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The Institute
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The Chartered Accountant **STUDENT**

Your monthly guide to CA news, information and events



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“
A man is but the
product of his
thoughts. What
he thinks, he
becomes.

**MAHATMA
GANDHI**

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SWACHH BHARAT - A STEP TOWARDS CLEANLINESS

ANNUAL SUBSCRIPTION RATES

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Dear Students,

As the year 2018 draws to an end, it is time to introspect, to take stock of your achievements as well as what still remains to be achieved in your *to do* list. Make a list of your achievements, the events contributing to them and the outcomes. As you reflect upon your accomplishments during the year, you would realise that positive outcomes are a result of good guidance, meticulous planning and impeccable execution of your action plan. Any activity, big or small, important or mundane, needs clarity of thought, sincere and timely efforts, attention to details and good intent to yield desirable results.

ICAI: Your Alma Mater

We at ICAI, your alma mater, have always stood by you, have always taken proactive and exemplary initiatives to facilitate best resources, catering to your learning needs. We have strived to address your concerns from time to time. As the premier accounting body, it is our prime responsibility to ensure that the institution is known for quality education and produce professionals with intellect devoted towards common good. True greatness stems from a deep understanding of the need to drive change for the better. We have been working tirelessly and will continue to do so to ensure that Indian Chartered Accountants are respected globally for their sharp acumen, analytical ability and technical expertise.

I know that you strive hard for weeks and months together to get where you truly belong. It is not just your journey through trials and tribulations but ours as well, as we work arduously to put together and provide the best resources to enhance your skills and enrich your knowledge. We are all working together for a common objective to enhance the glory of our Institute and the profession. Our aim is to not just make you all exam ready, but future and profession ready.

Recent Initiatives

Let's have a glance at the various initiatives undertaken for our students:

- **Live Virtual Classes:** Live Virtual Classes for CA Intermediate and Final students, appearing for May and November 2019 examinations have commenced. Subject experts from across the country are conducting these classes.
- **Practical Training Assessment:** To reinforce the significance of practical training component, online MCQ

based Practical Training Assessment has been introduced, which is to be taken after the first and second year of training. Grades will be awarded that would appear on the Final mark-sheet.

- **MCQ based Assessment:** An assessment system for CA Intermediate and Final from May 2019 exams is being introduced, wherein 30% of the questions in select papers will be MCQ based.
- **Student Activity Portal:** Through this portal students can register online for various events conducted by the BoS such as conferences, seminars, quiz, workshops, mock tests etc., and can also provide feedback on events.
- **Online Articleship and Industrial Training Portal:** The portal serves as a common platform for our members, students, firms and organisations (public/private) to interact with one another, enabling them to search, shortlist and schedule interviews with interested students, helping to bridge the requirement gap amongst members/industries and students seeking articleship/industrial training.
- **Reading Room Portal:** Students can register online anytime, anywhere by paying the fee online through Credit card/Debit card, Net banking or e-wallet to avail the facilities at the desired place, across the country.

International Conference for Students

It gives me immense pleasure that the International Conference for students is being organised with the theme: "Knowledge & Training with Ethical Quotient - Pathway to Professional Excellence" during January 5-6, 2019 in Ahmedabad. The event would create an opportunity for the students to understand and appreciate the impact of developments and innovations across the borders. The Conference would cover contemporary issues in the accounting domain, providing a wonderful platform for students to meet, share their knowledge/experiences and learn about diverse socio-cultural environments prevailing in different parts of the world. I am sure that the participants will benefit from technical sessions at the conference.

As students, you must attend the event to enrich your repertoire. You must prepare to face the challenges as they are stepping-stones that exhort you to devise your own mechanism to tackle them, helping you to explore new pathways to learning. In words of Emerson, "Every wall is a door". Every challenge is a hidden opportunity beckoning you. As Zig Ziglar puts it, "It's not what you've got; it's what you use that makes a difference".

I extend my heartiest best wishes for a peaceful, warm and wonderful Christmas!

CA. NAVEEN N. D. GUPTA
PRESIDENT, ICAI, NEW DELHI

CHAIRMAN'S COMMUNICATION ||



Dear Students,

The year 2018 is drawing to an end reminding us that another year of our life is blending into history. If January is the month of resolutions, December is the month for introspection. It is the month to look back, analyse and find out what we have done and what we have missed out. It is also the month to accelerate the pace to achieve the targets. While looking back, we will find pleasant as well as not so pleasant events and experiences. All these should have made us smarter, more mature and wiser. In life, there are no mistakes but only lessons. The year-end is the apt time when one can assess what he has learnt during the year and at what cost.

The November 2018 CA Examinations are just over and you might be in a jovial mood of refreshing yourself after putting a lot of arduous efforts to get through one of the most important examinations of your enduring professional career. I am hopeful that you will shimmer with resounding success. Now you must start thinking and act sincerely on achieving your professional endeavours. I believe that you will keep the spirit of positive attitude alive towards learning and uphold the values of the accounting profession.

The popularity of the accounting profession is growing along with a paradigm shift in our strong economy. With the New Year bells ringing, good news is underway for India as its economy is poised to win back its tag of the fastest growing economy in the world. The recent upgrade of India's rating by Moody's in recognition of the reforms agenda pursued by the Government is a major boost to investor confidence. Further, as the short term disruptions caused by major reforms such as the Goods and Services Tax (GST) and demonetisation recede, the economy is on the rebound and is likely to achieve higher growth targets in the New Year.

The contemporary time is beckoning you to become all round professionals to face the global challenges successfully. To face the diverse challenges with confidence, you must hone your skills in the emerging areas and mould your personality in a holistic manner. As you know, the accounting profession demands ignited minds like yours

that can spark brilliance and excellence. The horizons of CA profession are very wide and I am sure that you will be able to surpass all the encumbrances with a note of enthusiasm.

Here, I would like to emphasise that the CA Students' Conferences and Conventions are good platforms for the students to demonstrate their hidden talents and learn new things. To spread the knowledge on contemporary topics, the Board of Studies is organising an International CA Students' Conference on 5th & 6th January, 2019 in Ahmedabad. The event would be an opportunity for the students to learn and appreciate the impact of developments and innovations across the borders. The Conference would cover contemporary issues emerging in the accounting domain and would provide excellent opportunity for the students of the Chartered Accountancy course from different parts of the world to meet one other and share their knowledge and experiences. It will also be an opportunity to share and learn about diverse socio-cultural environment prevailing in different parts of the world.

The Institute, in all its endeavors, ensures to provide you an edge over others for measuring new heights of professional success. A potential Chartered Accountant gets advantage over his or her professional competitors. Our glorious profession has created very high standards of accounting and proved to be very effective in helping business. I expect that you should also remember that our profession is all about rich values so uphold these values and bring glory to our fascinating profession. I would also like to extend my heartiest greetings to all of you on the happy occasion of Christmas.

Wish you all the best

A handwritten signature in black ink, appearing to read 'Dhinal A. Shah'.

CA. DHINAL A. SHAH
CHAIRMAN, BOARD OF STUDIES, ICAI

Recent Significant Advance Rulings in GST



V S Datey*

Introduction

“Advance ruling” means a decision provided by the Authority or, as the case may be, the Appellate Authority to an applicant on matters or on questions specified in section 97(2) or section 100(1), as the case may be, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant – section 95(a) of CGST Act.

Application for advance ruling can be made in respect of supply ‘being undertaken’. Thus, a person can apply even in respect of activity he is already doing, though really that is not the idea of ‘Advance Ruling’.

Questions for which advance ruling can be sought

The question on which the advance ruling is sought shall be in respect of any of following [section 97(2) of CGST Act].

- classification of any goods or services or both under the Act.
- applicability of a notification issued under provisions of the Act
- determination of time and value of the goods or services or both.
- admissibility of input tax credit of tax paid or deemed to have been paid.
- determination of the liability to pay tax on any goods or services or both.
- whether applicant is required to be registered.
- whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Section 100(1) of CGST Act is in respect of appeal filed before Appellate Authority against ruling of Advance Ruling Authority.

Authority for Advance Ruling in each State

Authority for Advance Ruling (AAR) has been constituted in each State. The AAR normally consists of two officers. The Central Government and the State Government shall appoint an officer not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.

(*The Contributor is a noted author.)

Appellate Authority for Advance Ruling (AAAR) has also been constituted in many States.

The Authority for Advance Ruling will give a decision on question raised before it. Such ruling will be binding on the applicant and the department. The decision is not similar to decision of Tribunal. The decision of Tribunal is binding on others who were not party to the case. However, ruling of AAR and AAAR is binding only on appellants. Even in case of department, it is binding only in respect of that applicant and not in other cases.

So far, over 150 decisions of AAR have been reported wherein there are some conflicting rulings also.

Though ruling of Authority for Advance Ruling does not have value as precedence, it surely has persuasive value. Since many controversial issues are coming before AAR, it would be educative to study them, as many of these decisions may come before Tribunal, High Court and Supreme Court in due course.

Some rulings of Authority for Advance Ruling are summarised in this article, some of which are surely debatable and arguable.

AAR cannot take issue relating to place of supply?

In *Utility Powertech Ltd. In re* (2018) 68 GST 750 = 95 taxmann.com 88 (AAR – Chhatisgarh), it has been held that AAR cannot take question relating to place of supply – same view in *Esprit India P Ltd. In re* (2018) 69 GST 285 = 95 taxmann.com 203 (AAR – Haryana).

AAR cannot decide whether supply is inter-state supply or intra state supply – *Fichtner Consulting Engineers (I) P Ltd. In re* (2018) 69 GST 839 = 97 taxmann.com 153 (AAR).

The decision seems doubtful as liability to pay tax (whether IGST or CGST plus SGST/UTGST is payable) depends on determination of place of supply.

AAR cannot determine issue of transitional input tax credit

Transitional Input Tax Credit is in respect of duties paid under other Acts. Hence, it is beyond jurisdiction of AAR – *Sino Resources In re* (2018) 68 GST 709 = 94 taxmann.com 138 (AAR-AP).

AAR cannot determine issue relating to Foreign Trade Policy

AAR cannot determine issue relating to Foreign Trade Policy or procedure under Advance Authorisation – *Spentex Industries Ltd. In re* (2018) 68 GST 876 = 96 taxmann.com 49 (AAP – AP).

Recipient of goods or services cannot apply for advance ruling

Recipient of goods or services cannot apply for advance ruling where tax is payable by supplier and there is no

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reverse charge – *Visvesvaraya National Institute of Technology, Nagpur, In re (2018) 69 GST 621 = 97 taxmann.com 84 (AAR) * Dr. Dathu Rao Memorial Charitable Trust In re (2018) 69 GST 899 = 97 taxmann.com 158 (AAR-TN).*

No advance ruling if matter already pending or decided in any proceedings

Application for advance ruling will not be admitted if matter is already pending or decided in any proceedings in the case of applicant – proviso to section 98(2) of CGST Act – noted and followed in *Veeram Natural Products In re (2018) 69 GST 897 = 97 taxmann.com 159 (AAR-TN).*

GST on solar plant or solar heating system

Solar water heater system or solar plant is taxed at 5% if supplied as goods. However, if it is a contract for supply of equipment plus its installation, erection and commissioning it becomes a 'works contract'. It is defined as service and GST rate may be 18%.

Thus, intention of legislation in giving tax relief to certain specified plant, machinery and equipment and levying higher rate of luxury goods will be lost.

Solar water heater system or solar plant is taxed at 5%, but if it is supplied with erection and commissioning, and if the supply is treated as service, the tax rate on entire works contract (including value of solar water heater system) would be 18%, as has been held in *Fermi Solar Farms (P.) Ltd. In Re [2018] 67 GST 599 = 93 taxmann.com 96 (AAR-MAHARASHTRA) * Swati Dubey, In re [2018] 68 GST 689 = 96 taxmann.com 50 (AAR-MADHYA PRADESH) * Giriraj Renewables P Ltd. In re [2018] 68 GST 177 = 93 taxmann.com 93 (AAR – Maharashtra).*

Installation of solar water pumping systems is works contract and taxable @ 18% - *Tag Solar System In re (2018) 97 taxmann.com 455 (AAR Rajasthan).*

Erection, procurement and commissioning contract for 'solar power plant' is a works contract and attracts 18% IGST (or 9% CGST plus 9% SGST) – *RFE Solar P Ltd. In re (2018) 70 GST 74 = 97 taxmann.com 198 (AAR – Rajasthan).*

In *Giriraj Renewables P Ltd. In re [2018] 69 GST 64 = 94 taxmann.com 286 (AAR – Karnataka)*, the major component of solar plant constituting about 70% of entire plant was supplied by owner and about 30% supply was of applicant. It was held that this is not a composite supply of solar plant. It was also held that sub-contractors are not eligible for any concessional rate as applicable to solar plant.

In *Dinesh Kumar Agrawal In re [2018] 68 GST 537 = 94 taxmann.com 85 (AAR-AP)*, it was held that turnkey ECP Project of supply of solar power generating system is not 'supply of goods'. It is a service contract with GST rate of 18%. If goods are supplied by one person and services by other person, rate for goods can be 5% and rate for services 18%. If both goods and services are supplied by same person in split contract, if such splitting is artificial and colourable device to avoid legitimate tax, it will be treated as contract of service i.e. 18%.

The issue is highly debatable. Para 6(a) of Schedule II of CGST Act states that composite supply of 'works contract'

shall be treated as 'supply of services'. General rate of GST on composite supply of works contract services is 18%. Really, in my view, works contract is a composite supply and tax rate will be on basis of principal supply.

Thus, in my view, installation of solar plant is composite supply and if supply of solar equipment as goods is Principal supply, GST rate should be 5%.

Printing work when only contents are supplied by publisher

In some cases, the customer supplies only contents while paper is procured by printer and printing is also done by printer. The issue is whether it is supply of goods or service. This is not job work as the customer does not supply paper.

In many cases, AAR (and also CBI&C) has taken view that this is supply of service.

Printing of contents (like photographs, posters, designs) supplied by customer on photographic paper is not 'supply of goods' i.e. not supply of 'other printed matter' under chapter heading 4911. The activity is service of 'printing of photograph from media' classifiable as service under heading 9989 (GST rate 12%) – *Photo Products Company P Ltd. In re (2018) 68 GST 371 = 93 taxmann.com 479 (AAR – West Bengal).*

In an exactly contrary view, in *Macro Media Digital Imaging P Ltd. (2018) 68 GST 409 = 94 taxmann.com 135 (AAR-Telangana)*, it has been held that the activity is classifiable as supply of goods under heading 4911 (Other printed matter), as it is transfer of title in goods i.e. movable property.

In my view, the decision of Telangana AAR seems more logical.

In *Edutest Solutions (P.) Ltd., In re [2018] 69 GST 820 = 98 taxmann.com 9 (AAR-Gujarat)*, it has been held that activity of printing of test papers/question papers by applicant for its clients (Secondary and Higher Secondary Education Boards of various States, other educational institutes and others) should be treated as supply of service under 9989. In this case, manuscript material for printing question papers relating to examinations was supplied to applicant by Boards and he was printing with own paper. It was held that tax rate is 12% (6% CGST plus 6% SGST/UTGST or 12% IGST). However, if service is supplied to educational institution, it would be exempt.

