directions issued by the Reserve Bank in this regard, create a mortgage on

an immovable property in India owned by an NRI or an OCI, being a director of a company outside India, for a loan to be availed by the company from the said overseas lender.

Provided

- (a) the funds shall be used by the borrowing company only for its core business purposes overseas;
- (b) in case of invocation of charge, the Indian bank shall sell the immovable property to an eligible acquirer and remit the sale proceeds to the overseas lender.
- (iv) A person resident outside India who has acquired any immovable property in India in accordance with foreign exchange laws in force at the time of such acquisition or with the general or specific permission of the Reserve Bank may transfer such property to a person resident in India provided the transaction takes place through banking channels in India and provided that the resident is not otherwise prohibited from such acquisition.

11. Miscellaneous:-

Any transaction involving acquisition or transfer of immovable property under these regulations shall be undertaken:

- (a) through banking channels in India;
- (b) subject to payment of applicable taxes and other duties/levies in India.

12. Saving:-

Any existing holding of immovable property in India by a person resident outside India made in accordance with the policy in existence at the time of such acquisition would not require any modifications to conform to these regulations.

CHAPTER 3: PREVENTION OF MONEY LAUNDERING ACT, 2002

Amendments to the prevention of Money-Laundering Act, 2002 through the Finance Act, 2018 w.e.f. 19.04.2018

In the Prevention of Money-laundering Act, 2002,—

- (a) in section 2, in sub-section (1), in clause (u), after the words “within the country”, the words “or abroad” shall be inserted;
- (b) in section 5,—
 - (i) in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:— “Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.”;
 - (ii) in sub-section (3), for the word, brackets and figure “sub-section (2)”, the word, brackets and figure “sub-section (3)” shall be substituted;

- (c) in section 8,—
- (i) in sub-section (3), in clause (a), after the words “continue during”, the words “investigation for a period not exceeding ninety days or” shall be inserted;
- (ii) in sub-section (8), after the proviso, the following proviso shall be inserted, namely:—
“Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.”;
- (d) in section 19, in sub-section (3),— (i) after the words “be taken to a”, the words “Special Court or” shall be inserted; (ii) in the proviso, after the words “from the place of arrest to the”, the words “Special Court or” shall be inserted;
- (e) in section 45, in sub-section (1), —
- (i) for the words “punishable for a term of imprisonment of more than three years under Part A of the Schedule”, the words “under this Act” shall be substituted;
- (ii) in the proviso, after the words “sick and infirm,”, the words “or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees” shall be inserted;
- (f) in section 50, in sub-section (5), in the proviso, in clause (b), for the word “Director”, the words “Joint Director” shall be substituted;
- (g) section 66 shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—
“(2) If the Director or other authority specified under sub-section (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.”;

In “Paragraph 29 -Offence Under the Companies Act, 2013

Section 447 i.e., punishment for fraud has been inserted.

CHAPTER 6: INSOLVENCY AND BANKRUPTCY CODE, 2016

(1) Enforcement of clause (a) to clause (d) of section 2 of the Code Vide notification S.O. 1570(E) , dated 15th May , 2017

The Central Government hereby appoints the 1st April, 2017 as the date on which the provisions of clause (a) to clause (d) of section 2 of the Code relating to voluntary liquidation or bankruptcy shall come into force.

(2) Commencement of sections related to Fast Track Corporate Insolvency Resolution Process Vide Notification S.O. 1910(E) dated 14th June 2017

The Central Government hereby appoints the 14th day of June, 2017 as the date on which the provisions of section 55 to section 58 (both inclusive) of the said Code shall come into force.

(3) Commencement of sections related to Fast Track Corporate Insolvency Resolution Process u/s 55(2) of the Code vide Notification S.O.1911(E) dated 14th June 2017

In exercise of the powers conferred by section 55(2) of the Insolvency and Bankruptcy Code, 2016 , the Central Government hereby notifies that an application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely :-

- (a) a small company as defined under clause (85) of section 2 of Companies Act, 2013, or
- (b) a Startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 501(E), dated the 23rd May, 2017, or
- (c) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding rupees one crore.

