



SBS *Interns'* Digest

An attempt to share knowledge

By

**Interns of
SBS and Company LLP**

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FEMA

FEM (EXPORT OF GOODS & SERVICES) REGULATIONS, 2015

Contributed by Sauchit & Vetted by CA Bharani & CA Murali Krishna |

Introduction:

In general, export trade is regulated by the Directorate General of Foreign Trade (DGFT) functioning under the Ministry of Commerce and Industry (MoCI) and the exporters are required to adhere the policies and procedures announced by the DGFT, from time to time. One of such policies issued by DGFT is Foreign Trade Policy (FTP) to develop the manufacturing and service sectors by enabling various export schemes, providing legal framework therefor & trade facilitation, and also laying down the procedure for settlement of trade disputes.

Though DGFT is the regulator for foreign trade in India, RBI being the financial market regulator is responsible for management of foreign exchange, payment & settlement systems while continuously working towards the development of Indian financial markets.

RBI regulates the foreign exchange markets (i.e., FOREX market) through Foreign Exchange Management Act, 1999 (herein after referred as FEMA Act). In exercise of powers conferred by section 7(1)(a), 7(3) & 47(2) of FEMA Act, 1999, RBI has notified Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 (herein after known as "Export Regulations, 2000") by notification number 23/2000-RB dated 3rd May 2000 which came into force from 1st June, 2000.

RBI has been regulating the forex market with regard to export of goods and services from India through Export Regulations, 2000 and Master Direction on export of goods and services, by regularly updating the regulations and directions through A.P(DIR Series) Circulars issued from time to time. However, Export Regulations, 2000 has been superseded by Export regulations, 2015 by notification number 23(R)/2015-RB in the year 2015 which came into force from 12th January 2016.

Presently, RBI is regulating the forex market with regard to exports through Export Regulations, 2015 and A.P (DIR Series) circulars issued from time to time.

Note: Regulations are modified as and when required by issuing A.P(DIR Series) Circulars and all those changes made to regulations over a period of time by such circulars are consolidated into Master Direction.

In this article, an attempt has been made to understand and discuss about few important questions that generally arise in relation to exports, such as:

- (1) Invoicing for exports;
- (2) Submission of export documents;
- (3) Manner of receipt of exports proceeds;
- (4) Time period for realization of export proceeds;
- (5) Consequences of non-realization within the stipulated timelines;
- (6) Advance payment against exports;
- (7) Exchange Earners' Foreign Currency (EEFC) Account & Other accounts

Let's discuss on each of the above-mentioned points with the help of export regulations, 2015 to understand its related provision in the regulation.

(1) Invoicing for exports:

An important question in relation to Invoicing of exports is *"What are the denominations (i.e., currencies) in which the export invoice can be raised and be realised?"*

In terms of Para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or in Indian Rupees, but export proceeds shall be realised in ***freely convertible currency***.

However, export proceeds against the specific exports may also be realised in Indian Rupees provided it is through a freely convertible vostro account of a non-resident bank situated in any country, other than a member country of the Asian Clearing Union (ACU) or Nepal or Bhutan.

Another question related to invoicing of exports is *"What is duration within which export invoice has to be raised?"*

The answer to the above question can be categorized into the following:

(a) Invoicing of software exports:

(i) In case of export of software where there is an agreement of export for long duration involving series of transmissions:

- Invoice shall be raised by the exporter at least once a month or on reaching the 'milestone' and
- last invoice in relation to the agreement shall be raised within 15 days from the date of completion of contract.

The above shall be subject to submission of combined SOFTEX form for all the invoices raised on a particular overseas client, including advance remittances received in a month.

(ii) In case of export of software where there is only one-time operation involved:

- Invoice shall be raised by the exporter within 15 days of transmission of software export.

(b) Invoicing of exports other than software exports:

- Invoice shall be raised by the exporter at the time of export of goods through customs port.

(2) Submission of export documents:

An important question in relation to submission of export documents is *“How and when the export documents are to be handed over/sent to importer?”*

The answer to the above question can be understood and categorized into the following:

- (a) In terms of the provisions contained in Master Direction No.16/2015-16, exporter shall after due verification and authentication of export documents by concerned authority (such as Specified Officer in case of SEZ) within 21 days:
 - from the date of export (or)
 - from the date of certification of the SOFTEX form in case of software exports
 shall submit the export documents to the Authorised Dealer (AD). However, the authorized dealer may accept the documents after the expiry of the specified period of 21 days, for reasons beyond the control of the exporter subject to directions issued by RBI, from time to time.
- (b) In certain cases, AD may permit direct dispatch of export documents to the importer subject to the fulfilment of following conditions:
 - (i) Advance payment or an irrevocable Letter of Credit (LC) has been received for the full value of the export shipment and underlying sale contract/LC provides for such dispatch of documents;
 - (ii) The AD has approved such arrangement for direct dispatch subject to the track record of the exporter and
 - (iii) The export value does not exceed USD 1 million.