In *Ashok Kumar Basu., In re [2018] 69 GST 775 = 97 taxmann.com 665 (AAR-West Bengal)*, it has been held that service of printing Question Papers for Educational Institutions for specific examination is classifiable under SAC 9992. Service to such Educational Institutions relating to conduct of examination, as described in 66(b) (iv) of Notification No.12/2017-CT(Rate) dated 28-6-2017, includes supply of service of printing question papers, and is exempt under GST Act. It is exempt supply.

Service of printing of question papers, OMR sheets, answer books, mark sheet, scanning and processing of results is for conducting examination and is exempt – *K L Hi-tech Secure Print Ltd. In re (2018) 98 taxmann.com 127 (AAR-Telangana).*

In my view, really it is supply of goods as it is not mere job work. Even then, the question papers should fall under HSN code 4911 and tax rate should be 12%.

Printing of pamphlets where contents are supplied by buyer/client is supply of service falling under SAC No. 9989 – *Temple Packaging P Ltd. In re (2018) 70 GST 36 = 97 taxmann.com 154* (AAR – Daman, Diu and DNH).

GST rate on supply of food is 5% without ITC, no provision to avail ITC and pay tax @ 18%

The GST rate of 5% on supply of food is mandatory. There is no option to pay tax @ 18% and avail Input Tax Credit – *Coffee Day Global Ltd. In re (2018) 69 GST 901 = 97 taxmann.com 426* (AAR-Karnataka).

Supply of food in canteen to employees will subject to GST

In *Caltech Polymers (P) Ltd., In re [2018] 67 GST 95 = 92 taxmann.com 142* (AAR-Kerala), it has been held that GST is payable of supply of food in canteen made to workmen on chargeable basis – confirmed in *Caltech Polymers (P) Ltd., In re [2018] 98 taxmann.com 355* (AAAR-Kerala).

Accommodation Services supplied to SEZ unit

If supply is for operations, these will be zero rated supplies. These can be made under LUT/bond without payment of GST or on payment of IGST. If such supply is for authorised operations, IGST will be refunded if paid or input tax credit refund can be obtained if supplied under LUT/Bond. Endorsement of specified officer of SEZ will be required that these services are for authorised operations - CBI&C circular No. 48/22/2018-GST dated 14-6-2018.

However, in a contrary decision, in *Gogte Infrastructure Development Corporation Ltd. In re (2018) 68 GST 20 = 93 taxmann.com 201* (AAR – Kar), it has been held that in case of accommodation services supplied to employees and guests of SEZ units outside the SEZ are taxable to CGST and SGST (of State where the hotel is located).

Promoting foreign university course in India is not export of services, it is intermediary service and taxable

In *Global Reach Education Services (P) Ltd., In re [2018] 96 taxmann.com 107* (AAAR-West Bengal), appellant was promoting courses of foreign university in India. The activity was to find suitable prospective students to undertake courses, and, in accordance with university procedures and requirements, assisting in recruitment of suitable students. It was held that, appellant is to be considered as an intermediary in terms of section 2(13) of IGST Act and, therefore, services of appellant are not 'Export of Services' under GST Act, and are eligible to tax. [confirming decision of AAR in *Global Reach Education Services (P) Ltd., In re [2018] 92 taxmann.com 211* (AAR - Kol.)] In my view, the decision is correct.

Private coaching classes

Private coaching classes are subject to GST @ 18% - *Simple Rajendra Shukla In re (2018) 68 GST 73 = 93 taxmann.com 97* (AAR).

Diagnosis and pre and post counselling service is health care service

In *Sayre Therapeutics (P) Ltd., In re [2018] 69 GST 87 = 93 taxmann.com 418* (AAR-Karnataka), applicant was involved in providing services of diagnosis, pre and post counselling, therapy and prevention of diseases by providing tests that are sophisticated and relevant. Medical team of applicant was facilitating diagnosis process. It was held that applicant qualifies to be a clinical establishment and services provided by it qualify to be healthcare services which attract nil rate of central tax.

Liquidated damages recovered for delay in supply of goods are subject to GST

GST is payable on liquidated damages recovered for delay in supply of goods, as it is tolerating an act for delay, but for a price or damages - *Maharashtra State Power Generation Company Ltd., In re [2018] 68 GST 494 = 93 taxmann.com 266* (AAR - Maharashtra).

Tenant getting rent for alternate accommodation for vacating flat for redevelopment or getting compensation for late completion for redevelopment

Amount received by tenant towards alternate accommodation or delayed possession of new premises would be receipt of amounts for doing an act i.e. vacating premises for redevelopment as well as tolerating construction cum redevelopment work till possession of new redeveloped premises and further for tolerating an act of not having completed redevelopment period within time, would be a 'supply' and therefore, GST to be levied on such amount - *Zaver Shankarlal Bhanushali, In re [2018] 68 GST 730 = 95 taxmann.com 3* (AAR - Maharashtra).

Of course, taxability will arise only if the tenant is getting amount exceeding Rs 20 lakhs per annum, or where tenant is registered under GST.

Goods held as 'agricultural produce'

In *Sardar Mal Cold Storage & Ice Factory, In re [2018] 68 GST 890 = 95 taxmann.com 122* (AAR- Rajasthan), it has been held that following are 'agricultural produce' - Fennel (Saunf), Coriander (Dhaniya), Cumin Seeds (Jeera), Carom Seeds (Ajwain), Fenugreek Seeds (Kasoori Methi), Mustard Seeds (Sarson), Brown Mustard Seeds (Rai), Nigella Seeds (Kalonji), Poppy Seeds (Posara Dana).

List of goods held as not 'agricultural produce'

In *Sardar Mal Cold Storage & Ice Factory, In re [2018] 95 taxmann.com 122* (AAR- Rajasthan), it has been held that following are not 'agricultural produce' -

- Turmeric (Haldi) and dried ginger (sonth)
- Tamarind

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- Dry mango (sukha amchur), kathodi (sukhi kathodi), dry gooseberry (sukha amla), dry water caltrop/water cashewnut (dry Singadha), dry peas (sukha matar)
- Cinnamon (Dalchini), Gum (Gond), Arjuna Chaal (Arjun Chaal)
- Groundnuts (Mungfalli), Coconut (Copra Cola)
- Dry fruits such as Fig (Anjeer) Almond (Badaam), Walnuts (Akhrot), Pistchio (Pista), Lotus Seed Pop (Phool/Tal Makhana) etc.

However, in *Erode Manjal Vanigarkal Matrum Kidagu Sangam In re (2018) 69 GST 910 = 97 taxmann.com 450* (AAR – TN), it was (indirectly) held that turmeric is 'agricultural produce' and service of commission agent in respect of turmeric is exempt [Really in this decision, it was taken for granted that turmeric is agricultural produce and there is no specific ruling that turmeric is 'agricultural produce'].

Processed tea leaves is not agricultural produce, when activity of manufacture is carried out in warehouse

Processed tea leaves is not agricultural produce when activity of manufacture is carried out in warehouse and final product i.e. tea bags are also stored in same warehouse – *Nutan Warehousing Co. Ltd. In re (2018) 69 GST 661 = 96 taxmann.com 362* (AAR-Maharashtra).

Service of construction of sewage treatment plant

Service of construction of sewage treatment plants supplied to Jaipur Development Authority is covered under Sr No 3(vi)(a) of notification No. 11/2017-CT (Rate) dated 28-6-2017 and subject to tax @ 12% - *Tata Projects Ltd. In re (2018) 68 GST 420 = 94 taxmann.com 86* (AAR-Rajasthan).

Services supplied by Indian Institute of Management

Indian Institute of Management (IIM) is educational institution and eligible for general exemption under Sr No. 66(a) - *Indian Institute of Management, Kolkata In re [2018] 99 taxmann.com 80* (AAR-West Bengal)

In a contrary decision, in *Indian Institute of Management, Bangaluru In re, [2018] 99 taxmann.com 131* (AAR-Karnataka), it has been held that though IIM is 'educational institution', IIM is eligible for exemption under Sr No. 67 only. Hence, Long duration post-graduate diploma/degree-granting programmes offered by Indian Institute of Management, Bengaluru other than those specifically covered under Sl. No. 67 of Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017 are not exempt from GST. Both Serial Nos. 66 and 67 are related to all educational services covered under same heading 9992. Serial No. 67 is specifically carved out for educational services provided by Indian Institutes of Management. When Notification No. 12/2017 provides for a specific entry for Indian Institute of Management at serial No. 67, provisions of serial No. 66 shall not apply to them – similar decision in *Indian Institute of Management, Indore In re [2018] 97 taxmann.com 318* (AAR-Madhya Pradesh).

Really, decision of West Bengal AAR seems correct as even if specific exemption under Sr No. 67 is provided, general exemption as available under Sr No. 66(a) cannot be denied.

Conclusion

It is good that many controversies and issues are being addressed at early stages of implementation of law, due to Advance Rulings. This will enable GST Council to take timely remedial steps.

CA Students Conference - BANGALORE

Organized by: Board of Studies, ICAI

Hosted by: Bangalore Branch of SIRC and SICASA of ICAI

THEME: "KNOWLEDGE & TRAINING WITH ETHICAL QUOTIENT - PATHWAY TO PROFESSIONAL EXCELLENCE".

15TH & 16TH DECEMBER, 2018

**DR. B R AMBEDKAR BHAVAN,
MILLERS ROAD, BANGALORE**

DAY-1

10.00 am to 10.45 am	Inaugural Session
10.45 am to 11.30 am	Special Session : I: Interaction and Open House with Board of Studies
12.00 Noon to 01.00 pm	Technical Session : I: Topic: Whether Capital Gain is a real Gain Considering the recent Changes
2.00 pm to 3.00 pm	Technical Session : II: Topic: Discussion on Input Tax Credit
3.00 pm to 3.45 pm	Special session : II: Topic: How CA Profession help the student to reach on self-actualisation stage
4.15 pm to 5.15 pm	Technical Session : III: Topic: Critical Changes in Company law

DAY-2

10.00 am to 11.00 am	Special Session :III: Topic: Motivational Session
11.00 am to 12.00 Noon	Technical Session : IV: Topic: Audit Approach for E – Commerce Business
12.30 pm to 1.30 pm	Technical Session :V : Topic: Key Difference between AS & Ind AS
2.30 pm to 3.30 pm	Special Session :V: Special Address by: IAS officer / IIM Faculties / CFO'S
4.00 pm to 4.45 pm	Technical Session :VI: Topic: Technological Trends in Accounting and Auditing

Registration Fee	₹ 500/- per student	Accommodation (if required) @ ₹ 1000/- per student per day.
Payment Mode	The student has to register & make the payment online on the Portal itself, the link will be http://bosactivities.icai.org/	

Insolvency and Bankruptcy Code, 2016 - Significant Changes Unlocked



Ashhok Saxena

Background

A new era has dawned upon India Inc., after the promulgation of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') w.e.f. May 28, 2016, the edifice of which was drafted by a specially constituted 'Bankruptcy Law Reforms Committee' (BLRC) under the Ministry of Finance. Its enactment has heralded a major economic reform which contemplates creditor-driven insolvency resolutions to be conducted in a time bound manner. Having an overriding effect, the Code seeks not to attract any further legal action under other prevailing laws like grant of stay etc., while dealing with insolvency matters. Prior to the birth of Code, there were multiple and overlapping laws as well as manifold adjudicating forums dealing with business failures and insolvency of corporate persons, partnership firms and individuals in our country. In short, liquidation of Companies was handled by the High Courts; individual insolvency cases were dealt with under the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920. The other laws which had a say in the matter included Sick Industrial Companies (Special Provisions) Act (SICA), 1985; Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 as well as Companies Act, 1956 which has since been replaced by the Companies Act, 2013. The enforcement of Code is a much needed economic reform legislation which encompasses in its fold corporates, partnership firms and individuals but excludes financial firms, for a different legislative structure is in the offing to provide for bankruptcy resolutions in case of weakening banks or other financial institutions.

Ours is a dynamic world where changes and reforms are but natural. As the Code is evolving day by day based on the experiences gained, attempts have been made to smoothen its functioning from time to time. Accordingly, the Code was amended by promulgating the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, effective from 23-11-2017 which was later on repealed by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, effective retrospectively from 23-11-2017. Again, significant changes were made in the Code by promulgating the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, effective from 06-06-

2018 (it incorporated most of the amendments suggested by the Insolvency Law Committee (ILC) constituted in November, 2017) which was later on repealed by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, effective retrospectively from 6th day of June, 2018. This Article deals with significant changes/amendments made to improve the Code as far as possible.

Recognition of Flat Purchasers/Home-buyers as 'Financial Creditors'

Section 5 (8) of the Code defines the term 'financial debt'. By adding Explanation (i) in Section 5 (8) (f) of the Code (*inserted vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06-06-2018*), flat purchasers/home-buyers have been categorised as 'financial creditors'. The inclusion of *Explanation (i)* has the effect of including in the 'financial debt' any amount raised from an allottee under a real estate project and such amount shall be deemed to be an amount having the commercial effect of a borrowing. This opens up a level playing field for the allottees under a real estate project, allowing them to perform a significance part by being the part of the Committee of Creditors (CoC) when the Corporate Insolvency Resolution Process (CIRP) is initiated against the corporate debtor. The allottees, as other financial creditors, shall now have a say whether to agree to a resolution plan as submitted by the Insolvency Resolution Professional or to discard it if it adversely affects their interest.

Before this amendment the situation was somewhat different, the allottees did not form part of the Committee of Creditors (CoC) and therefore, they could not be considered a decisive factor in acceptance or rejection of resolution plan though they had contributed substantially for the implementation of the real estate project. While dismissing a petition at the admission stage itself, which was filed under Section 9 that allows the operational creditors to file application for initiation of corporate insolvency resolution process [*refer Col. Vinod Awasthy vs. AMR Infrastructure Limited – CP No. (IB)10 (PB)/2017*], the Hon'ble National Company Law Tribunal (NCLT) did not consider the flat purchaser an 'operational creditor'. As observed by the Tribunal, the term 'operational debt' [*refer definition given by Section 5 (21)*] could not be said to include a debt other than a financial debt; rather, 'operational debt' needs to be confined only to the four categories of creditors i.e. goods, services, employment and Government dues. Since debt owed to the flat purchaser by the builder company had not arisen from supply of any goods, or rendering of any services, or on account of employment or because of dues payable to the Central Government, any State Government or any local authority, the petitioner being flat purchaser could be considered as an 'operational creditor' [*refer definition given by Section 5 (20)*] and therefore, for recovery of his dues he had to

(*The Contributor is a practicing Company Secretary.)

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resort to other remedies available under different laws. After the amendment this situation has been eased out and now the retail customers in the real estate industry shall be treated at par with banks and other financial creditors.

The number of home-buyers in a real estate project is quite large and therefore, every individual home-buyer cannot be the part of Committee of Creditors (CoC). To address concerns relating to multiplicity, sub-section (6A) has been inserted in Section 21 *vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06-06-2018*, providing for appointment of a representative. Thus, if a financial debt is owed to a class of creditors exceeding the specified number, the Interim Resolution Professional (IRP) shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, different from IRP, to act as the authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the CoC. Such authorised representative shall attend the meetings of the CoC, and vote on behalf of each financial creditor to the extent of his voting share.