(4) Issue of clarification regarding approval of resolution plans under section 30 and 31 of Insolvency and Bankruptcy Code, 2016 vide general circular IBC/01/ 2017 dated 25th October 2017

Ministry of Corporate Affairs issued a clarification in view of the requirement under section 30(2)(e) of the Code for the resolution professional to confirm that each resolution plan received by him does not contravene any of the provisions of the law for the time being in force.

Accordingly clarification was sought whether approval of shareholders/ members of the corporate debtor/ company is required for a resolution plan at any stage during the process for its consideration and approval as laid down under section 30 & 31 of the Insolvency and Bankruptcy Code and after approval during its implementation, for any actions contained in the resolution plan which would normally require specific approval of shareholders/ members under provisions of Companies Act, 2013 or any other law.

Through the issue of this circular, it has been clarified that the approval of shareholders / members of the corporate debtor/company for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law if the resolution plan of the company was not being considered under the Code, is deemed to have been given on its approval by the Adjudicating Authority.

(5) Insolvency and Bankruptcy Code (Amendment) Act, 2018

Ministry of Law and Justice, amended the Insolvency and Bankruptcy Code, 2016 (Principal Act) through the enforcement of the Insolvency and Bankruptcy Code (Amendment) Act, 2018 vide notification dated 19th January, 2018. This Act came into enforcement on 23rd day of November 2017.

Significant relevant changes are as follows:

(i) Amendment in section 2 of the Principal Act

- a. in clause (d), the word "and" shall be omitted;
- b. for clause (e), the following clauses shall be substituted, namely:—
 - "(e) personal guarantors to corporate debtors;
- c. partnership firms and proprietorship firms; and
- d. individuals, other than persons referred to in clause (e),".

(ii) Amendment in section 5 of the Principal Act

in clause (26), for the words "any person", the words "resolution applicant" shall be substituted.

(iii) In section 30 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy-five per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code Ord. 7 of (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under 2017. section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section."

(2) The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018

Vide Notification dated 17th August, 2018, Ministry of Law and Justice here by amended the Insolvency and Bankruptcy Code, 2016 through the enforcement of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018. With the enforcement of this Amendment Act, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 have been repealed. This amendment Act is effective from **6th June, 2018**.

Following are the relevant amendments:

(1) In section 3(12), in the Insolvency and Bankruptcy Code, 2016 (Principal Act), for the word "repaid", the word "paid" shall be substituted.

(2) In section 5 of the principal Act,

(i) after clause (5) i.e., after the definition of Corporate applicant, the following clause shall be inserted, namely:—

'(5A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;'

(ii) in clause (8) prescribing the term "Financial Debt" in the Code, in sub-clause (f), the following Explanation shall be inserted, namely:—

'Explanation.—For the purposes of this sub-clause,—

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;

(iii) in clause (12) i.e., as to the "Insolvency commencement date", the following proviso shall be inserted, namely:—

"Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;"

(iv) after clause (24), the following clause shall be inserted, namely:—

'(24A) "related party", in relation to an individual, means—

(a) a person who is a relative of the individual or a relative of the spouse of the individual;

(b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

(c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;

(d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

- (f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;
- (g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;
- (h) a person on whose advice, directions or instructions, the individual is accustomed to act;
- (i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

- (a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—
 - (i) members of a Hindu Undivided Family,
 - (ii) husband,
 - (iii) wife,
 - (iv) father,
 - (v) mother,
 - (vi) son,
 - (vii) daughter,
 - (viii) son's daughter and son,
 - (ix) daughter's daughter and son,
 - (x) grandson's daughter and son,
 - (xi) granddaughter's daughter and son,
 - (xii) brother,
 - (xiii) sister,
 - (xiv) brother's son and daughter,
 - (xv) sister's son and daughter,
 - (xvi) father's father and mother,
 - (xvii) mother's father and mother,
 - (xviii) father's brother and sister,
 - (xix) mother's brother and sister, and

