




**Chengalpattu District Branch of SIRC of ICAI
(Formerly known as Kanchipuram District Branch)**

**E- NewsLetter
JANUARY 2023**



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Note: Articles are invited from members for publishing in newsletter. The articles shall be either on the specific subject or a general article. Members can mail their article with Name, Membership Number, Mobile Number, Residential Address, Office Address & Photo to our Mail mentioned below

Note: The views expressed in the articles published are their own views and Chengalpattu District Branch does not endorse or take responsibility for the views expressed in the articles.

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E-NEWSLETTER

CHENGALPATTU DISTRICT BRANCH OF SIRC OF ICAI

From the Chairman's Desk



Esteemed Members,

Greetings for the year.

We are all stepping in to the New Year. Welcome 2023.

The branch had organised Seminars on the topics of Ethics, Standards on Auditing, Practical Issues on E-assessment and E-appeal, IT implications on Real Estate Transactions, Filing GST Annual Return using Tally etc last month.

During this month, we also conducted an Investor Awareness Programme jointly with the Committee on Financial Markets and Investors' Protection, ICAI under the aegis of Investor Education and Protection Fund Authority, Ministry of Corporate Affairs, Government of India for BSF Camp at Keerapakkam, Chengalpattu District. We take pride in organising this exclusive program for BSF who dedicates their life to our nation.

We are also organizing 10 days Training Programme with AVNL Institute of Learning Avadi from 26th December 2022.

I thank the Managing Committee members for their continued support and encouragement. I also thank the Chairmen of various Sub Committees for organizing various programs from their Sub -Committees.

I once again wish you all a very Happy New Year and Happy Pongal to all our members. Let us work together in harmony towards our branch's development.

CA. Sathiyarayanan K.R.
Chairman,
Chengalpattu branch of SIRC of ICAI

01.01.2023

Income tax implication on –Real Estate Transactions

Adv / CA S. Sathiyarayanan

Real Estate Sector

2nd Largest Employer in the Country

2nd largest contributor to GDP after Agriculture (>10%)

Strong growth post COVID19

Demon has brought the sector in the main stream



Capital Gain or Business Income ?

Answer to this question will depend upon the nature of transaction. Even a solitary transaction could result in business income.

If a person has lived in a house for 20 years and then gives it for development, it is a clear case of capital gains.

If a builder gives a piece of land held as stock in trade for development it is a clear case of business income.

Land transfer is transfer of capital asset or Biz asset ?

Can entering into JDA amounts to carrying on biz by Land Owner ?

Can change of land use converts land into Biz asset ?

Can receipt of sale consideration in Kind or linked to revenue recognition by the developer make the land as Biz asset ?

Tax issues for Land Owner

Land held as biz asset transferred at the time of JDA

Whether JDA may be treated in the nature of biz JV

If JV, separate taxable entity comes into existence –AOP ?

Year of taxability when land owner transfers as biz asset in consideration of developed constructed area

In case UDS is transferred directly to the customer by the Land Owner, whether land may be treated as business asset in his hands ?

Capital Gains

Concept of Income u/s 2(24)

Legal friction

Capital Gain –at glance

Capital Asset

Long Term v. Short Term Capital Asset

Transfer

Indexation

Cost to previous owner

Capital Gain computation

Exemptions

Structured Transactions

Development Agreement –an illustration

Total Land area- 10,000 sqft.

Builtup Area – Total Builtup area –20000 sqft.
Landowner -50 % i.e. 10,000 sqft.
Developer -50 % i.e. 10,000 sqft.

Date of Development Agreement –01/01/2018

Possession hand-over to developer on 30/04/2019
(with/without GPOA)

Building completed & Landowner's share hand-over on 10/05/2019

When is the transfer complete

Date of transfer to decide the year of accrual of capital gain

Transfer under the Income Tax Act

Section 2 (47) (v) of the IT Act reads as under:

Any transaction involving the allowing of the possession of any immovable property to

be taken or retained in part performance of a contract of the nature referred to in Sec 53A of the Transfer of Property Act, 1882.

Sec 53A of TP Act -What is part performance

Where any person contracts in writing to transfer any immovable property, and the transferee has, in part performance of the contract, taken possession of the property and has done some act in furtherance of the contract, and is willing to perform his part of the contract then -

the transferor shall be debarred from enforcing any right in respect of the property, other than a right expressly provided in the agreement.

S.53A of TP Act

'willingness to perform' for the purposes of Section 53A is something more than a statement of intent;

it is the unqualified and unconditional willingness on the part of the vendee to perform its obligations.

willing to perform under the contract in the same sequence in which these are to be performed, it cannot be said that the provisions of Section 53A of the TP Act will come into play.

(K. Radhika V. DCIT, Mumbai AIT (2011) 482

Point of accrual of income

Date of execution of Development Agreement

Date of handing over of possession

Handing over of possession coupled with GPOA in favour of developer

Date of execution of first sale deed for developer's share

Date of execution of first sale deed for landowner's share

Date of handing over of Landowner's built up area

Date of execution of Development Agreement

Transfer would not be complete if the agreement is properly drafted and all clauses are kept out of the purview of Section 2(47) read with Section 53A of the Transfer of Property Act.

Date of handing over of possession of land

Capital gain will not accrue provided possession is handed over to developer purely as a licensee - See R Vijayalakshmi Vs Appu Hotels Ltd (2002) 257 ITR 4 - though given in the context of Chapter XXC.

Handing over possession with GPOA

Transfer for IT purposes = date when irrevocable GPOA is given

What happens if GPOA is given but possession is not handed over or it is linked to some other event like permission from municipal authorities ?

Chaturbhuji Dwarkadas's case 260 ITR 491

Original Agreement dated 18/08/1994

This was a sale agreement with a consideration of Rs 1.86 cr. Court held that this was a development agreement.

Almost entire consideration paid by 31/3/96

Possession given on 1/4/96

GPA given on 12/3/99

Capital gains tax paid for AY 1999-2000

Dept. said capital gain in A Y 1996-97

Court held that capital gain arose on 18/8/94 itself.

Potla Nageswara Rao v. DCIT (APHC)

In AY 2003-04, the assessee entered into an agreement with Bhavya Constructions pursuant to which he agreed to transfer the land in consideration of the developer giving him four flats in the developed area. The assessee received a token advance and handed over possession of the land. The developer obtained the approval of the municipality to the plan for construction on the property.

The AO held that the capital gains in AY 2003-04

Assessee = AY 2004-05 when the consideration was received.

The CIT(A) upheld the claim of the AO. The Tribunal (included in file), relying on Chaturbhuji Dwarkadas Kapadia 260 ITR 491 (Bom), Dr. T. K. Dayalu 202 Taxman 531 (Kar) & Maya Shenoy 124 TTJ (Hyd) 692, held that as the assessee had handed over possession of the property to the developer, it was a clear case of transfer by exchange.

It was held that the fact that the consideration was received in a later year was not relevant. On appeal by the assessee to the High Court dismissed the appeal:

APHC:: The element of factual possession and agreement are contemplated as transfer within the meaning of the aforesaid section.

APHC :: When the transfer is complete, automatically, consideration mentioned in the agreement for sale has to be taken into consideration for the purpose of assessment of income for the AY when the agreement was entered into and possession was given. Both the aforesaid aspects took place in the previous year relevant to the assessment year 2003-04.

CIT v. Balbir Singh Maini –SC
Civil Appeal No. 15619 of 2017.

Issue - whether giving of possession of land for purposes of development under an unregistered joint development agreement could be regarded as giving rise to capital gains

SC after referring to the 2001 amendment to the Registration Act, 1908, have categorically held that an unregistered agreement was not covered by section 53A of the Transfer of Property Act, 1908.