Persons not Eligible to be considered as Resolution Applicants

With the introduction of Section 29A (*inserted vide Insolvency and Bankruptcy Code (Amendment) Act, 2018 w.e.f. 23-11-2017 and further amended vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06-06-2018 providing more clarifications as to the ineligibility*) certain persons have been made ineligible to be considered as Resolution Applicants. Before the emergence of Section 29A, every individual or body corporate was allowed to participate in the resolution process and could submit its resolution plan; thus letting such promoters also who did not repay the creditors and who in fact were responsible for the downfall (fraudulently or otherwise) of the corporate debtor to regain control of the same debt-ridden company at substantial discounts whereas the bankers and financial institutions who lent the funds had to bear the loss in the form of bad debts. With its enforcement, Section 29A provides for disqualification criteria in respect of various resolution applicants who are debarred from submitting resolution applications.

Ineligible Resolution Applicants as per Section 29A

According to Section 29A which attaches disqualifications to certain persons and provides for the eligibility criterion, following persons including any other person acting jointly or in concert with such persons have been deprived of submitting a resolution plan:

- (a) An undischarged insolvent.
- (b) A willful defaulter as per the guidelines issued by the RBI under the Banking Regulation Act, 1949.
- (c) At the time of submission of resolution plan, a person who 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 a non-performing asset (NPA) as per the guidelines issued by

the RBI or the guidelines of a financial sector regulator issued under any other law for the time being in force and at least a period of one year has lapsed from the date of such classification till the date of commencement of CIRP of the corporate debtor.

Exception to Clause to (c):

- (i) A person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan.
- (ii) Nothing in clause (c) shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

It is clarified that:

- (i) 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.
- (ii) 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 clause (c) 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.

In effect, clause (c) disqualifies such persons who are in control of NPA accounts which have remained so for more than one year at the time of submission of resolution plan. However, disqualification is not applicable to a financial entity which is not a related party to the corporate debtor. Further, a resolution applicant who has acquired a non-performing asset (NPA) through CIRP during the last three years before the date of submission of resolution plan shall also not be disqualified because of clause (c).

- (d) A person who has been convicted of any offence punishable with imprisonment for two years or more under any Act specified in Twelfth Schedule of the Code or for seven years or more under any law for the time being in force.

Exception: Clause (d) shall not apply to a person after the expiry of two years from the date of his release from imprisonment; and further, it shall also not apply in relation to a 'connected person' referred to in Explanation I (iii) i.e. holding company, subsidiary company, associate company or a related party of a person who is the promoter or in the management or control of the resolution applicant or a related party of a person who shall be the promoter or

in management or control of the business of the corporate debtor during the implementation of the resolution plan.

- (e) A person who is disqualified to act as a director under the Companies Act, 2013.

Exception: Clause (e) shall not apply in relation to a 'connected person' referred to in *Explanation I (iii)*.

- (f) A person who is prohibited by the SEBI from trading in securities or accessing the securities markets.
- (g) A person who has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under the present Code.

Exception: Clause (g) shall not apply if any of the transactions referred to in (g) has taken place prior to the acquisition of the corporate debtor by the resolution applicant in terms of 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 any of such transaction.

- (h) A person who has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under the Code and such guarantee has been invoked by the creditor and remains unpaid in full or part.
- (i) A person who is subject to any disability, corresponding to clauses (a) to (h) as mentioned above under any law in a jurisdiction outside India.
- (j) A person who has a connected person not eligible under clauses (a) to (i) as mentioned above.

In above mentioned clauses, the terms 'connected person' and 'financial entity' have been used at certain places. The meanings of both the terms are given below:

Meaning of "Connected Person": It means:

- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii).

In connection with the meaning of "Connected Person" it is clarified that:

- (a) Nothing in clause (iii) shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

- (b) 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.

Meaning of Financial Entity: It means-

- (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.
- (c) any investment vehicle, registered Foreign Institutional Investor (FII), registered Foreign Portfolio Investor (FPI) or a Foreign Venture Capital Investor (FVCI).
- (d) an Asset Reconstruction Company (ARF) registered with RBI.
- (e) an Alternate Investment Fund (AIF) registered with SEBI.

Micro, Small and Medium Enterprises (MSMEs) – Exemption to Promoters

With the insertion of Section 240A *vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06-06-2018*, the promoters of Micro, Small and Medium Enterprises (MSMEs) have been exempted from the application of provisions of clauses (c) and (h) of section 29A which disqualifies certain persons to act as resolution applicant in respect of CIRP. This being the boosting provision for the promoters of MSMEs as they can also participate in the bidding process under the Code unless they are willful defaulters or suffer from any disqualifications related to the defaults, increases their chances of reviving the units owned by them. MSME is a significant sector of the economy which supplies essential products to the large industries and provides livelihood to a large number of employees and therefore, it must not be pressed into liquidation due to a harsh provision like Section 29A; hence this exemption is certainly much required one.

Further, Section 240A (2) empowers the Central Government to exempt MSMEs from any other provision of the Code or to apply any of its provision to them in a modified form. This needs to be done by issuing notification which shall be ratified by the Parliament for its continuation.

Eligibility of Resolution Applicant

Before the enactment of Section 29A, anybody could be the resolution applicant to participate in CIRP without any disqualification. However, with the enforcement of Section 29A, Section 30 (1) has been amended *vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06-06-2018*, requiring the resolution applicant himself to certify that he is eligible under section 29A (*i.e. he does not suffer from any disqualification specified in this section*) by submitting

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an affidavit in this respect. Therefore, a resolution plan shall be accompanied by an affidavit stating that the resolution applicant is eligible under section 29A, thus relieving the Resolution Professional from ascertaining the applicant's eligibility.

Approval of Shareholders not Necessary

Section 30 requires the Resolution Professional to examine each resolution plan received by him and confirm that each such plan provides for accomplishment of specified actions including that the plan does not contravene any of the provisions of the law for the time being in force as mentioned in clause (e) of sub-section (2). In respect of clause (e), by way of inserting Explanation *vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06-06-2018*, it is clarified that 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. This timely amendment will not allow the shareholders to interfere while implementing the resolution plan.

Change in Voting Threshold of Committee of Creditors (CoC)

A speedy resolution without much hindrance is the backbone of the Code and only thereafter it can prove to be a useful legislation for the economy as a whole paving way for the revival of sick companies, rather than their liquidation which must be the last option. Accordingly, voting threshold of the Committee of Creditors (CoC) has been lowered from seventy five percent to sixty six percent in the following cases to ease out the situation:

(a) *Extension of Corporate Insolvency Resolution Process (CIRP) beyond 180 days (amendment of Section 12 (2) vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f.06-06-2018)*: Earlier this issue was required to be approved by the Committee of Creditors (CoC) by a majority vote of seventy five per cent of the voting shares but now the approval of CoC is required by a vote of sixty six per cent and accordingly, if instructed to do so by a resolution passed at a meeting of the CoC by a vote of only sixty-six per cent, the Resolution Professional (RP) shall file an application to the Adjudicating Authority to extend the period of CIRP beyond 180 days.

(b) *Appointment of the Interim Resolution Professional (IRP) as a Resolution Professional (RP) or Otherwise (amendment of Section 22 (2) vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f.06-06-2018)*: As regards appointment of IRP as RP or to replace the IRP by another resolution professional, the issue can now be decided by the Committee of Creditors (CoC) by a majority vote of sixty six per cent (*instead of earlier seventy five percent*).

(c) *Replacement of Resolution Professional (RP) (substitution of Section 27 (2) vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06-06-2018)*: If at any time during the CIRP, the Committee of Creditors (CoC) desires

to replace the existing RP with another resolution professional, it can now do so by a vote of sixty six per cent (instead of earlier seventy five percent) of voting shares.

(d) *Approval of Committee of Creditors (CoC) for Certain Actions (amendment of Section 28 (3) vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f.06-06-2018)*: Certain actions as narrated in Section 28 shall not be performed by the RP unless they are approved by the Committee of Creditors (CoC). This issue can now be approved by a vote of sixty six per cent (*instead of earlier seventy five percent*).

(e) *Approval of Resolution Plan by Committee of Creditors (CoC) (amendment of Section 30 (4) vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f.06-06-2018)*: After a resolution plan is received by the RP, it shall be examined by him as per the specified conditions and if satisfied, he shall present the same to the Committee of Creditors (CoC) for its approval. Now it is possible for the CoC to approve such resolution plan, if found feasible and viable, by a majority vote of only sixty six per cent (*instead of earlier seventy five percent*).

(f) *Initiation of Liquidation of Corporate Debtor (amendment of Section 33 (2) vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f.06-06-2018)*: As regards liquidation of the corporate debtor by the Adjudicating Authority, Committee of Creditors (CoC) needs to approve the liquidation. Now it can be sanctioned by the CoC by a vote of sixty six per cent (*instead of earlier seventy five percent*). However, the action regarding liquidation is to be taken before confirmation of the resolution plan, and accordingly, the RP shall intimate the Adjudicating Authority of such decision.

Applicability of Limitation Act to the Code of 2016

With a view to address the controversy surrounding whether the Limitation Act, 1963 is applicable to the Code or not, Section 238A has been inserted *vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06-06-2018*. It states that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority (AA), the National Company Law Appellate Tribunal (NCLAT), the Debt Recovery Tribunal (DRT) or the Debt Recovery Appellate Tribunal (DRAT), as the case may be.

As already pointed out, prior to the insertion of Section 238A w.e.f. 06-06-2018, there were doubts regarding the applicability of the Limitation Act, 1963 to the initiation of Corporate Insolvency Resolution Process (CIRP), more particularly the cases filed under the Code from its commencement i.e. 1-12-2016 and up to 05-06-2018. However, the Hon'ble Supreme Court in *B.K. Educational Services Private Limited vs. Parag Gupta and Associates (Civil Appeal No. 23988 of 2017)*, held that the insertion of Section 238A w.e.f. 06-06-2018, is not going to serve its object unless it is applied retrospectively. Thus, time-barred debts to which the Limitation Act, 1963 is applicable cannot be resurrected under the Code.

In the case cited *supra*, initially, the National Company Law Tribunal (NCLT) disallowed the application for commencement of insolvency proceedings under Section 7 filed by the Parag Gupta and Associates, a financial creditor, for the debt in question was time-barred under the Limitation Act, 1963. An appeal was filed by the Parag Gupta and Associates before the National Company Law Appellate Tribunal (NCLAT) against this order. NCLAT, upholding the appeal, turned down the order passed by NCLT stating that the Limitation Act, 1963 was not applicable to the initiation of Corporate Insolvency Resolution Process (CIRP); and further, if operational creditors or financial creditors for that matter, were in a position to explain the delays reasonably for not filing the applications in time – an action which triggered the provisions of the Limitation Act, 1963 – such applications could be entertained. However, the upholding of appeal by the NCLAT was challenged in the Apex Court by B.K. Educational Services Private Limited; and accordingly, the Hon'ble Supreme Court passed the judgment that the Limitation Act, 1963 was very well applicable to the Code, that too not from 6-6-2018 i.e. the date from which Section 238A had been made effective but from 1-12-2016 itself i.e. the date from which the Code was enforced. The outcome of this judgment is that the cases barred by limitation shall automatically be ousted; thus easing the burden of NCLT as well as NCLAT who can ponder upon and pay more attention to the other viable cases.

Another significant aspect of the judgment of the Hon'ble Supreme Court is when it makes clear that the periods of limitation as mentioned in the Code shall always be applicable irrespective of anything contained to the contrary in the Limitation Act, 1963. This implies that the provisions of the Code relating to the periods of limitation like Section 61 where thirty days, extendable to forty five days, have been prescribed for filing of the appeals shall have overriding effect and therefore, Section 5 of the Limitation Act, 1963 cannot be invoked for condoning the delays in filing appeals. However, Section 5 of the Limitation Act, 1963 can be invoked for condonation of delays, for example, in case of delays in filing applications under Section 7 or Section 9 if the applicant satisfies the Adjudicating Authority that he had sufficient cause for not making the application in time.

Withdrawal of Admitted Application

The Code, when originally promulgated, did not contain any provision as to the withdrawal of an admitted application. However, Rule 8 of the *Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016* does provide that Adjudicating Authority may permit withdrawal of the application made under Rules 4, 6 or 7, as the case may be, on a request made by the applicant before the admission of the application. As noted above, since there existed no provision for withdrawal of an admitted application in the Code, Section 12A has been inserted *vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06-06-2018* which provides that the Adjudicating Authority may allow the withdrawal of application admitted under Section 7 (*Initiation of corporate insolvency resolution process by financial creditor*) or Section 9 (*Application for initiation of corporate insolvency resolution process by operational creditor*) or Section 10 (*Initiation of*

corporate insolvency resolution process by corporate applicant). Thus, an applicant may make a withdrawal application but only with the approval of ninety per cent voting shares of the Committee of Creditors (CoC) in the prescribed manner for consideration by the Adjudicating Authority. The 'ninety per cent' vote share indicates that the withdrawal norm is stringent and not so easy.

Earlier, the Insolvency Law Committee (ILC) constituted in November, 2017, recommended to amend Rule 8 (*mentioned supra*) to pave way for withdrawal of application after it was admitted by the Adjudicating Authority, but only in circumstances where the Committee of Creditors (CoC) approved such withdrawal by a voting share of 'ninety per cent'. Amendment of the Code itself for facilitating the withdrawal of an admitted application is a welcome step. Accordingly, if the promoters of the corporate debtor happen to work out a viable settlement with the financial or operational creditors after the admission of the application by the Adjudicating Authority, they should be permitted to do so under the prevailing law; though such action would require strict norms to be followed so as to guard against the misuse of the legal provision.

Non-Applicability of Moratorium to Guarantors

Section 14 provides that on the insolvency commencement date the National Company Law Tribunal (NCLT) shall declare a moratorium period of 180 days. The effect of moratorium is that it prohibits, *inter-alia*, institution of suits or continuation of pending suits against the corporate debtor, alienating or disposing of by the corporate debtor any of its assets, any action by the creditors to recover or enforce any security interest created by the debtor, etc. However, it was a vital question as well as there were conflicting judgments whether such moratorium would also encompass enforcement action against the assets of the guarantors of the corporate debtor. To set at rest the prevailing controversies, sub-section (3) to Section 14 has been substituted *vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06-06-2018* to provide that the moratorium shall not apply to a surety in a contract of guarantee to a corporate debtor.

It is essentially true that the assets and properties belonging to the guarantor are not that of a corporate debtor and therefore, it is not justifiable to apply moratorium to such assets and properties; and when moratorium is not applicable, the personal properties of the guarantor can be proceeded against on the basis of contract of guarantee for recovery of outstanding dues even though moratorium period is in operation.

Responsibility of Interim Resolution Professional (IRP) for Legal Compliances

From the date of his appointment, an Interim Resolution Professional (IRP) steps into the shoes of the corporate debtor and in terms of Section 17 he is the person who shall manage the affairs of the corporate debtor exercising the powers of the board of directors. By inserting clause (e) in Section 17 (2) *vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06-06-2018*, he has been made responsible for complying with the requirements under any law for the time being in force (for example Companies Act, 2013, Factories

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Act, 1948, various Labour Laws, Regulations made by SEBI, Stock Exchange compliances, if applicable, etc.) on behalf of the corporate debtor.

Continuation of Resolution Professional (RP)

There was ambiguity as to who shall manage the operations of the corporate debtor after the resolution plan is submitted to the National Company Law Tribunal (NCLT) on the expiry of CIRP period of 180 days or extended period of 270 days. In this respect, Section 23 has been amended *vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06-06-2018*, and a proviso has been inserted in Section 23 (1) providing for continuation of the Resolution Professional for management of the operations of the corporate debtor after the expiry of the CIRP period until an order is passed by the Adjudicating Authority.