- (b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;'
- (3) In **section 7(1)** of the principal Act which deals with the initiation of CIRP by financial creditor, for the words "other financial creditors", the words "other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government," shall be substituted.
- (4) In **section 8(2)** of the principal Act which deals with the Insolvency resolution by operational creditor, following are the amendments—
- (i) in clause (a), for the words "if any, and", the words "if any, or" shall be substituted;
 - (ii) in clause (b), for the word "repayment", the word "payment" shall be substituted;
- In the Explanation, for the word "repayment", the word "payment" shall be substituted.
- (5) In **section 9(3)** of the principal Act, which states of the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor—
- (i) in clause (c), for the words "by the corporate debtor; and", the words "by the corporate debtor, if available;" shall be substituted;
 - (ii) for clause (d), the following clauses shall be substituted, namely:—
 - "(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and
 - (e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.";
- (6) in **section 9(5)** of the principle Code which deals with the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor —
- (a) in clause (i), in sub-clause (b), for the word "repayment", the word "payment" shall be substituted;
 - (b) in clause (ii), in sub-clause (b), for the word "repayment", the word "payment" shall be substituted.
- (7) **Section 10 (3)** of the principal Act, deals with the initiation of corporate insolvency resolution process by corporate applicant, shall be substituted with the following-
- "(3) The corporate applicant shall, along with the application, furnish—
- (a) the information relating to its books of account and such other documents for such period as may be specified;
 - (b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

- (c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.";
- (8) In **Section 10 (4)** related to the initiation of corporate insolvency resolution process by corporate applicant, following amendments have been made—
- (i) in **clause (a)**, after the words "if it is complete", the words "and no disciplinary proceeding is pending against the proposed resolution professional" shall be inserted;
 - (ii) in **clause (b)**, after the words "if it is incomplete", the words "or any disciplinary proceeding is pending against the proposed resolution professional" shall be inserted.
- (9) In **section 12(2)** of the principal Act, related to the time limit for completion of corporate insolvency resolution process, for the word "seventy-five", the word "sixty-six" shall be substituted.
- (10) **After section 12** of the principal Act, the section 12A shall be inserted—
- "12A. **Withdrawal of application admitted under section 7, 9, or 10:** The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."
- (11) **Section 14(3)** of the principal Act which deals with the moratorium, shall be substituted, with the following—
- "(3) The provisions of sub-section (1) shall not apply to—
- (a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
 - (b) **a surety in a contract of guarantee to a corporate debtor."**
- (12) In **section 15(1)(c)** of the principal Act which deals with the provisions related to the public announcement, for the word "claims", the words "claims, as may be specified" shall be substituted.
- (13) In **section 16(5)** of the principal Act which is related to the appointment and tenure of interim resolution professional, for the words "shall not exceed thirty days from date of his appointment", the words and figures "shall continue till the date of appointment of the resolution professional under section 22" shall be substituted.
- (14) In **section 17(2)(d)** of the principal Act which deals with the management of affairs of corporate debtor by IRP, for the words "may be specified.", the words "may be specified; and" shall be substituted;
- (15) **After section 17(2)(d)** which deals with the management of affairs of corporate debtor by IRP, the following **section 17(2)(e)**, shall be inserted,

- (iii) (iv) for sub-sections (7) and (8), the following sub-sections shall be substituted, namely:—
 - "(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6A).
 - (8) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors:
 - Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified."
- (17) In **section 22(2)** of the principal Act, for the word, "seventy-five", the word "sixty-six" shall be substituted;
- (18) In **section 23(1)** of the principal Act, the following proviso shall be inserted-
 - "Provided that the resolution professional shall, if the resolution plan under sub-section (6) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31."
- (19) In **section 24(3)** of the principal Act, in clause (a), for the words "Committee of creditors", the words, brackets, figures and letter "committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)" shall be substituted;
- (20) **Insertion of new section 25A** which deals with the Rights and duties of authorised representative of financial creditors.
 - '25A. (1) **Right to participate and Vote on behalf of FC:** The authorised representative(AR) under section 21(6) & 21(6A) or section 24(5) shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor(FC) he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.
 - (2) **Duty of AR to circulate agenda & minutes to FC:** It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.
 - (3) **AR to act on instruction of FC:** The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:
 - Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