Issue - whether the signing of the JDA or giving of possession could be said to be a transaction, which had the effect of transferring or enabling the enjoyment of the immovable property, which could also give rise to capital gains.

According to the SC, the purpose of this provision was to bring those transactions within the tax net, where, though title of the property was not transferred in law, there was, in substance, a transfer of title in fact.

On a reading of the JDA, the Apex Court noted that the owner had continued to be the owner of the property throughout the development of the property, and had at no stage sought to transfer rights similar to ownership to the developer. At the most, only possession was given under the agreement and that too, for the limited purpose of development.

The Hon'ble Apex Court, therefore, held that this clause also did not apply to the transaction, and that there was no transfer giving rise to capital gains.

Therefore, the principal ratio which emerged out of the above judgement of the Hon'ble Apex Court is that part performance of such an unregistered agreement (JDA) by the landowner, by giving possession of the property for the limited purpose of development, would not amount to a transfer, and hence did not give rise to capital gains.

Section 45(5A)

Capital gain arises at the instance of transfer of the capital asset.

Deviation from this general rule was provided by the Finance Act, 2017, by inserting a new sub section (5A) to section 45, with effect from 01.04.2018, i.e. Assessment Year 2018-19.

Section 45(5A) defers the point of taxability from the point of transfer, in cases of Joint Development Agreements (JDAs), which are referred to in the provision as 'specified agreements'.

Memorandum of explanation to Finance Bill, 2017

“With a view to minimise the genuine hardship which the owner of land may face in paying capital gains tax in the year of transfer, it is proposed to insert a new sub-section (5A) in section 45 so as to provide that in case of an assessee being individual or Hindu undivided family, who enters into a specified agreement for development of a project, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority.”

Section 45 (5A)

“(5A) Notwithstanding anything contained in sub-section (1), where the capital gain arises to an assessee, being an individual or a Hindu undivided family, from the transfer of a capital asset, being land or building or both, under a specified agreement, the capital gains shall be chargeable to income- tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority; and for the purposes of section 48, the stamp duty value, on the date of issue of the said certificate, of his share, being land or building or both in the project, as increased by the consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset:

Provided that the provisions of this sub-section shall not apply where the assessee transfers his share in the project on or before the date of issue of the said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place and the provisions of this Act, other than the provisions of this sub-section, shall apply for the purpose of determination of full value of consideration received or accruing as a result of such transfer.

Explanation.-For the purposes of this sub-section, the expression-

(i) “competent authority” means the authority empowered to approve the building plan by or under any law for the time being in force;

(ii) "specified agreement" means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash;

(iii) "stamp duty value" means the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both."

DATE OF TRANSFER IS FROZEN

As section 45(5A) deals only with the capital assets being in the nature of land or building.

As the transfer is so well defined under the Act and no diversion is provided even under section 45(5A), the date of transfer has been made rigid by the instance of transfer as per this provision. Only the instance of taxability has been deferred by it.

Another instance

where a capital asset is converted into stock in trade
capital gain is though taken to have arisen on the date of such conversion, the

taxability arises only at the time of sale of the stock, which came into existence on conversion of the capital asset.

The intention is clearly to tax the person at the time the consideration is realised, as on the date of conversion only the nature of asset changes from investment to inventory and nothing actually realises on that day. The similar intention is there in section 45(5A), as on the date of transfer nothing would have actually realised.

In such a situation the property actually gets transferred on a date preceding the chargeability of tax.

Issues -Section 45(5A)

Holding Period -Issue

In case of section 45(5A), though the provision calls for deferment of tax from the date of actual transfer, still no such specific provision is provided to clarify how the period of holding is to be computed. In such a situation normal provisions of the Act will prevail.

Section 2(42A) -- term 'short term capital asset' reads as under:

"short-term capital asset" means a capital asset held by an assessee for not more than thirty- six months immediately preceding the date of its transfer."

Third Proviso to section 2(42A), inserted by Finance Act, 2017, w.e.f. 01.04.2018, -- in case of immovable property being land, building or both the period of holding for this purpose is taken to be 24 months immediately preceding the date of transfer.

Case Study

An assessee transfers a property under JDA to the developer for development after only a period of six months of its acquisition, the completion certificate is issued, say, after five years of such transfer.

The capital gain would be taxable after a period of more than five years from the acquisition, however only as short term capital gain, since the period of holding between acquisition and transfer is only six months.

Indexation Issue

Section 48 provides for the mode of computation of capital gains. The second Proviso to this section also provides for indexation of cost of acquisition in cases of transfer of long term capital asset. Clause (iii) of Explanation under this section defines the term 'indexed cost of acquisition' as under;

"(iii) "indexed cost of acquisition" means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1st day of April, 2001 , whichever is later;"

The law is very clear that the indexation benefit will be given to the extent of cost inflation index till the year of transfer.

Karnataka High Court in CIT Vs. Rudra Industrial Commercial Corporation

In the context of section 45(2) of the Act. The High Court, observed as under:

"Explanation (iii) to s. 48 defines indexed cost of acquisition which means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1st day of April, 1981, whichever is later.

12. A harmonious interpretation of these two provisions makes it clear as to how the capital gains is to be taken into consideration. First we have to find out what is the fair market value of the asset on the date of conversion, then to find out what is the market value of the property on the date of transfer. So, in order to compute the capital gains payable, it is the market value on the date of transfer that is relevant and in arriving at that market value the index cost of acquisition as prescribed on the date of transfer is to be taken into consideration and not the date of conversion. In the instant case, the index cost of acquisition was 223 on the date of transfer in the year ending 1993 and the index cost of acquisition on the date of conversion is 161. Therefore, the AO committed a serious error in taking 161 as the index. The appellate authorities have rightly interfered with the said assessment and have taken 223 as correct index cost of acquisition. Therefore, when the impugned order passed by the appellate authorities is in accordance with the aforesaid statutory provisions, the said substantial questions of law have to be answered in favour of the assessee and against the Revenue."

the basic difference between the situation perceived under section 45(2) and 45(5A) -

In case of conversion of capital asset/investment in the stock in trade, there is no actual transfer of the asset. At this point of time, it is only the nature of the property that has changed, the asset itself remains with the owner, there is no actual transfer.

While in cases referred under section 45(5A), there is actual transfer of asset in JDA.

Cost of Improvement -Issue

Clause (iv) to the Proviso to section 48, defines 'indexed cost of improvement' as follows:

"(iv) "indexed cost of any improvement" means an amount which bears to the cost of improvement the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the year in which the improvement to the asset took place;"

The cost of improvement incurred by an assessee on the capital asset, transferred is recognized only till the date of transfer.

If there is an obligation under JDA on the Landowner to incur costs, such costs may not qualify.

Section 50-C

Sec. 45(5A) provide a deeming fiction by prescribing the method of determination of the value of consideration to be received in kind.	Provisions of sec. 50C(2) are applicable on the ground of principle of parity and natural justice.
Under Sec. 45(5A) there is no provision which states to substitute fair market value as a sale consideration if the FMV is less than Stamp duty Value	Provisions of sec. 50C are not applicable to the provisions of Sec. 45(5A) of the Act
Section 45(5A) and Section 50C are deeming provisions;	Supreme Court in CIT vs. MoonmillLtd. 59 ITR 574
Specific provision over-rules general provision of law	where in it held that one deeming section cannot be extended by importing another deeming section
Section 45(5A) being deeming provision needs strict interpretation	

Exemption -Sec 54 / 54F

Investment in new asset

Benefit of CBDT cir NO. 672 dated 16.12.1993 (flats by coops) refers to CBDT Cir No. 471 dated 15.10.1986

Followed in Sashi Varma Vs. CIT (1997) 224 ITR 106 (MP)

CIT vs RL Sood (2000) 245 ITR 727 (Del)

Even if hand over is delayed beyond 3 years !!