Conclusion

With the enforcement of the Insolvency and Bankruptcy Code (Amendment) Act, 2018, effective from 23-11-2017 and also the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, effective from 6th day of June, 2018, significant changes have been implemented to improve the Code. However, newly introduced Section 29A which prescribes disqualifications for certain category of persons, even after amendment by the Second Amendment Act

of 2018, needs further refinement because of excessively wide scope of disqualifications. As recommended by the Insolvency Law Committee (ILC), its scope should be limited to actual defaulting persons and reference to persons acting jointly or in concert should be deleted, but the same is yet to be implemented. Even the defaulting person may be allowed to participate in resolution proceedings if he is agreeable to a nominal haircut, say maximum up to five per cent of total outstanding debts at a particular date. As regards treating allottees in a real estate project as financial creditors, the bankers and other financial institutions who have extended housing loans to the home-buyers need to be given due weightage, for example, to let them be the part of Committee of Creditors (CoC) instead of home-buyers who have availed housing loans from them. Another significant question that still remains to be addressed is whether an 'allottee' now considered as 'financial creditor' is a secured creditor or unsecured creditor, for the Code, even after amendment, is silent on this issue. In continuation of non-extension of moratorium period to the guarantors, it should also be clarified that the guarantors' rights are extinguished after the approval of the resolution plan. In the absence of such clarification, there is a possibility that the guarantor may claim such debt amount from the corporate debtor instituting his statutory right of subrogation which he was required to pay as per the terms of the guarantee under the resolution plan.

CA Students Conference - MANGALORE

Organized by: Board of Studies, ICAI

Hosted by: Mangalore Branch of SIRC & SICASA of ICAI

THEME: KNOWLEDGE & TRAINING WITH ETHICAL QUOTIENT – PATHWAY TO PROFESSIONAL EXCELLENCE

12TH & 13TH DECEMBER, 2018

**TOWN HALL,
MANGALURU**

DAY-1

08.30 to 09.30	Registrations
09.30 to 10.00	Inaugural Session
10:00 to 11:00	Special Session: I: BOS Presentation and Interaction with Board of Studies. Topic: - Importance of Article training And Practical Assessment
11.15 to 12.45	Special Session: II: Topic: CA Examination – An Insight
01.45 to 02.45	Technical Session : I: Topic: - 1) IND AS 115 v/s AS 9 v/s IND AS 18; 2) Overview of Valuations standards (done by two people); 3) Quality Control Framework for Statutory Audit in Financial Statements
03.00 to 04.30	Technical session : II: Topic: Corporate Law- Amendments in Company Law; Corporate Crime; Company Insolvency; CSR Audit
04.45 to 05.45	Special Session : III : Topic : Ethical Values in the Profession

DAY-2

08.30 to 09.30	Special Session: Topic: Balance Sheet of Life
09.30 to 11.15	Technical Session : III: Topic : Goods and Service Tax- GST Audit Report; Startup Incubators – GST Advantages and Tax Exemptions; Aggregators – GST Implications
11.30 to 12.30	Technical Session: IV: Topic:- InformationTechnology- Overview of Data Privacy Laws in India and Aspects of Data Protection; Digital India; Cyber Crime : The Challenges in Forensic Accounting
01.30 to 03.00	Technical Session : V: Topic : -Allied Laws- LODR, Amendment in SEBI Act; Capital Markets & Securities Law; Amendments with respect to Benami Transactions, Black Money and Insider Dealings
03.15 to 04.45	Special Session: IV

Registration Fee	₹ 500/- per student	Accommodation (if required) @ ₹ 500/- per day per student
Payment Mode	The student has to register & make the payment online on the Portal itself, the link will be http://bosactivities.icai.org/	



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305448

Landscape of Transfer Pricing (TP) compliances under Indian Income-tax

Emergence of worldwide TP Regulations ('TPR')

Intra-firm trade corresponds to international flows of goods and services between parent companies and their affiliates or among these affiliates¹, commonly referred to as Multi National Enterprises (MNEs). The price charged for such a transaction is referred to as the TP. Given the variety of taxation rates, incentives, exemptions and exchange control regulations, the first assertion that comes to the mind of any seasoned tax authority is that the TP may be controlled to optimise profits / avoid taxes, etc. Any tax authority would be interested in protecting its tax base, i.e. to ensure that the member of the MNE operating in its country pays a fair share of taxes for the activities attributable to the country of the tax authority.

There are two broadly accepted approaches for testing the appropriateness of the TPs, first being the "global formulary apportionment", wherein the global profits are allocated to the member entities of the MNE, based on their respective contribution, whereas, the second approach, which is also more popular, is known as the "arm's length principle", which requires testing of the related party (i.e. controlled) transactions vis-à-vis the transactions between unrelated parties (i.e. under uncontrolled circumstances). The arm's length principle seems to be accepted by most of the countries worldwide under their respective tax laws. Such TPR were introduced in the advanced countries like United Kingdom and the United States in the years 1915 and 1917 respectively. The Organisation for Economic Cooperation and Development (OECD) is the apex authority, which provides guidance on the important aspects of international taxation, which are adopted under the domestic tax laws by the OECD member countries. The OECD published its first report purely on TP matters 1979, which served as a basis for the TP Guidelines (TPG) issued by it in 1995, which was later revised in 2010, the latest being in the year 2017. These TPG provided guidance on the methodology for computation of the Arm's Length Price (ALP), importance of the analysis of Functions performed, Assets employed and Risks assumed (FAR analysis), the documentation to be maintained by the taxpayers and the audits to be conducted by the tax authorities.

Emergence of the Base Erosion and Profit Shifting (BEPS) guidance and TP compliance aspects from the same

A number of countries experienced that the MNEs are possibly achieving a situation of "economic double non-taxation" with the implementation of principle structures, parking of Intellectual Properties (IP) in the member firms located in tax heavens, etc. With this, the developed as well as developing (i.e. G20 nations) approached the OECD to come up with a guidance on the international taxation aspects relating to the changing business trends, MNE business models, etc., which was named as Base Erosion and Profit Shifting (BEPS) project by the OECD, for which 15 different important aspects (referred to as 'Action Plan') of international taxation, requiring guidance, were identified by the OECD. Four out of these Action Plans were dedicated to TP.

A detailed BEPS guidance was issued by the OECD in 2015, wherein, under Action Plans 8-10² a detailed TPG, with an emphasis on substance over form was provided and under Action Plan 13³, a three tier documentation approach was introduced, namely:

1. Country-by-Country-Reporting (CbCR): requiring the MNE to provide statistical details of allocation of income, taxes and business activities by tax jurisdiction and listing of the member entities included in aggregation per tax jurisdiction, along with provision of their main business activities. The CbCR is typically required to be filed by the ultimate parent with its tax authorities and the worldwide tax authorities would have access to the same under the automatic exchange route (subject to the signing of the Multilateral Competent Authority Agreement (MCAA),
2. Master File: Covering the macro picture of MNEs business details, IP creation and management related details and finance and tax related details, including the group's global TP policies, etc.,
3. Local File: Same as the historical TP documentation to be maintained by each member entity, as covered by TPG 1995.

Introduction to Indian TPR (ITPR')

The formal and detailed ITPR was introduced under the Income-tax Act, 1961 ('the Act') with the inclusion of Chapter X by Finance Act, 2001. Section 92 of the Act requires every tax payer entering into an international transaction (i.e.

¹ <https://www.oecd-ilibrary.org>

² Aligning Transfer Pricing Outcomes with Value Creation

³ Transfer Pricing Documentation and Country-by-Country Reporting

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transaction with the cross border MNE member entity) to compute the income therefrom having regard to the arm's length principle. While India is not an OECD member

country, however, the ITPR are broadly similar to the TPG issued by the OECD. India has also adopted the BEPS guidance by the OECD under the ITPR recently.

The Chapter X provides the following provisions of the ITPR

Section	Particulars
92A	The meaning of Associated Enterprise (AE) and deemed AEs
92B	The meaning of international transaction, including the deemed international transaction
92BA	The meaning of Specified Domestic Transactions (SDT) requiring compliance with the arm's length principle
92C	Computation of arm's length price with methods similar to the TPG of the OECD, such as:
a)	Price level comparison: Comparable Uncontrolled Price (CUP),
b)	Gross profit level comparison: Resale Price Method (RPM) ⁴ , Cost Plus Method (CPM) ⁵ ,
c)	Net profit level comparison: Transaction Net Margin Method (TNMM),
d)	Net profit apportionment between the transacting parties: Profit Split Method (PSM) ⁶ .
92CA	Reference to the Transfer Pricing Officer (TPO) ⁷ by the Assessing Officer (AO)
92CB	Power of the Central Board of Direct Taxes (CBDT) to make Safe Harbour Rules (SHR): typically the prescribed circumstances under which the TP will be accepted by the Indian Revenue Authorities (IRA) ⁸
92CC and 92CD	Scheme of Advance Pricing Agreement (APA), where, the taxpayer can agree in advance with the IRA / CBDT on the TP method, methodology, etc.
92CE	Secondary adjustment: i.e. requiring the tax payer to bring in the money to the extent of TP adjustment under the prescribed circumstances, such as (a) voluntary / <i>suo-motu</i> adjustment, (b) acceptance of the TP adjustment made by the AO / TPO by the taxpayer, (c) TP adjustment under APA, (d) TP adjustment under SHR, (e) TP adjustment under resolution under Mutual Agreement Procedure (MAP) under the Double Taxation Avoidance Agreements (DTAAs) or requiring to treat such adjustment as deemed loan attracting interest implications under the ITPR.
92D	Maintenance and keeping of TP documentation and Master File
92E	Tax payer entering into international transaction is required to obtain a report from an Accountant in Form 3CEB ⁹
94B	Thin capitalisation related provisions, where, under the specified circumstances, the deductible interest on AE loans shall be restricted to 30% of earnings before interest, taxes, depreciation, amortisation and the balance can be carried forward to next 8 assessment years
286	CbCR related provisions

The Income-tax Rules, 1962 ('the Rules') also cover the following provisions under the ITPR

Rule	Particulars
10A	Meaning of expressions used in computation of ALP
10AB	Prescription of Other Method: Any other method not fitting under the above categories, but can be considered as a parameter for computation of ALP ¹⁰
10B	Detailed methodology for computation of ALP under Section 92C
10C	Parameters for selection of Most Appropriate Method for computation of ALP
10CA	Detailed guidance on computation of ALP: cases where arithmetic mean can be applied and where the range can be applied and also guidance on the comparable date to be used for the purposes of computation of ALP
10CB	Timelines for funds repatriation for the secondary adjustment and interest computation for delayed / non-recovery of the funds owing to the TP adjustment
10D	Detailed provisions on TP documentation, including contents
10DA	Detailed provisions regarding the Master File
10DB	Detailed provisions regarding the CbCR
10E	Prescription of Form 3CEB for Accountant's Report under Section 92E
10F to 10T	Detailed provisions on APA
10TA to 10THD	Detailed provisions on SHR

⁴Typically applicable to a distribution activity

⁵Typically applicable to a manufacturing activity

⁶Typically applicable for composite transactions for which a separate analysis cannot be performed or where all the parties to the transactions contribute non-routine intangibles

⁷Officer specialised in audit / assessment of TP transactions

⁸The SHR are typically applicable to the small and medium enterprises: applicable to provision of software development, Information Technology enabled Services (ITeS), Knowledge Process Outsourcing (KPO), Contract Research and Development (R&D), Auto Component manufacturing, Contract R&D for pharmaceutical industry, intercompany loans and guarantee and receipt of low value adding intra group services.

⁹Covering the names of the AEs, transactions, method selected for computation of ALP, transaction value, computed ALP, etc., under various categories, such as raw materials, finished goods, other goods, services, capital finance transactions, IP transactions, business restructuring, deemed international transactions, SDTs, etc.

¹⁰For example quotations

Summary of compliance requirements under ITPR

Based on the above, following are the compliance requirements under the ITPR:

Category	Particulars
Traditional compliance requirements	a) Computation of income having regard to ALP (Section 92) b) Maintenance of TP documentation (Section 92D read with Rule 10D) c) Obtaining Accountant's Report in Form 3CEB (Section 92E read with Rule 10E)
BEPS related compliance requirements	a) Furnishing of CbCR (Section 286 read with Rule 10DB) b) Filing of Master File (Section 92D read with Rule 10DA) c) Computing the interest deduction in accordance with the guidance provided under Section 94B.
Recent requirement	a) Repatriation of funds to the extent of TP adjustment under the prescribed circumstances under Section 92CE read with Rule 10CB

Note: The compliance requirements under specific circumstances, i.e. where the Safe Harbour is opted or where the APA has been entered into has not been covered above.

Penal consequences for non-compliances under the ITPR

The ITPR prescribe following penalties for non-compliance:

Compliance	Timeline and filing requirement	Circumstances	Section	Prescribed penalty
Non ALP transaction	<i>Suo-motu</i> adjustment in Return of Income ('RoI')	Computation of TP adjustment by the TPO / IRA	270A	Penalty of 50% - 200% of tax payable on TP adjustment ¹¹
Accountant's Report	e-Filing along with ROI	Non-furnishing	271BA	₹100,000
		Failure to report transactions	271AA	2% of each transaction value
TP Documentation	to be maintained by the due date for filing the RoI	Non-maintenance: • Failure to maintain prescribed documentation, • Maintenance or furnishing of incorrect information or document	271AA	2% of transaction value
	To be furnished within 30 days of requisitioning	Non-furnishing: Failure to furnish information/ documents during assessment	271G	2% of transaction value
Master File	e-Filing along with ROI	Non-furnishing of the Master File by due date	271AA	₹500,000
	To be furnished within 30 days of requisitioning	Non-furnishing: Failure to furnish information/ documents during assessment ¹²	271G	2% of each transaction value
CbCR	Within 12 months from the end of the reporting accounting year	Failure to furnish CbCR	271GB	Graded penalty structure from ₹5,000 to ₹50,000 per day for: • Non-furnishing of CbCR, or • Non- submission of required information, when requisitioned
		Furnishing inaccurate information in CbCR		₹500,000

¹¹May not apply where TP documentation is maintained, transaction is declared and all material facts pertaining to the international transaction have been disclosed. The 200% penalty threshold can apply where there is a failure to report an international transaction, deemed international transaction or SDT to which Chapter X applies.

¹²Arguable to challenge applicability, but a possible initiation of penalty proceedings cannot be ruled out

More details on Accountant's Report compliance requirement

Parameter	Particulars
Who needs to maintain/file	Every person who has entered into an international transaction / SDT
Monetary thresholds	None: for even a rupee of transaction, Form 3CEB is mandatory
Contents	Part A: Details of "Assessee" and aggregate value of international transaction and SDT entered Part B: <ul style="list-style-type: none"> Name and address of the AEs with whom the international transaction has been entered into along with business description and nature of relationship with the Assessee Description of transaction Amount as per books of account and as computed by the Assessee having regard to the ALP Method used for determining the ALP Part C: Similar details pertain to SDTs also.
Provision of revision	Not covered by the Act / the Rules

More details on TP documentation compliance requirements

Parameter	Particulars
Who needs to maintain	Where the total value of transactions (international and SDT) exceed the monetary limit specified below.
Monetary thresholds	<ul style="list-style-type: none"> Where the aggregate value of international transactions exceeds Rs. 1 Crore However, where the above thresholds are not met, the tax payer has to maintain appropriate documentation to prove that the transaction complies with the arm's length test
Contents	Detailed information about the international transaction and SDT entered by taxpayer with AEs and justification for ALP including, <ul style="list-style-type: none"> Group overview, ownership structure and disclosure of AEs, Business and industry overview, Description of controlled transactions, FAR analysis, Selection of most appropriate TP method, Economic analysis of comparable transactions, Conclusion on arm's length nature of the transactions Supporting documents.

