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By

SBS and Company LLP
Chartered Accountants

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UPDATES

INTERNATIONAL TAXATION

SAFE HARBOUR VS APA

Contributed by CA Suresh Babu S

Background of Safe Harbour: Tax payers often need to carry out complex transfer pricing analysis of their related party cross border transactions. Compelled to allocate resources for preparing detailed documentation, companies are thus burdened with significant costs associated with undertaking such an exercise. Moreover, transfer pricing analysis being a subjective exercise, may be viewed in different ways. The factual nature of transfer pricing determinations can be an extremely complex subject that frequently vexes both taxpayers and tax administrations alike. In the understandable desire to find bright line rules that do not require the exercise of judgment and analysis, it is often proposed that "safe harbors" be provided.

Even OECD recognizes that applying the arm's length principle can be a fact-intensive process and uncertainty associated with it may impose a heavy administrative burden on taxpayers and tax administrations that can be aggravated by both legislative and compliance complexity. These facts have led a number of countries to consider whether transfer pricing safe harbors rules would be appropriate in the transfer pricing arena. The theory of a safe harbor is that the burdens imposed in applying the arm's length principle may be ameliorated by providing circumstances in which taxpayers could follow a simple set of rules under which a national tax administration would automatically accept transfer prices. In taxation contexts, the safe harbor concept typically refers to a statutory provision that applies to a given category of taxpayers and by substituting exceptional, usually simpler obligations, relieves eligible taxpayers from certain obligations that the tax code otherwise imposes. In effect, a safe harbor is a defined parameter. If the transfer pricing result falls within that parameter, tax administrations would not be allowed to make an adjustment. Hence, transfer pricing safe harbour rules would need to be designed to achieve the following objectives:

- *Compliance relief:*
- *Certainty*
- *Administrative simplicity*

The Finance (No 2) Act (FA), 2009 introduced provisions in the Indian Income-tax Law (ITL) that empowered the Central Board of Direct Taxes (CBDT), the apex Indian Tax Administration, to issue transfer pricing “safe harbor” rules. A “safe harbor” is defined in the ITL as circumstances in which the Tax Authority shall accept the transfer price declared by the taxpayer. The CBDT on 14 August 2013 released draft safe harbor rules for public comments. After considering comments of various stake holders, on 18 September 2013, the CBDT issued the final safe harbor rules.

The rules provide minimum operating profit margins in relation to operating expenses a taxpayer is expected to earn for certain categories of international transactions, such as provision of software development services, information technology enabled services, (ITES), knowledge process outsourcing (KPO) services, contract research and development (R&D) services, manufacture and export of automotive components etc. that will be acceptable to the Tax Authority. The rules also provide acceptable norms for certain categories of financial transactions such as intra-group loans made or guarantees provided to nonresident affiliates of an Indian taxpayer.

The transfer price contained in the safe harbor rules shall be applicable for five years beginning from financial year (FY) 2012-13. The safe harbor rules, optional for a taxpayer, contain the conditions and circumstances under which the norms/marginswould be accepted by the Tax Authority and the related compliance obligations. The taxpayer has flexibility in electing the years to be governed by the safe harbor rules within the five year period. Where a taxpayer's transfer price is accepted by the Tax

Authority under the safe harbor rules, the taxpayer shall not be entitled to invoke the mutual agreement procedure (MAP) under an applicable tax treaty.

Implications:

- If safe harbour opted, taxpayer not entitled to make any comparability adjustments nor avail benefit of the prescribed variation.
- Taxpayer required to comply with TP documentation & Form 3CEB filing requirements even if they opt for the safe harbour rules.
- Form 3CEFA to be furnished for the initial year to exercise safe harbour option. Option exercised to remain in force for lesser of the period specified in Form 3CEFA or 5 years, unless option held to be invalid or taxpayer opts out.
- Relatively simplified audit process prescribed for taxpayers opting for safe harbour in respect of eligible transactions
- Ineligible to invoke MAP if taxpayer's safe harbour option is accepted

APA vs Safe harbour rules:

Criteria	APASafe	Harbour
Double tax mitigation	► Absence of double taxation in case of BAPAs ► Option of converting UAPA to BAPA, subject to conditions ► However, no BAPA where Article 9(2) absent in DTAA. Can consider "synthetic BAPA", if possible	► No access to MAP to avoid risk of double taxation if safe harbour is accepted by tax authorities in India but challenged in other country
Compliance requirements	► Reduced compliance cost relative to complying with annual documentation & Form 3CEB. ►Only an annual compliance report in the prescribed form is to be furnished	►Annual TP documentation & Form 3CEB compliance to be met for each FY ► Relatively simplified/ time bound audit process for eligible transactions

Criteria	APASafe	Harbour
Flexibility	▶ Flexibility in modifying/combining TP methods ▶ Negotiation and discussion in determining the arm's length price/margins based on "factual" matrix of taxpayers ▶ Agreeing on acceptable range of results ▶ Generally binding on taxpayer/ tax authority for period specified in APA	▶ Tax payer to consider only safe harbour margins ▶ No flexibility/scope for negotiation ▶ Taxpayer may opt out after initial year
Eligibility	▶ Any international transaction undertaken/proposed to be undertaken	▶ Only "eligible assessee" undertaking "eligible international" transaction
Covered transactions	▶ Open for all types of international transactions – complex/routine transactions ▶ Flexibility to cover "closely linked transactions" as well	▶ Restricted only to notified international transactions ▶ General TP provisions apply to other transactions ▶ No clarity on treatment of closely linked transactions
Certainty	▶ Discussion/negotiation at the "right level" ▶ Upfront certainty and enhanced predictability ▶ Detailed functional analysis/review to characterize the transaction ▶ Ability to build in adequate critical assumptions	▶ Certainty only when the tax authorities accepts option as valid ▶ Potentially overlapping services between notified category of transactions could result in uncertainty with risk of litigation challenge
Time Frame	▶ Generally 9-12 months for UAPA ▶ BAPA likely to take 18-24 months for conclusion	▶ Yearly compliance timelines to be adhered. Risk of taxpayer/ transaction being reviewed for eligibility year on year ▶ Audit scrutiny for safe harbour compliance like to conclude in 6-8 months
Double tax mitigation	▶ Absence of double taxation in case of BAPAs ▶ Option of converting UAPA to BAPA, subject to conditions ▶ However, no BAPA where Article 9(2) absent in DTAA. Can consider "synthetic BAPA", if possible	▶ No access to MAP to avoid risk of double taxation if safe harbour is accepted by tax authorities in India but challenged in other country

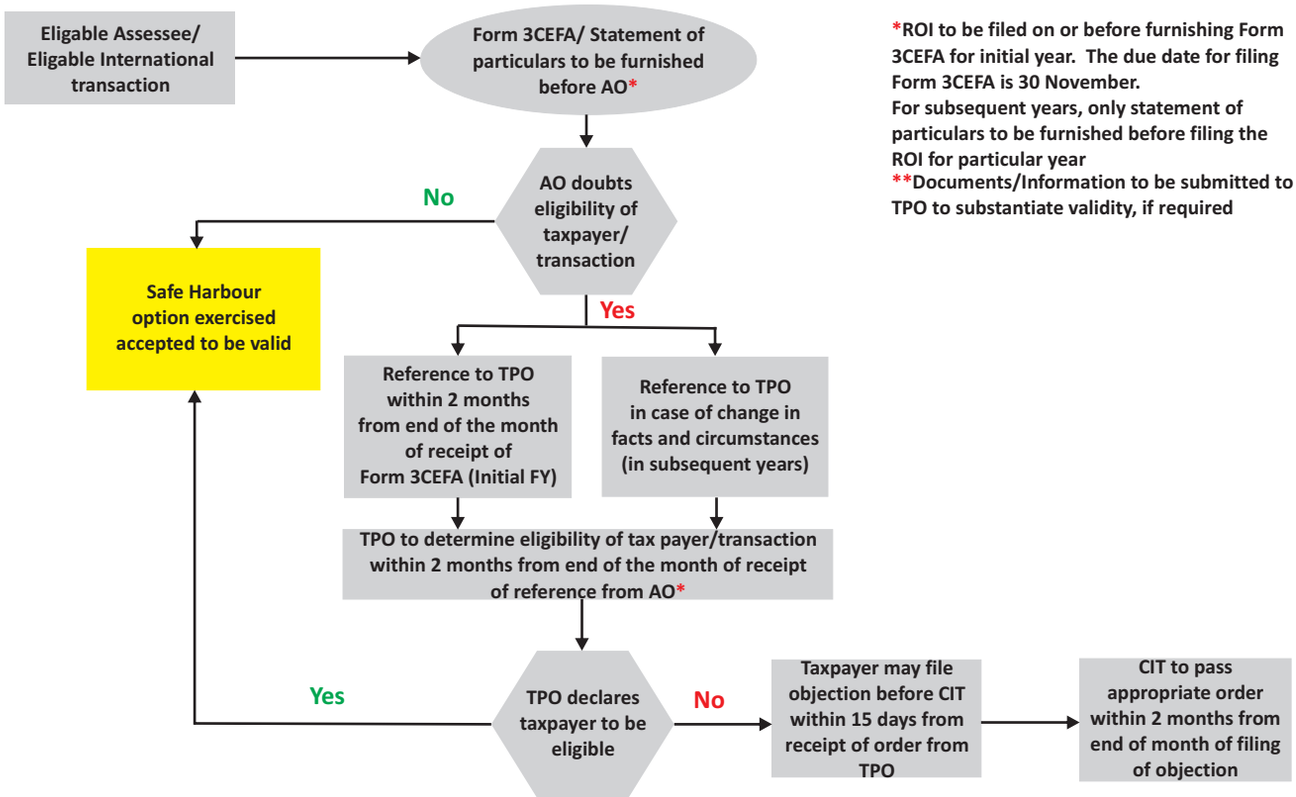
Criteria	APASafe	Harbour
Compliance requirements	▶ Reduced compliance cost relative to complying with annual documentation & Form 3CEB. ▶ Only an annual compliance report in the prescribed form is to be furnished	▶ Annual TP documentation & Form 3CEB compliance to be met for each FY ▶ Relatively simplified/ time bound audit process for eligible transactions
Flexibility	▶ Flexibility in modifying/combining TP methods ▶ Negotiation and discussion in determining the arm's length price/margins based on "factual" matrix of taxpayers ▶ Agreeing on acceptable range of results ▶ Generally binding on taxpayer/ tax authority for period specified in APA	▶ Tax payer to consider only safe harbour margins ▶ No flexibility/scope for negotiation ▶ Taxpayer may opt out after initial year
Cost	▶ Investment in resources from taxpayers – personnel and expenses ▶ Filing fee for APA irrespective of reaching an agreement	▶ No filing fee prescribed ▶ Relatively cost efficient mechanism, subject to audit efforts ▶ Costs in relation to compliance with TP documentation and filing of Form 3CEB continues