Displacement Allowance / Rental

Compensation such as rent, for alternate accommodation, shifting expenses, inconvenience allowance, hardship allowance etc.

Such compensation is Capital Receipt - Not taxable

Smt. Delilah Raj Mansukhani vs. ITO (ITAT Mumbai), ITA No. 3526/Mum/2017

Kushal K. Bangia vs. ITO in ITA No.2349/Mum/2011

Shri Devshi LakhamshiDedhia vs. ACIT in ITA No.5350/Mum/2012, and

Lawrence Rebello vs. ITO (ITAT Indore) in ITA No. 132/Ind/2020.

Allowance/Compensation is Part of Capital Gain

ITO vs. Harsha Jitendra Sanghvi [ITA No 6732/Mum/2012 and MA No 15/Mum/2017].

Pradyot Borkar vs. ACIT: ITA No 4070/Mum/2016.

Allowance/Compensation is "Income from Other Sources"

Section 56(2)(x)

Jatinder Kumar vs ITO: 21 taxmann.com 316 (Mum-Trib).

Sec 194-IC

in case any monetary consideration is payable under the specified agreement, tax at the rate of **ten percent** shall be deductible from such payment.

GST Updates on Recent Notifications 26/2022 & 27/2022

CA. Bhuvaneshwari R.V.



1. Rule 8(2)(a)

Verification will be done through separate one-time passwords sent to the mobile number and e-mail address linked to the Permanent Account Number.

2. Rule 8(4)(A)

Application for registration shall be deemed to be completed for the applicant (other than notified persons who has opted for authentication of Aadhar number) based on data analysis and risk parameter, only after bio-metric based Aadhar authentication and taking photograph of the applicant where the applicant is an individual or in cases other than an individual authentication of Karta, managing director, whole time director, partners, board of trustees etc., along with the verification of original copy of documents uploaded along with the application for registration, at one of the Facilitation Centers notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule.

3. Rule 8 (4)(B)

The Central Government may, on the recommendations of the Council, by notification specify the States or Union territories wherein the provisions of sub-rule (4A) shall not apply.

As per Notification 27/2022, all the provisions of this rule, shall not apply in all the States and Union territories except the State of Gujarat.

4. Rule 9(1)(aa) & (2)(aa)

Based on the data analysis and risk parameters, though the applicant has undergone authentication of Aadhar number specified in rule 8(4A), the proper officer may carry out a physical verification of place of business before granting registration.

5. Rule 12(3)

Voluntary cancellation facility for Tax payers registered only for the purpose of Deducting Tax at source (Government sector) and Collection Tax at source (E-commerce operators), on a request made in writing by a person to whom a registration has been granted

6. Rule 37(1)

Registered person who has availed Input tax credit on any inward supply of goods and services other than the supplies for which tax is payable on reverse charge basis, but fails

to pay the amount to the supplier whether wholly or partly shall pay or reverse an amount equal to the input tax credit in respect of such supply proportionate to the amount not paid to the supplier along with interest.

7. Rule 37A

Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year. Provided that where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50.

8. Rule 88C

Where the tax liability discharged in GSTR-3B is less than the tax liability disclosed in GSTR-1, the registered person shall be intimated of such difference in Part A of FORM GST DRC-01B electronically on the common portal and copy shall also be sent to the registered mail address. The registered person shall pay the differential tax liability fully or partially along with interest through FORM DRC-03 and furnish a reply electronically on common portal in Part-B of DRC-01B, within 7 days. Where any amount specified in the intimation remains unpaid within 7 days and where no explanation or reason is furnished by the registered person recovery proceedings under section 79 shall be initiated by the officer. Until the liability is discharged and reply is filed in Part B of DRC-01B, the tax payer cannot file GSTR-1.

9. Rule 89

Statement containing details of the invoices in respect of which refund is being claimed along with a copy of such invoices, proof of making payment to the supplier shall also be submitted along with the refund application.

Certificate from the chartered Accountant is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.

10. Rule 109C

The appellant may, at any time before issuance of show cause notice or before issuance of the order whichever is earlier, in respect of any appeal filed, may file an application for withdrawal of the said appeal by filing an application in FORM GST APL-01/03W

Recapitulation of MCA Amendments - Journey of 2022

CA. PRIYA A

January 2022

Amendment in Section 403 of the Companies Act, 2013

MCA vide its Notification No.G.S.R. (E) dated 11th January, 2022, had amended Companies (Registration Offices and Fees) Rules, 2014 and notified the Companies (Registration Offices and Fees) Amendment Rules, 2022.



The amendment was to effect higher additional filing fee of upto 18 times as against 12 times which was there earlier, under Section 403 of the Company Act, 2013 applicable w.e.f. 01st July 2022.

The following table of additional fees and higher additional fees (in certain cases) shall be applicable for delay in filing of forms other than for increase in Nominal Share capital or forms:

Sl. No.	Period of delays	Additional fee as a multiple of normal fees	Higher additional fee as a multiple of normal fees for certain cases
(1)	(2)	(3)	(4)
1	Upto 15 days	One time of normal fees	
2	More than 15 days and upto 30 days	2 times of normal filing fees	3 times of normal filing fees
3	More than 30 days and upto 60 days	4 times of normal filing fees	6 times of normal filing fees
4	More than 60 days and upto 90 days	6 times of normal filing fees	9 times of normal filing fees
5	More than 90 days and upto 180 days	10 times of normal filing fees	15 times of normal filing fees
6	Beyond 180 days	12 times of normal filing fees	18 times of normal filing fees

February 2022

All the stakeholders were informed that the Registrar of Companies and the Regional Directors of the Ministry of Corporate Affairs at all locations were directed by the Ministry to enter all cases of complaints against the Companies and the LLPs, Inspections, Inquiries, Investigations and Prosecutions in the MCA Electronic registry i.e., MCA21 before issuing

any letter, notice, order etc. Thereafter, a Service Request Number (SRN) would be generated. They had also been directed to mention such SRN mandatorily in all such communications to Companies, LLPs, their officers, auditors, etc., on all communications.

In case of any communication received without SRN may be considered as unauthorised and need not be responded further. Any instance of such communication received without mentioning SRN may be brought to the notice of the Office of the Director General of Corporate Officer (DGCoA) at email dgcoa@mca.gov.in along with the copy of communication. - Updated on 23-02-2022.

Filing of Form CSR-2 - Report on Corporate Social Responsibility

MCA vide its Notification No. G.S.R. 107(E) dated 11th February, 2022 had amended the Companies (Accounts) Rules, 2014 and introduced Companies (Accounts) Amendment Rules, 2022.

Rule 12 (1B) was inserted where in, every company covered under section 135(1) shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS) as the case may be.

MCA launched web-based e-filings for all LLP forms in V3 of MCA21 portal from Feb 2022.

March 2022

Stakeholders were required to do DSC Association is a post-login service in V3. User Registration was mandatory for DSC Association. Multiple DSC Associations could not be done using one user id. - Updated on 09-03-2022

Steps for associating DSC in V3.

- (1) To associate the DSC as a Business user in V3.
- (2) Login using credentials.
- (3) MCA Services ->FO LLP Services - >Associate DSC
- (4) Download & run "embridge".
- (5) Change the DSC password/PIN (for 1st time users on V3).
- (6) In the "Token" field, select "ePass" option from the available drop downs.
- (7) Select Certificate Details from the drop-down and enter the DSC password.
- (8) Click on Register.
- (9) A confirmation message would be received on portal.