More details on Master File compliance requirements

Parameter	Particulars
Who needs to maintain/file	<pre> graph TD A[Master File] --> B{Consolidated revenue of the Group for the accounting year exceeds ₹500 Cr.?} B -- Yes --> C{The aggregate value of international transactions during the accounting year, as per books of account, exceeds ₹50 crore?} B -- No --> D[Master File] C -- Yes --> E[Master File to be maintained and filed in India] C -- No --> F{The aggregate value of purchase, sale, transfer, lease or use of intangible property related to international transactions during the accounting year, as per books of account, exceeds ₹10 crore?} F -- Yes --> E F -- No --> D </pre>

Contents	Master File contents as per the OECD			
	MNE's business details	Intangibles details	Financial / tax related details	
	<ul style="list-style-type: none"> Organisational structure: legal and ownership Operating geographical locations Nature of business Important drivers of profit Description of the supply chain for the group's five largest products and/ or service (including products and/ or service contributing more than 5% of group's revenue) Important service arrangements (other than for R&D services) Description of capabilities of main service provider TP Policy for intra-group service List and description of major geographical market FAR of group companies that contribute to value creation Description of important business restructuring, acquisitions and divestments 	<ul style="list-style-type: none"> Description of overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D, facilities and location of R&D management List of intangibles and legal owners of the same List and brief description of important agreement relating to intangibles: cost contribution, research services and licensing Description of the group's TP policies related to R&D and intangibles Description of important transfers of interests in intangibles and compensation paid for such transfers. 	<ul style="list-style-type: none"> Description of financing arrangements with unrelated lenders List of entities providing central financing functions and their place of effective management Description of TP policies related to financing arrangements Annual consolidated financial statement of the Group List and description of existing APAs and other tax rulings 	
	<p>Additional requirements as per ITPR:</p> <ul style="list-style-type: none"> Address of all entities in the Group, FAR analysis of entities contributing 10% of revenue / assets / profits, Names and addresses of all entities of the Group engaged in development and management of intangibles, Addresses of entities legally owning important intangibles and entities involved in important transfers of interest in intangibles, Details of top 10 unrelated lenders, Names and addresses of entities providing central financing functions. 			
Forms and due dates	Purpose	Form	To be filed by	Due date
	Master File	3CEAA	<ul style="list-style-type: none"> Part A by Every constituent entity / designated entity (if more than one entity exists in India) of an IG: irrespective of thresholds Entire Form by every constituent entity / designated entity (if more than one entity exists in India) of an IG: if thresholds are fulfilled 	Along with ROI
	Filing for designation of Indian Constituent entity where multiple Indian constituent entities exist	3CEAB	Designated Constituent Entity	30 days prior to the due of filing Master File

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More details on CbCR compliance requirements

Parameter	Particulars			
Who needs to file	<ul style="list-style-type: none"> Indian Parent Alternate Reporting Entity, if resident in India Indian constituent entity, falling under conditions of Section 286 (4) of the Act 			
Forms and due dates	Purpose	Form	To be filed by	Due date
	Notification Inbounds	3CEAC	Indian constituent entity, if parent entity is not resident in India	File at least 2 months prior to the due date for filing of CbCR
	CbCR filing	3CEAD	<ul style="list-style-type: none"> Indian Parent Alternate Reporting Entity, if resident in India 	Within 12 months from the end of the reporting accounting year for which report is being furnished
			Indian constituent entity, falling under conditions of Section 286(4) of the Act	No due date prescribed yet
Filing for designation of Indian Constituent entity	3CEAE	Designated Indian Constituent Entity	Not Specified	

Parting comments

With the global developments like BEPS, their adoption in the ITPR and the significant penal consequences, it is advisable for the taxpayers operating in India to ensure to lay down a robust TP documentation, monitoring and compliance mechanism.

While the legacy compliances, i.e. Accountant's Report and TP documentation have already resulted in huge TP litigation in India, one will have to wait and watch the impact of the BEPS related compliances, i.e. CbCR and Master File and the approach of the IRA in conducting the audits / assessments by referring to these additional compliance tools.

CROSSWORD SOLUTION - NOVEMBER 2018

¹ A	² N	A	³ M	⁴ O	⁵ L	⁶ Y		⁷ S	⁸ I	⁹ P		¹⁰ U	¹¹ S	¹² A
¹³ P	E		¹⁴ O	D	O	R	¹⁵ S		¹⁶ M	O	¹⁷ U		¹⁸ A	T
¹⁹ P	O	²⁰ M	P	O	U	S	L	Y		²¹ P	R	²² I	M	E
		A			D		Y			²³ U	L	I	P	
²⁴ T	O	T	²⁵ A	²⁶ L				²⁷ T		L		²⁸ I	L	²⁹ L
E		³⁰ E	C	H	³¹ O		³² B	E	³³ G	A	T		I	I
³⁴ S	³⁵ T	R	A	T	I	³⁶ F	I	C	A	T	I	O	N	
³⁷ S	I	I			³⁸ L	A	N		³⁹ A	I		⁴⁰ A	G	⁴¹ E
	⁴² M	A	P			I	A		⁴³ R	O	⁴⁴ I		⁴⁵ U	P
⁴⁶ M	I	L	K		⁴⁷ C	R	R		⁴⁸ G	N	P		⁴⁹ N	O
⁵⁰ A	N		⁵¹ R	B	I		⁵² Y	E	S		⁵³ O	T	I	C
⁵⁴ C	G	U		⁵⁵ O	L	D		⁵⁶ R	T	I		⁵⁷ N	T	H

Revenue Recognition under Ind AS 115- More Transparency for Real Estate



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Background

On 16th February 2015, the Ministry of Corporate Affairs (MCA) notified the Companies (Indian Accounting Standards) Rules, 2015 effective from 1st April 2015. The Annexure to Rule 3 specified the Standards applicable to companies covered under Ind AS, including Ind AS 115, *Revenue from Contracts with Customers* (Ind AS 115 is based on IFRS 15, which was effective from January 1, 2017). In September 2015, the International Accounting Standards Board (IASB) deferred the effective date of IFRS 15 by one year to 1st January 2018. Consequently, MCA omitted Ind AS 115 and replaced it with Ind AS 11, *Construction Contracts* and Ind AS 18, *Revenue* for entities transitioning to Ind AS. However, while notifying Ind AS 18, MCA did not include provisions similar to IFRIC 15, *Agreements for the Construction of Real Estate*. Instead, it was decided that for the real estate developers, revenue should be accounted for in accordance with the Guidance Note to be issued by the Institute of Chartered Accountants of India (ICAI). On 10th May 2016, ICAI had issued the *Guidance Note on Accounting for Real Estate Transactions (for entities to whom Ind AS is applicable)* recommending the accounting treatment under Ind AS to entities dealing in 'Real Estate' as sellers or developers. The Guidance Note was applicable to

all projects in real estate by entities to whom Ind AS were applicable and was based on the principles enunciated in Ind AS 11 and Ind AS 18.

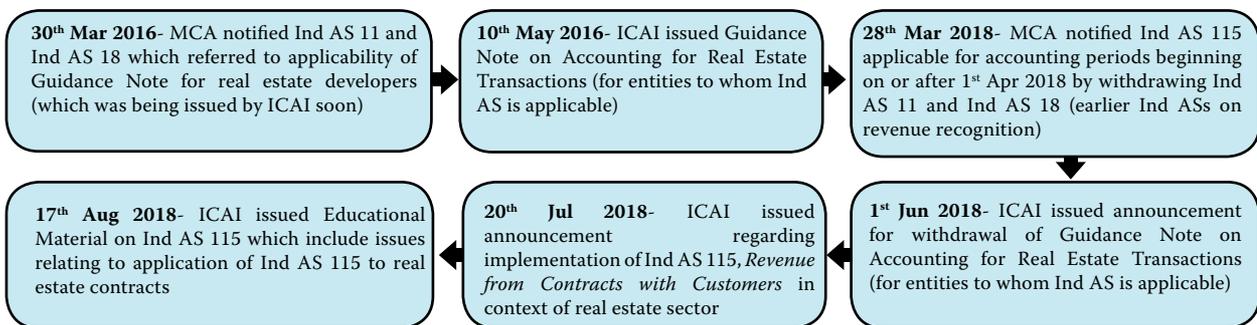
In April 2016, IASB issued amendments to IFRS 15 to provide additional transition relief for companies transitioning to IFRS 15. To keep up with the transition relief provided by IASB, ICAI issued an Exposure Draft on Clarificatory Amendments for incorporating the same in Ind AS 115, earlier notified by MCA, which was proposed to be applicable for period beginning on or after 1st April 2018. Finally, on 28th March 2018, MCA notified much-awaited Ind AS 115 (applicable for accounting periods beginning on or after 1 Apr 2018), which has replaced the existing standards namely Ind AS 11 and Ind AS 18. Later on 1st June 2018, ICAI issued an announcement for withdrawal of Guidance Note on Accounting for Real Estate Transactions (for entities to whom Ind AS is applicable) from the date Ind AS 115 is effective, which made it clear that the revenue recognition for companies in real estate sector would also be governed by Ind AS 115 as the case with other companies, i.e., there is no exception for real estate companies.

The following diagram depicts the timelines of activities in relation to Ind AS 115 specifically in relation to real estate sector:

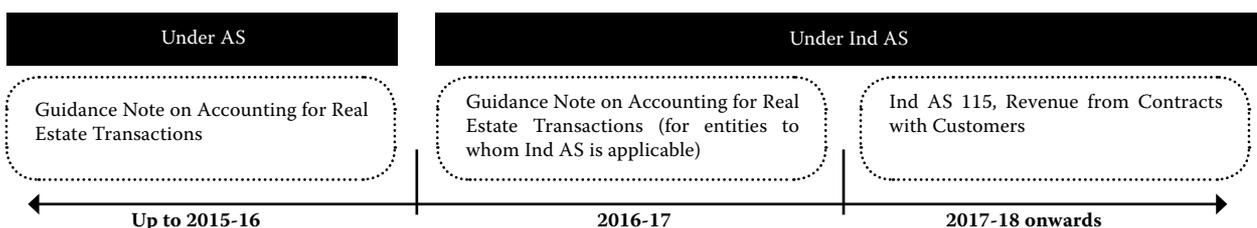
Now, before we discuss the key impact areas of Ind AS 115 on real estate sector, let us first understand the main principles of Ind AS 115 applicable to all entities under Ind AS, the transition approaches under the Standard and the key changes from the previously issued Standards (namely Ind AS 11 and Ind AS 18).

Main principles of Ind AS 115

The core principle under Ind AS 115 is to recognise revenue



Thus, for real estate companies covered under Phase 1 of Ind AS implementation, revenue recognition would be as follows:



to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. Ind AS 115 establishes a **'five-step model'** that will apply to revenue earned from a contract with a customer (with limited exceptions), regardless of the type of revenue transaction or the industry. The five steps are briefly explained below:

- **Step 1- Identify the contract with the customer**

In accordance with Ind AS 115, a contract with a customer exists only when all the following conditions are met:

- (a) Parties to the contract have approved the contract (whether in writing or orally) and are committed to perform their obligations.
- (b) Each party's rights regarding the goods or services to be transferred are identifiable.
- (c) Payment terms for goods or services are identified.
- (d) The contract has commercial substance.
- (e) Collection of consideration for goods or services is probable.

- **Step 2- Identify the performance obligations in the contract**

A performance obligation is a promise to transfer to the customer either:

- (a) a distinct good or service; or
- (b) a series of distinct goods or services that are substantially the same and that have the same pattern of transfer to the customer.

A good or service is distinct if both of the following criteria are met:

- (a) the good or service is *capable of being distinct*, i.e., the customer can benefit from the good or service either on its own or together with other readily available resources
- (b) the good or service is *distinct within the context of the contract*, i.e., promise to transfer the good or service is separately identifiable from other promises in the contract

- **Step 3- Determine the transaction price**

The transaction price is the amount of consideration to which an entity expects to be entitled in exchange for transferring promised goods or services to a customer, excluding amounts collected on behalf of third parties, e.g., GST. When determining the transaction price, an entity should consider the effects of the following factors:

- (a) variable consideration
- (b) constraining estimates of variable consideration, i.e., consider variable consideration only to the extent it is highly probable that a significant reversal of cumulative revenue recognised will not occur
- (c) existence of a significant financing component
- (d) non-cash consideration
- (e) consideration payable to a customer

- **Step 4- Allocate the transaction price to the performance obligations**

Transaction price should be allocated to each performance obligation (or distinct good or service)

in an amount that depicts the amount of consideration to which the entity expects to be entitled in exchange for transferring the promised goods or services to the customer. In accordance with Ind AS 115, allocation of transaction price is done on a *'relative stand-alone selling price'* basis (with limited exceptions in case of allocating discounts and variable consideration) which may be estimated using suitable methods including adjusted market assessment approach, expected cost plus margin approach, residual approach.

- **Step 5- Recognise revenue when (or as) a performance obligation is satisfied**

An entity should recognise revenue when (or as) the entity satisfies a performance obligation by transferring a promised good or service (i.e., an asset) to a customer. An asset is transferred when (or as) the customer obtains control of that asset.