(3) Manner of receipt of exports proceeds:

An important question in relation to manner of receipt for exports is *“What are the methods in which an exporter can realise his export proceeds?”*

As per regulation 4 of FEMA 14(R)/2016-RB [*Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016*], receipt for export may be made by the exporter as under, namely:

- (a) in the form of a bank draft, cheque, pay order, foreign currency notes/ travellers' cheque from a buyer during his visit to India, provided the foreign currency so received is surrendered within the specified period to the authorized dealer of which the exporter is a customer;
- (b) by debit to FCNR/NRE account maintained by the buyer with an Authorised Dealer or an Authorised Bank in India;
- (c) in rupees from the credit card servicing bank in India against the charge slip signed by the buyer where such payment is made by the buyer through a credit card;
- (d) from a rupee account held in the name of an Exchange House with an authorized dealer if the amount does not exceed fifteen lakh rupees per export transaction or an amount prescribed by RBI, in consultation with Government of India in this regard;
- (e) in the form of precious metals i.e. gold/ silver/ platinum, equivalent to value of jewellery exported by Gem & Jewellery units in Special Economic Zones(SEZ) and Export Oriented Units(EOU) on the condition that the sale contract provides for the same and the value is declared in the relevant Export Declaration Form(EDF).

- (f) In accordance with the directions issued by the RBI to AD, where the export is covered by the arrangement between the Central Government(CG) and the Government of a foreign country or by the credit arrangement entered into by the Exim Bank with a financial institution in a foreign state;

In addition to the methods prescribed above, exporters may also receive the export realisations through following permitted methods by RBI through Master Direction No.16/2015-16:

- (a) Processing of export related receipts through Online Payment Gateway Service Providers (OPGSPs). This facility shall only be available for export of goods and services of value not exceeding USD 10,000 (US Dollar ten thousand);

Note: A start-up can realise the receivables of its overseas subsidiary and repatriate them through OPGSPs.

- (b) Third party payments for export transactions:

Receipt of export realisations from third party has been permitted by RBI, subject to conditions as laid down under:

- (i) Firm irrevocable order backed by a tripartite agreement should be in place. However, it may not be insisted upon in cases where documentary evidence for circumstances leading to third party payments / name of the third party being mentioned in the irrevocable order/ invoice has been produced subject to:
 - AD bank should be satisfied with the bona-fides of the transaction and export documents, such as, invoice / FIRC.
 - AD bank should consider the Financial Action Task Force(FATF) statements while handling such transaction.
- (ii) Third party payment should be routed through the banking channel only;
- (iii) It would be responsibility of the exporter to realize and repatriate the export proceeds from such third party;
- (iv) Reporting of outstanding, if any, in the EDPMS would continue to be shown against the name of the exporter. However, instead of the name of the overseas buyer from where the proceeds must be realized, the name of the declared third party would appear in the EDPMS;

(4) Time period for realization of export proceeds:

An important question in relation to time period for realization of export proceeds is *“What is the period within which an exporter should realise his export proceeds?”*

- (a) For exports, other than exports made to a warehouse established outside India with the permission of the RBI,
- The amount representing the full export value of goods / software/ services exported shall be realised and repatriated to India within nine months from the date of export

Note: Here, the “date of export” in relation to the export of software in other than physical form, shall be deemed to be the date of invoice covering such export.

- (b) For exports made to a warehouse of the exporter established outside India with the permission of the RBI
- The amount representing the full export value of goods exported shall be realised and repatriated to India within fifteen months from the date of shipment of goods

(5) Consequences of non-realization within the stipulated timelines:

If exporter is unable to realize the export proceeds within the stipulated timelines, he may apply to AD Category-I banks to extend the period of realization upto a period of six months, at a time, irrespective of invoice value.

If the period of realization exceeds two years for the date of export, exporter would be 'caution-listed' if the shipping bill remains open in EDPMS portal of RBI, subject to the condition that no further extension is granted by AD category-I bank or RBI.

Once an exporter is caution-listed, it would be difficult for exporter to undertake the export transactions as he needs to face the following issues related to:

- (a) Receipt of letter/notices from investigating agencies;
- (b) Delay in processing of export documents;
- (c) Non availability of Letter of credit bills.
- (d) Exporter cannot undertake any of the FDI or ODI transactions unless prior approval of RBI has been obtained which usually takes lot of time.

(6) Advance Payment against export:

Regulation 15 of FEMA 14(R)/2016-RB permits an exporter to receive advance payment for exports subject to the conditions as laid down under:

- (a) If an exporter receives advance payment (with or without interest) from a buyer outside India, the exporter shall be under an obligation to ensure that:
 - (i) the shipment of goods is made within one year from the date of receipt of advance payment;
 - (ii) the rate of interest, if any, payable on the advance payment does not exceed the London Inter-Bank Offered Rate (LIBOR) + 100 basis points and
 - (iii) the documents covering the shipment are routed through the AD through whom the advance payment is received

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the said period of one year, without the prior approval of the Reserve Bank.