- Updated on 12-03-2022

April 2022

Stakeholders were requested to use their V2 user ID and password to log into the new V3 portal, and then upgrade to a Business user. Once upgraded the email ID of the V2 account would automatically become the login ID for V3 and password would remain the same, which could be then changed as required. – Updated on 14-04-2022

May 2022

Clarification regarding Micro finance / Micro credit in MOA of Section 8 Companies

MCA issued clarification regarding Micro finance / Micro credit as an object in the Objects Clause of Memorandum Of Association (MOA) of Section 8 Companies vide General Circular No.05/2022 dated 30th May 2022.

At initial incorporation, the ROC does not allow Section 8 Companies to get incorporated with the objects of microfinance. However, various companies have altered their objects clause for carrying out microfinance activities by way of passing Special Resolution and subsequent filing of form MGT-14 for the same. Immediate action on the part of RoCs had been required as per law, including changing their objects to prevent such companies from carrying out the microfinance activities.

June 2022

Penal Consequences for Contravention of National Financial Reporting Authority Rules, 2018

MCA vide its Notification Dated 17th June 2022 amended the National Financial Reporting Authority Rules, 2018 and introduced the National Financial Reporting Authority Amendment Rules, 2018.

Rule 13 had been substituted, wherein, the penal consequences for non-compliance with the rules is fine not exceeding five thousand rupees, and a further fine not exceeding five hundred rupees for every day after the first, for a continuing contravention.

Incorporation of Limited Liability Partnerships - Procedure of PAN application & allotment

CBDT had notified the procedure of PAN application & allotment through Simplified Proforma for incorporating Limited Liability Partnerships (LLPs) electronically through Form: FiLLiP of Ministry of Corporate Affairs vide Notification No. 04/2022 dated 26th June 2022.

The Director General of Income Tax Systems had laid down the classes of persons, forms, format and procedure for PAN in this notification.

July 2022

Spending of CSR funds for “Har Ghar Tiranga” Campaign

MCA had issued a clarification on spending of CSR funds for “Har Ghar Tiranga” Campaign vide Genral Circular No.08/2022 dated 26th July 2022.

It was clarified that spending of CSR funds for the activities related to the Har Ghar Tiranga campaign, such as mass scale production of the National flag, outreach and amplification efforts and other related activities, were eligible CSR activities under Schedule VII of the Companies Act, 2013, pertaining to the promotion of education relating to culture.

August 2022

Signing of charge e-forms by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation

MCA, vide its Notification No.G.S.R. (E) dated 29th August, 2022, introduced a new rule in Companies (Registration of Charges) Rules, 2014

As per the new Rule 12, the signing of charge e-forms viz. the Form No. CHG-I, CHG-4, CHG-8 and CHG-9 by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation as the case may be and filed with the Registrar.

September 2022

Amendment of definition of Small Company

MCA had amended the Companies (Specification of Definition Details) Rules, 2014 Vide Notification No.G.S.R. 700(E) dated 15th September 2022 and introduced Companies (Specification of Definition details) Amendment Rules 2022.

Rule 2(2)(t) had been substituted, wherein for the purposes of Section 2(85)(i) and section 2(85)(ii) of the Companies Act, 2013, paid up capital and turnover of the small company shall not exceed rupees four crore and rupees forty crore respectively.

Amendment of the Companies (Corporate Social Responsibility Policy) Rules, 2014

MCA, vide its Notification No. G.S.R. 715(E) dated 20th September 2022, amended the Companies (Corporate Social Responsibility Policy) Rules, 2014, and introduced Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022.

Any company having any amount in its unspent Corporate Social Responsibility Account as per Section 135(6), shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section.

Under Rule 4 (1), the following sub-rule was substituted to provide for the following:

‘(1) The Board shall ensure that the CSR activities were undertaken by the company itself or through, -

(a) a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company; or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or

(c) any entity established under an Act of Parliament or a State legislature; or

(d) a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

Under Rule 8(3) (c):

(i) for the words “five percent”, the words “two per cent.” was substituted;

(ii) for the words “whichever is less”, the words “whichever is higher” was substituted.

Annexure-II was substituted with Format for The Annual Report on CSR activities to be included in the Board’s Report for Financial Year commencing on or after the 1st day of April, 2020.

Extension of time for filing e-form DIR-3-KYC

MCA had provided extension of time for filing e-form DIR-3-KYC and web-form DIR-3-KYC-WEB without fee vide General Circular No. 09/2022 dated 28th September 2022. E-form DIR-3-KYV-WEB was allowed to be filed without filing fee upto 15th October 2022.

MCA issued a clarification for Amendment to Schedule III to the Companies Act, 2013 vide MCA Notification GSR. 207(E) dated 24th March 2021 mandating companies to round off the figures appearing in the Financial Statements depending upon their total income. However, if the companies provided absolute figures in e-forms ie. AOC-4, the same need not be treated as incorrect certification by the Professionals. – Updated on 26-

09-2022.

November 2022

Amendments in Companies (Registered Valuers and Valuation) Rules, 2017

MCA had amended the Companies (Registered Valuers and Valuation) Rules, 2017 vide Notification No. G.S.R. 831(E) dated 21st November 2022 and introduced the Companies (Registered Valuers and Valuation) Amendment Rules, 2022.

Rule 3(2)(f) had been added, which states that a partnership entity or a company shall not be a member of more than one such registered valuers organisation at a given point of time. If such registration has already been done, the above mentioned amended rule is to be complied within 6 months of commencement of these amended rules.

Rule 7A had been added, wherein a registered valuer shall intimate the authority for a change in the personal details, or any modification in the composition of partners or directors, or any modification in any clause of the partnership agreement or Memorandum of Association, which may affect the registration of registered valuer, after paying the fee as per the Table -I in Annexure V.

Rule 14A had been inserted wherein a registered valuers organisation shall intimate the authority for change in composition of its governing board, or its committees or appellate panel, or other details, after payment of fee as per the Table II in Annexure V.

December 2022

MCA is launching the Second set of Company Forms covering 56 forms in two different lots on MCA21 V3 portal. 10 out of 56 forms would be launched on 09th January 2023 and the remaining 46 forms on 23rd January 2023.

Following forms would be rolled-out on 09th January 2023:

SI. No.	Form No.	Form Name
1	SPICe+ PART A	Application for reservation of name for new company incorporation
2	RUN	Application for change of name of existing company
3	SPICe+ PART B	Integrated Company Incorporation Application
4	AGILE PRO S	Application for Goods and services tax Identification number , employees state Insurance corporation registration plus Employees provident fund organisation registration, Profession tax Registration, Opening of bank account and Shops and Establishment Registration
5	E-AOA[INC-34]	Articles of Association
6	E-MOA[INC-13]	Memorandum of Association

7	E-AOA[INC-31]	Articles of Association
8	E-MOA[INC-33]	Memorandum of Association
9	INC-9	Declaration by Subscribers and First Directors
10	URC-1	Application by a company for registration under section 366

The list of 46 forms which would be rolled-out on 23rd January 2023 are as below:

Sl. No.	Form No.	Form Name
1	DIR-12	Particulars of appointment of directors and the key managerial personnel and the changes among them
2	DIR-11	Notice of resignation of a director to the Registrar
3	DIR-3	Application for allotment of Director Identification Number
4	DIR-3C	Intimation of Director Identification Number by the company to the Registrar DIN services
5	DIR-5	Application for surrender of Director Identification Number
6	DIR-6	Intimation of change in particulars of Director to be given to the Central Government
7	INC-12	Application for grant of License to an existing company under section 8
8	INC-18	Application to Regional Director for conversion of section 8 company into any other kind of company
9	INC-20	Intimation to Registrar of revocation of license issued under section 8
10	INC-20A	Declaration for commencement of business
11	INC-22	Notice of situation or change of situation of registered office
12	INC-23	Application to the Regional Director for approval to shift the Registered Office from one State to another state or from jurisdiction of one Registrar to another Registrar within the State
13	INC-24	Application for approval of Central Government for change of name
14	INC-27	Conversion of public company into private company or private company into public company or Conversion of Unlimited Liability Company into Limited Liability Company
15	INC-28	Notice of Order of the Court or any other competent authority
16	INC-4	One Person Company - Change in Member/ Nominee
17	INC-6	One Person Company - Conversion form
18	MGT-14	Filing of Resolutions and agreements to the Registrar under section 117
19	MR-1	Return of appointment of managing director or whole time director or manager

