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By

SBS and Company LLP
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CONTENTS

Dear Readers,

Greetings for the season!

In this edition, we bring you to quite a few interesting articles.

The article on Resident Welfare Associations – Income Tax & GST Perspective' deals with taxation of certain issues from the income tax and GST provisions faced by Resident Welfare Associations.

The article on 'Corporate Social Responsibility – Boon or Bane' deals with the recent changes brought under the Companies Act to such provisions.

The presentation on 'Practical Issues in GSTR 9 and GSTR 9C' focuses on certain issues which impact the reconciliation and probable solutions to fix.

I hope that you will have good time reading this edition and please do share your feedback. I will also urge clients to mail us topics or issues on which you want us to deliberate in our future editions, so that we can contribute to the same.

I am also glad to announce that we have launched our mobile app 'SBS Connect' on the eve of completion of 10 years. Now, Wiki and other resources can be accessed through 'SBS Connect'. Please use 'SBS Connect' to stay connected with us.

Thanking You,

Suresh Babu S
Chairman &Managing Partner

GST & DT PERSPECTIVE

RESIDENT WELFARE ASSOICATIONS

Contributed by CA Suresh Babu S & CA Sri Harsha

The birth of Resident Welfare Association (for brevity 'RWA') is guided by Section 11(4)(e) of Real Estate (Regulation & Development) Act, 2016. The said section mandates that promoter should enable the formation of RWA under the local laws. In absence of such local laws, the section mandates that RWA must be formed within 3 months from the majority of allottees having booked their apartment.

RWAs are formed primarily with an objective to protect and upkeep the welfare of all the members who are the owners of apartments forming part of such residential complex. All RWAs are incorporated with intention of 'no profit no loss' and guided by bye-laws which are agreed at the time of incorporation.
Basis such bye-laws, different RWAs collect different types of fees from members for provision of certain services. The most common fees are corpus, admission fee, transfer fee, No-Objection Certificate fee and other similar items.

Majority of RWAs in their bye-laws have modus operandi which must be adopted for each type of fee charged by them[1] . The bye-laws would also contain provisions dealing with accounting treatment of such fee, purposes for which a particular fee can be used, purposes for which a particular fee cannot be used, the timing of usage, the necessary approval for such usage, the nature of investments into which the idle funds of RWAs can be made into and various other aspects.

Apart from the said fee, RWAs will also collect monthly maintenance charges from all the members against provision of specific services. The services will include the upkeep of common area, common amenities, security services and various others.

In this article, we deal with certain challenges faced by RWAs from the income tax perspective and deal with exemptions available to such RWAs from goods & services tax (GST) perspective.

Income Tax:

One of the challenges that RWAs face is the treatment of interest earned from fixed deposits made by them with Banks. As stated above, RWAs put the corpus fund in fixed deposits with the banks, since the corpus is not allowed to use (as per the bye-laws) for day to day operation of RWAs.

The taxability of interest earned out of fixed deposits of corpus fund is a vexatious issue under the income tax, which is detailed hereunder.

Section 28(iii) of Income Tax Act, 1961 (for brevity 'IT Act') deals with profits and gains arising from business or profession (for brevity 'PGBP') with respect to income derived by a trade, professional or ***similar association from specific services performed to its members.***

[1]For example, majority of RWAs receive corpus fee in a separate bank account and all other fee in a separate bank account.

In other words, an income would be classifiable under PGBP, only when such income is earned from rendering specific services to its members. If the services provided to its members are universal and general in nature, such income is not covered under Section 28(iii).

Thus, the income earned by RWAs by providing services or goods to its members in general is not subjected to income tax by virtue of Principle of Mutuality [2]. The legislature vide Section 28(iii), tries to cover only income earned from provision of specific services to its members and not the general.

The Honorable Supreme Court in various occasions has held that the societies, clubs or companies will be exempt from payment of tax by adopting the Principle of Mutuality. However, the Honorable Supreme Court in the matter of Bankipur Club Limited[3] held that profit earned by clubs from making sales to its members is not tainted with commerciality and cannot be said that such club is denied of exemption based on principle of mutuality. Hence, all the incomes collected from the members by RWAs will be exempted based on the principal of mutuality and accordingly, there would not be any implication of income tax on such receipts.