- (4) **To ensure recording of instruction by IRP/RP:** The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.
- (21) **Amendment in section 27(2)** of the principal Act which deals with the Replacement of Resolution Professional (RP) by Committee of creditors (CoC): This sub-section is substituted with the following provision-
"The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form."
- (22) Amendment in section 28(3) of the principal Act which deals with the approval of committee of creditors for certain actions , for the word, "seventy-five", the word "sixty-six" shall be substituted.
- (23) **Amendment in Section 29 A**, dealt with the persons not eligible to be resolution applicant came into enforcement on 23rd day of November 2017 through the enforcement of Insolvency and Bankruptcy Code (Amendment) Act, 2018 vide notification dated 19th January, 2018.
- (i) **in clause (c),—**
- (a) for the words "has an account," the words "at the time of submission of the resolution plan has an account," shall be substituted;
- (b) after the words and figures "the Banking Regulation Act, 1949", the words "or the guidelines of a financial sector regulator issued under any other law for the time being in force," shall be inserted;
- (c) after the proviso, the following shall be inserted, namely:—'Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

The expression "**related party**" here shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;';

- (ii) **for clause (d)**, the following clause shall be substituted, namely:—
- "(d) has been convicted for any offence punishable with imprisonment—
- for two years or more under any Act specified under the Twelfth Schedule; or
 - for seven years or more under any other law for the time being in force:
- Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:
- Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;"
- (iii) **in clause (e)**, the following proviso shall be inserted, namely:—
- "Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;"
- (iv) **in clause (g)**, the following proviso shall be inserted, namely:—
- "Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;"
- (v) **in clause (h)**,—
- for the words "an enforceable guarantee", the words "a guarantee" shall be substituted;
 - after the words "under this Code", the words "and such guarantee has been invoked by the creditor and remains unpaid in full or part" shall be inserted;
- (vi) **in clause (i)**, for the words "has been", the word "is" shall be substituted;
- (vii) **the Explanation occurring after clause (j)** shall be numbered as *Explanation I*, and in *Explanation I* as so numbered, for the proviso, the following provisos shall be substituted, namely:—

'Provided that nothing in clause (iii) of *Explanation I* shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;

(viii) after *Explanation I* as so numbered, the following *Explanation* shall be inserted, namely:—

*Explanation II—*For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

- (a) a scheduled bank;
- (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999.
- (d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;
- (f) such categories of persons as may be notified by the Central Government.

(24) Amendment in section 30: The said section deals with the submission of resolution plan. Following are the amendments-

- (i) in **sub-section (1)**, after the words "resolution plan", the words, figures and letter "along with an affidavit stating that he is eligible under section 29A" shall be inserted;
- (ii) in **sub-section (2)**,—
 - (a) in clauses (a) and (b), for the word "repayment" at both the places where it occurs, the word "payment" shall be substituted;

(b) after clause (f), the following *Explanation* shall be inserted, namely:—

Explanation.—For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.";

(iii) in **sub-section (4)**,—

(a) for the word "seventy-five", the word "sixty-six" shall be substituted;

(b) after the third proviso, the following proviso shall be inserted, namely:—

"Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018."

(25) Amendment in section 31 of the principal Act, which deals with the approval of resolution plan—

(a) in **sub-section (1)**, the following proviso shall be inserted, namely:—

"Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."

(b) after **sub-section (3)**, the following sub-section shall be inserted namely:—

"(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."

(26) Amendment made in section 33(2) of the principal Act. This section deals with the initiation of liquidation process. Amendments made is that after the words "decision of the committee of creditors", the words "approved by not less than sixty-six per cent. of the voting share" shall be inserted.

(27) In **section 34** of the principal Act, which states of appointment of liquidator and fee to be paid, following amendments are made—

- a. in **sub-section (1)**, for the words and figures "Chapter II shall", the words and figures "Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form," shall be substituted;
- b. in **sub-section (4)**,—
- i. in clause (b), for the words "in writing", the words "in writing; or" shall be substituted;
- ii. after clause (b), the following clause shall be inserted, namely:—
"(c) the resolution professional fails to submit written consent under sub-section (1).";
- c. in **sub-section (5)**, for the word, brackets and letter "clause (a)", the words, brackets and letters "clauses (a) and (c)" shall be substituted;
- d. in **sub-section (6)**, after the words "another insolvency professional", the words "along with written consent from the insolvency professional in the specified form," shall be inserted.
- (28) In section 42 of the principal Act, which deals with the provisions related to the appeal against the decision of liquidator, after the words "of the liquidator", the words "accepting or" shall be inserted.
- (29) In **section 45(1)** of the principal Act, which deals with the Avoidance of undervalued transactions, the words and figures "of section 43" shall be omitted.