- (b) Notwithstanding anything contained in clause (a), an exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment.

(7) Exchange Earners' Foreign Currency (EEFC) Account & Other Foreign Currency accounts:

An important question in relation to opening of Foreign currency accounts by persons resident in India is *"What are the foreign currency accounts that can be opened and maintained by persons resident in India?"*

A person resident in India may, in terms of Regulations of Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015 dated January 21, 2016, open with an AD Category – I bank in India following foreign currency accounts;

(a) Exchange Earners' Foreign Currency (EEFC) Account:

EEFC is an account maintained in foreign currency with an authorised dealer i.e. a bank dealing in foreign exchange. It is a facility provided to the foreign exchange earners, including exporters, to credit 100% of their foreign exchange earnings to the account, so that the account holders do not have to convert foreign exchange into rupees and vice versa, thereby minimising the transaction / conversion costs. Following are the permissible debits and credits to the EEFC account:

(i) Permissible Credits:

- 100% of the foreign exchange earnings by way of inward remittance for exports through normal banking channel (other than loan and investments);
- Advance remittance received by an exporter towards export of goods or services;
- Re-credit of unutilized foreign currency earlier withdrawn from the account;
- Receipts by DTA for supplies to SEZ units

(ii) Permissible Debits:

- Conversion into INR;
- Facilitating trade related loans / advances to overseas importers;
- Payment of customs duty in accordance with the provisions of Export Import Policy;
- Payment for goods purchased from 100% EOU, SEZ Unit, STP, EHTP;
- Repay packing credit advances

Other important points related to EEFC account:

- The account will be in the form of a non-interest-bearing account;
- Fund-based/ non-fund-based credit facilities should not be granted against the balances held in EEFC Accounts;
- Withdrawal in rupees are permitted from this account, provided the amount so withdrawn cannot be re-credited to the account;
- Foreign exchange purchased in India against rupees cannot be credited to the account without prior permission from the Reserve Bank.
- The sum-total of the accruals in the account during a calendar month should be converted into Rupees on or before the last day of the succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments.

Ex: If any amount is credited to EEFC A/c on any day between 1st July 2019 to 31st July 2019, all such credits must be converted to INR by 31st August 2019.

(b) Diamond Dollar Account (DDA account):

- (a) Firms and companies dealing in purchase/sale of rough or cut and polished diamonds/precious metal and/or other stones:
- with a track record of at least 2 years in import/export of such trade and
 - having an average annual turnover of Rs. 3 crores or above during the preceding three licensing years (licensing year is from April to March) are permitted to transact their business through Diamond Dollar Accounts.
- (b) An exporter is not allowed to open not more than five Diamond Dollar Accounts with their banks.
- (c) The sum-total of the accruals in the account during a calendar month should be converted into Rupees on or before the last day of the succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments.

(c) Foreign Currency Account (FC account):

A unit located in a Special Economic Zone (SEZ) may open, hold and maintain a Foreign Currency Account with an AD Category – I bank in India to credit all foreign exchange funds received by such SEZ unit.

Other important points related to FC account:

- The account can be used for bona fide trade transactions between the unit and a person resident in/ outside India.
- Foreign exchange purchased in India against rupees cannot be credited to the account without prior permission from the Reserve Bank.
- The funds held in these accounts cannot be lent or made available to any person or entity resident in India not being a unit in Special Economic Zones.
- Unlike EEFC account/DDA account, there is no such requirement to convert the funds held in the account to INR at the end of month. In other words, balances in FC account can be held in foreign currency by SEZ Units till the closure of account.

AUDIT**INDIAN ACCOUNTING STANDARD 16**

Contributed by Raju D & Vetted by CA Bhyrav

Introduction:

Through this document, I am going to discuss regarding the applicability of Ind AS and objective, scope, and Measurement after recognition relating to Ind AS-16, Disclosure Requirements and also significant differences between Ind AS-16 and AS-10&6

Applicability of Ind AS:

MCA has phase wise convergence from current Accounting standards to Ind AS. Ind AS shall be applicable to specific class of companies based on their Net worth and Listing status. Following are the phases