However, the challenge is that, since interest is an income which is earned from a non-member (bank), can the exemption based on principal of mutuality would be affected? In our opinion, the exemption still would hold good even if RWAs generate certain income while transacting with non-members basis hereunder.

The Honorable Supreme Court in the matter of Bankipur Club Limited (supra) has ratified the decision of Patna High Court in the matter of Ranchi Club Limited [4], ***wherein the Patna High Court has held that the principle of mutuality would not be affected just because the club has entered certain transactions with non-members and earned certain profit thereon.***

Hence, applying such judgment, it can be argued that the interest income earned by RWAs would not itself put the exemption into risk and RWAs can continue to claim exemption based on principal of mutuality with respect to transactions carried on with the non-members.

The issue, whether interest earned from fixed deposits with banks is taxable or not is a contentious issue and there are various contradictory judgements in this connection. The judgment of Honorable Supreme Court in the matter of Bangalore Club[5] has laid down three important conditions to exempt interest based on principal of mutuality. The said three conditions are detailed as under:

a. complete Identity between contributors and participators
b. treatment of excess funds must be in furtherance of the object of the club/society
c. contributors should derive profits from contributions made by themselves which could only be expended or returned to themselves

[2] no taxable profit can be said to emerge from out a mutual activity
[3] 1997 (5) TMI 392 – Supreme Court
[4] 1991 (9) TMI 52 – Patna High Court
[5] 2013 (1) TMI 343- Supreme Court

The Honorable Supreme Court in the facts of Bangalore Club (supra) has held that since all the above three conditions were not satisfied by the Club, the interest earned could not be exempted based on the principal of mutuality. In other words, if RWA can satisfy all the above three conditions then, such interest can be exempted based on the principle of mutuality. Now, let us proceed to examine whether RWA can satisfy all the above three conditions.

Complete Identity between contributors and participators:

In majority of RWAs, since there is a complete identity between the contributors (members) and participators (members), we can conclude that the said condition has been satisfied. In the matter of Bangalore Club (supra), the surplus funds of the Club were placed with the members of the club that is banks with a sole purpose of earning interest, which brings a commerciality element. Further, the bye laws of Bangalore Club also allow the managing committee to invest not only in fixed deposits, but in shares or any other instruments, which is not the fact set in majority of RWAs.

Treatment of excess funds must be in furtherance of the object of the club/society:

The excess funds must be used in furtherance of the object of RWA. In majority of RWAs, the excess funds are parked in fixed deposits and interest accrued thereon is also treated as corpus fund. Further, the byelaws stipulate as to for what purposes such excess fund or interest thereon can be used. In the Bangalore Club (supra), the surplus funds were not used for any specific service, infrastructure, maintenance or direct benefit for the member of the club, which is not the fact in majority of RWAs. These were taken out of mutuality when the member banks placed the same at the disposal of third parties, thus initiating an independent contract between the banks and the clients of the bank. Hence, the Court has held that the principle of mutuality is not applicable in such instances.

Contributors should derive profits from contributions made by themselves which could only be expended or returned to themselves:

This principle requires that the funds must be returned to the contributors as well as expended solely on the contributors. In the facts of majority of RWAs, this condition gets satisfied because the excess funds or interest thereon is to be used in similar lines as to the usage of corpus. However, in the Bangalore Club (supra), the court held that even though the funds are returned to the club, the same were used for the benefit of other than contributors leading to the failure of satisfaction of this condition.

Further, the jurisdictional Tribunal in the case of Windsor Home Owners Welfare Association [6] held that in para 5 as under:

that bye-laws of society provided for maintenance of sinking fund @ 15,000 per flat and further that the sinking fund is to be kept in the bank as fixed deposits and interest there from also is to be added to sinking fund and shall not be transferred to general reserve or towards expenses except to the extent required and limited to the amount of interest accumulated and ploughed back to the sinking fund.