PART II – QUESTION AND ANSWERS

Multiple Choice Questions

1. All the three directors of Cygnus Wires Limited generally remain out of India for developing connections and securing business opportunities on behalf of the company. However, the company must strictly follow the legal requirement that at least one of its directors must stay for the specified statutory period in India. To reckon as 'resident director' for the financial year 2018-19, advise the company as to which period spent in India shall count towards statutory period.
- (a) Period spent in India during the previous financial year 2017-18.
- (b) Total of fifty percent each of the period spent in India during the financial year 2016-17 and 2017-18.
- (c) Period spent in India during the financial year 2018-19.
- (d) Total of fifty percent each of the period spent in India during the financial year 2017-18 and 2018-19.

2. Mr. Roop was appointed as an Additional Director of XYZ Limited in July, 2018. Immediately after his appointment, on behalf of the Company he entered into an agreement with NY Private Limited for supplies of raw material. In the ensuing meeting, he was regularized as a Director. He signed Contract with Laxmi vendors. At the end of the December 2018, management came to know that his appointment was not valid as he was disqualified to act as a Director of any Company. He signed one more agreement in January 2019 with Saraswati vendors. In such scenario, what will be the status of contract/agreements he signed on behalf of XYZ Limited?
 - (a) All agreement/ contracts will become invalid;
 - (b) All agreement/ contracts will be valid;
 - (c) All agreement/ contracts before December 2018 will be valid;
 - (d) All agreement/ contracts before December 2018 will be invalid.

3. Mr. Nagar a director, decided to resign from MGT Private Limited due to preoccupation. He sent his resignation letter dated 12th June, 2018 to the Company stating that he will resign w.e.f. 15th June, 2018. Due to non receipt of any communication from the Company he dropped a mail on 17th June, 2018, to confirm whether Company has received his letter. Finally Company received his letter on 25th June, 2018. In this case, from which date his resignation will be effective?
 - (a) 12th June, 2018
 - (b) 15th June, 2018
 - (c) 17th June, 2018
 - (d) 25th June, 2018

4. Mr. Raman, is appointed as valuer in April, 2018 in ABC Ltd. He undertook the valuation of the assets of the company in 2018. In case, Mr. Raman becomes interested in any property, stock etc. of the company, he may not be eligible to undertake valuation in such property of the company till:
 - (a) 2019
 - (b) 2020
 - (c) 2021
 - (d) He will never be appointed as Registered Valuer of the company.

5. Under the IBC, The resolution plan shall be approved by the Committee of Creditors by a vote of not less than-----percent of voting share of the financial creditors.
 - (a) 51%
 - (b) 66%
 - (c) 75%

- (d) 95%
- 6. Who is empowered to designate court of session as special courts for trial of offence of money laundering?
 - (a) Central government in consultation with the Chief Justice of Supreme Court
 - (b) High court in consultation with the Chief Justice of Supreme Court
 - (c) Central government in consultation with the Chief Justice of Session Court
 - (d) Central government in consultation with the Chief Justice of High Court

Descriptive Questions

Part I: Corporate Laws

- 7. Mr. X, a Director of Sunrise Limited, was appointed on 1st April, 2016, one of the terms of appointment was that in the absence of adequacy of profits or if the company had no profits in a particular year, he will be paid remuneration in accordance with Schedule V. The company suffered heavy losses during the financial year ended 31st March, 2018. The company was not in a position to pay any remuneration, but he was paid ₹ 50 Lakhs for the year, as paid to other directors. The effective capital of the company is ₹ 150 crores. Referring to provisions of the Companies Act, 2013, examine the validity of the above payment of remuneration to Mr. X.
- 8. Rudraksh Ltd., a public company, was incorporated for supply of solar panels for the emerging project of government for construction of highways. However, the said project did not turn up for two years due to some legal implications. During the said period, no any significant accounting transaction was made and so the company did not file financial statements and annual returns during the last two financial years. In the meantime, the Board proposed for Mr. Ram & Mr. Rahim to be appointed as an Independent Directors for their independent and expertise knowledge and experience for better working and improvement of financial position of the company.