Phase I	<p>Mandatory applicability of IND AS to all Companies from 1st April 2016, provided:</p> <ul style="list-style-type: none"> ➤ Listed Company where the Net worth is greater than or equal to Rs.500 crore. ➤ Unlisted Company where the Net worth is greater than or equal to Rs.500 crore. <p>Note: Net worth shall be checked for the previous three financials years.</p>
Phase II	<p>Mandatory applicability of IND AS to all companies from 1st April 2017, provided:</p> <ul style="list-style-type: none"> ➤ It is a listed company or is in the process of being listed ➤ Its Net worth is greater than or equal to Rs. 250 crore but less than Rs. 500 crore <p>Note: Net worth shall be checked for the previous four Financial Years</p>
Phase III	<p>Mandatory applicability of IND AS to all Banks, NBFCs, and Insurance companies from 1st April 2018, whose:</p> <ul style="list-style-type: none"> ➤ Net worth is more than or equal to INR 500 crore with effect from 1st April 2018. ➤ IRDA (Insurance Regulatory and Development Authority) of India shall notify the separate set of IND AS for Banks & Insurance Companies with effect from 1st April 2018. NBFCs include core investment companies, stockbrokers, venture capitalists, etc <p>Note: Net worth shall be</p>
Phase IV	<p>All NBFCs whose Net worth is more than or equal to INR 250 crore but less than INR 500 crore shall have IND AS mandatorily applicable to them with effect from 1st April 2019.</p>

Note:

If IND AS applies to an entity, then the same would be applicable for all its subsidiaries, Holding companies, Associated companies, and Joint Ventures of that entity, irrespective of individual qualification of such companies.

In case of foreign operations of an Indian Company, the preparation of stand-alone financial statements may continue with its jurisdictional requirements and need not be prepared as per the IND AS.

However, these entities will still have to report their IND AS adjusted numbers for their Indian parent company to prepare consolidated IND AS accounts.

Ind AS 16 Property, Plant and Equipment:**Objective:**

The objective of this Standard is to prescribe the accounting treatment for Property, Plant and Equipment so that users of the financial statements can discern information about an entity's investment in its property, plant and equipment and the changes in such investment. The principal issues in accounting for property, plant and equipment are the recognition of the assets, the determination of their carrying amounts and the depreciation charges and impairment losses to be recognised in relation to them.

Scope:

This Standard shall be applied in accounting for property, plant and equipment except when another Standard requires or permits a different accounting treatment.

Definition of PPE:

Property, plant and equipment are tangible items that:

- Are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and
- Are expected to be used during more than one period.

Exclusions:

1. Biological Assets other than **Bearer plant**
2. Wasting Assets
3. Any other standard Governance Recognition and Measurement Principles (Ex: IND AS 23 – Borrowing cost, IND AS 20 – Government Grants etc.)

Bearer Plant:

Bearer plant is a plant that:

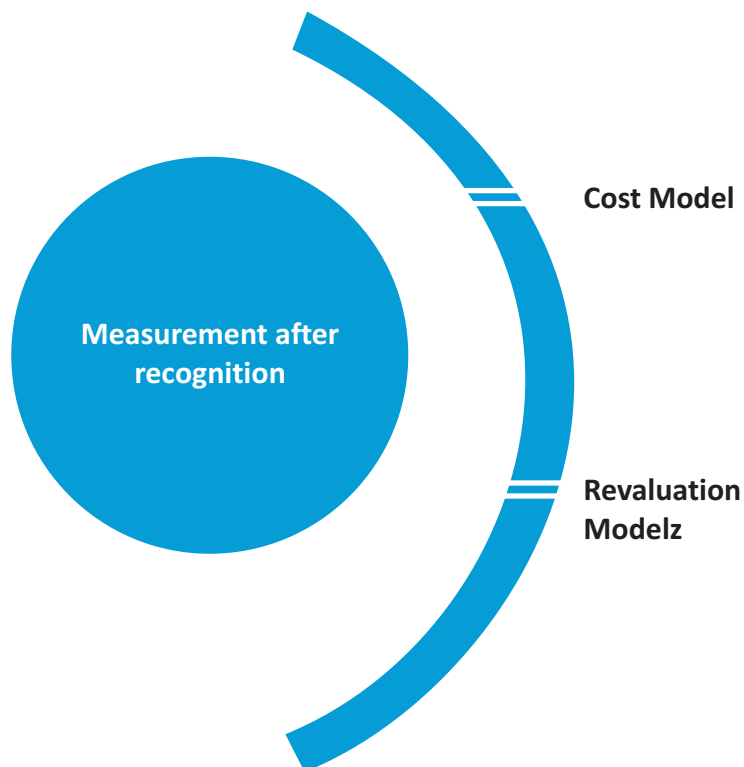
- Is used in the production or Supply of agricultural produce
- Is expected to bear produce for more than a period of 12 Months; and
- Has remote likelihood of being sold as agricultural produce, except for incidental scrap sales.

The Following are not considered as a Bearer plant:

- Plants cultivated to be harvested as a Agricultural Produce (for Ex: trees grown for use as Lumber)
- Annual Crops

Measurement after recognition:

An entity shall choose either the cost model or the revaluation model as its accounting policy and shall apply that policy to an entire class of property, plant and equipment



Cost Model:

- After recognition as an asset, an item of property, plant and equipment shall be carried at its cost less any accumulated depreciation and any accumulated impairment losses.