[6] ITA No. 2013/HYD/2018

It is seen that corpus funds have been deposited into the bank account and the interest earned thereon is to the extent of Rs. 9,71,127/-. ***These funds are contributed by the members of society for meeting their own expenses and interest earned on deposit of such funds also attain the character of the corpus fund and therefore, principles of mutuality would apply, and the interest income cannot be brought to tax.***

From the above, it can be argued that the interest earned from fixed deposits with banks, would be eligible for exemption based on the principle of mutuality.

Goods & Services Tax:

Section 7 of Central Goods & Services Tax Act, 2017 (for brevity CT Act) deals with scope of 'supply'. As per the said section, supply includes all forms of supply of goods or services or both such as sale, exchange, barter, transfer, license, rental, lease or disposal made or agreed to made for consideration by a person in course or furtherance of business.

Thus, the services carried on by RWAs to its members for consideration, will fall under the ambit of supply. However, the question that has to be answered is whether such services are provided by RWAs can be called as in course or furtherance of 'business'. The phrase 'business' is defined vide Section 2(17). Sub-section (e) specifically categorizes provision by a club, association, society or any such body (for a subscription or any other consideration) of the facilities or benefits to its members as 'business'. Hence, the supplies made by RWAs can be called as 'business', for the purposes of GST laws.

Under the GST laws, the Principle of Mutuality is not recognised and the members and RWAs are treated as separate persons and the services provided by RWAs is considered as supply and taxed accordingly. Even though, there are certain doubts surrounding the taxability of the said transaction, for the purposes of this article, let us assume, such transaction is taxable.

Since the supplies made by RWAs fall under the ambit of Section 7, the supplies would be subjected to tax under the charging section, Section 9. However, if the aggregate turnover of RWAs does not exceed Rs 20 lakhs during a financial year, then in terms of Section 22 of CT Act, RWAsare not obliged to register under GST laws.

The GST law also provide an exemption vide Entry 77 of Notification No 12/2017 – CT (R). Said Entry provides an exemption for services provided by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution upto an amount of Rs 7,500/- per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

Hence, if the contribution per member per month does not exceed Rs 7,500/-, then RWAs need not charge and collect tax from its members. In case, if the contribution per member per month exceeds Rs 7,500/-, then RWAs must collect tax from its members.

Now, let us deal with certain issues which RWAs are regularly concerned with in the form of FAQs.

S No	FAQ	Response
1	We are RWA having 20 flats. We collect Rs 7,300/- per flat per month as maintenance charges from each member. Do we need to register under GST and collect tax from each member?	• In the instant case, there is no requirement to register under GST laws for two reasons. • One being, the maintenance charges for all the flats for the entire year would amount to Rs 17.52 lakhs (Rs 7,300/month * 12 months * 20 flats), which is not exceeding Rs 20 lakhs threshold as per Section 22. • Two being, the amount of Rs 7,300/- which is collected from members does not exceed the threshold Rs 7,500/- per month per member
2	We are RWA having 25 flats. We collect Rs 7,300/- per flat per month as maintenance charges from each member. Do we need to register under GST and collect tax from each member?	• In the instant case, there is no requirement to register under GST laws. • Even though annual contribution from all members amounts to Rs 21.9 lakhs (Rs 7,300/month * 12 months * 25 flats), which exceeds the threshold of Rs 20 lakhs as per Section 22, since each unit contribution is less than the exemption threshold of Rs 7,500/-, the RWA would be treated as person engaged in exclusive exempted supplies and accordingly, RWA by taking shelter under Section 23, need not register under GST laws. • The above is also clarified by CBIC vide Para 2 of Circular 109[7].