Safe harbour margins prescribed:

Sl.No.	Eligible International Transaction	Transaction Value	Safe harbour ceilings
1	SWD services / ITES with insignificant risk	Rs. 500 crores and below Above Rs. 500 crores	OPM is 20% or more OPM is 22% or more
2	KPO services with insignificant risk	Not applicable/ No limit prescribed	OPM is 25% or more
3	Intra group loans to wholly owned subsidiary	Value of loan does not exceed Rs. 50 crores	Interest rate ≥ base rate of SBI on June 30 of the relevant year plus 150 basis points
		Value of loan exceeds Rs. 50 crores	Interest rate ≥ base rate of SBI on June 30 of the relevant year plus 300 basis points

Sl.No.	Eligible International Transaction	Transaction Value	Safe harbour ceilings
4	Contract R&D wholly or partly relating to SWD with insignificant risk	Not applicable/ No limit prescribed	OPM is 30% or more
5	Contract R&D wholly or partly relating to generic pharmaceutical drugs with insignificant risk	Not applicable/ No limit prescribed	OPM is 29% or more
6	Explicit corporate guarantee to a wholly owned subsidiary	Amount guaranteed does not exceed Rs 100 crores	Commission or fee should be charged at the rate of 2% or more per annum of the amount guaranteed
		Amount guaranteed exceeds Rs 100 crores and credit rating of AE is adequate to highest safety	Commission or fee should be charged at the rate of 1.75% or more per annum of the amount guaranteed
7	Manufacture and export of core auto components	Not applicable/ No limit prescribed	OPM is 12% or more
8	Manufacture and export of non core auto components	Not applicable/ No limit prescribed	OPM is 8.50% or more

Compliance Procedure for safe harbour rules



Concluding Remarks:

The safe harbour program was intended to reduce the transfer pricing litigation and related compliances. However, the objective was not achieved because of the high margins prescribed for the various industries. Further, the APA program has been successful and the margins agreed in the APA programs have been much conducive and attractive to the taxpayers and thus the results followed. There are expectations from the government that they would shortly revisit the safe harbour and come out with a much better and tax friendly margins on par with the APA and the litigation results.

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FEMA

FDI INTO FOOD PROCESSING INDUSTRY

Contributed by CA Murali Krishna G

FDI into Food Processing Products – various forms of business – FEMA Regulations

Food Processing Sector has been on average growing at a faster rate than agricultural sector since last three years. During the last three years ending 2014-15, it is growing at Average Annual Growth Rate (AAGR) of around 2.26% as against 1.69% in the Agriculture and 6.23% in manufacturing at 2011-12 Prices[1].
Food Processing has emerged as an important segment of the Indian Economy in terms of its contribution to GDP, employment and investment. The sector constitutes as much as 9.0% and 11.0% respectively of GDP in Manufacturing and Agricultural sector[2].

Food Processing can be viewed as different levels of processing – Primary, Secondary, and tertiary. Primary processing relates to conversion of raw agricultural produce, milk, meat and fish into a commodity that is fit for human consumption. It involves steps such as cleaning, grading, sorting, packing etc., and subsequent processes are involved for making the processed inputs into finished goods and ultimate retail trading through sales distribution channels.

Traditionally India was allowing Foreign Direct Investment (FDI) into the business of dealing with Food Products either by a manufacturer under automatic route for the products manufactured by them (Subject to MSMED regulations) or Trading of such goods via B2B e-commerce, Single Brand Retail Trading and Multi Brand Retail Trading etc., under automatic/approval route subject to various conditions

Later the concept of e-commerce has been introduced for FDI purposes and detailed regulations have been made from time to time.

Over the last two decades, rising internet and mobile phone penetration has changed the way we communicate and do business. E-commerce is relatively a novel concept. It is, at present, heavily leaning on the internet and mobile phone revolution to fundamentally alter the way businesses reach their customers.

Now India is getting ready for introduction of Goods and Service Tax law (GST), it can further fuel the growth of e-commerce

With the above background the author has made an attempt to bring the extantFEMA - Foreign Direct Investment Regulations for Food Processing Industries and/or trading in Food Products (including e-commerce)

[1] *Source: Annual Report 2015-16 of Ministry of Food Processing Industries, GOI*
[2] *Source: Annual Report 2015-16 of Ministry of Food Processing Industries, GOI*

Brief Background:

Before 2006	FDI was prohibited into Retail Business
10th February, 2006	FDI in cash-and-carry (wholesale) brought under automatic route. Earlier, it was allowed under approval route. 51% FDI was permitted under Government approval into SBRT
April, 2010	Cash and Carry Whole Sale Trade is permitted subject to 25% intra group entities sales restriction
July, 2010	DIPP has issued second Discussion Paper FDI into MBRT
7th December, 2011	Union Cabinet Proposes 51% FDI in Multi-Brand Retail Trade
10th January, 2012	FDI into Single Brand Retail increased to 100% under Government route subject to stipulated Conditions
14th September, 2012	The Government opens FDI into Multi-Brand Retail Trade (MBRT) upto 51% subject to stipulated conditions
20th September, 2012	The Government clarifies the position that company having FDI cannot enter into e-commerce in both SBRT and MBRT
January, 2014	DIPP Releases a discussion paper on "E-Commerce in India, highlighting pros and cons of allowing FDI in the Sector"
29th March, 2016	DIPP has issued Press Note No. 3/2016, whereby the definition of E-Commerce has been divided into Inventory based Model and Market based model.
24th June, 2016	DIPP has issued Press Note No. 5/2016 for 100% FDI into Food Processing Industries and also relaxing local sourcing norms for SBRT

Extant FDI Regulations for FDI into Food Processing Industries:

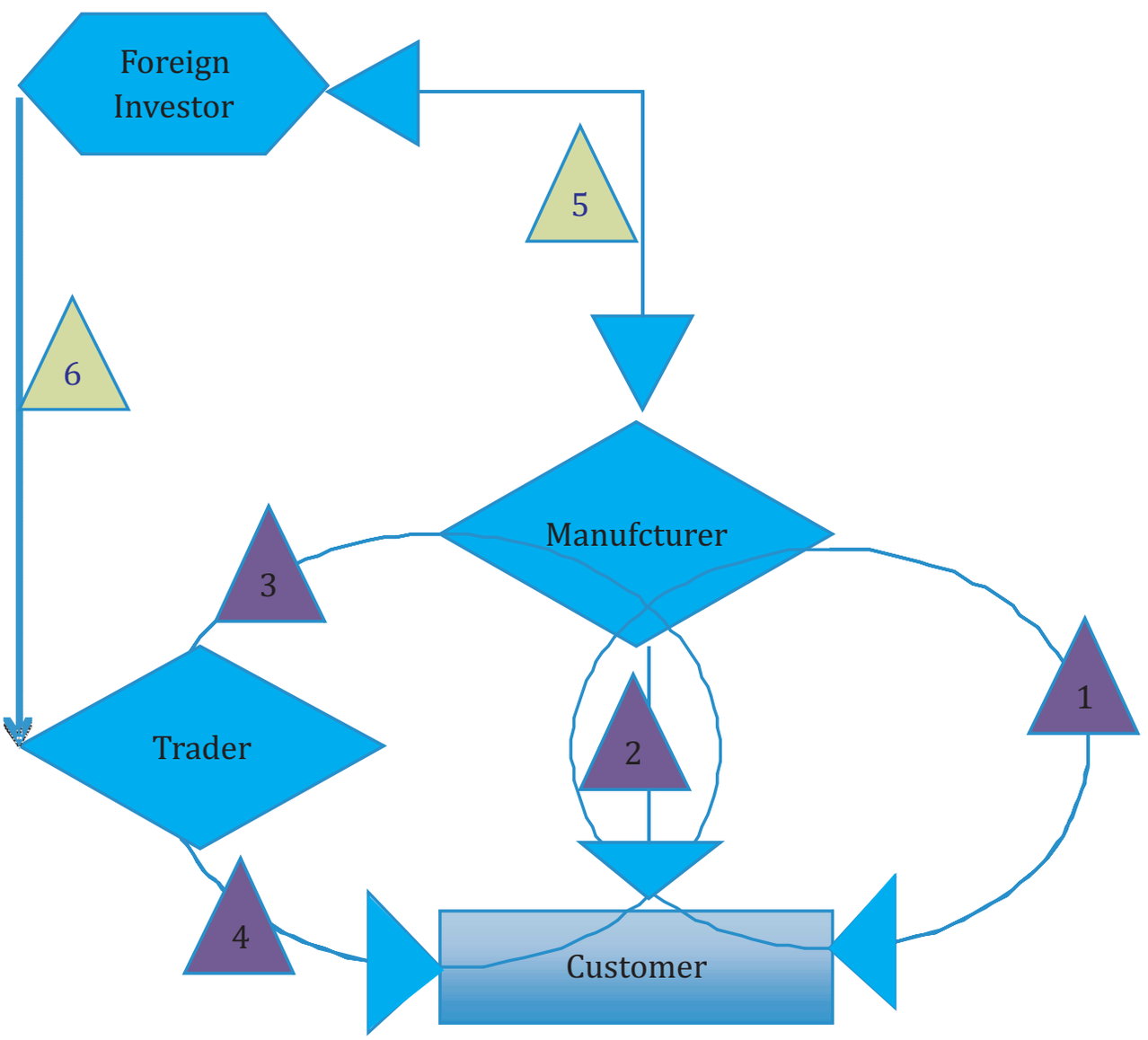
A. Relevant Definitions:

(i) **E-commerce-** E-commerce means buying and selling of goods and services including digital products over digital & electronic network.

(ii) **E-commerce entity-** E-commerce entity means a company incorporated under the Companies Act, 1956 or the Companies Act, 2013 or a foreign company covered under section 2 (42) of the Companies Act, 2013 or an office, branch or agency in India as provided in section 2(v)(iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business.

(iii) **Inventory based model of e-commerce-** Inventory based model of e-commerce means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.

(iv) **Marketplace based model of e-commerce-** Marketplace based model of e-commerce means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.



Examples:

1. Manufacturer selling directly to Customer via Single Brand Retail Trade or Whole Sale Trade
2. Manufacturer selling directly to the customer via E-Commerce
3. Manufacturer selling to Trader (B2B Commerce/ Cash and Carry whole-sale trade)
4. In turn, Trader selling to Customer through either Single Brand Retail Trade or Multi Brand Retail Trade or through E-commerce
5. Flow of the FDI into Manufacturing Activity
6. Flow of the FDI into Trading Activity (including e-commerce), where the trader is not having any manufacturing activity

B. Guidelines for Foreign Direct Investment in Food Processing sector:

(i) 100% FDI under Automatic route is permitted in Manufacturing of Food Products in India

(ii) 100% FDI under Automatic route is permitted in trading by the manufacturer of its own products– Wholesale and/or retail (including through e-commerce) in respect of Food Products manufactured and/or produced in India.

(iii) 100% FDI under Government approval route is permitted in trading (including through e-commerce) in respect of Food Products manufactured and/or produced in India.

- Based on the above one can understand the FDI into manufacturing activity related to Food Processing Activities is freely permitted upto 100% under automatic route; and
- FDI into MBRT/SBRT of own manufactured Food products is also under automatic route; and
- FDI into Trading of goods by the Traders (including e-commerce) is subject to approval of Central Government and permitted upto 100%

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AUDIT

HOW AUDIT COMMIITTES CAN LEVERAGE INTERNAL AUDIT

Contributed by CA Sandeep Das

The audit committee is a cornerstone of good corporate governance. Its mandate now extends well beyond oversight of financial reporting to include an array of key areas that support an organization's performance, such as risk management, compliance, reliability and integrity of internal data, cyber risk, and the effectiveness of internal control over operations.

Yet even as the list of oversight responsibilities gets longer and more complex, the amount of time that most audit committee members can reasonably commit to the part has not. The role of internal audit has traveled a parallel course with that of the audit committee, with internal auditors expanding their scope of responsibilities to meet organizational needs. Organizations are increasingly turning to the internal audit function to provide assurance and/or consulting services to better address their own needs. When a strong working relationship is in place with the audit committee, internal audit can enhance and protect organizational value by providing risk-based and objective assurance, advice, and insight. With its broad view of the organization and its familiarity with operations across all business units, the internal audit department is uniquely positioned to help the audit committee understand and evaluate risks that may affect the enterprise.

Audit committees can and should rely on internal audit as a critical resource to help them successfully fulfill their responsibilities. In addition to helping address risk, an effective internal audit department acts as an objective insider, empowering the audit committee with insights into the business and its practices that can achieve significant cost savings.

Internal auditors, use tools such as data analytics to identify problems and recommend new, better approaches that can affect the company's bottom line. Audit committees and management take notice when that happens, but one of the biggest obstacles to optimizing the value obtained from internal audit is a bias toward viewing the function as primarily providing assurance on financial, regulatory, and compliance risks. While those areas are critically important and are historically internal audit's strengths, internal audit can make contributions well beyond those traditional spaces.

With appropriate resources and staff, internal audit can also address areas many stakeholders see as offering higher value to the organization by improving the efficiency and effectiveness of all controls, including, for instance, controls of data security or operations. In some cases, internal audit may increase value to stakeholders by providing assurance over strategic and business risks.

Audit Committee and Internal Audit:

To ensure that internal audit can deliver value, the audit committee must protect and nurture unbiased assurance, which is among internal audit's greatest contributions to the organization. Audit committees should be prepared to:

- Understand the resources needed to provide value, including both personnel and data analytics resources.
- Protect the independence and objectivity of the chief audit executive (CAE) and internal audit team.
- Communicate with the CAE often and at a deep level, both formally and informally.
- Agree on expectations and help design, review, and approve audit plans that are aligned with those expectations.
- Hold management accountable for assessing and implementing, when appropriate, internal audit recommendations.
- Monitor the quality of internal audit work and insist on timeliness, organizational perspective, and fact-based observations and recommendations.

Importance of Communication

An expanded role for internal audit inevitably creates higher expectations of the function, and requires clear communication about how internal audit will support the audit committee. The audit committee must partner with the CAE to determine what are the risk areas where internal audit's activities will best serve the organization, When internal audit consistently identifies key known and emerging risks, and updates its assessment on an ongoing basis, the department can deliver credible insights to management and the board that help equip the organization to respond quickly and appropriately.

Attributes of Extraordinary Audit Committee

- Courageously independent
- Professionally skeptical and intellectually curious
- Deeply experienced
- Approachable relationship builders
- Risk-centric strategists