The carrying amount of an asset will be presented as Under:

Particulars	Amount
Original Cost	Xxx
(-) Accumulated Depreciation	(xxx)
(-) Accumulated Impairment Loss	(xxx)
Carrying Amount	xxx

Note: Impairment Loss can be calculated as per IND AS 36.

Revaluation model

After recognition as an asset, an item of property, plant and equipment whose fair value can be measured reliably shall be carried at a revalued amount, being its fair value at the date of the revaluation less any subsequent accumulated depreciation and subsequent accumulated impairment losses. Revaluations shall be made with sufficient regularity to ensure that the carrying amount does not differ materially from that which would be determined using fair value at the end of the reporting period.

The Carrying amount of an Asset will be presented as under :

Particulars	Amount
Fair Value of Asset	xxx
(-) Subsequent Accumulated Depreciation	(xxx)
(-) Subsequent Accumulated Impairment Loss	(xxx)
Carrying Amount	xxx

If an asset's carrying amount is increased as a result of a revaluation, the increase shall be recognised in other comprehensive income and accumulated in equity under the heading of revaluation surplus. However, the increase shall be recognised in profit or loss to the extent that it reverses a revaluation decrease of the same asset previously recognised in profit or loss.

If an asset's carrying amount is decreased as a result of a revaluation, the decrease shall be recognised in profit or loss. However, the decrease shall be recognised in other comprehensive income to the extent of any credit balance existing in the revaluation 15 Property, Plant and Equipment surplus in respect of that asset. The decrease recognised in other comprehensive income reduces the amount accumulated in equity under the heading of revaluation surplus.

Disclosure Requirements:

Ind AS 16 prescribes financial statements should disclose, for every class of PPE:

- Measurement basis for determining carrying amount
- Depreciation methods used
- Depreciation rates/ Useful lives of the assets
- Aggregate carrying amount and accrued depreciation at the start and at the end of period
- Existence and value of restrictions on the title and PPE pledged as collateral for liabilities
- Amount of expenditure recognized in carrying amount of an item of PPE during its construction
- Amount with respect to contractual commitment for acquisition of PPE

Disclosure (Illustration) – Property, Plant & Equipment – Infosys Ltd.

Property, plant and equipment represent a significant proportion of the asset base of the Company. The charge in respect of periodic depreciation is derived after determining an estimate of an asset's expected useful life and the expected residual value at the end of its life. The useful lives and residual values of Company's assets are determined by the Management at the time the asset is acquired and reviewed periodically, including at each financial year end. The lives are based on historical experience with similar assets as well as anticipation of future events, which may impact their life, such as changes in technology.

Difference between IND AS 16 and AS 10&6

Particulars	Ind AS 16 Property Plant Equipment	AS 10 & 6
Change in the methods of depreciation	Ind AS 16 considers such change as changes in the accounting estimate and is applied prospectively.	AS 10 necessitates retrospective recalculation of the depreciation and accounted for prospectively. This change is considered as the changes in accounting policy.
Reviewing residual value	The residual value must be reviewed at the end of every financial year at least and, any change must be accounted for as changes in the accounting estimate.	As per AS 10, estimates with respect to residual value aren't required to be updated and reviewed.
Reassessing the useful life	Ind AS 16 requires reviewing at the end of every financial year and applied prospectively.	AS 10 required periodical review and prospective application.
Government grant received for PPE	Ind AS doesn't allow the same.	AS 12 gives an option to reduce the grant so received from gross value of such asset
Cost of major Inspections	As per Ind AS 16, the cost of any major inspections must be recognized in carrying the amount of the PPE	As per AS 10, the cost of major inspections are usually expensed as and when they're incurred.

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DIRECT TAX

270A

Contributed by Indu K & Vetted by CA Madhusudan & CA Ramprasad |

Section 270A specifies when the penalty be levied and rate of penalty leviable for under - reporting and misreporting of income. It is primarily about the circumstances under which income is under-

reported or misreported, incomes excluded from calculating such under reported income and arriving in the amount of penalty payable.

Objective behind introduction:

- Sections 270A & 270AA have been introduced through Finance Act 2016 to “rationalize and bring objectivity, certainty and clarity in the existing penalty provisions”.
- 270A stipulates the levy of penalty in case of under - reporting of income and misreporting of income.
- 270AA stipulates immunity from imposition of penalty u/s 270A
- Prior to introduction of these sections penalty was levied u/s 271(1)(c) where the rate of penalty and levy of penalty is at the discretion of respective assessing officer.

What is 270A?

- Section 270A says when any person has under reported his income, he is liable to pay additional burden called penalty along with tax payable on such under reported income.
- However, such person can avoid his penalty upon satisfying the conditions specified u/s 270AA.