Evaluate in the light of the given facts, the following legal position:

 - (i) Comment upon the accountability for non- filing of financial statements and annual returns for last two financial years of the Rudraksh Ltd.
 - (ii) Nature of the proposal for an appointment of Mr. Ram & Mr. Rahim in the Rudraksh Ltd. for improvement of the company.
- 9. The Board of Directors of IBC Consultants Limited, registered in Maharashtra, proposes to hold the next board meeting in the month of May, 2019. They seek your advice in respect of the following matters:
 - (i) Can the board meeting be held in Delhi through video conferencing, when all the directors of the company reside at Maharashtra.
 - (ii) Is it necessary that the notice of the board meeting should specify the nature of

business to be transacted?

10. The Board of Directors of APCO Limited a listed company for carrying out the valuation of the immovable properties standing in the name of the company as required under the provisions of the Companies Act, 2013 proposes to appoint Mr. Mehta, an individual as the valuer. Referring to the provisions of the *Companies Act, 2013 read with the Companies (Registered Valuers and Valuation) Rules, 2017*, the Audit Committee is of the opinion that the Board of Directors does not have the right to appoint the valuer. Decide.
11. Decide the liability of the person for commission of the act during the course of inspection, inquiry or investigation under the Companies Act, 2013:
 - (i) A person who is required to make statement during the course of investigation pending against its company, is a party to the manipulation of documents related to the transfer of securities and naming of holders in the register of members by the company.
 - (ii) An employee of the company publicized among his social networking of sound financial position of his organization in order to incite them to purchase the shares of its company. In actuality, the company was running in loss.
12. Board of Directors of the ABC Ltd., a listed company, in their meeting passed the resolution for an appointment of Company Secretary and the Compliance Officer for the guidance to the Board with regards to their duties, responsibilities and powers and the conduct of the affairs of the company. Draft the Resolution for an appointment of Mr. Nirman as Company Secretary and Compliance Officer of the company.
13. (i) Mr. RG is a practicing Chartered Accountant and having 15 years of professional experience. Can he be appointed as Technical Member of National Company Law Appellate Tribunal as per section 411 of the Companies Act, 2013? Will your answer be different, if he is appointed as Technical Member of National Company Law Tribunal?
 - (ii) IJK Limited was wound up with effect from 15th March 2018 by an order of the Court. Mr. A, who ceased to be a member of the company from 1st June 2017, has received a notice from the liquidator that he should deposit a sum of ₹ 5000 as his contribution towards the liability on the shares previously held by him. In this context explain whether Mr. A can be called as a contributory, whether he can be made liable and whether there is any limitation on his liability.
14. M/s DJ Limited, a listed company, as per the audited financial statements as on 31st March, 2018 is having issued and paid-up equity share capital comprising of 10 lakhs shares of ₹ 10 each and issued and paid up preference share capital of 5 Lakhs shares of ₹ 10 each respectively. The members of the company after complying with the provisions of section 169 of the Companies Act, 2013 removed one Mr. Satish from the directorship of the

company on 1st August 2018 before the completion of his term of office. Mr. Satish is also one of the members of the company holding 110000 fully paid-up equity shares. Mr. Satish has alleged oppression on his removal and has moved the jurisdictional Honourable National Company Law Tribunal (NCLT) under section 241 read with section 244 of the Companies Act, 2013. The Board of Directors of the company is of the opinion that the application is not maintainable as per the provisions of Section 244 of the Companies Act, 2013. Decide.

Also, state if any other recourse that is available with Mr. Satish under the provisions of the Companies Act, 2013.

15. DEJY Company Limited incorporated in Singapore desires to establish a place of business at Mumbai. You being a practising Chartered Accountant have been appointed by the company as a liaison officer, for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, state the documents you are required to furnish on behalf of the company, on the establishment of a place of business at Mumbai.
16. (i) Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of LR Ltd., a listed public company. Specify the measures which may be taken by SEBI under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors and securities market, on completion of such inquiry.
- (ii) Upon complaints been received by SEBI, regarding the listed securities of Blue Rock Limited at the Guwahati Stock Exchange, SEBI has passed an order to delist the securities of the company from the said stock exchange. Blue Rock Limited is aggrieved by the order of the SEBI. Advise the company on the further step that the company can take against the order of SEBI to delist the securities.