An entity transfers control of a good or service over time and, therefore, satisfies a performance obligation and recognises revenue over time, if one of the following conditions is met:

- (a) the customer simultaneously receives and consumes the benefits provided by the entity's performance as the entity performs
- (b) the entity's performance creates or enhances an asset (e.g., work in progress) that the customer controls as the asset is created or enhanced
- (c) the entity's performance does not create an asset with an alternative use to the entity and the entity has an enforceable right to payment for performance completed to date

If a performance obligation is not satisfied over time in accordance with above, an entity satisfies the performance obligation at a point in time. To determine the point in time at which a customer obtains control of a promised asset and the entity satisfies a performance obligation, the entity should, *inter-alia*, consider the following indicators of transfer of control:

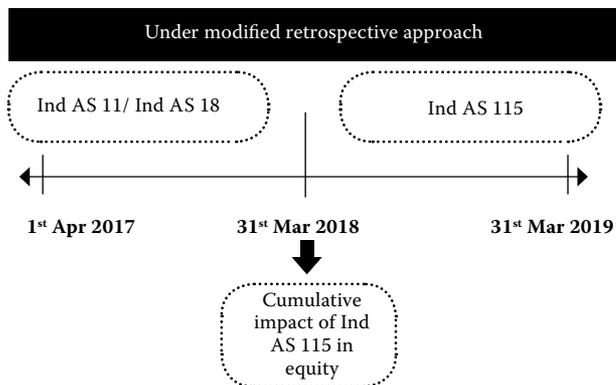
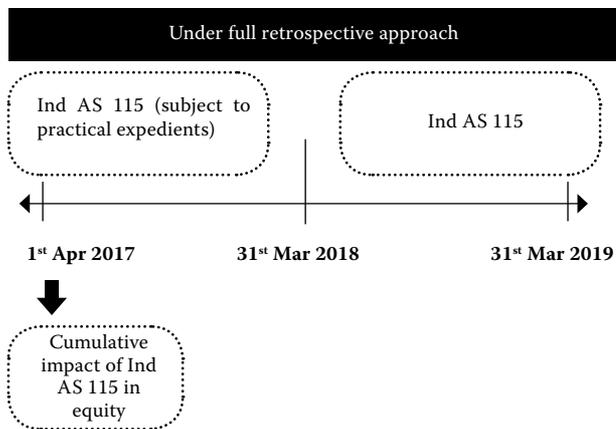
- (a) the entity has a present right to payment for the asset
- (b) the customer has legal title to the asset
- (c) the entity has transferred physical possession of the asset
- (d) the customer has the significant risks and rewards of ownership of the asset
- (e) the customer has accepted the asset

Transitional approach under Ind AS 115

An entity covered under Ind AS is required to apply Ind AS 115 for accounting periods beginning on or after 1st April 2018, with no option for early adoption. Ind AS 115 requires application of **'retrospective adoption'** only for transitioning to the new Standard, with following two approaches permissible:

- **'Full' retrospective approach** with certain practical expedients
- **'Modified' retrospective approach** with certain practical expedients

Below diagram briefly explains the above two transition approaches:



contract balances, performance obligations, transaction price allocated to the remaining performance obligations, significant judgements in the application of Ind AS 115, determining the timing of satisfaction of performance obligations, assets recognised from the costs to obtain or fulfil a contract with a customer and practical expedients.

Key impact of Ind AS 115 on real estate sector

- Collaboration arrangements with land owner**
 Many real estate companies enter into joint development agreements (JDAs) with land owners. These JDAs requires the land owner to grant the real estate developer, permission to construct building in return for ownership of a part of the building. Real estate companies engaged in such arrangements will need to closely examine the terms and conditions of the JDAs to determine the economic substance of the arrangement, to determine the appropriate accounting, e.g., whether it is a joint arrangement, whether the landowner is in substance selling the land to the property developer, whether the property developer is providing construction services to the landowner, etc.
- Agreements for construction/sale of real estate**
 Considering the guidance under Ind AS 115, many real estate companies in India may not qualify for percentage of completion method (POCM). However, one of the revenue recognition criteria for transfer of control of a good or service over time, relating to enforceable right to payment for performance completed to date, can result in real estate companies recording revenue using the POCM method. To qualify for POCM recognition, real estate companies should ensure that they have a contractual right to collect payment from the customer for work completed to date and that the contractual right is not in contradiction with any law of the land. However, one needs to consider the prevalent long established legal system and jurisprudence in India, and the facts and circumstances of individual case.

For example, a real estate company is developing a residential complex and has entered into a binding sale agreement with the customer for a specified unit under construction. The customer has paid a deposit of 20% upon entering into the contract and has promised to make progress payments during construction of the unit. The deposit is refundable, only if, the company fails to complete construction of the unit in accordance with the contract. The company retains legal title to the real estate until construction is complete. The customer can resell or pledge the right as the real estate unit is being constructed and the company cannot direct the unit to another customer as per terms of the contract. In addition, the customer does not have the right to terminate the contract unless the company fails to perform as promised. Also, as per the agreement, if the customer defaults on its obligations by failing to make the promised progress payments as and when they are due, the company would have a right to all of the consideration promised in the contract on completion of the unit. The courts have previously upheld similar rights that entitle developers

Key changes under Ind AS 115 (compared to Ind AS 11 and Ind AS 18)

- The new model under Ind AS 115 is a **'control'** model, rather than a **'risk and reward'** model, though **'risk and reward'** is still an indicator for assessment of transfer of control.
- Ind AS 115 contains extensive guidance for determination of transaction price considering the impact of various factors in its estimation, including variable consideration and its constraints.
- Detailed guidance exists for allocation of transaction price to each performance obligation with specific guidance for allocating discount and variable consideration.
- Ind AS 115 has new guidance in relation to accounting for cost of obtaining and fulfilling contracts, contract modifications, etc.
- Additional guidance exists under Ind AS 115 for performance obligations satisfied over time, licensing arrangements, evaluation of principal-agent relationships, etc.
- Ind AS 115 contains extensive disclosures relating to contracts with customers, disaggregation of revenue,

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to require the customer to perform, subject to the company meeting its obligations under the contract. In such a case, the real estate company has a performance obligation that is satisfied over time, hence, revenue should be accounted for under POCM method.

- **Significant financing components**

A significant financing component may exist when the receipt of consideration does not match the timing of the transfer of goods or services to the customer, regardless of whether it is explicitly stated in the contract or implied by the payment terms agreed to by the parties to the contract. In a scheme like 20:80 for sale of units to customers, or disproportionate payments over the project duration vis-à-vis revenue earned, the real estate developer is required to separate the financing component, if it is significant, from the consideration to determine the transaction price.

- **Common areas**

Common areas are unlikely to be a separate performance obligation because the interests received in common areas are typically undivided interests that are not separable from the property itself. However, if the common areas were sold separately by the developer, then they could be considered as a separate performance obligation provided that it is distinct in the context of the contract. Real estate developers may have to apply considerable judgment to identify performance obligations within their contracts, i.e., whether common areas represent a separate performance obligation, i.e., whether these are distinct from the commercial/ residential units. This will require significant judgment and evaluation will depend upon specific facts.

- **Sales commission**

Real estate developers usually pay selling commission to various brokers for getting real estate contracts. The commission payable to each broker is usually determined as a specific percentage of the sales value of the real estate. In accordance with the terms of agreement, this amount becomes payable once developers enter into a binding sales contract with the customers. Under Ind AS 115, incremental costs of obtaining a contract, e.g., sales commissions will be required to be capitalised as cost to obtain contract. Any capitalised contract costs are amortised, with the expense recognised on a systematic basis that is consistent with the entity's transfer of the related goods or services to the customer. Such expenses will not form part of the POCM calculations. As a practical expedient, an entity may recognise the incremental costs of obtaining a contract as an expense when incurred if the amortisation period is one year or less.

Assessing impact of Ind AS 115 (based on recent quarterly reporting of select real estate companies)

- DLF Ltd.¹

Transition approach used	Modified retrospective approach
<i>Impact of Ind AS 115</i>	<ul style="list-style-type: none"> • Retained earnings as at 1st April 2018 is debited by INR 5,382.82 crore (net of tax) pertaining to recognition of revenue based on satisfaction of performance obligation at a point in time. • Revenue from operations for quarter ended 30th June 2018 is higher by INR 188.88 crore and net profit after tax is higher by INR 111.34 crore, than what it would have been if replaced standards were applicable. • Basic EPS for quarter ended 30th June 2018 is higher by INR 0.63 per share and diluted EPS for the period is higher by INR 0.51 per share. • Revenue from operations for the quarter and half year ended 30th September 2018 is higher by INR 995.26 crore and INR 1,184.15 crore and net profit after tax for the quarter and half year ended 30th September 2018 is higher by INR 396.51 crore and INR 507.85 crore, than what it would have been if replaced standards were applicable. • Basic EPS for the quarter and half year ended 30th September 2018 is higher by INR 2.22 per share and INR 2.85 per share and diluted EPS for the quarter and half year ended 30th September 2018 is higher by INR 1.83 per share and INR 2.31 per share.

- **Sobha Ltd.²**

Transition approach used	Modified retrospective approach
<i>Impact of Ind AS 115</i>	<ul style="list-style-type: none"> • Retained earnings as at 1st April 2018 is debited by INR 7,454 million (net of tax). • Revenue from operations for quarter ended 30th June 2018 is lower by INR 2,443 million and net profit after tax is lower by INR 246 million, than what it would have been if replaced standards were applicable.

¹Source- Audited consolidated financial results for the quarter ended 30th June 2018 and unaudited consolidated financial results for the quarter and half year ended 30th September 2018.

²Source- Unaudited consolidated financial results for the quarter ended 30th June 2018.

• **Indiabulls Real Estate Ltd.**³

Transition approach used	Full retrospective approach
Impact of Ind AS 115	<ul style="list-style-type: none"> • Decrease in total equity as at 31st March 2018 by INR 211,779.56 lakh. • Increase in revenue from operations by INR 100,785.61 lakh for quarter ended 31st March 2018. • Decrease in revenue from operations by INR 49,123.19 lakh for quarter ended 30th June 2017. • Decrease in revenue from operations by INR 159,258.30 lakh for year ended 31st March 2018. • Increase in net profit after tax by INR 35,682.89 lakh for quarter ended 31st March 2018. • Decrease in net profit after tax by INR 3,406.82 lakh for quarter ended 30th June 2017. • Increase in net profit after tax by INR 19,993.65 lakh for year ended 31st March 2018.

Conclusion

Ind AS 115 will affect the recognition, measurement, and disclosure of revenue for many entities. From above analysis, it is evident that Ind AS 115 has significantly impacted the real estate sector and the companies need to do a thorough assessment of the potential impact. A real estate company may wish to consider new requirements while negotiating its contract with customers so that it meets the criteria for revenue recognition over time. Gaining an understanding of the effect of the new standard, providing early communication to all stakeholders and planning ahead are crucial for a successful implementation. Adoption of Ind AS 115 is not just an accounting change and would have a far-reaching impact on several other functions of the entity including tax, legal, IT, sales and marketing, IT and investor relations.

³Source- Unaudited consolidated financial results for the quarter ended 30th June 2018.

CA Students Conference -BHOPAL

Organised by: Board of Studies, ICAI

Hosted by: Bhopal Branch of CIRC & CICASA of ICAI

THEME: "KNOWLEDGE & TRAINING WITH ETHICAL QUOTIENT- PATHWAY TO PROFESSIONAL EXCELLENCE"

15TH & 16TH DECEMBER, 2018
SAMANVAY BHAWAN,
T. T. NAGAR, BHOPAL

DAY-1

10.00 am -10.30 am	Inaugural Session
10.30 am- 12.45 pm	Technical Session: I: Topic: Direct Tax - Capital gains in respect of transfer of Equity shares; Clubbing of income; Acceptance of Deposits and Repayment of loans as per section 269SS, 269ST and 269T.
12.45 pm- 1.45 pm	Special Session: I: BOS Presentation and interaction with Board of Studies Topic: Importance of Articleship & How to Crack CA Examination
02.30 pm - 04.00 pm	Technical Session: II: Topic Company Law and Allied Law - Loan given to Director as per section 185 & 186 of Companies Act 2013; Overview on National Financial Reporting Authority (NFRA); Overview on Insolvency and Bankruptcy Code ,2016
04.00 pm- 05.00 pm	Special Session: II: Topic: Professional Opportunities in Stock Market

DAY-2

10.00 am – 12.00 Noon	Technical Session: III: Topic: Indirect Tax - Goods and Service Tax Audit: Provisions, Operation and Future Prospects; Input Tax Credit under GST Regime- Apportionment and Block Credits; Provision of TDS and TCS under GST
12.00 Noon - 1.00 pm	Special Session: III : Motivational Session: on Nation Building
02.00 pm - 02.45 pm	Special Session: IV: Motivational Session on Student Motivation.
02.45 pm - 04.15 pm	Technical Session: IV: Topic: Audit and Accounts - Ind AS 24: Related Party Disclosure; SA 700: Audit Report; Ind AS implication on computation of MAT.

Registration Fee	₹ 500/- per student	Accommodation (if required) @ ₹ 2000/- per student
Payment Mode	The student has to register & make the payment online on the Portal itself, the link will be http://bosactivities.icai.org/	

Key Audit Matters - A new foundation in auditor's reporting



CA. Deepa Agarwal
ICAI Membership No.
099068

Background

While users of the financial statements have indicated that the auditor's opinion on the financial statements is valued, many have called for the auditor's report to be more informative – in particular, for auditors to provide more relevant information to users based on the audit that was performed. The International Auditing and Assurance Standards Board therefore set out to develop new and revised Auditor Reporting standards aimed at enhancing the informational value of the auditor's report. Given the fact that our Standards on Auditing are aligned with International Standards on Auditing, ICAI also issued revised/new reporting standards. These standards have been issued in response to demand from users of financial statements, in the wake of the financial crisis, for more relevant information on audits.

The aim of the standards is to provide auditor's reports that increase the public's confidence in both the audit process itself and the financial statements of companies. The standard setters also believes that enhancing auditor reporting will improve communications between the auditor and investors, as well as between auditors and those charged with governance.

The auditors' report on statutory financial statements for FY19 is changing significantly. The objective of this article is to give detailed overview of the **revised/new Standards of Auditing (SAs)** for audits of financial statements for the period beginning **on or after April 1, 2018**.

The following reporting standards are applicable for audits of financial statements for periods beginning on or after April 1, 2018.

- SA 700 - Forming an Opinion and Reporting on Financial Statements (Revised)
- SA 701 - Communicating Key Audit Matters in the Independent Auditor's Report (New)
- SA 705 - Modifications to the Opinion in the Independent Auditor's Report (Revised)
- SA 706 - Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report (Revised)

Significant efforts will be required to implement changes to the new auditor's report under the revised reporting standards requirements of the SAs, which includes:

- affirmative statement on our independence and compliance with relevant ethical requirements;
- affirmative statement on assessment for Going concern;
- Key audit matters (KAM) in case of listed entities
- broadened description of management and auditor's responsibilities in the Auditor's report.

Key Audit Matters (KAM)

One of the challenges with the financial statements is that they are fairly complicated. As a result, the audit is also quite complex and requires the auditor's assessment of risks of material misstatement to those financial statements to drive the performance of the audit. In today's "boilerplate" auditor's report, it is not possible for financial statements users to understand where the greatest of those risks lie in the eyes of the auditor. For this reason, a particular area of focus within the new standards is the requirements as set out in the new SA701 *Communicating Key Audit Matters in the Independent Auditor's Report*. For audits of listed entities, a new section in the auditor's report called Key Audit Matters (KAM) will highlight those matters that, in the auditor's professional judgment, were of most significance in the audit.

What is KAM?

KAM is defined in the standard as, "Those matters that, in the auditor's professional judgment, were of most significance in the audit of the financial statements of the current period. KAM are selected from matters communicated with those charged with governance".

In essence, KAM are drawn from matters that are communicated with those charged with governance (TCWG).

SA 701, Key Audit Matters includes a judgment-based decision-making framework to help the auditor decide which issues from the audit would count as KAMs. The auditor firstly narrows the matters communicated with TCWG to matters that required significant auditor attention. In doing so, auditors will explicitly consider:

- Areas of higher risk of financial statements material misstatement
- Significant auditor judgments relating to areas in the financial statements that involved significant management judgment, including accounting estimates that have been identified as having high estimation uncertainty
- The effect on the audit of significant events or transactions that occurred during the period

The fact that these considerations are required does not imply that matters related to them are always KAM.

The auditor is required to communicate with those charged with governance the matters to be included in auditor's report. This communication is intended to make management and those charged with governance aware of the matters that auditor intends to communicate in the auditor's report, and to provide them with an opportunity to obtain further clarification when necessary.