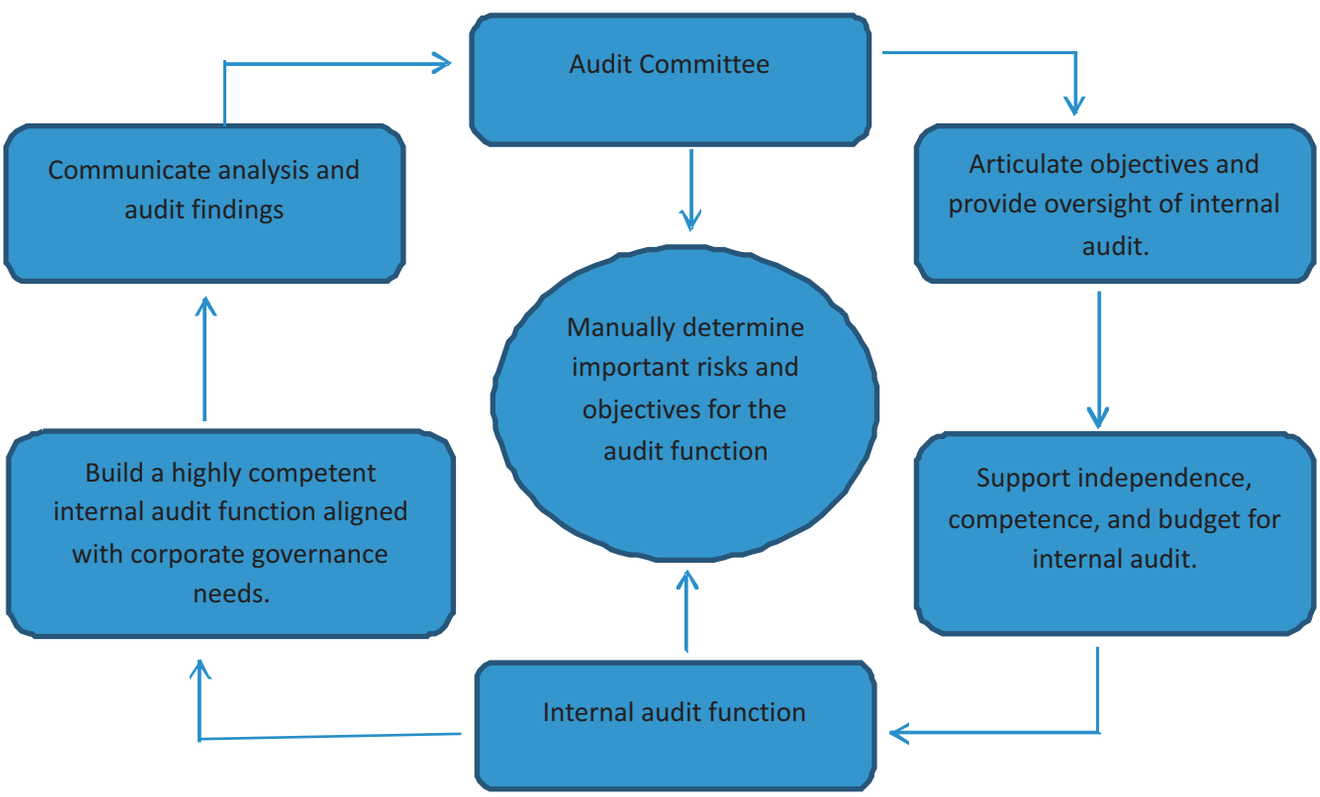
The Role of Executives, Boards, and Audit Committees

The pervasive impact of culture on long-term organizational success is a compelling reason for audit committees, boards, and executives to concern themselves with the topic. Success starts at the top. Generally speaking, executives establish the culture and lead by example. Those in senior leadership must articulate and model the organization's culture and values, demand the highest standards of ethical behavior from themselves and others, encourage transparency, and be willing to make difficult decisions. At the same time, the board of directors must ensure that the senior leaders they put in place have the right ethical compass, tact, and communication style to instill the most effective culture.

Beyond having the right leaders whose actions align with the organization's core values, some tactics used by enterprise leaders to inspire a healthy culture are to:

- ❖ Make sure that culture, values, and ethics appear directly or indirectly on board and audit committee meeting agendas, and talk about them candidly and explicitly.
- ❖ Ensure that culture — including the tone at the top — is evaluated using observable and measurable behaviors
- ❖ Demand frequent reporting. Some organizations create a culture dashboard that reports data such as employee feedback, ethics violations, hotline calls, and customer complaints.

Relationship between the Audit Committee and Internal Audit Function



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INCOME TAX

INCOME COMPUTATION AND DISCLOSURE STANDARDS (ICDS)- NEW

Contributed by CA Ramprasad

Flash News!!!

The Central Government in exercise of the Powers conferred in 145(2) of the Income tax Act, 1961 notifies[1] Income Computation and Disclosure Standards ('ICDS') to be followed by all assessees (other than exempted[2]) following mercantile system of accounting for the purpose of computing income under the head 'Profits and Gains of Business or Profession' or 'Income from Other Sources'.

This Notification will apply from Assessment Year 2017-18 and subsequent assessment years.

The major changes in the latest ICDS are summarized as follows:-

ICDS II-VALUATION OF INVENTORIES:

A. Method of Measurement:-

Standard Cost method was allowed as a technique for measure of cost of inventories. The new change provides for regular review of normal levels of consumption of materials, supplies, labour, efficiency and capacity utilization.

B. Cost of Service:-

The cost of services shall consist of labour and other costs of personnel directly engaged in providing the service including supervisory personnel and attributable overheads (The term 'Serviceprovider' in the existing ICDS was removed)

C. Disclosure:-

The accounting policies adopted in measuring inventories including the cost formula used. Where Standard Costing has been used as a measurement of cost, details of such inventories and confirmation of the fact that standard cost approximates the actual cost.

ICDS III- CONSTRUCTION CONTRACTS:

Transitional Provisions:-

Contract revenue and contract costs associated with the construction contract which commenced on or before 31st March 2016 but not completed by the said date shall be recognized based on the method regularly followed by the person prior to the previous year beginning on 1st April 2016.

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[1] *29-09-2016*

[2] *Individual or HUF who is not required to get his accounts audited U/S 44AB.*

(Existing ICDS provides for recognition of contract revenue and cost with respect to contract commenced on or before 31st March 2015 but not completed by the said date shall recognize in accordance with provisions of this standard.)

ICDS IV- REVENUE RECOGNITION:

A. Revenue from Services with short duration:-

Revenue from service contracts with duration of not more than 90 days may be recognized when the rendering of services under that contract is completed or substantially completed. (New)

B. Revenue from Services:-

Revenue from services provided by indeterminate number of acts over a specific period of time is recognized on straight line basis over the specific period. (New)

C. Interest on refund of tax etc:-)

Interest on refund of any tax, duty, cess shall be income of the previous year in which such interest is received.(New)

ICDS V- TANGIBLE FIXED ASSETS:

Valuation of Tangible Fixed Assets in Special Cases:-

Details of Jointly Owned tangible fixed assets are not required to be indicated separately in the tangible fixed assets register.

ICDS VI -EFFECT OF CHANGES IN FOREIGN EXCHANGE RATES:

A. Financial Statements of Foreign Operations:-

The Financial Statements of Foreign Operations shall be translated as if the transactions of the foreign operations had been those of the person himself. (Integral or Non integral operation classification withdrawn)

B. Conversion at Last Date of Previous Year:

Non-monetary item being inventory which is carried at NRV denominated in Foreign Currency shall be reported using the exchange rate that existed when such value was determined. (New)

ICDS VIII-SECURITIES:

A. Definition of Securities:-

Securities shall include share of a company in which public are not substantially interested but shall not include derivatives. (New)

B. Subsequent Measurement of Securities:-

For value of securities held as a stock in trade at the end of the previous year or value of securities held as a stock in trade on the beginning of the previous year or securities not listed on recognized stock exchange or listed but not quoted on recognized stock exchange regularly from time to time where actual cost initially recognized cannot be ascertained by reference to specific identification , the cost of such security shall be determined on the basis of FIFO method of Weighted Average Cost formula. (New)

C. New Chapter Part B:-

This part of the standard deals with securities held by scheduled bank or public financial institution formed under Central or State Act or so declared under the Companies Act, 1956 or Companies Act, 2013.

ICDS IX- BORROWING COSTS

Borrowing Costs Eligible for Capitalisation:-

Specific and non-specific borrowing costs eligible for Capitalisation shall cease when such asset is first put to use or when substantially all the activities necessary to prepare such inventory for its intended sale are complete. (New)

Changes in Form 3CD:-

In clause 13 (For sub clause (d) the following shall be substituted):-

Information about the adjustment required to be made to the profits or loss for compliance with ICDS.
If yes, details of such adjustments are required to be furnished. (Net effect of adjustments)
Disclosures of information as per ICDS need to be furnished. (WEF 01-04-2017)

This article is contributed by CA Ram Prasad, Partner of SBS and Company LLP, Chartered Accountants. The author can be reached at caram@sbsandco.com

COMPANIES ACT, 2013

COMPANIES AMENDMENT BILL-2016 (PART-5)

THE COMPANIES AMENDMENT BILL, 2016 [BILL 73 of 2016] – A REVIEW- PART-5 (continued from September-2016 wiki) Contributed by CS D V K Phanindra

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
74	Section - 384 – Debentures, Annual Return, Registration of charges, books of account and their inspection.	75	Amendment to Section (2) of Section 384 of the Act, to include Section 135 of Act, thereby making the provisions of Corporate Social responsibility CSR applicable to a Foreign Company, in addition to the applicability of the provisions of Section 71, 92, 128, Chapter-VI &Chapter-XIV of the Act.	**Amendment to remove ambiguity.**
75	Section - 403 – Fee for filing, etc.	76	Amendment to replace the existing 1st proviso to Sub-Section (1) of Section 403 of the Act, with new a proviso, so as to include the details of the relevant sections [i.e., 89, 92, 117, 121, 137 or 157] under which filings can be done within a period of 270 days from the expiry of the period so provided in those sections, on payment of such additional fee. Amendment to replace the existing 2nd proviso to Sub-Section (1) of Section 403 of the Act, with new a proviso, so as to enable filing of returns relating to the sections referred in the 1st proviso, beyond the time frame as given in the 1st proviso and with regard to the other sections, beyond the time frame given in the respective section, on payment of such higher additional or additional fee.	**Welcome Amendment, to remove ambiguity** **Welcome Amendment, to remove ambiguity and ease of operations.**