Who is liable u/s 270A?

- Under 270A(1) Any person who has under - reported the income shall be liable to pay penalty in addition to tax on such under reported income.
- Since it specifies any person it can be concluded that it is applicable to all persons upon satisfying the conditions mentioned under this section.

Who can levy the penalty?

- The Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.

Applicability of threatening sections 270A & 270AA:

- Sections 270A & 270AA are applicable from 01-04-2016 i.e. FY 2016-17. Therefore, provisions of section 271(1)(c) are not applicable from AY 2017-18.

Under reporting of income:

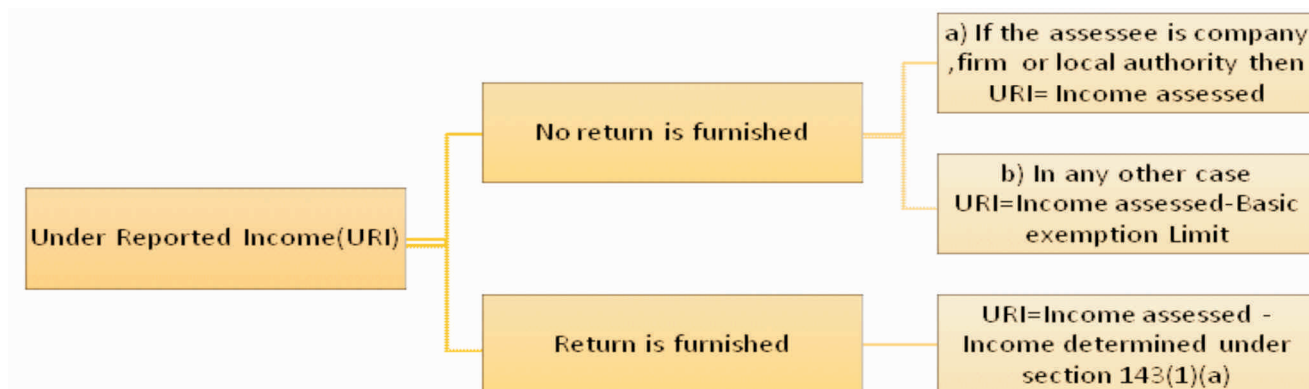
- In simple words as the name suggests it means the recording of Income comparatively lesser than the actual income.

Conditions amounting to under - reporting of income:

- One of the ways to report the earnings made by assessee is through filing of Return of Income. So, this can be taken as base to determine whether the assessee has under reported the income through the following two situations:
 - Under - reporting where Return of Income (ROI) is filed.
 - Under reporting where no return of income (ROI) is filed.
- **Under reporting where Return of Income (ROI) is filed:** Income is considered as under reported if:
 - Income assessed is more than income determined in the return processed u/s 143(1)(a)
 - Income reassessed is more than income assessed or reassessed immediately before such re-assessment.
 - Deemed total income assessed or reassessed U/s 115JB / 115JC, is more than deemed total income determined U/s 143(1)(a)
 - Income assessed / reassessed has the effect of reducing the loss or converting such loss into income.
- **Under reporting where no Return of Income (ROI) is filed:**
 - Basically, Assessee is not liable to file a return of income when the income earned is less than the basic exemption limit available.
 - Situation of under reporting arises only when the income assessed is more than the basic exemption limit.
- Income is considered as under reported when:
 - ❖ Income assessed is more than maximum amount not chargeable to tax i.e. Basic exemption limit.
 - ❖ Deemed Total income assessed as per section 115JB / 115JC > maximum amount not chargeable to tax i.e. Basic exemption limit.

Calculation of under reported Income:

- For brevity, amount of under reported income where return of income is filed will be the difference between amount assessed or reassessed or recomputed and amount reported through return of income. However, in case no return of income is filed the calculation of amount of under reported income is described in the picture below.
- It is calculated as below:
 - ❖ Where Income is assessed for first time the under reported income (URI) shall be calculated as below:



- ❖ Where income is reassessed: In case of reassessment the under reported income shall be the difference between amount assessed or reassessed and amount reassessed or recomputed:

Particulars	Amount
Amount of income reassessed/recomputed	XXX
Less: Amount of income assessed/reassessed / recomputed in the preceding order	(XXX)
Under reported income (URI)	XXX

- ❖ Assessment or Reassessment reduces or converts loss into income:
Then URI is the difference between loss claimed and Income (or loss) assessed / reassessed.
- ❖ In case of Deemed total Income:
 - If under reported Income arises out of Deemed Income under section 115JB/115JC of Income Tax Act, then amount of Under reported Income (URI) shall be calculated as per the following formula:

$$URI = (A-B) + (C-D)$$

- Where,
- A = Income assessed as per general provisions (i.e. other than provisions of section 115JB/115JC)
- B = Income assessed as per general provisions reduced by amount of under reported income
- C = Income assessed as per provisions of Section 115JB/115JC
- D = Income assessed as per provisions of Section 115JB/115JC reduced by amount of under reported income.