[7]Circular 109 - Issued by CBIC

3	We are RWA having 100 flats. We collect Rs 7,400/- per flat per month as contribution. Apart from Rs 7,400/-, we also collect property tax, electricity bill, water tax and other fees which are related to individual unit. If we add such amounts which are pertaining to individual units, we exceed the threshold limit of Rs 7,500/- . In such case, to calculate the exemption threshold of Rs 7,500/- should we include the amounts collected towards property tax, electricity bill, water tax and other fee which are pertaining to such individual unit?	• In order to arrive at exemption threshold of Rs 7,500/- per flat per month, only such goods or services which are used for common use of its members of RWA should be included and not charges pertaining to individual unit. • Since, the property tax, electricity bill, water tax and other fees are pertaining to individual unit and not related to common amenities and common areas, such amounts would not enter into the calculation of Rs 7,500/-. • Hence, your RWA does not require to collect tax on contributions from members since the amounts pertaining to individual units should not be added to arrive the threshold. • The above is also clarified vide FAQ 1 of Circular F N0 332/04/2017 – TRU.
4	We are RWA having 150 flats. We generate electricity and supply the same to our members. We charge on consumption basis. Whether such electricity charges: i. should be added to threshold of Rs 7,500/-? ii. should be subjected to tax, if monthly maintenance exceeds Rs 7,500/-?	• Since RWA is itself generating electricity and supplying them to the members, the same will form part of common amenities. • Supply of Electricity is exempted only if it is supplied by certain persons. Since RWA does not fit under such specified persons, supply of electricity is subjected to tax applying the principles of composite supply. • Since, electricity generation is a common amenity, the charges collected from members should be added to arrive at threshold of Rs 7,500/-. • Further, as stated above, since RWA is not a notified person, supply of electricity would be subjected to tax, if monthly maintenance charges exceed Rs 7,500/-. • This also clarified by FAQ 1 of Circular F N0 332/04/2017 – TRU.

5	In our RWA, we charge monthly maintenance charges of Rs 10,000/-. For certain flats, we have joint owners. If we arrive monthly maintenance charges for each such joint owner, such flats would not exceed the threshold of Rs 7,500/-, because the monthly maintenance charges will be split among them, Rs 5,000/- each. In such cases, should we collect tax from such joint owners, or will they be entitled for exemption since contribution from each joint owner has not exceeded Rs 7,500/-?	• The exemption entry states that contribution per month per member. In our view, such member includes all the joint owners. • In simple words, for the purposes of arriving threshold of Rs 7,500/- per member, all joint owners would be considered as single member and not multiple members. • Hence, in your case, the RWA must charge tax on contributions from joint owners also treating them as a single member. • The view that joint owners are to be treated as single member is also supported by majority of bye-laws of RWAs which state that each flat will have a single vote, despite such flat has multiple owners.
6	In our RWA, the annual subscriptions received from members exceeds is Rs 19 lakhs. Interest earned from the fixed deposits is Rs 3 lakhs. Contribution from each member per month exceeds Rs 7,500/-. We have not registered with GST because, the annual contribution from members is less than Rs 20 lakhs, even though monthly contribution exceeds the threshold of Rs 7,500/-? Whether our stand is in accordance with the GST laws?	• Section 22of CT Act states that a person must obtain registration if the aggregate turnover in a financial year exceeds Rs 20 lakhs. • For arriving the 'aggregate turnover', as per Section 2(6) of CT Act, exempt supplies should also be included in the aggregate turnover. • Since interest from fixed deposit is an exempt supply, the same must be included for arriving threshold of Rs 20 lakhs. • Hence, on adding interest of Rs 3 lakhs to Rs 19 lakhs, the aggregate turnover exceeds Rs 20 lakhs and accordingly your RWA is liable for registration. • Since it is liable for registration and the monthly maintenance charges exceeds the threshold exemption of Rs 7,500/-, the monthly maintenance would be subjected to tax.