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
			Insertion of a 3rd proviso to provide that in case of default on two or more occasions in filing of returns under section 89, 92, 117, 121, 137 or 157, the provisions of the first and second provisos shall not apply, until the return is submitted, filed, registered or recorded, as the case may be, with additional fee, without prejudice to any legal action or liability under this Act. Amendment to Sub-Section (2) of Section 403 of the Act, to substitute the words "first proviso to that sub-section" with words *"relevant section".*	**Amendment to remove ambiguity.**
76	Section - 406 - Power to modify Act in its application to *Nidhis.*	77	Amendment to substitute the existing section 406 of the Act with a new section 406 with 5 sub-sections.. The new section is titled: ***"Provision relating to Nidhis and its application, etc.".*** The gist of the sub-sections is as below: (1) A word "Mutual Benefit Society" has been added, and accordingly a Nidhi or a Mutual Benefit Society shall be a company which the Central Government may by notification in the Gazette, declare to be so. (2) The Central Government may by notification in the Gazette, direct the applicability or non-applicability of the provisions of the Act to a Nidhi or Mutual Benefit Society. (3) Placing of the draft of the proposed notification before each House of Parliament, while it is in session, for a total period of 30 days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.	**Amendment to give more clarity.**

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
			(4) For the purpose of reckoning the period of 30 days, referred to in sub-section (3), any period during which the House referred to in sub-section (3), is prorogued or adjourned for more than four consecutive days, shall not be counted. (5) Laying of Copies of every notification, before each House of Parliament, as soon as may be after it has been issued.	
77	Section – 409 – Qualification of President and Members of Tribunal.	78	Amendment to Sub-Section (3) of Section 409 of the Act, in connection with the eligibility of the Technical members of the National Company Law Tribunal.	
78	Section 411– Qualifications of chairperson And Members of Appellate Tribunal.	79	Amendment to Sub-Section (3) of Section 411 of the Act, in connection with the eligibility of the Technical members of the National Company Law Appellate Tribunal.	
79	Section – 412 - Selection of Members of Tribunal and Appellate Tribunal.	80	Amendment to Sub-Section (2) of Section 412 of the Act, in connection with the constitution of the Selection Committee, to recommend the appointment of Members to the National Company Law Tribunal and the National Company Law Appellate Tribunal.	
80	Section - 435 – Establishment of Special Courts.	81	Substitution of the existing Section 435 of the Act, with a new section, to amend provide for appointment by Central Government of Metropolitan Magistrate or a Judicial Magistrate of the First Class in Special Court in case of offences punishable under the Act with imprisonment less than 2 years. The appointment by the Central Government shall be with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.	**Welcome Amendment to remove ambiguity.**

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
81	Section – 438 – Application of Code to Proceedings before Special Court.	82	Amendment of Section 438 of the Act, consequent upon the proposed amendment to Section 435 of the Act, thereby to replace the words "deemed to be a Court of Session", with the words "deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be".	
82	Section – 439 - Offences to be non-cognizable.	83	Amendment to Sub-section (2) of Section 439 of the Act to include ”Member” in addition to the shareholders, for making a complaint with respect to taking cognizance of offences under the Act by the Court.	**Welcome Amendment to remove ambiguity.**
83	Section – 440– Transitional provisions.	84	Amendment to Section 440 of the Act to provide that till Special Courts are established, the trial of offences shall be continued with Court of Sessionor Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, thereby to replace the words " Court of Session", appearing in the section with the words " Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be.	
84	Section –441 – Compounding of certain offences	85	Amendment to Sub-Section (1) of Section 441 of the Act to replace the words *"with fine only"*, appearing in the Sub-Section, with the words *"not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine".* **NOTE:** Consequent upon amendment to Sub-Section (1) of Section 441, the clause (a) of Sub-Section (6) of Section 441, also needs amendment, but seems to have been missed out in the proposed amendment bill.	**Welcome Amendment, giving further scope to compound offences punishable with imprisonment or with Fine, with imprisonment or with Fine or both with out the special permission of the Special Court.**

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
85	New Section	86	Insertion of 2 new sections 446A & 446B, after the existing Section 446. **<u>Section 446A : Factors for determining level of punishment.</u>** The new Section provides that the court or the Special Court, shall consider the following factors, to decide the amount of fine or imprisonment under this Act. (a) size of the company; (b) nature of business carried on by the company;(c) injury to public interest;(d) nature of the default; and(e) repetition of the default. **<u>Section 446B: Lesser penalties for One Person Companies or small companies</u>** If a One Person Company or a small company fails to comply with the provisions of Section 92(5), Section **<u>117(2)(c)</u>**,Section 137(3), such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections. **<u>Note:</u>** *It is noticed that in the amendment bill they have referred Section 117 (2)(c), but the said sub-section does not contain any clauses, and it is assumed probably it is relating to Section 117 (3)(c) and not Section 117 (2)©.*	**Welcome inclusion** **Welcome inclusion in favour of One Person Companies and Small Companies and the officers, reducing fine and imprisonment.**

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
86	Section – 447– Punishment for fraud.	87	Amendment to Section 447 of the Act, to include **threshold limits** for the punishments for fraud. ➔ any person who is found to be guilty of fraud involving an amount of at least Rs. 10 Lakhs or 1 % of the turnover of the company, whichever is lower, shall be punishable with imprisonment for a term which shall not be less than 06 (Six) months but which may extend to 10 (Ten) years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. Insertion of a proviso after the existing proviso to provide that: ➔ where the fraud involves an amount less than Rs. 10 Lakhs or 1 % of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both.	**Welcome Amendment, as prescribes the thresholds to quantify the fraud and accordingly, decide the penalty/punishment**

From the all the proposed amendments to the Companies Act, 2013, it is clearly evident that all possible steps are being taken to remove the practical difficulties faced by the Companies and the Professionals, in the implementation of the provisions of the Companies Act, 2013.

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INDIRECT TAX

GST CONSTITUTIONAL AMENDMENT ACT KEY ISSUES

Contributed by CA Manindar K

Introduction:

The Constitution (One Hundred and First Amendment) Act, 2016 (hereinafter referred to as 'GST Constitutional Amendment Act) is been recently passed by Parliament, ratified by majority of the States and received President's assent on 08.09.2016. Subsequently, Central Government has notified various provisions of the GST Constitutional Amendment Act through notifications issued on 10.09.2016 and 16.09.2016. The President has constituted the GST Council with effect from 15.09.2016. The passage of the said Act is considered to be a major breakthrough in implementation of GST in India. In fact several legal issues are instigated during the phase of its enactment only. Let us now discuss some of the key legal issues that emanate from this GST Constitutional Amendment Act.

Centre power to levy tax on inter-state sales is retained:

Section 18 of The Constitution (One Hundred and Twenty- Second Amendment) Bill, 2014 has provided for levy of additional origin based tax of one per cent on supply of goods in the course of inter-state trade or commerce for a period of two years. This clause was adopted by Lok Sabha but the same was withdrawn from the bill before being passed in Rajya Sabha due to pressures from Opposition political parties and of stake holders on the reason that its existence under GST regime will dilute the objectives of GST.

However, sub-clause (g) of Article 269(1) of the Indian Constitution remained untouched with respect to the power of the Central Government to levy and collect tax on sale or purchase of goods in the course of interstate trade or commerce. Further corresponding entry under List I of Seventh schedule i.e. entry 92A provides for levy of tax on sale or purchase of goods in the course of inter-state trade or commerce is also retained. Accordingly, Centre is empowered to levy tax on sale of goods in the course of interstate trade or commerce even under GST regime.

One of the reasons for proposing this one per cent additional tax on inter-state sale or purchase of goods is in order to protect the interests of the developed States like Maharashtra, Tamil Nadu etc which are manufacturing hubs of our Country. It is expected there will be a revenue loss for these producing States as GST being a destination based consumption tax, thereby Consuming states gets more revenue. It is expected that there may be loss of revenue in the initial years despite the fact that majority of the revenue loss is going to be mitigated because of conferring power on States to levy tax on services under the GST Regime.

Of course, Centre has assured compensation for loss of revenue only for a period of five years. What will happen if these States are not able to generate adequate revenue after the period of five years? Revenue appetite for each State would be different depending upon their social, economic and political factors. Definitely, existence of such circumstances will persuade the States to compel Centre for generation of more revenue by increasing the tax burden on citizens. It is possible that if the amount compensation to

be made by Centre to State is beyond a certain tolerance level, there may be an urge on Centre itself to look for new tax avenues for revenue. The Governments that are going to be formed in future both at Centre and States may not strictly adhere to the basic objectives of GST. In all these circumstances, there may be a chance for Centre to resort this power of levying tax on inter-state sale of goods. Thus continuation of Article 269(1)(g) may be considered as serious threat to objectives enshrined under GST viz. 'uniformity in tax structure' and 'one nation-one market'.