20	MR-2	Form of application to the Central Government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors
21	NDH-4	Form for filing application for declaration as Nidhi Company or updation of status by Nidhis.
22	PAS-3	Return of Allotment
23	SH-7	Notice to Registrar of any alteration of share capital
24	SH-11	Return in respect of buy-back of securities
25	SH-8	Letter of Offer
26	SH-9	Declaration of Solvency
27	NDH-1	Return of Statutory Compliances
28	NDH-2	Application for extension of time
29	NDH-3	Return of Nidhi Company for the half year ended
30	GNL-3	Particulars of person(s) charged for the purpose of sub- clause (iii) or (iv) of clause 60 of section 2
31	PAS-6	Reconciliation of Share Capital Audit Report (Half-yearly)
32	MGT-3	Notice of situation or change of situation or discontinuation of situation, of place where foreign register shall be kept
33	PAS-2	Information Memorandum
34	DIR-9	Report by the company to Registrar for disqualification of Directors
35	DIR-10	Application for removal of Disqualification of Directors
36	AOC-5	Notice of address at which books of account are maintained
37	FC-1	Information to be filed by foreign company
38	FC-2	Return of alteration in the documents filed for registration by foreign company
39	FC-3	Annual accounts along with the list of all principal places of business in India established by foreign company
40	FC-4	Annual Return of a Foreign company
41	GNL-2	Form for submission of documents with the Registrar
42	GNL-4	Addendum to form
43	MSC-1	Application to ROC for obtaining the status of dormant company
44	MSC-3	Return of dormant companies
45	MSC-4	Application for seeking status of active company
46	RD-1	Form for filing application to Regional Director

To facilitate implementation of these forms in V3 MCA21 portal, stakeholders were advised to note the following points:

(1) Company e-Filings on V2 portal would be disabled from 07th January 2023 12:00 AM to 08th January 2023 11:59 pm for 10 forms which were planned for roll-out on 09th January 2023.

(2) Company e-Filings on V2 portal would be disabled from 07th January 2023 12:00 AM

to 22nd January 2023 11:59 pm for 46 forms which would be planned for roll-out on 23rd January 2023.

(3) All stakeholders have been advised to ensure that there are no SRNs in pending payment and Resubmission status.

(4) In view of the upcoming launch of 56 Company forms, V3 portal would not be available from 07th January 2023 12:00 AM to 08th Jan 2023 at 11:59 pm due to 10 company forms roll-out and from 21st January 2023 to 22nd January 2023 for 46 company forms roll-out.

(5) V2 Portal for company filing would remain available for all the forms excluding above mentioned 56 forms. – Updated on 26-12-2022

Conduct of EGM through EVC and OAVM for EGM

MCA had allowed companies to conduct EGMs through Video Conference (VC) and Other Audio Visual Means (OAVM) vide General Circular No.11/2022 dated 28th December 2022.

Companies had been allowed to conduct EGMs through EVC or OAVM or transact items through postal ballot in accordance with the framework provided in earlier Circulars up to 30th September 2023.

Clarification on holding of Annual General Meeting (AGM) through Video Conference (VC) or Other Audio Visual Means (OAVM)

MCA, vide in its General Circular No.10/2022 dated 28th December 2022, Clarification on holding of Annual General Meeting (AGM) through Video Conference (VC) or Other Audio Visual Means (OAVM)

1. In continuation to its Ministry's General Circular No.20/2020 dated 05.03.2020 and General Circular No.02/2022 dated 05.05.2022, and following due consideration, it has been decided to allow companies whose AGMs are due in the year 2023 to hold their AGMs on or before September 30, 2023, in accordance with the requirements laid out in paragraphs 3 and 4 of the General Circular No.20/2020 dated 05.05.2020.

2. It was clarified that this general circular shall not be construed as conferring any extension of time for the holding of AGMs by the companies under the Companies Act, 2013 (the Act), and the companies that have not adhered to the relevant timelines shall be liable to legal action under the appropriate provisions of the Act.

Standards on Audit

DR CA K SRIDHAR



SA 240 THE AUDITOR'S RESPONSIBILITIES RELATING TO FRAUD IN AN AUDIT OF FINANCIAL STATEMENTS

Effective Date

This SA is effective for audits of financial statements for periods beginning on or after 1st April, 2009

Scope

This Standard on Auditing (SA) deals with the auditor's responsibilities relating to fraud in an audit of financial statements

Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment

Fraud Vs Error

The distinguishing factor between fraud and error is whether the underlying action that results in the misstatement of the financial statements is intentional or unintentional

Definitions

(a) Fraud - An intentional act by one or more individuals among management, those charged with governance, employees, or third parties, involving the use of deception to obtain an unjust or illegal advantage.

(b) Fraud risk factors - Events or conditions that indicate an incentive or pressure to commit fraud or provide an opportunity to commit fraud

Characteristics of Fraud

Fraud, whether fraudulent financial reporting or misappropriation of assets, involves incentive or pressure to commit fraud, a perceived opportunity to do so and some rationalization of the act.

Examples:

Incentive or pressure to commit fraudulent financial reporting may exist when management is under pressure, from sources outside or inside the entity, to achieve an expected (and perhaps unrealistic) earnings target or financial outcome

when an individual believes internal control can be overridden

individuals possess an attitude, character or set of ethical values that allow them knowingly and intentionally to commit a dishonest act

How done

Manipulation, falsification (including forgery), or alteration of accounting records or supporting documentation from which the financial statements are prepared

Misrepresentation in or intentional omission from, the financial statements of events, transactions or other significant information

Intentional misapplication of accounting principles relating to amounts classification, manner of presentation, or disclosure.

Recording fictitious journal entries, particularly close to the end of an accounting period, to manipulate operating results or achieve other objectives

Inappropriately adjusting assumptions and changing judgments used to estimate account balances

Omitting, advancing or delaying recognition in the financial statements of events and transactions that have occurred during the reporting period.

Concealing, or not disclosing, facts that could affect the amounts recorded in the financial statements

Engaging in complex transactions that are structured to misrepresent the financial position or financial performance of the entity

Altering records and terms related to significant and unusual transactions.

Misappropriation of assets – ways

Embezzling receipts (for example, misappropriating collections on accounts receivable or diverting receipts in respect of written-off accounts to personal bank accounts).

Stealing physical assets or intellectual property (for example, stealing inventory for personal use or for sale, stealing scrap for resale, colluding with a competitor by disclosing technological data in return for payment).

Causing an entity to pay for goods and services not received (for example, payments to fictitious vendors, kickbacks paid by vendors to the entity's purchasing agents in return for inflating prices, payments to fictitious employees).

Using an entity's assets for personal use (for example, using the entity's assets as collateral

for a personal loan or a loan to a related party).

Responsibility for the Prevention and Detection of Fraud

The primary responsibility for the prevention and detection of fraud rests with both those charged with governance of the entity and management.

Management Representations

The auditor shall obtain written representations from management and, where applicable, those charged with governance that:

- (a) They acknowledge their responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud;
- (b) They have disclosed to the auditor the results of management's assessment of the risk that the financial statements may be materially misstated as a result of fraud;
- © They have disclosed to the auditor their knowledge of fraud or suspected fraud affecting the entity involving:
 - (i) Management
 - (ii) Employees who have significant roles in internal control; or
 - (iii) Others where the fraud could have a material effect on the financial statements
- (d) They have disclosed to the auditor their knowledge of any allegations of fraud, or suspected fraud, affecting the entity's financial statements communicated by employees, former employees, analysts, regulators or others.