Exclusion from under reported income:

- In calculating the under reported income, the following amounts will not be considered.
 - ❖ Explanation is offered: The income for which assessee had offered explanation which is bonafide to Assessing officer and all the material facts have been disclosed.
 - ❖ Estimated and method Employed:
 - The under reported income is determined on the basis of an estimate where the accounts are correct and complete to the satisfaction of the Assessing officer, but the method employed cannot compute the income properly.
 - The under reported income which has been determined on the basis of an estimate, where the assessee on his own, has estimated a lower amount of addition or disallowance on the same issue and has included such amount in the computation of income and has disclosed all material facts relating to such addition and disallowance.
 - ❖ Transfer Pricing:
 - The under reported income is due to any addition made in accordance with the arm's length price as determined by the TPO and proper documentation has been maintained by the assessee as prescribed under section 92D. Further, the assessee has declared the international transactions under Chapter – X and disclosed all material facts relating to the same.
 - Where, Chapter – X relates to special provisions relating to avoidance of tax.
 - Section 92D – Maintenance and keeping of information and documents by persons entering into international transaction or specified domestic transaction.
 - ❖ Search u/s 271AAB: The undisclosed income referred to in section 271AAB (penalty where search has been initiated).

Misreporting of Income:

- Misreporting in simple terms refers to reporting of false information.
- In case income has been under reported due to any of the following instances it amounts to misreporting of income.
 - ❖ Misrepresentation or suppression of facts
 - ❖ Failure to record investments in the books of accounts
 - ❖ Claim of expenditure not supported by any evidence
 - ❖ Recording of any false entry in the books of account
 - ❖ Failure to record any receipt in books of account having a bearing on total income and
 - ❖ Failure to report any international transaction / any transaction deemed to be an international transaction / any specified domestic transaction to which the provisions of Chapter X (Special provisions relating to avoidance of double taxation) applies.

Calculation of Tax Payable:

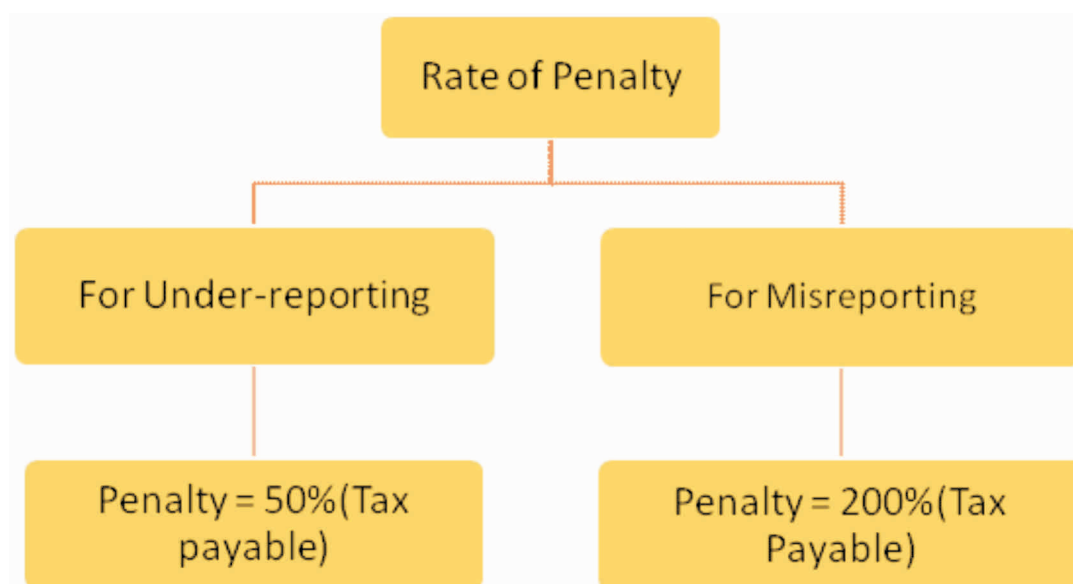
- Income Tax payable on the under reporting of Income can be calculated in three different scenarios as below.
 - No return of income is filed: In case no return is furnished, and the income is assessed for first time amount of tax payable shall be

$$\text{Tax payable} = \text{Tax on (under reported income + basic exemption limit)}$$
 - Income determined u/s 143(1)(a)/assessed/reassessed in a preceding order¹ is less than:

$$\text{Tax payable} = \text{Tax on (under reported income, where under reported income is considered as total income)}$$
 - In any other case:
 The amount of Tax payable = (X-Y) where,
 X = Tax on Under reported income + income determined u/s 143(1)(a) and Y = Tax on Income determined u/s 143(1)(a) or total income assessed, reassessed or recomputed in a preceding order.