Confusion over the subsumption of entry tax, octroi, entertainment tax and other local body taxes:

Under Article 243H and Article 243X, powers are conferred on the local government bodies to levy, collect and appropriate such taxes, duties, tolls and fees as the Legislature of the State may by law authorise them. The taxes that are presently levied by the local bodies include octroi in lieu of entry tax and entertainment taxes. List II of Seventh Schedule contains matters on which State Government is entitled to legislate. Entry 52 and Entry 62 deals with entry tax and entertainment tax respectively.

There is confusion over the subsumption of these taxes into GST as trade, tax experts, even bureaucrats are of the belief that that local bodies have power to levy these taxes that they are empowered to even under GST regime. Even in the First Discussion Paper that was released by Empowered Committee of State Finance Ministers, it was mentioned that entertainment tax and entry tax except those levied by local bodies are subsumed under GST. The said entries pre and post GST Constitutional Amendment Act are reproduced hereunder

Pre GST Constitutional Amendment Act	Post GST Constitutional Amendment Act
Entry 52: Taxes on the entry of goods into a local area for consumption, use or sale therein	Omitted
Entry 62: Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling	Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.

State Government derives power to tax under Constitution of India. It can delegate the said authority to tax to local bodies by law in terms of Article 243H and Article 243X. Thus a local body derives the power of taxation upon express law made by State Legislature in this regard. With the omission of entry 52 under List II, States are barred from levying entry tax. Thus States cannot delegate the power of levying entry tax which they are not going to have under GST regime. In view of this, in the humble opinion of paper writer, entry tax/octroi cannot be levied by States as well as local bodies under the GST regime.

Coming to entertainment tax, unlike the case of entry tax, entry 62 is not omitted. Instead, it is amended to retain the power to State to legislate on taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or District Council. Thus this confers power on States to authorise local bodies to levy entertainment/amusement tax even under GST regime also.

Row over the Constitutional Validity on levy of Excise after giving effect to the GST Constitutional Amendment Act:

The Central Government vide Notification on 16.09.2016, has notified various sections of the GST Constitutional Amendment Act including Section 2 which provides for insertion of Article 246A and Section 17 which amends various entries in List I and List II of Seventh Schedule to the Constitution. Article 246A provides for concurrent jurisdiction to Centre and State for levy of goods and services tax on supply of goods and services. Section 17 amends various entries in List I and List II. These include amendments to entry 84 to restrict the power to levy excise duty only on manufacture of petroleum and tobacco products. Infact, there was no hurry for Central Government to notify these sections. These could have been notified at any time before the appointed date for rollout of GST. This has persuaded the social media to spread the propaganda that with effect from 16.09.2016, excise duty levy would be unconstitutional. To everyone's surprise, some of the media houses went on to say that assesses can claim refund of the excise duty paid by them on or after 16.09.2016.

Section 19 of GST Constitutional Amendment Act has provided for transitional provisions which is reproduced as under—

"Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier"

On perusal of this section, it seems that the language used in this transitional provision is confusing. On one hand it talks about any provision of any law relating to tax on goods or services as in force in any state. The phrase 'taxes in force in any state' need not be restricted to those taxes levied State and it can include even the taxes levied by Centre also that are in force on assesses located in that State. On the other hand, it says that such provisions shall remain in force until amended or repealed by a competent Legislature or any other competent authority or until the expiry of one year. Because of the use of the phrase 'until amended or repealed by competent Legislature or any other competent authority', media houses and some tax experts have taken a stand that the transitional provisions under this Section 19 is only applicable for State tax laws but not of Centre's. Hence there is confusion over the validity of excise duty presently being levied by Centre.

In humble opinion of the paper writer, the transitional provisions do not expressly say that they are only applicable for the taxes levied by State. The language used in Section 19 is that it is applicable to all laws relating to tax on goods or services that are in force in any State. Thus Section 19 covers taxes levied by Centre also. To add further, GST Constitutional Amendment Act is dealing with subject relating to taxing of goods or services by both Centre and State. The transitional provisions are equally applicable to the taxation laws of both Centre and States especially in the absence clear expression provision that they are applicable only for taxation laws of States.

Coming to the language 'until amended or repealed by competent Legislature or any other competent authority or until the expiry of one year', it also possible for Centre to take shelter under the phrase 'any other competent authority' includes Parliament with respect to taxation laws of Centre. Further, it is also possible to interpret that with respect to taxation laws of Centre, they remain in force for a maximum period of one year from the date of commencement of GST Constitutional Amendment Act unless the Centre enacts appropriate GST legislation exercising their power under Article 246A.

Even otherwise, in case the transitional provisions under Section 19 are interpreted by Courts in such a way that they are applicable only to taxation laws of States, Centre has recourse under Section 20 which says that in case any difficulty in giving effect to the provisions of the GST Amendment Act including any difficulty in transition, President is given power to modify or adapt the provisions of Constitution by issuing an order at any time before the expiry of three years from the date of such assent. In worst possible scenario, Centre has the option to put rest to this row by way of President's order suitably amending the provisions of Constitution to validate excise duty levy for the interim period before the roll out of GST.

Definition of 'Goods' under Model GST is not incongruence with its definition under Constitution:

The definition of Goods under Constitution is provided under Article 366(12). Accordingly, it provides that 'goods' includes all materials, commodities, and articles. As laid down by Supreme Court in the case of Tata Consultancy Services vs. State of AP 2002(178)ELT22(SC), goods includes intangible property also when the said intangible property is capable of abstraction, consumption and use and can be transferred, transmitted, delivered, stored, possessed etc.

Thus, as per the Indian Constitution, goods include intangible property also. This position remains unchanged even after the rollout of GST. Further, with respect to taxes, that are going to be prevailing even under GST regime, the position remains unchanged. Say designs, drawings are covered under chapter 4911 and Information Technology Software covered under chapter 8523 of First Schedule to Customs Tariff Act, 1985. These intangibles when imported in the form of media would be treated as import of goods for the purpose of levy of customs duty.

Under the Model GST Law, it is envisaged in terms of definitions of 'goods', 'services' as per section 2(48) and section 2(49) respectively and meaning and scope of 'Supply' as defined under Section 3 read with Schedule II, that all intangibles are considered as services for the purpose levy of GST. Thus the definition of 'goods' and 'services' as provided under Model GST law is incongruous with the definition of 'goods' as provided under Indian Constitution. This may likely to pose legal challenges as to Constitutional vires of the GST legislations on intangibles.

On the other hand, one can easily understand the intention behind treating intangibles as services for the purpose of levy under GST. This is all to put an end to the humungous litigation that is presently taking place under VAT and Service Tax Laws as to whether a particular transaction involving intangibles is to be treated as sale of goods or provision of services. It seems that the drafting committees of Model GST Law are of the view that under GST, a supply transaction needs to be taxed treating them either as goods or services. In fact it is not so.

The GST Constitutional Amendment Act has inserted a definition for 'Goods and Services Tax' by way of sub-clause (12A) of Article 366. Accordingly, it means any tax on supply of goods, or services or both except taxes on supply of the alcoholic liquor for human consumption. Thus GST is a tax which will be levied on a transaction involving either supply of goods alone or supply of services alone or on a composite supply involving supply of both goods and services as part of same transaction.

Under GST regime, Centre and States exercise concurrent jurisdiction thereby both the authorities levy tax on transaction involving supply of goods or services or both. Therefore, in the humble opinion of the paper writer, there is no need under Model GST law to prescribe that intangibles are deemed to be services. Instead, the law can prescribe that all transactions involving supply of intangibles (whether as goods or services) would be subject to a single rate of tax. This practice will avoid the need to ascertain whether a particular supply of intangible is supply of goods or services or to deem all supplies of intangible as services. It also avoids unnecessary litigation on Constitutional vires of deeming all intangibles as services under GST legislation.

Conclusion:

In view of the above discussion, it is more likely that GST Constitutional Amendment Act is going to pose several Constitutional challenges before Courts. GST is supposed to be the biggest tax reform since Independent India. It is supposed unify the indirect tax structure of the Nation besides simplification of tax laws. Thus it is going to play a pivotal role in the growth of our economy in the coming years. With dual structure, Centre and States are required to work in harmony for successful implementation and administration of GST. Any rift between them on legal or revenue front is likely to cripple this major tax reform. In this backdrop, it is very important that Centre should be proactive in identifying potential Constitutional and other legal issues and address them correctly to ensure successful implementation of GST in India.

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INCOME TAX

INCOME TAX UPDATES

1 The Central Government notifies the following districts of the State of Telangana, Bihar, West Bengal and Andhra Pradesh as backward areas under the first proviso to clause (iia) of sub-section (1) of section 32 and sub-section (1) of section 32AD of Income Tax Act, 1961 through Notification No. 61/2016 dated 20th July, 2016 and Notification No. 85/2016 dated 28th September, 2016 respectively.