The objectives of the auditor are

- (a) To identify and assess the risks of material misstatement in the financial statements due to fraud;
- (b) To obtain sufficient appropriate audit evidence about the assessed risks of material misstatement due to fraud, through designing and implementing appropriate responses; and
- (c) To respond appropriately to identified or suspected fraud.

Responsibilities of the Auditor

obtaining reasonable assurance that the financial statements taken as a whole are free from material misstatement, whether caused by fraud or error (there is an unavoidable risk that some material misstatements of the financial statements may not be detected)

The risk of not detecting a material misstatement resulting from fraud is higher than the risk of not detecting one resulting from error.

Because fraud may involve sophisticated and carefully organized schemes designed to conceal it, such as forgery, deliberate failure to record transactions, or intentional misrepresentations being made to the auditor.

The auditor's ability to detect a fraud depends on factors such as the skillfulness of the perpetrator, the frequency and extent of manipulation, the degree of collusion involved, the relative size of individual amounts manipulated, and the seniority of those individuals involved

the risk of the auditor not detecting a material misstatement resulting from management fraud is greater than for employee fraud, because management is frequently in a position to directly or indirectly manipulate accounting records, present fraudulent financial information or override control procedures designed to prevent similar frauds by other employees.

Requirements - Risk Assessment Procedures and Related Activities

(1) Professional Skepticism

the auditor shall maintain professional skepticism throughout the audit, recognizing the possibility that a material misstatement due to fraud could exist, notwithstanding the auditor's past experience of the honesty and integrity of the entity's management and those charged with governance.

Unless the auditor has reason to believe the contrary, the auditor may accept records and documents as genuine

(2) Discussion Among the Engagement Team:

discussion among the engagement team members regarding emphasis on how and where the entity's financial statements may be susceptible to material misstatement due to fraud, including how fraud might occur.

(3) Management and Others within the Entity

The auditor shall make inquiries of management regarding:
Management's assessment of the risk that the financial statements may be materially misstated due to fraud, including the nature, extent and frequency of such assessments

Management's process for identifying and responding to the risks of fraud in the entity,

Management's communication, to those charged with governance regarding its processes for identifying and responding to the risks of fraud in the entity;

Management's communication, to employees regarding its views on business practices and ethical behavior

entities that have an internal audit function, the auditor shall make inquiries of internal audit to determine whether it has knowledge of any actual, suspected or alleged fraud affecting the entity, and to obtain its views about the risks of fraud.

(4) Those Charged with Governance

the auditor shall obtain an understanding of how those charged with governance exercise oversight of management's processes for identifying and responding to the risks of fraud in the entity and the internal control that management has established to mitigate these risks

shall make inquiries of those charged with governance to determine whether they have knowledge of any actual, suspected or alleged fraud affecting the entity.

(5) Unusual or Unexpected Relationships Identified

auditor shall evaluate whether unusual or unexpected relationships that have been identified in performing analytical procedures, including those related to revenue accounts, may indicate risks of material misstatement due to fraud

(6) Other Information

The auditor shall consider whether other information obtained by the auditor indicates risks of material misstatement due to fraud

(7) Evaluation of Fraud Risk Factors

The auditor shall evaluate whether the information obtained from the other risk assessment procedures and related activities performed indicates that one or more fraud risk factors are present

Responses to the Assessed Risks of Material Misstatement Due to Fraud

the auditor shall determine overall responses to address the assessed risks of material misstatement due to fraud at the financial statement level and shall:

Assign and supervise personnel taking account of the knowledge, skill and ability of the individuals to be given significant engagement responsibilities

Evaluate whether the selection and application of accounting policies by the entity may be indicative of fraudulent financial reporting resulting from management's effort to manage earnings

Incorporate an element of unpredictability in the selection of the nature, timing and extent of audit procedures.

Business Rationale for Significant Transactions

The form of such transactions appears overly complex

Management has not discussed the nature of and accounting for such transactions with those charged with governance of the entity, and there is inadequate documentation.

Management is placing more emphasis on the need for a particular accounting treatment than on the underlying economics of the transaction.

Transactions that involve non-consolidated related parties, including special purpose entities, have not been properly reviewed or approved by those charged with governance of the entity.

The transactions involve previously unidentified related parties or parties that do not have the substance or the financial strength to support the transaction without assistance from the entity under audit.

Evaluation of Audit Evidence

The auditor shall evaluate whether analytical procedures¹⁴ that are performed when forming an overall conclusion indicate a previously unrecognized risk of material misstatement due to fraud.

When the auditor identifies a misstatement, the auditor shall evaluate whether such a misstatement is indicative of fraud.

If the auditor identifies a misstatement the auditor shall reevaluate the assessment of the risks of material misstatement due to fraud and its resulting impact on the nature, timing and extent of audit procedures to respond to the assessed risks.

Auditor Unable to Continue the Engagement

If, as a result of a misstatement resulting from fraud or suspected fraud, the auditor encounters exceptional circumstances that bring into question the auditor's ability to continue performing the audit, the auditor shall:

- (a) Determine the professional and legal responsibilities applicable in the circumstances, including whether there is a requirement for the auditor to report to the person or persons who made the audit appointment or, in some cases, to regulatory authorities;
- (b) Consider whether it is appropriate to withdraw from the engagement, where withdrawal from the engagement is legally permitted; and

If the auditor withdraws:

- (i) Discuss with the appropriate level of management and those charged with governance, the auditor's withdrawal from the engagement and the reasons for the withdrawal; and

Code of Ethics

CA. Sundararajan R.

History of Code through Puranas

Satyam Vada – Speak the truth

Need of COE

To ensure credibility which is the foundation of our profession

Society's expectations

An outsider's perception – delays, mild punishment etc.



About Ethics

Ethics is a state of the mind, and there may be some act which, though it may not strictly fall under one of the items of the Schedule, may be one which may not be proper by any moral or ethical standards. In the larger interests of the Institute, the Council exhorts all members to search their hearts and conscience whenever in doubt, and thereby assist towards the maintenance of high principles of professional conduct established by the Council.

As said by R.C Cooper , former president in his foreward to the first edition to the Code of Ethics

“The Ethics in contemporary terms is not a domain that has to be separate from the practical world, but is very much a part of it. It has to be inculcated in the habit and temperament of the individual, so that there is an overall culture of ethics; the force has to be strong enough to withstand any selfish motive or temptation”.

As said by CA. NAVEEN N.D. GUPTA, Past President, ICAI in forward to the 12th Edition of Code of Ethics.

“With the changing business environment and increasing complexities, the ethical dilemmas faced by an accountant today is different from that faced by him a decade ago. Accordingly, it became imperative to revise the ethical framework for chartered accountants to keep pace with the changing dynamics of the profession”.

As said by then chairman of Ethical Standards Board, ICAI in preface to the 12th edition of Code of Ethics.

Structure of Code'2009

Part A	IESBA (International Ethics Standards Board for Accountants) Code suitably incorporated
Part B	Domestic Provisions governing members

Structure of Revised Code

Volume I	Part A – (IESBA International Ethics Standards Board for Accountants Code of Ethics'2018	Code of Ethics ' 2019	Effect from 1.7.2020	Introduced in line with the IESBA Code in compliance of membership obligation of the ICAI Frequently Asked Questions on Ethical Issues 2 towards IFAC. This part of the Code establishes a conceptual framework for all members to ensure compliance with five fundamental principles of professional ethics
Volume II	Revised counterpart of Part B	Code of Ethics ' 2020	Effect from 1.7.2020	Code of Ethics comprises two schedules to the Act along with decisions, directions, guidelines, statements, clarifications and also interpretations of the Council on the various clauses of these two schedules.
Volume III	Compilation Disciplinary Case laws		Effect from 1.7.2020	Case Laws Referencer

Important Terms

Professional Accountant: An individual who is a member of the Institute of Chartered Accountants of India.