From the matters that required significant auditor attention, the auditor determines matters which were of the most significance in the audit of the financial statements of the current period and therefore are KAMs. In most cases, KAMs will relate to significant or complex matters disclosed in the financial statements. Examples of KAMs might include valuation of goodwill and other long-term assets, valuation of financial instruments, difficult or unique aspects of revenue recognition, or accounting for significant acquisitions.

Applicability of KAM

- For audits of complete sets of general purpose financial statements of listed entities, the auditor shall communicate key audit matters in the auditor's report in accordance with SA 701.
- When the auditor is otherwise required by law or regulation or decides voluntarily to communicate key audit matters in the auditor's report, the auditor shall do so in accordance with SA 701.

However, KAM is **not**:

- A substitute for disclosures in the financial statements
- A substitute for the auditor to express a modified opinion
- A substitute for reporting any matters relating to going concern or
- A separate opinion on an individual matter

From the matters that required the auditor's significant attention, the auditor determines which were of the most significance in the audit of the current period. These matters are KAM.

In most cases, KAM relate to significant complex matters disclosed in the financial statements, e.g., valuation of goodwill and other long-term assets, valuation of financial instruments, difficult or unique aspects of revenue recognition, or accounting for significant acquisitions. The description of a KAM should be clear, concise, understandable and entity-specific.

KAM describes "Why the matter was determined to be a KAM; How it was addressed in the audit; and Reference to disclosure(s) in the financial statements"

Purpose of KAM

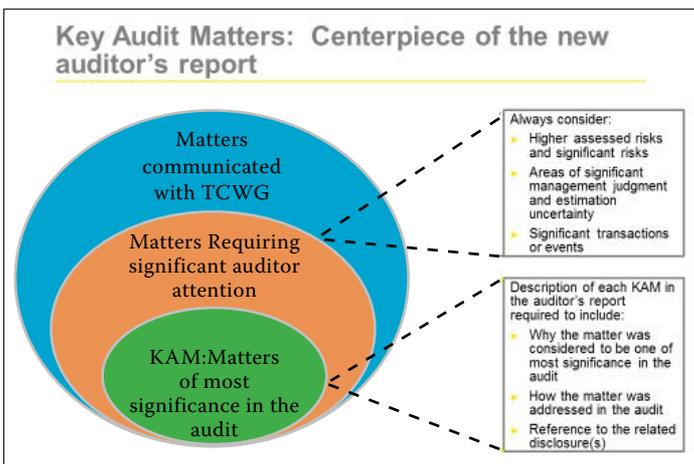
The purpose of communicating KAM is to enhance the communicative value of the auditor's report by providing greater transparency about the audit that was performed. Communicating KAM provides additional information to users of the financial statements and our auditor's report thereon to assist them in understanding

those items that, in our professional judgment, were significant to our audit. Communicating Matters may also assist in understanding the entity and areas of significant management judgment in the audited financial statements.

How to identify or determine KAM?

KAM needs to be determined right from the planning stage – A funnel approach may be adopted to determine which matters are required to be reported as key audit matter in the auditor's report. The starting point would be the matters that are communicated to those charged with governance, filtered for those matters that required significant auditor attention and then finally filtered for matters of most significance in the audit, which then would be the key audit matter for inclusion in the auditor's report.

It is important to note that communicating KAM does not change the auditor's underlying responsibilities – i.e., to conduct a high-quality audit. KAM may differ depending on the approach taken by the auditor because certain entity-specific or audit-specific factors may influence the auditor's judgment as to which matters were of "most significance" in the audit of the current period.



Examples of KAMs

Some of the most common KAM are as below:

- Determination of carrying value assessments or impairment of goodwill and related CGU assets such as intangibles and PPE. Since there is significant judgement associated with forward looking estimation in the valuation models and when combined with the quantum of balances, attract attention.
- Revenue – significance of revenue, high volume of transactions, complexity of underlying IT systems, variety of revenue streams – auditors may choose to focus procedures on gathering evidence regarding its accuracy.
- Business combinations – Auditors focus on acquisitions due to their size and significant judgements associated

ARTICLE

with separately identifying intangibles and fair valuing assets – assessments involve estimates of future performance expectations and attract greater auditor effort.

- Inventory – Judgements regarding future commodity prices, costs of completion, and estimation techniques to assess the quantity and quality of stockpiles, driver auditor attention to evaluating inventory net realisable values.
- Long-term contracts may involve significant auditor attention with respect to revenue recognition, litigation or other contingencies, and may have an effect on other accounting estimates.

Some examples could even be auditor experiencing significant difficulties in matters such as

- Significant delays in management providing required information.
- An unnecessarily brief time within which to complete the audit.

Determining which, and how many, of those matters that required significant auditor attention or were of most significance in the audit is a matter of professional judgment. The number of key audit matters to be included in the auditor's report may be affected by the size and complexity of the entity, the nature of its business and environment, and the facts and circumstances of the audit. In general, the greater the number of matters initially determined to be key audit matters, the more we may need to reconsider whether each of these matters meets the definition of a key audit matter. Lengthy lists of key audit matters are contrary to the notion of such matters being those of most significance in the audit.

Is a KAM a form of qualification?

Stakeholders are used to the binary “pass/fail” opinion. With KAM reporting, the stakeholders might perceive it as a piecemeal qualification on matters determined to be KAMs. The description of auditor's procedures contained in the KAM section of the auditor's report might be misunderstood without proper context.

Other concerns are:

- Will KAMs make the auditor's report as the primary source of “red flags”, such as going concern?
- How will KAMs be interpreted by stakeholders and the market?
- Would it trigger a negative market response?
- Will stakeholders perceive matters highlighted as KAMs as areas where management and TCWG failed to discharge their responsibilities properly?

One very important message to be conveyed to the stakeholders is that KAMs are not an avenue for the auditor to express qualification on matters highlighted as KAMs. KAMs are addressed in the context of the audit of the financial statements as a whole, and

the auditor does not provide a separate opinion on these matters.

Therefore, stakeholder education is critical in addressing the potential consequences of misinterpreting KAMs. You should actively engage and educate the stakeholders so that they understand the objective of KAMs, and how a matter is determined to be a KAM.

How to write KAM?

KAM are included in a separate section of the auditor's report explaining the nature and intent of KAM. Other important points to note are as below:

- To be placed immediately below “Basis for Opinion” Section
- If “Material Uncertainty Related to Going Concern” Section required as per revised SA 570, then immediately below that Section
- Auditor needs to describe each KAM under appropriate sub-heading so that individual KAM are differentiated
- If there is no KAM to communicate, KAM Section is still required where the auditor needs to include a statement to that effect
- Do not include in KAM references to disclosures or other information outside the financial statements, unless such other information is audited.

Circumstances where a KAM should not be communicated

SA 701 prescribes two situations where KAM should not be communicated:

- Law or regulation precludes public disclosure about that matter;
 - E.g. a public communication might prejudice an investigation by an appropriate authority into an actual, or suspected, illegal act (matter that are or appear to be related to money laundering)
- In extremely rare circumstances, the auditor determines that the matter should not be communicated because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication.

Issues regarding a decision to not communicate a matter are complex and involve judgement – auditor may obtain legal advice.

Documentation of KAM

SA 701 included a requirement for the auditor to document the matters that will be communicated as KAM, and the significant professional judgments made in reaching this determination, in accordance with SA 230. Application material in SA 701 also explains that the professional judgments for the matters determined to be KAM are likely to be supported by the

written communications with TCWG and other audit documentation, and that such communications and documentation may assist the auditor in developing a description of KAM that explains the significance of the matter. The application material was included in SA 701 to assist the auditor's consideration of documentation of professional judgments.

communications now so as to ensure smooth implementation for the financial year ending March, 2019 audits.

The introduction of KAM is a significant enhancement that will change not only the auditor's report, but more broadly the quality of financial reporting by providing more informative value to investors and other key stakeholders. That said, it is important to emphasise here that it remains the responsibility of management, with the oversight of TCWG, to communicate relevant information to users about the entity and its financial performance, including providing adequate disclosures in accordance with the applicable financial reporting framework.

What's next?

Significant efforts will be required to implement the enhanced auditor's reporting and implementation of KAM Management. Those Charged with Governance and the auditors should align their goal of improving

CA Students Conference - TRIVANDRUM

Organized by: Board of Studies, ICAI
Hosted by: Trivandrum Branch of SIRC & SICASA of ICAI
THEME: "KNOWLEDGE & TRAINING WITH ETHICAL QUOTIENT - PATHWAY TO PROFESSIONAL EXCELLENCE"

4TH & 5TH DECEMBER, 2018

**ALAKAPURI AUDITORIUM,
TRIVANDRUM**

DAY-1

8.30 am - 9.15 am	Registrations and Kit Distributions
9.15 AM to 10.45 AM	Technical Session : I : Topic: Finance & Accounting -Accounting for E-Commerce Business; IND AS 115 - Revenue from Contractors; IFRS – 9 Financial Instruments
10.45 AM to 11.15 AM	Inaugural Session
11.15 AM to 11.45 PM	Special Session: I : Topic: "Success Stories" or "Opportunities"
12.00 Noon to 01.00 PM	Special Session: II: Motivational Session- Opportunities in the new world, and self-actualization.
02.00 PM to 03.30 PM	Technical session : II: Topic: Auditing Standards and Ethics- Ensuring Ethics in CA Profession- Educational and Interventional Strategies; Internal Financial Controls-Impact on Ultimate Reporting; Forensic Audit-Current and Potential Opportunities
04.00 PM to 05.30 PM	Technical Session : III: Topic: Goods and Service Tax- GST Amendment Act,2018; GST Audit: Provisions, Operations and Future Prospects; A year's impact of Goods and Services Tax on Indian Economy-Learning and way forward.

Day 2

9.15 AM to 10.45 AM	Technical Session : IV: Topic: Direct Taxes- Amendments to form 3CD - Relevance and Impact on Assessment; Alternate Minimum Tax / Minimum Alternate Tax; Chapter VI A Deductions
10.45 AM to 11.45 AM	Special Session: III: BOS Presentation and Interaction with Board of Studies on Importance of Article training and Assessment Exams Plus Activities of BoS
12.00 Noon to 01.30 PM	Technical Session : V: Topic: Corporate Law- Insolvency and Bankruptcy Code –An Impact Analysis; The Companies Amendment Ordinance,2018; The New Audit Report and CARO under the Companies Act,2013
02.30 PM to 3.15 PM	Special Session: IV: Etiquettes & The Unwritten rules - Do's & Don'ts in Profession General-Session on importance of Eye Donation.

Registration Fee	₹ 500/- per student ₹ 1000/- for others.	Accommodation (if required) @ ₹ 300 per student
Payment Mode	The student has to register & make the payment online on the Portal itself, the link will be http://bosactivities.icaai.org/	

CA Students Conference - GOA & NAGPUR

Organized by: Board of Studies, ICAI

Hosted by: Goa Branch of WIRC of ICAI & Goa Branch of WICASA of ICAI

Jointly with Nagpur Branch of WIRC of ICAI & Nagpur Branch of WICASA of ICAI

THEME: "KNOWLEDGE & TRAINING WITH ETHICAL QUOTIENT - PATHWAY TO PROFESSIONAL EXCELLENCE"

14TH & 15TH DECEMBER, 2018

**RAVINDRA BHAVAN,
MARGAO, GOA**

DAY-1

09.30 am – 11.00 am	Technical Session : I: Topic: Accounting & Assurance- Spot light on GST Audit; Revenue Recognition, ICDS verses Accounting Standard verses Ind AS; Report on Internal Financial Control
11.00 am – 12.00 Noon	Inaugural Session: Chief Guest: Shripad Yesso Naik* , Hon'ble Minister of State (I/C) for AYUSH
12.00 Noon – 01:00 pm	Special Session : I: Topic : "Stress Management & Healthy Living"
02.00 pm – 03.00 pm	Special Session : II: Interaction and Open House with Board of Studies
03.00 pm – 05.00 pm	Technical Session : II: Topic : Taxation- NRI; Section 5A of Income Tax Act; TDS /TCS under GST

DAY-2

09.30 am – 11.00 am	Technical Session : III: Topic : Economic Environment- Rupee dollar equation; Demonization boon or bane; Bank & NPA
11.15 am - 01.15 pm	Special Session : III: Topic – "Art of Public Speaking"
02.15 PM – 03.45 PM	Technical Session : IV: Topic : Corporate Compliance- Bankruptcy Law; Attack on Chartered Accountants Profession; Code of Ethics – Transformation needed for the New Era

Registration Fee	₹ 700/-per student (Non-Residential)	₹ 1400/- per student (Residential) (Shared accommodation at good dormitory will be provided)
Payment Mode	The link for Registration & online payment is as under :https://bosactivities.icai.org	

Attend Student Conferences across the Country The Board of Studies has planned the following Conferences for CA Students as on date For December, 2018-2019

S. No.	Branch	Nomenclature of the Programme	Approved Dates
1	Ranchi	CA Students Conference	1-2 Dec, 2018
2	Hubli & Belgaum Branch (conf in Hubli)	CA Students Conference	1-2 Dec, 2018
3	Trivandrum	CA Students Conference	4-5 Dec 2018
4	Mangalore	CA Students Conference	12-13 Dec, 2018
5	Goa & Nagpur	CA Students Conference	14-15 Dec, 2018
6	Coimbatore	CA Students Conference	15-16 Dec, 2018
7	Rajkot	CA Students Conference	15-16 Dec, 2018
8	Bangalore	CA Students Conference	15-16 Dec, 2018
9	Bhopal	CA Students Conference	15-16 Dec, 2018
10	Pimpri	CA Students Conference	22-23 Dec, 2018
11	Ludhiana	CA Students Conference	22-23 Dec, 2018
12	Thane	CA Students Conference	24-25 Dec, 2018
13	Pune	CA Students Conference	29-30 Dec, 2018

Students Eligible to attend the Students Conference: Students who have registered as IPCC/Intermediate Students/ Students who are pursuing their Article ship Training/ Students who have completed their Practical Training but could not qualify their final examinations may attend the conference till next one year from the date of completion of Practical Training.(CPT Students and Students who have completed one year beyond their Articleship training will not be eligible to register for these Conferences)

It may however be noted that during April, 2018 - March, 2019, the students can be Paper Presenters for max. 2 Students Conferences. Best paper presenters (overall category) of National Conference can be permitted to present technical papers in International CA Students Conference where the limit of two programmes per year will not be applicable.