Amount of Penalty:

- In case of under reporting of income the amount of penalty is equal to 50% of amount of tax payable on under reported income (URI).
- In case of Mis reporting of income, the amount of penalty is equal to 200% of amount of tax payable on under reported income.



¹"preceding order" means an order immediately preceding the order during the course of which the penalty u/s 270A(1) has been initiated".

Examples:

1. A resident Mr. Ravi Kumar aged about 40 years, has not filed return of income for FY 2018-19. The income assessed u/s 143 is Rs.11,50,000. Is penalty leviable u/s 270A?

Ans: Provisions:

- As per section 270A(2)(b) a person is considered to have under reported his income if the income assessed is greater than the basic exemption limit.
- As per 270(3)(i)(b) Amount of under reported income in case no return is filed is difference between Income assessed and Basic Exemption Limit.

Calculation of Penalty u/s 270A

Particulars	Amount Rs.
<u>i) Under reported Income:</u>	
Income Assessed u/s 143	11,50,000
Less: Basic Exemption Limit	2,50,000
	9,00,000
<u>ii) Amount of Tax</u>	
Under reported Income	9,00,000
Add: Basic Exemption Limit	2,50,000
Taxable Amount	11,50,000
Tax thereon	1,57,500
Add: Education Cess @ 4%	6,300
Total Tax Payable	1,63,800
Penalty @ 50%	81,900
Total Payable	2,45,700

NOTE: It is assumed that under reporting is not due to misreporting.

2. During the FY 18-19 the income reported by M/s Ravi & Co a partnership Firm is Rs.25,00,000. However, during the assessment u/s 143 an unaccounted income of Rs.90,000 was found. Is Penalty leviable u/s 270A?

Ans: Provision: As per 270A(9) suppression of facts amounts to misreporting of income. Since the income is unrecorded it can be treated as misreporting and penalty is leviable u/s 270A at 200%. It is considered that under reporting is due to mis reporting.

In this case the amount of Tax payable= (X-Y) where,

X = Tax on [Under reported income + income determined u/s 143(1)(a)] and

Y = Tax on Income determined u/s 143(1)(a).

Calculation of Penalty u/s 270 A

Particulars	Amount
<u>I) Misreported Income:</u>	
Income determined u/s 139	25,00,000
Add: Additional Income Assessed u/s 143	90,000
Total Income	25,90,000
<u>ii) Amount of Tax on Total Income</u>	
Taxable Amount	25,90,000
Tax thereon	7,77,000
Add: Education Cess @ 4%	31,080
Total Tax Payable (X)	8,08,080
<u>iii) Amount of Tax on Mis reported Income</u>	
Taxable Amount	25,00,000
Tax thereon	7,50,000
Add: Education Cess @ 4%	30,000
Total Tax Payable (Y)	7,80,000
a) Net Tax Payable (X-Y)	28,080
b) Penalty @ 200%	56,160
Total Payable (a+b)	84,240

This article is contributed by Indu K, Intern of SBS and Company LLP. The author can be reached at interns@sbsandco.com

SATURDAY SESSIONS

S.No.	Event	Date	Speaker	Venue
1	Foreign Contribution Regulation (Amendment) Rules, 2019	10/08/2019	Sai Laasya	SBS - Hyd
2	Basics on Tally	17/08/2019	Ravi Raju D	SBS - Hyd
3	An insight into IL&FS case		Suma. B	SBS - Hyd
4	To be decided	24/08/2019	Indu K	SBS - Hyd
5	Financial Statements and Board Report		Arun. T	SBS - Hyd
6	TDS on Professional or consultancy services u/s 194J	31/08/2019	Rambabu	SBS - Hyd

SESSION TIMINGS: 2:30 to 4:30 PM

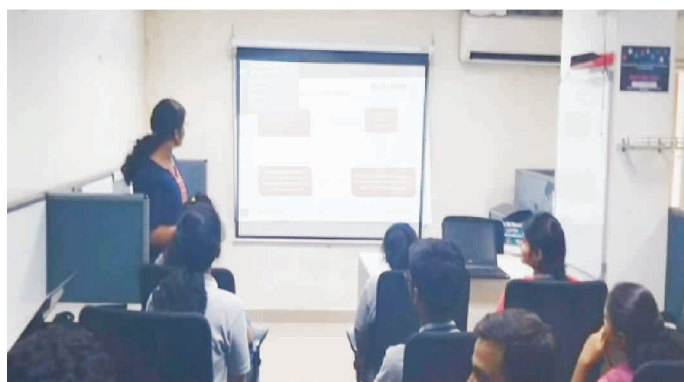
FEM (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 - Laasya



Insolvency and Bankruptcy Code, 2016 - Arun



Overview on GSTR 9C - Sukanya



SA 570_Going concern - Monika



Treatment for Discount or Rebate under GST - Divyasree



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