In Part 1, the term “professional accountant” refers to individual professional accountants in service and to professional accountants in public practice and their firms.

In Part 2, the term “professional accountant” refers to professional accountants in service.

In Parts 3, 4A and 4B, the term “professional accountant” refers to professional accountants in public practice and their firms.

Professional accountant in service

A professional accountant working in areas such as commerce, industry, service, the public sector, education, the not-for-profit sector, or in regulatory or professional bodies, who might be an employee, contractor director (executive or non-executive), owner-manager or volunteer.

Professional accountant in public practice

Member of the Institute of Chartered Accountants of India who is in practice in terms of section 2 of The Chartered Accountants Act, 1949... The term “professional accountant in public practice” is also used to refer to a firm of professional accountants in public practice.

Public interest entity

(a) A listed entity; or

(b) An entity:

(i) Defined by regulation or legislation as a public interest entity; or

(ii) For which the audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities. Such regulation might be promulgated by any relevant regulator, including an audit regulator.

For purpose of this definition, it may be noted that Banks and Insurance Companies are to be considered as Public Interest Entities. Other entities might also be considered by the Firms to be public interest entities.

The Fundamental Principles (Sec-110)**Integrity**

to be straightforward and honest in all professional and business relationships

Objectivity

not to compromise professional or business judgments because of bias, conflict of interest or undue influence of others

Professional Competence and Due Care

Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation; and Act diligently and in accordance with applicable technical and professional standards

Confidentiality

to respect the confidentiality of information acquired as a result of professional and business relationships

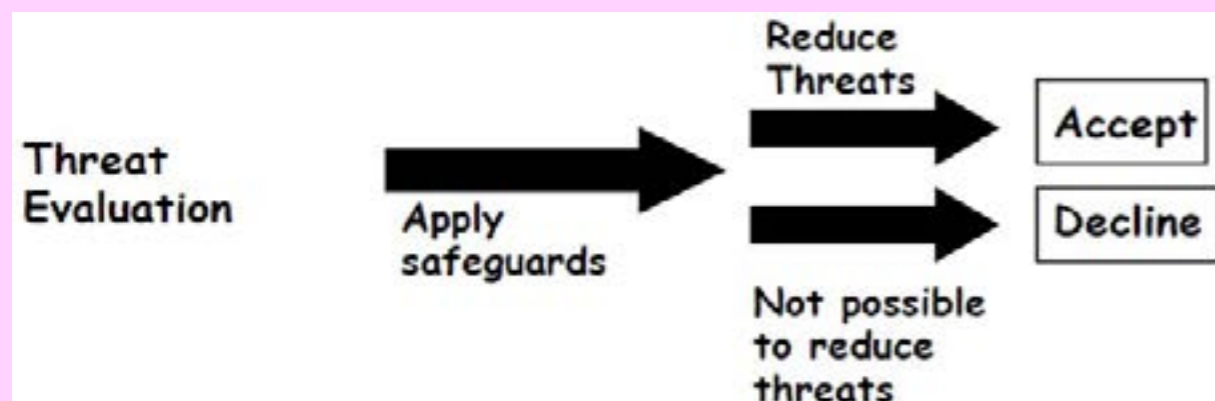
Professional Behaviour

to comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know might discredit the profession.

Conceptual framework approach

A conceptual framework requires a professional accountant to identify, evaluate and address threats to compliance with the fundamental principles, rather than merely comply with set of specific rules which may be arbitrary.

If threats to ethics are not clearly insignificant, a professional accountant should apply safeguards to eliminate the threats or reduce them to an acceptable level.



Threats

Compliance with the fundamental principles may potentially be threatened by broad range of circumstances. Many threats fall into the following categories:

Self-interest Threats

Self-review Threats

Advocacy Threats

Familiarity Threats

Intimidation Threats

Evaluating Threats

An Acceptable Level Is A Level At Which A Professional Accountant Using A Reasonable And Informed Third Party Test Would Likely Conclude That The Accountant Complies With The Fundamental Principles.

Remaining Alert Through Out The Professional Activity Assists The Professional Accountant In Determining Whether New Information Has Emerged Or Changes In Facts And Circumstances Have Occurred That Impact The Level Of Threat.

Affect The Accountants Conclusion About Whether Safeguards Applied Continues To Be Appropriate To Address Identified Threats.

Safeguards

Safeguards that may eliminate or reduce such threats to an acceptable level fall into three broad categories:

Safeguards created by the profession, legislation or regulation;

Safeguards within the client ; and

Safeguards within the firm's own systems and procedures

Misconduct relating to Non - Compliance with Code of Ethics

As a result, the non-compliance of provisions of the Code will be deemed as violation of Clause (1) of Part-II of Second Schedule of the Chartered Accountants Act, 1949:-

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he-

(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council

Important Changes in Independent Standards

Section 410 : FEES - Relative Size Differentiated Disclosures

For non Public Interest Entities (PIE)

Disclosure is required where for two consecutive years, the gross annual professional fees from an audit client represent more than 40% of the total fees of the firm.

For public interest entities

Disclosure is required where for two consecutive years, the gross annual professional fees from an audit client represent more than 20% of the total fees of the firm.

Earlier it was 15% in General No difference.

Exemption from applicability of the provision where total Fees received by firm does not exceed 20 lacs of rupees. (Earlier was 5 lacs)

Exemption from the applicability of the provision in the case of audit of government Companies, public undertakings, nationalized banks, public financial institutions or where appointments of auditors are made by the Government. (Regulators Added)

Disclosure to the Institute.

Responding to Non-Compliance with Laws and Regulations (NOCLAR) applicable to Professional Accountants in service - Section 260

Refers to any act of omission or commission, committed by a client or employer contrary to prevailing laws or regulations.

Applicable to Senior Professional Accountants in service, being employees of listed entities.

"Senior professional accountants refer to key managerial personnel".

Responding to Non-Compliance with Laws and Regulations (NOCLAR) applicable to Professional Accountants in public practice – Section 360

Applicable to Audit engagements of entities the shares of which are listed on recognized stock exchange(s) in India and have *net worth of 250 crores of rupees or more*.

The applicability of Section 360 will subsequently be extended to all listed entities, at the date to be notified later.

The term “Audit Engagement” defined in Glossary as applicable to entire Code: – “A reasonable assurance engagement in which a professional accountant in public practice expresses an opinion whether financial statements are prepared, in all material respects (or give a true and fair view or are presented fairly, in all material respects), in accordance with an applicable financial reporting framework, such as an engagement conducted in accordance with Standards on Auditing. This includes a Statutory Audit, which is an audit required by legislation or other regulation”

“For the purpose of Section-360 “Audit” or “Audit engagement” shall mean a reasonable assurance engagement in which a professional accountant in public practice expresses an opinion whether financial statements give a true and fair view in accordance with an applicable financial reporting framework”.

NOCLAR – Scope of Laws and Regulations

Laws and regulations that have a nexus to Professional Accountants’ professional training and expertise, i.e.:-

Laws and regulations that have a direct effect on the determination of material amounts and disclosures in the financial statements

Other laws and regulations, compliance with which may be fundamental to the entity’s business and operations or to avoid material penalties.

Examples of laws and regulations required to be addressed are :-

Fraud, corruption and bribery,

Money laundering,

Terrorist financing and proceeds of crime,

Securities markets and trading, etc.

Schedules to the act

First Schedule	Second Schedule
Total parts - 4	Total parts - 4
Total clauses - 19	Total clauses - 15

Professional or Other Misconduct

Section 22 of the Act defines professional or other misconduct as follows :- “For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.”