Part II: Economic Laws

17. The financial creditor, Mr. Raman, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OPDB)' payable on maturity, was issued by the M/s Asset Ltd. (corporate debtor). The zero interest OCD bonds amounted to 2 crore matured in 2016. The liability to redeem the debentures on maturity along with a redemption premium lay on the debtor, which was not made. Mr. Raman filed the Corporate Insolvency resolution process before the NCLT. Advise in the light of the given facts, the following situations:
- (i) State whether Mr. Raman is eligible for filing of application for initiation of CIRP?
- (ii) Do the redemption of debenture payable on the maturity date amounts to debt?
18. Answer the following with reference to the provisions of the FEMA, 1999-
- (i) Mr. Bharat, a person resident in India can remit amount to his son Arjun residing in USA, to buy immovable property there.

- (ii) Mr. Raghav, a resident of India went to Australia for a business deal. He realised foreign exchange for bearing expenses while staying there for the business purpose. After maturing the deal, he returned back to India. Mr. Raghav was left with certain unused foreign exchange. He retained the foreign exchange with him for future use.
19. (i) On what grounds the Reserve Bank of India can cancel a certificate of registration granted to an Asset Reconstruction Company?
- (ii) X is an association having registration to transfer the Foreign Contribution received by it to another organization? Is the valid act of X? If yes, then what is the process to do so? Is there any restriction on transfer of funds to other organisations?
20. (i) The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company aggrieved by the order of the Adjudicating Authority seeks your advice about the remedy that is available under the Act. Advise explaining the relevant provisions of the Prevention of Money Laundering Act, 2002.
- (ii) In 2016, Company Amar, food processor manufacturing unit entered into a joint venture agreement with Company USHA, the largest manufacturer of Food processors for supply of parts of mixer & grinder for manufacturing its latest model. Both the companies are registered under the Companies Act 2013. Agreement carries the term that all disputes shall be arbitrated in Mumbai. State the type of arbitration agreement made between them.

SUGGESTED ANSWERS/HINTS

Answers MCQs

1. (c)
2. (c)
3. (d)
4. (c)
5. (b)
6. (d)

Descriptive answers

7. Under Section II of Part II of Schedule V to the Companies Act, 2013, the remuneration payable to managerial personnel is linked to the effective capital of the company. According to section 197(3) of the Companies Act, 2013, where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are

inadequate, it may, pay remuneration to the managerial person not exceeding ₹ 120 Lakh in the year in case the effective capital of the company is between ₹100 crore to ₹ 250 crore. However, the remuneration in excess of ₹ 120 Lakhs may be paid if the resolution passed by the shareholders is a special resolution.

From the foregoing provisions contained in schedule V to the Companies Act, 2013 the payment of ₹ 50 Lakh in the year as remuneration to Mr. X is valid in case he accepts it, as under the said schedule he is entitled to a remuneration of ₹ 120 Lakh in the year and his terms of appointment provide for payment of the remuneration as per schedule V.

8. (i) As per the stated facts, Rudraksh Ltd. is an inactive company as per the provision given under the Companies Act, 2013. According to the section 455 of the Companies Act, 2013, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company (which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;) may make an application to the Registrar for obtaining the status of a dormant company. Since in the given case, Rudraksh Ltd. has not filed financial statements or annual returns for 2 financial years consecutively, the Registrar shall issue a notice to that effect and enter the name in the register maintained for dormant companies.
 - (ii) As per section 149(6) read with Rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*, the public companies of prescribed class shall require to appoint minimum 2 Independent directors. However, vide Notification number G.S.R. 839(E) dated 5th July, 2017, an amendment was issued through the *Companies (Appointment and Qualification of Directors) Amendment Rules, 2017* inter-alia amending rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*. It is provided that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors. So, the proposal for appointment of Independent Director (Mr. Ram & Mr. Rahim) is not necessitated.
9. (i) There is no provision in the Companies Act, 2013 under which the board meetings must be held at any particular place. Therefore, there is no difficulty in holding the board meeting at Delhi even if all the directors of the company reside at Maharashtra and the registered office is situated at Maharashtra provided that the requirements regarding the holding of a valid board meeting and the other provisions relating to the signing of register of contracts, taking roll calls, etc. are complied with.
 - (ii) Section 173 (3) of the Companies Act, 2013 provides for the giving of notice of every board meeting of not less than seven days to every director of the company. There is no provision in the Act laying down the contents of the notice. Hence, it may be construed that notice may be interpreted as intimation of the meeting and does not