CA Students International Conference - AHMEDABAD

Organized by: Board of Studies, ICAI

Hosted by: Ahmedabad Branch of WIRC & WICASA of ICAI

THEME: "KNOWLEDGE & TRAINING WITH ETHICAL QUOTIENT - PATHWAY TO PROFESSIONAL EXCELLENCE"

5TH & 6TH JANUARY, 2019

**THE CAPITAL, CLUB 07,
OFF S P RING ROAD, SHELA,
AHMEDABAD GUJARAT 380058**

DAY-1

09.30 am to 10.30 am	Inaugural Session
10.30 am to 12.15 pm	Technical Session : I: Topic : Role of Information Technology in CA Profession- CA. P.R. Ramesh- Block chain Technology in new era for Accounting and Auditing Profession; Artificial Intelligence and future of Accountancy; Cyber Security- Challenge for Accountants.
12.15 pm to 01.00 pm	Special Session: I: BOS Presentation and Interaction with Board of Studies.
01.00 pm to 01.45 pm	Special Session : II: By Eminent Industrialist
02.30 pm to 04.00 pm	Technical session: II: Topic: Corporate Laws – Shri. M. R. Umarji - Challenges to the Shell Companies in India; Insolvency and Bankruptcy Code and the Corporate Law: Swapping of jurisprudence; FEMA administration- Prospects and ChallengesDay-2
04.00 pm to 05.00 pm	Special Session: III: By Eminent Industrialist

Day 2

10.00 am to 10.45 am	Special Session: IV: Session on "Importance of Ethics in CA Profession" by Shri. Jay Vasavada.
10.45 am to 12.15 am	Technical Session :III: Topic : Taxation - CA. (Dr.) Girish Ahuja - Limitation of Benefits clause in tax treaties: A sine qua non to prevent base tax erosion; Input Tax Credit under GST Regime; A new Income –tax law: Need of the hour?
12.15 pm to 02.00 pm	Technical Session : IV: Topic : Audit, Ethics & Finance- CA. Amarjit Chopra, Past President, ICAI - How the role of Internal & External Auditor complement each other; Audit, Conflict of Interest, code of ethics- Whether can go hand in hand; Impact of newly notified Ind AS 115 on different sectors including Real estate sector; Growing importance of consolidation of corporates in India and issues in accounting thereof.
02.45 pm to 04:00 pm	Technical Session : V: Topic: Economic and Strategy- Prof. Satish Deodhar, IIMS Ahmedabad- Money and Business Cycle: Operation in Indian Economy; Effect of predatory pricing on competition; US & China Trade War including the crude oil countries - Impact on India.
04.00 pm to 05.00 pm	Special Session: V: Motivational Session on "Transcend Challenges & Conquer Greater Heights" by Padma Shri CA. T. N. Manoharan, Past President, ICAI.

- 1) Students who have registered as IPCC/Intermediate Students – either after passing CPT or through Direct Entry route.
- 2) Students who are pursuing their Article ship Training.
- 3) Students who have completed their Practical Training but could not qualify their final examinations may attend the conference till next one year from the date of completion of Practical Training.

(Students who have merely registered as CPT Students and Students who have completed one year beyond their Article ship training will not be eligible to register for these Conferences)

Registration Fee	₹ 600/- per student till 15 th December, 2018 ₹ 650/- per student from 16 th December, 2018 onwards ₹ 700/- per student for on the spot registration	Accommodation (if required) @ ₹ 1200 per student per day on triple sharing basis.
Payment Mode	The student has to register & make the payment online on the Portal itself, the link will be http://bosactivities.icai.org/	
For registration queries contact:-	Ahmedabad Branch of the ICAI of WIRC, "ICAI Bhawan", 123, Sardar Patel Colony, Nr. Usmanpura, Underbridge, Naranpura, Ahmedabad – 380 014; Ph. 079-39893989, 2768 0537, 2768 0946; Email ahmedabad@icai.org	

Residential Programme on Professional Skills Development at Centre of Excellence, Hyderabad and Jaipur

The Board of Studies is pleased to announce the next batch of ICAI's 'Four Weeks Residential Programme' on Professional Skills Development as below:

Venue	Participant	Fees	Date	Online Registration
Centre of Excellence (CoE), Jaipur	Men	₹ 48,000/-	10 th December, 2018 to 6 th January, 2019	https://resource.cdn.icai.org/50874bos40500main.pdf

This programme aims to help the Chartered Accountancy students and newly qualified Chartered Accountants in imbibing the professional skills required for effective functioning in business organisations and the profession. The Programme environment focuses on development of communication skills, personal qualities, interpersonal and teamwork skills, problem solving skills, leadership skills etc.,

Salient Features of the Programme:

- Emphasis on Soft Skills, Communication Skills and Personality Development.
- Exemption from payment of Fees to Top 10 Rank holders.
- Part of Practical Training.
- No need for Separate Management and Communication Skills(MCS) forming part of Advanced Integrated Course on Information Technology and Soft Skills(AICITSS).
- Special Session on Group Discussion & Interview.
- Preparation of Project and Presentation Skills.
- Building Team Spirit.

Students who have passed Chartered Accountancy IPCC/ PCC/ PE- II examination and pursuing last year of Practical training or completed Practical training are invited to join the course for this batch. Recently qualified Chartered Accountants are also welcome to join the course.

Student's opinion

CoE is a place to learn from best of speakers who fill the session with loads of earnings and bundle of creativity. It is a great place to learn from students and professional with diverse background. A must-do course for all CA Students.

CA. Kevin Dharmesh Gandhi
from Western Region
(Participant of 37th batch)

It was an amazing experience and the faculties were exceptionally good. It bridges the gap between a CA students and a professional. It influences us to be creative and think out of box.

Ms. Parnika Poddar
from Eastern Region
(Participant of 40th batch)

For online registration, you can proceed with 'Board of Studies Announcements' https://www.icai.org/new_category.html?c_id=345 under the 'Students' tab on the Home Page of the ICAI's website www.icai.org. For any query, you can write us at ashokdua@icai.in or may also contact us on 0120-3045935 and Mobile no. 9868879548.

Director, Board of Studies



The Institute of Chartered Accountants of India (ICAI)

ICAI Commerce Wizard-2018:

A Talent Search Test

Organised By: Career Counseling Group (CCG), ICAI

For Details and Registration please visit the Exclusive Website for ICAI Commerce Wizard, 2018: icaicommercewizard.org

The Commerce Talent Search Test called as Commerce Wizard -2018 is a diagnostic test that measures the concept understanding ability of a student. Unlike regular tests which try only to find out how much a child knows, this test measures how well a student has understood the concepts.

Online Registration

Eligibility: Students appearing in class IX/X/XI/XII & B.Com./BBA/BMS/Allied subjects examination

Registration Fees : ₹100/- upto 31st Oct. 2018
After Due Date : ₹150/- 1st Nov., 2018 to 15th Dec., 2018

The Commerce Wizard will be conducted by means of in two levels i.e. Level I (Online) & Level II (Online/Pen & Pencil test) in English language for Students studying in class IX/X/XI/XII & B.Com./BBA/BMS/Allied Subjects:

Class	No. of Questions	Duration	Subjects	Mode	Negative Marking	Max. Marks	Pattern
IX	100	1 Hr 15 Min	(I) Social Studies (Economics) (II) Mathematics (III) Business Awareness (IV) Aptitude	Online/Pen & Pencil	0.25	100	Objective - type (Multiple Choice) questions
X	100	1 Hr 15 Min	(I) Social Studies (Economics) (II) Mathematics (III) Business Awareness (IV) Aptitude	Online/Pen & Pencil	0.25	100	
XI	100	1 Hr 15 Min	(I) Business Studies (II) Accountancy (III) Economics (IV) Aptitude	Online/Pen & Pencil	0.25	100	
XII	100	1 Hr 15 Min	(I) Business Studies (II) Accountancy (III) Economics (IV) Aptitude	Online/Pen & Pencil	0.25	100	
B.Com./BBA /BMS/ Allied Subjects Examination	100	1 Hr 15 Min	(I) Business Studies (II) Accountancy (III) Economics/ Financial Studies (IV) Aptitude	Online/Pen & Pencil	0.25	100	

Date Timings for the aforesaid test :

Class/Levels of Exam and Date	Level-I (Online test) 16 th December, 2018 (Sunday)	Level-II Test : Online or Pen Pencil Mode in the designated test centre 23 rd December, 2018 (Sunday)
Class IX & Class X	09:30 AM to 10.45 AM	1. 09:30 am. to 10.45 am. for Class IX & Class X
Class XI	11.45 AM to 1.00 PM	2. 11:45 am. to 1.00 pm. for Class XI
Class XII	2.00 PM to 3.15 PM	3. 2:00 pm. to 3:15 pm. for Class XII
Graduation-B.Com./BBA/BMS/Allied Subjects	4.15 PM to 5.30 PM	4. 4:15 pm. to 5:30 pm. for Class B.Com./BBA/BMS/Allied Subjects

Prizes for Participants

Level-I Test

- All participants In Level-1 test will receive a Participation Certificate.

Level-II Test

- 1st Rank holder will be awarded with Rs 1, 00,000/- for Class IX, Class X, Class XI , Class XII & B.Com./BBA/BMS/Allied Subjects Separately, if multiple winners are there, the prize amount will be shared by them. If more than 50 joint rank holders for the same, the awardee will at least awarded with the cash prize of Rs 2,000/-
- 2nd Rank will be awarded with Rs 50,000/-for Class IX, Class X, Class XI Class XII & B.Com./BBA/BMS/Allied Subjects separately, if multiple winners are there, the prize amount will be shared by them. If several joint rank holders for the same are there, the awardee will at least awarded with the cash prize of Rs 1,500/-
- Top 500 consolation prizes will be awarded worth Rs 500/- along with an appreciation certificate for Class IX, Class X, Class XI, Class XII & B.Com./BBA/BMS/Allied Subjects separately
- Participation Certificate will be given to each participant appeared for the Level-II Test.

ICAI Scholarship scheme will also be provided for the wards of Military/Para Military/ Railways Personnel

For further details please visit at: https://www.icaai.org/post.html?post_id=14927

Other Important Dates:

Award Ceremony: Award Ceremony will be held in January/February, 2019 at Delhi NCR.

ICAI/Test Management Committee reserves the right to change in any of the modalities cited above.

Deputy Convener

Career Counseling Group (CCG), ICAI

Convener

Career Counseling Group (CCG), ICAI



For any Query please contact :

Secretary, Career Counselling Group (CCG), The Institute of Chartered Accountants of India

ICAI Bhawan, A-29, Sector 62, Noida (U.P.) - 201309

Telephone (O): 0120-3876871, 886 Email: ccc.events@icai.in



Training Programme on **Goods and Services Tax** for **Skill Development of Girl Students**

Organised by **Career Counseling Group**

ICAI- Partners in India's Growth

The Institute of Chartered Accountants of India (ICAI), through its Career Counseling Group aims to promote the Commerce Education with Special Focus on CA Course amongst Secondary, Senior/Higher Secondary, Graduate/Post-Graduate students as well as other stakeholders. The

Vocational training programmes being organize are envisaged to be a step forward in the direction of employment oriented skill building of young talent in a niche and much sought after area. This shall also fulfil the need of trained manpower requirements of Small and Medium Sector.

GST Training module for Girl Students



**ICAI -
Celebrating the past,
Inspiring the Future**

**ICAI Joining India's movement of
Women Empowerment &
Beti Bachao, Beti Padhao**

**ICAI celebrate Platinum Jubilee Year
beginning July 1, 2018.**

**ICAI organises GST Training
Programs across the country at various
colleges specially for girl students.**



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

Career Counseling Group, ICAI Bhawan A-29, Sector 62, NOIDA (U.P.) Pin Code: 201309,

Tel. No.: 0120-3045910 • E-mail: sambit.mishra@icai.in • Website: www.icai.org, www.cccicai.in

SCHOLARSHIP

SCHEME

TO SALUTE THOSE WHO SERVE & SECURE OUR INDEPENDENT SOVEREIGNTY
ICAI – SCHOLARSHIP SCHEME FOR 75 MERITORIOUS STUDENTS

Career Counseling Group (CCG), ICAI

Launching “Scheme for the Award of Scholarship” to the 75 meritorious wards of

1. Military personnel i.e. India Army, Indian Navy and Indian Air Force & Para Military Forces i.e. Indian Coast Guard, Assam Rifles, Special Frontier Force, Central Reserve Police Force, Border Security Force, Indo-Tibetan Border Police, Sashastra Seema Bal, Central Industrial Security Force, National Security Guard, Special Protection Group etc.



2. Railway employees

ABOUT SCHEME

- This Special Scheme shall be effective from year 2018 to 2022.
- 75 Meritorious students* will be awarded the scholarships. (*Out of 75 scholarships, 50 scholarships will be awarded to wards of Military & para military personnel & 25 scholarships to wards of personnel in Railways).
- Scholarship Award – 50% of the CA course fee will be adjusted at the time of registration to the Foundation, Intermediate & Final Course.
- The scholarship is admissible for only one child per family.
- The scholarship is only for students who wish to pursue CA course in future.
- The applicant will be shortlisted on the basis of merit rank in Commerce Wizard Test.
- The applicants irrespective of his / her marital status are eligible.
- The said scheme is also applicable for wards of retired personnel.

ICAI COMMERCE

WIZARD 2018

The Career Counselling Group of ICAI aims to promote the commerce education with special focus on CA course amongst Secondary, Senior/Higher Secondary & Graduate/ Post graduate students.

The Commerce Talent Search Test called as Commerce Wizard is a diagnostic test to measure the concept understanding ability of a student.

- Students appearing in Class IX / X / XI / XII, B.Com / BBA / BMS / Allied Subjects and students registered under open learning examination are eligible for the Common Wizard test.
- The aforesaid test will be conducted in English languages only.
- The aforesaid test is an objective-type test of 75 minutes duration comprising 100 objective-type (Multiple Choice) questions, 25 questions (25 marks) from each subject through on-line arrangement.
- Level-I test (Online) – 16th Dec., 2018 : For students of CBSE / ICSE or any other national boards or open schools and various state boards conducting Secondary/Senior Secondary Examination.
- Level-II test (Online) – 23rd Dec., 2018 : For shortlisted candidates of Level-I test.

Award

• 1st Prize of Rs.1 Lakh • 2nd Prize of Rs.50,000 • Top 500 Consolation Prizes of Rs.500

REGISTRATION & DETAILS

Candidate can fill registration forms at

<http://icaicommercewizard.org> and can complete their online registration before due date. For more details please visit the said website.

CROSSWORD - DECEMBER 2018

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22. Of highest quality
24. An organisation granted the right by an airport to operate at the airport and provide aeronautical services.
25. Advisor
26. In India, a person who is making the payment (above prescribed limits) is responsible for deducting the ___ and depositing the same with government.
27. Aristocratic
28. Roman numeral for 501
33. ---- in the back.
36. Government's bank in India.
37. Lair
38. Service charge

ACROSS

1. A brief comment or explanation.
5. Costing an arm and a leg
10. Copied
11. A method of learning
12. A research company that conducts research work in the fields of energy, environment and sustainable development.
13. A joint venture between Reliance Infrastructure Ltd. and government of NCT of Delhi for supply of power.
15. Establishes
16. Partner of neither
17. Leading stock exchange of India located in Mumbai.
19. Tatter
21. College student
23. Is used to refer to the hours from midnight and noon
24. Meeting places
25. The main circuit board of a computer that holds together many of the important components of a computer.
29. Means to an ----: something you do in order to achieve something else.
30. Every ----- and corner.
31. Roman numeral for 101.
32. Foreland
34. Used as an adjective indicating nationality

35. Barter
39. Sets of facts or figures that can be displayed through a computer, especially in columns.
40. A commercial bank in India
41. Get

DOWN

1. Country with its own government
2. ___ and shut case.
3. Concise
4. Correct or refine
6. Angers
7. A trigonometric ratio : ---- Q
8. A science fiction based on an alien.
9. Third most traded currency of the world.
13. Personal website
14. The reserve requirement that the commercial banks in India are required to maintain in the form of cash, gold reserves, government approved securities.
17. Smart ___: Snoring solution
18. To look up something
19. A cheer of encouragement
20. Uttered at the end of a prayer or hymn, meaning 'so be it'
21. A small text file stored in a computer's hard drive by a website.

If undelivered, please return to: The Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg, New Delhi-110104