What constitutes `misconduct under any other circumstances has to be determined on case to case basis keeping in view the facts of the circumstances of each case. Fraud, intention to deceive and committing an act which affects the public or society at large could be in the ambit of such misconduct.

Schedule	part	Particulars	Nature of Miscounduct	No. of Clauses
First	I	Professional misconduct of members in practice	Professional	12
	II	Professional misconduct of members in Service	Professional	2
	III	Professional misconduct of members generally	Professional	3
	IV	Other Misconduct of members generally	Other	2
Second	I	Professional misconduct of members in practice	Professional	10
	II	Professional misconduct of members in Service	Professional	4
	III	Professional misconduct of members generally	Other	1

First Schedule - Part I - Professional Misconduct in relation to Chartered Accountants in Practice

Clause (1): allows any person to practice in his name as a chartered accountant unless such person is also a chartered accountant in practice and is in partnership with or employed by him;

Clause (2): pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal

representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Clause (3): accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute;

Clause (4): enters into partnership, in or outside India, with any person other than a chartered accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under Clause (v) of sub-Section (1) of Section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships.

Clause (5): secures, either through the services of a person who is not an employee of such chartered accountant or who is not his partner or by means which are not open to a chartered accountant, any professional business:

Clause (6): solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means;

Clause (7): advertises his professional attainments or services, or uses any designation or expressions other than chartered accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Chartered Accountants of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council;

Clause (8): accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing;

Clause (9): accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956 (1 of 1956), in respect of such appointment have been duly complied with;

Clause (10): charges or offers to charge, accepts or offers to accept in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulation made under this Act;

Clause (11): engages in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage:

Clause (12): allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, any balance-sheet, profit and loss account, report or financial statements.

First Schedule - Part II - Professional Misconduct in Relation to Members of the Institute in Service.

Clause (1): pays or allows or agrees to pay directly or indirectly to any person any share in the emoluments of the employment undertaken by him;

Clause (2): accepts or agrees to accept any part of fees, profits or gains from a lawyer, a chartered accountant or broker engaged by such Company, firm or person or agent or customer of such Company, firm or person by way of commission or gratification;

First Schedule - Part III - Professional Misconduct in Relation to Members of the Institute Generally.

Clause (1): not being a fellow of the Institute, acts as a fellow of the Institute.

Clause (2): does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;

Clause (3): While inviting professional work from another chartered accountant or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.

First Schedule - Part IV - Other misconduct in relation to members of the Institute generally.

Clause (1): is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;

Clause (2): in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

Second Schedule - Part I - Professional Misconduct in relation to Chartered Accountants in Practice

Clause (1): discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force;

Clause (2): certifies or submits in his name, or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice;

Clause (3): permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

Clause (4): expresses his opinion on financial statements of any business or enterprise in which he, his firm or a partner in his firm has a substantial interest;

Clause (5): fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;

Clause (6): fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;

Clause (7): does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;

Clause (8): fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;

Clause (9): fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances;

Clause (10): fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

Second Schedule - Part II - Professional Misconduct in relation to Members of the Institute generally.

Clause (1): contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council:

Clause (2): being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment except as and when required by any law for the time being in force or except as permitted by the employer;

Clause (3): includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;

Clause (4): defalcates or embezzles moneys received in his professional capacity.

Second Schedule - Part III - Other misconduct in relation to members of the Institute generally.

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months

(ii) Determine whether there is a professional or legal requirement to report to the person or persons who made the audit appointment or, in some cases, to regulatory authorities, the auditor's withdrawal from the engagement and the reasons for the withdrawal.

Communications to Management and with Those Charged with Governance

If the auditor has identified a fraud or has obtained information that indicates that a fraud may exist, the auditor shall communicate these matters on a timely basis to the appropriate level of management

Communications to Regulatory and Enforcement Authorities

If the auditor has identified or suspects a fraud, the auditor shall determine whether there is a responsibility to report the occurrence or suspicion to a party outside the entity.

the auditor's legal responsibilities may override the duty of confidentiality

Documentation

The auditor's documentation shall include

The significant decisions reached during the discussion among the engagement team

The identified and assessed risks of material misstatement due to fraud at the financial statement level and at the assertion level

the nature, timing and extent of audit procedures,

The results of the audit procedures

The auditor shall document communications about fraud made to management,

When the auditor has concluded that the presumption that there is a risk of material misstatement due to fraud related to revenue recognition is not applicable in the circumstances of the engagement, the auditor shall document the reasons for that conclusion.

PHOTO GALLERY

Topic: Practical Issues in E-Assessment and E-Appeal

Speaker: CA. Petchi Kannan, Chennai

Date : 03-12-2022



PHOTO GALLERY

Topic: **Investor Awareness program**

Venue: BSF - SHQ, Chennai

Speaker: Mr. Satya Yanmantram & CA. Uttamchand Jain P

Date : 12-12-2022



PHOTO GALLERY

Topic: **FILING GST ANNUAL RETURNS USING TALLY**

Speaker: CA. Monica Challani

Date : 13-12-2022 & 15-12-2022

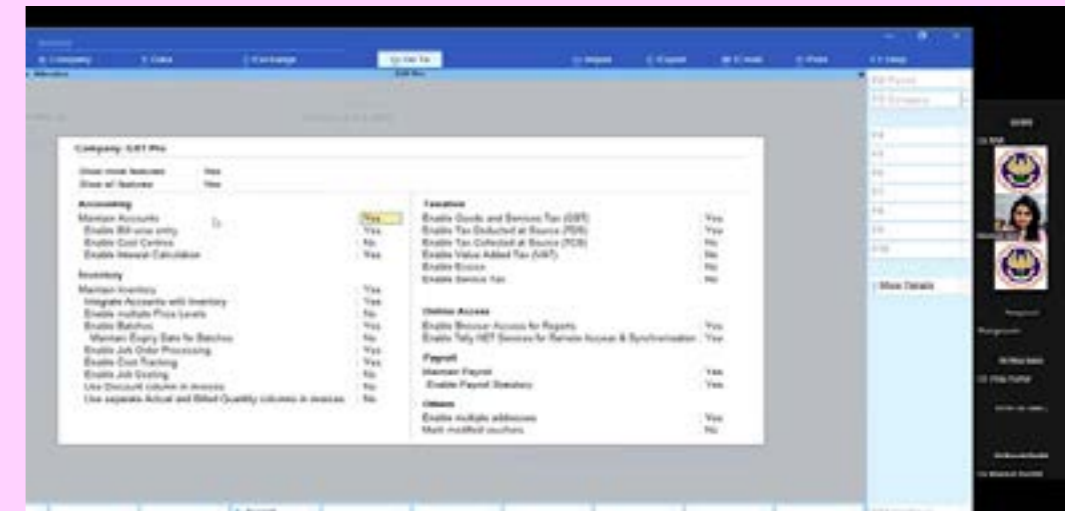


PHOTO GALLERY

Topic: Income Tax Implications on Real Estate Transactions
Speaker: Adv/CA. Sathiyarayanan S, Chennai
Date : 24-12-2022



PHOTO GALLERY

Topic: GST - Past, Present and Future
Speaker: CA. Sivarajan K, Chennai
Date : 26-12-2022



PHOTO GALLERY

Topic: Ethics -What's new? & Standards on Auditing
Speaker: CA. Sundararajan R, Treasurer, SIRC of ICAI
CA. Sridhar. K, Chennai
Date : 30-12-2022



PHOTO GALLERY

Topic: CORPORATE FINANCE & ACCOUNTS
Speaker: CA. Sivarajan K, Chennai
Date : 26-12-2022 to 31-12-2022
Joint Program with AVNL Institute of Learning, Avadi