In the State of Andhra Pradesh:

S. No.	Name of the District
1	Anantapur
2	Chittoor
3	Cuddapah
4	Kurnool
5	Srikakulam
6	Vishakhapatnam
7	Vizianagaram

In the State of Telangana:

S. No.	Name of the District
1	Adilabad
2	Nizamabad
3	Karimnagar
4	Warangal
5	Medak
6	Mahabunagar
7	Rangareddy
8	Nalgonda
9	Khammam

In the State of West Bengal:

S. No.	Name of the District
1	South 24 Paraganas
2	Bankura
3	Birbhum
4	DakshinDinajpur
5	Uttar Dinajpur
6	Jalpaiguri
7	Malda
8	East Medinipur
9	West Medinipur
10	Murshidabad
11	Purulia

In the State of Bihar:

S. No.	Name of the District
1	Arwal
2	Banka
3	Begusarai
4	Bhagalpur
5	Buxar
6	Gopalganj
7	Khagaria
8	Kishnaganj
9	Madhepura
10	Munger
11	West Champaran
12	East Champaran
13	Saharsa
14	Saran
15	Sheikhpura
16	Sitamarhi
17	Siwan

2. If monthly maintenance charges are stipulated in the rent agreement to be paid by lessor / licencee /tenant, the same shall form part of rent for the purposes of computing annual value of the property. Where, however, the rent agreement stipulates that these charges shall be paid by the owner, it is obvious and reasonable to presume that the same is factored into the rent, fee or compensation payable by the lessee or the licencee. In that event the same cannot be added to the rent agreed to be paid. *[Sunil Kumar Gupta Vs. Assistant Commissioner of Income-tax at High Court of Punjab & Haryana on September 27, 2016]*

3. In exercise of the powers conferred by sub-section (2) of section 145 of the Income-tax Act, 1961, the Central Government rescinds the notification of the Government of India in the Ministry of Finance, Department of Revenue, published in the Gazette of India, Part-II, Section 3, Sub-section (ii), vide notification number S.O. 892(E) dated the 31st March, 2015, except as respects things done or omitted to be done before such rescission. And notifies the income computation and disclosure standards (ICDS) to be followed by all the Assessees (other than an individual or a Hindu undivided family who are not required to get their accounts of the previous year audited in accordance with the provisions of section 44AB of the said Act) following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources" from assessment year 2017-18 and subsequent assessment years. Accordingly, CBDT makes the Income Tax (23rd Amendment) Rules, for changes in Appendix II of Income-tax rules, 1962 [i.e., sub-clause (d) of clause (13) in Part-B of Form No. 3CD].

4. No deduction of Tax shall be made from payments of the nature specified in section 193 or 194A or 194-I of Income Tax Act, 1961 to TirumalaTirupatiDevasthanams, Tirupati, Andhra Pradesh as per *Notification No. 81/2016 dated 9th September, 2016.*

5. Extension of due date for quarterly furnishing of 15G/15H declarations as per *Notification No. 10/2016 dated 31st August, 2016.*

S. No.	Scenarios	Original Due Date	Extended Due Date
1	Form 15G/H received during the period from 01.10.2015 to 31.03.2016	30.06.2016	31.10.2016
2	Form 15G/H received during the period from 01.04.2016 to 30.06.2016	15.07.2016	31.10.2016
3	Form 15G/H received during the period from 01.07.2016 to 30.09.2016	15.10.2016	31.12.2016
4	Form 15G/H received during the period from 01.10.2016 to 31.12.2016	15.01.2016	15.01.2016
5	Form 15G/H received during the period from 01.01.2016 to 31.03.2016	30.04.2016	30.04.2016

6. CBDT has issued an Order under Section 119 of the Income Tax Act, 1961 dated 9th September, 2016, whereby the due date of filing the IT return & Tax Audit report is extended to 17th October, 2016 for all Assessees who are liable to file the IT return on or before 30th September, 2016.

7. Generation of Electronic Verification Code (EVC) through ATM is now available which will be helpful for the assesses who have not availed facility of Internet banking. At present this option is enabled by SBI.

8. Generation of Electronic Verification Code (EVC) is enabled for online filing of appeal in Form 35 for taxpayers not required to file using DSC.

9. Online facility for filing Return of Income u/s 119(2)(b)/92CD has been enabled in e-filing portal (www.incometaxindiaefiling.gov.in).

FEMA

FEMA UPDATES

1. **Thirteenth Amendment to the Notification No. 20/2000 RB- Transfer of Issue of Security by a Person Resident Outside India**

Prior to the amendment, Foreign Investment in the Other Financial Services require prior Approval of Government. In accordance with the amendment FDI is permitted as below with the conditions attached:

Sector	%of FDI permitted	Automatic/Approval
Other Financial Services*	100%	Automatic
Other Financial Services**	100%	Approval

*Financial services activities regulated by financial sector regulators
**Financial Services not regulated or where only part is regulated or where there is doubt regarding the regulatory oversight

Other Conditions:

1. Subject to conditionalities including the minimum capitalization norms, as specified by the concerned Regulator/ Government Agency.
2. Any activity which is specifically regulated by an Act, the FDI will be restricted to the limits mentioned in the Act, if any
3. Downstream investments by any of the entities engaged in "Other Financial Services" will be subject to the extant sectoral regulations and provisions of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, as amended from time to time."

2. **Revision to the Notification No. FEMA 5/2000-RB i.e., Foreign Exchange Management (Deposit) Regulations, 2000**

In the exercise of the powers of the 6(3(f)) & 47(2) of Foreign Exchange Management Act, 1999, RBI has made Foreign Exchange Management (Deposit) Regulations, 2016 vide Notification No. **FEMA 5(R)/2016-RB**relating to deposits between a person resident in India and a person resident outside India in supersession to the FEM (Deposit) Regulations, 2000. FEM (Deposit) Regulations, 2016 has come into force with effect from April 01, 2016 except the provisions of Regulation 7(2) (Para 6 (iii) above), which have come into effect from January 21, 2016.

With effect from April 01, 2016 FEM (Deposit) Regulations, 2000 has been replaced by FEM (Deposit) Regulations, 2016.

General Update: Mr. Urjit Patel has taken charge as Governor of RBI with effect from 4th September, 2016.

COMPANIES ACT, 2013

RULES, CIRCULARS AND NOTIFICATIONS ISSUED DURING THE MONTH OF SEPTEMBER, 2016

RULES

❖ **Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Amendment Rules, 2016, Dt:05-09-2016.**

Vide the above amendment rules, a new Rule 3-A, has been inserted, designating the nature of the Authority as prescribed in Rule-3 of the Principal rules. As per the amendment rules, the Authority under Rule-3, shall be a Body Corporate. Click the following link for the complete rules. Click here for the complete Rule

❖ **Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016,Dt:05-09-2016.**

Vide the above rules, the Ministry has come with a set of rules/procedural aspects, relating to Accounting, Audit and Transfer and refund of the Investor Education and Protection Fund. Click the following link for the complete rules. Click here for the Complete Rule

❖ **Companies (Mediation and Conciliation) Rules, 2016, Dt:09.09.2016.**

Pursuant to the provisions of Section 442 of Companies Act, 2013, rules have been notified. The rules provide forvarious procedural aspects relating to mediators or conciliators, their qualifications/disqualifications, procedure for the appointment disposal of the matters and related provisions. Click here for the Complete Rule

❖ **The Companies (Management and Administration) Amendment Rules, 2016, Dt:23.09.2016.**

Vide the above amendment rules, certain provisions in the Companies (Management and Administration) Rules, 2014, have been further amended, relating to **(a)**Transfer of data from old register of members;**(b)**Omission of the requirement of submission of declarations under 89(1) & 89 (2) in duplicate;**(c)** Filing of MGT-10, in case of listed companies, where the change of shareholding position of the Promoters and top 10 shareholders, of the Company, amounts to 2% or more in entire paid-up share capital of company, within 15 days of such change;**(d)** conducting of EGM by requisitionists, on any day (including Sunday) but not on National holiday; **(e)** Listed companies and other companies having shareholders not less than 1000 members, to provide facility of e-voting to its members, and Nidhi Companies, satisfying the explanation given in the amendment rules, are not required to provide e-voting facility to its members even though it has more than 1000 members; **(f)**Omission of the Sub-rule (7) & (14) of Rule 22 of the Principal Rules, with reference to procedure for conducting business through Postal Ballot**(g)**Minutes of the General Meeting to be kept at the Registered office only; and **(h)**Notification of a new form MGT-6.Click here for the Complete Rule

❖ **The Companies (Incorporation) Amendment Rules, 2016, Dt:01.10.2016.**

Vide the above amendment rules, certain provisions in the Companies (Incorporation) Rules, 2014, have been further amended, relating to **(a)** Providing of a new Form No.INC-27, for filing the Order of the Tribunal along with a printed copy of the Articles of Association, within 15 days from the date of receipt of the Order from Tribunal, for effecting conversion of the Public Company into a Private Company**(b)** Introduction of a new Integrated form INC-32, for incorporation of a Company, along with e-MOA & e-AOA in form INC-33 & INC-34, to be effective from 02.10.2016; **(c)** Prescribing the procedure for conversion of a Company limited by Guarantee into a Company limited by Shares, with effect from 01.11.2016.Click here for theComplete Rule.

CIRCULARS

❖ **General Circular No.10/2016, Dt:07.09.2016:**

Vide General Circular No.5, Ministry has given clarification with regard to relaxation for the additional fees for filing the Form IEPF-1Click here for the Circular

NOTIFICATIONS

❖ **Designation of Special Courts under section 435 of the Companies Act, 2013:**

Ministry vide Notification Dt:01.09.2016, has designated the following courts as Special Courts, pursuant to Section 435 of the Companies Act, 2013, for the purpose of trial of offences punishable with imprisonment of 2 years or more. Extract of the notification is as below. Click here for the complete notification

EXISTING COURT	JURISDICTION AS SPECIAL COURT
Sessions Judge, Bilaspur	State of Chhattisgarh
Court of Special Judge, (Sati Niwaran), Jaipur	State of Rajasthan
Court of Sessions Judge and 2nd Additional Sessions Judge, S.A.S. Nagar	State of Punjab
Court of Sessions Judge and 2nd Additional Sessions Judge, Gurgaon	State of Haryana
Court of Sessions Judge and 2nd Additional Sessions Judge, Chandigarh	Union Territory of Chandigarh
I Additional District and Sessions Court, Coimbatore	Districts of Coimbatore, Dharmapuri, Dindigul, Erode, Krishnagiri, Namakkal, Nilgiris, Salem and Tiruppur.
II Additional District and Sessions Court, Puducherry	Union Territory of Puducherry
Sessions Judge, Imphal East	State of Manipur

❖ **Commencement of various provisions relating to Investor Education and Protection Fund:**

Vide above notification, the Ministry has notified that the provisions of Section 124 (1) to (4) & (6) and Section 125 (8) to (11), shall come in to effect from 07.09.2016.Click here for the notification

❖ **Commencement of various provisions:**

Vide above notification, the Ministry has notified that the provisions of section 227, clause (b) of sub-section (1) of section 242, clauses (c) and (g) of sub-section (2) of section 242, section 246 and sections 337 to 341 (to the extent of their applicability for section 246), of the said Act shall come into force with effect from 09.09.2016. Click here for the notification

❖ **Amendment to the Schedule V of the Companies Act 2013**

Vide Notification Dt: 12.09.2016, the Ministry has made the amendments to the Schedule V of the Act, with reference to Section-II of Part-II The amendment doubles the remuneration to the original Section-II of the Schedule-V. Click here for the notification.

❖ **Constitution of National Advisory Committee on Accounting Standards:**

Vide Notification Dt: 03.10.2016, the Ministry has notified the National Advisory Committee on Accounting Standards, to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for the adoption by the Companies. Click here for the notification.

INDIRECT TAXES

INDIRECT TAXES UPDATES

1. Extension of exemption given to business entity to operate as telecom service provider/ use radiofrequency spectrum: Notification 39/2016 – Service tax.

   Government permits the business entity to operate as Telecom service provider or use radiofrequency spectrum on payment of licence fee or spectrum user charges. Such service provided by Government/local authority to business entity is exempted during the period prior to 01.04.2016.

2. Service tax (Third Amendment) Rules ,2016: Notification 43/2016 – Service tax.

   This rule modifies the Rule 7 of Service Tax Rules ,1994 with respect to Form ST-3. The version 1.6 of Excel utility for filing returns is introduced where particulars of Krishi Kalyan Cess is added in the excel utility wherever required that is Part B, C, D, DB, G, H, I, J, L for filing return for the period April to September 2016-2017 onwards. Also, 'Constitution of the Assessee' is altered by adding One Person Company and the Limited Liability Partnership.

3. Power of Central Excise Officers for the purpose of adjudication u/s 83A of FA 1994 : Notification 44/2016 – Service tax

   There is change in the prescribed limit set for adjudication power of various officers vide the above notification. The table shown below states the new prescribed limit for Central Excise Officers.

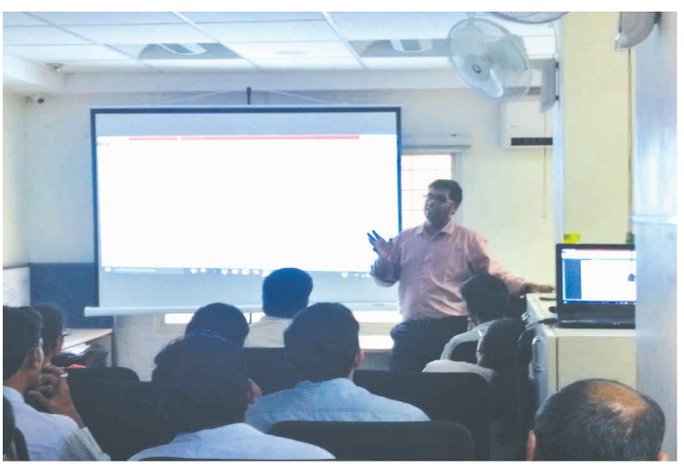
Sr. No.	Rank of the Central Excise Officer,	Amount of service tax or CENVAT credit specified in a notice issued under the Finance Act 1994.
(1)	(2)	(3)
(1)	Superintendent,	Not exceeding rupees ten lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation).
(2)	Assistant Commissioner or Deputy Commissioner,	Not exceeding rupees fifty lakh (except cases where Superintendents are empowered to adjudicate).
(3)	Joint Commissioner or Additional Commissioner,	Rupees fifty lakh and above but not exceeding rupees two crore.
(4)	Commissioner,	Without limit.

TECHNICAL SESSIONS:

S.No.	Event	Date	Speaker	Venue
1	Companies Amendment Bill (Part 3)	14/10/2016	CS Phanindra	SBS - Hyd
2	Understanding Supply in GST	21/10/2016	CA Manindar K	SBS - Hyd
3	Import and Export of Goods and Services – FEMA Regulations	28/10/2016	CA Murali Krishna G	SBS - Hyd
4	Special issues in Audit pertaining to Hotel Industry (Part 2)	04/11/2016	CA MHS Bhyrav	SBS - Hyd

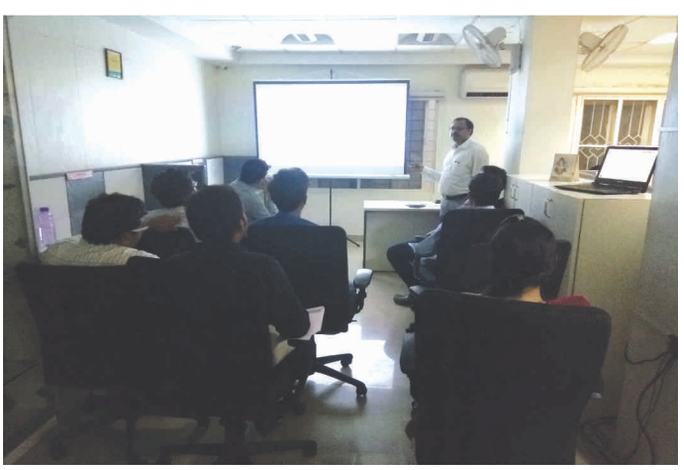
Note:

The timings for the above events shall be from 17:30 hrs to 19:30 hrs. We request the recipients of "SBS Wiki" who are interested to attend the above events to send confirmation of your participation two days in advance to make appropriate arrangements. The relevant material will be hosted at slideshare shortly after the session. The link to download is *http://www.slideshare.net/Team-SBS*



Introduction to GST - CA Harsha Sri

Special issues in Audit pertaining to Hotel Industry - CA MHS Bhyrav



Evolution of Alternative Investment Funds in India and latest developments - CA Rajesh

Hyderabad: 6-3-900/6-9, #103 & 104, Veeru Castle, Durganagar Colony, Panjagutta, Hyderabad, Telangana
Kurnool: No. 302, 3rd Floor, V V Complex, 40/838, R.S. Road, Near SBI Main Branch, Kurnool, Andhra Pradesh
Nellore: 16-6-259, 1st Floor, Near Santi Sweets Opp: SBI ATM, Vijayamahal Centre, SPSR Nellore, Andhra Pradesh
Tada: 8-3-425/2, Flat No. 202, 2nd Floor, Bigsun Avenue, Near SRICITY, TADA, SPSR Nellore Dist, Andhra Pradesh
Visakhapatnam: # 39-20-40/6, Flat No.7, Sai Yasoda Apartments, Madhavadhara,Visakhapatnam (Urban),Vizag, Andhra Pradesh
Bengaluru: B104,RIRCO, Santosh Apartments, Wind Tunnel Road, Murugeshpalya, Old Airport Road, Bangalore – 560017, Karnataka.

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