7	We have not formed RWA as of now. The builder is maintaining the flats till the time RWA is formed. The maintenance charges do not exceed Rs 7,500/- per month per member. In such case, should the builder charge tax on maintenance charges?	• The exemption of Rs 7,500/- per member per month is available only for services provided by unincorporated body or non-profit entity. • Since the builder is neither an unincorporated body nor a non-profit entity, the said exemption is not applicable. • Hence, the builder has to charge tax on the entire amount despite that amount does not exceed the exemption threshold.
8	In our RWA, we have 500 flats. Out of 500 flats, members of 300 flats pay Rs 10,000/- as monthly maintenance and members of 200 flats pay Rs 7,300/-. In such case, whether GST is to be collected from all 500 units or only units which exceed threshold of Rs 7,500/-?	• The exemption of Rs 7,500/- is available qua member (flat). Hence, the tax must be collected only for units, where the monthly maintenance charges exceeds Rs 7,500/-. • Applying the same to your RWA, GST must be collected from 300 units, where the monthly maintenance exceeds Rs 7,500/- and the remaining 200 flats should not be subjected to GST. • The above view is supported by Circular issued in service tax laws[8], which holds good even today as far as the interpretation is concerned.
9	We are RWA, where we collect monthly contribution of Rs 10,000/- from each member. In this situation, should we charge GST on Rs 10,000/- or Rs 2,500/- (after taking exemption of Rs 7,500/-)?	• In our view, it should be after taking an exemption of Rs 7,500/-, that is tax to be paid on Rs 2,500/-. The reason being that exemption entry under Entry 77(c) of Exemption Notification provides ***exemption upto Rs 7,500/-.*** Hence, upto Rs 7,500/- an exemption can be taken. • However, Circular 109 clarifies that tax must be paid on Rs 10,000/- and not on Rs 2,500/-. In simpler words, the circular clarifies that tax has to be paid without taking an exemption of Rs 7,500/-.

[8]http://cbic.gov.in/htdocs-servicetax/st-circulars/st-circulars-2014/st-circ-175-2014

10	We are RWA having 100 flats. Our monthly maintenance charges also exceed the threshold of Rs 7,500/-. We procure various services from third parties who charge us GST. Can we take input tax credit of such taxes and set off against the tax payable on amounts collected from members?	• Yes, RWAs who are collecting tax from members can avail credit of taxes paid on their purchases. • However, appropriate care must be taken to see, whether such credit does not suffer from any specific restriction as mentioned in Section 17(5) of Act. • If the credits are not restricted and eligible and RWA satisfies all other conditions for availing credit, then they can avail credit and use it against the tax payable.
11	In situation mentioned in FAQ #4, can RWA take the credit of taxes paid to third party vendors or any specific restriction is applicable?	• In FAQ#4, tax is collected only from 300 units, since only such units have exceeded the threshold of Rs 7,500/-. The balance 200 units have not exceeded such limit and accordingly, we have suggested that no tax is required to be paid on 200 units. • When it comes to credit, since the third-party services are pertaining to all 500 units, as per Section 17(2), only credit pertaining to 300 units can only be availed and balance 200 units must be reversed. • The reason being, since the 200 units does not exceed the threshold limit of Rs 7,500/-, the services provided by RWA to such units becomes 'exempted supply' and accordingly credit pertaining to such exempted supply must be restricted in terms of Section 17(2) of CT Act.
12	We are RWA consisting of 200 flats. Our annual contribution from members exceeds Rs 20 lakhs and exceeds monthly threshold of Rs 7,500/-. We have a community hall, which would be given on rent to members and in certain circumstances to outsiders. In such case, should we charge tax on such rental income arising from community hall?	• Since your RWA exceeds the annual threshold of Rs 20 lakhs, the rental income earned from community hall would be subjected to tax at applicable rates.

13	Continuing with the above, our RWA has also certain guest rooms which are given on rent on daily basis to relatives or friends of the members. Whether such amounts should be subjected to tax?	• Continuing with the above response, the amounts collected from renting of guest rooms is taxable subjected to eligibility for exemptions. • Entry 14 of Exemption Notification provides exemption for services provided by hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes having value of supply of a unit of accommodation below Rs 1,000/- per day or equivalent. • Hence, applying such an exemption can also be evaluated by RWA if the value of supply of a unit of accommodation is below Rs 1,000/- per day.

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AUDIT

CORPORATE SOCIAL RESPONSIBILTY - BOON OR BANE

Contributed by CA Sandeep Das

Background

CSR is about managing the impacts on society and stakeholders of a organisation's operations, process, behaviour etc. The significance of CSR emerged considerably in the last decade and is becoming an increasingly important activity to businesses nationally and internationally. Over the time, CSR stretched to both social and economic interests and broadened to cover social as well as economic interests. Companies now become more transparent in accounting and other activities due to pressure from the various interest groups of the society. It is mandatory for companies to behave in ethical and responsible manner towards the various interest groups of the society and environment. CSR is a form of corporate self – regulation integrated into a business model.

CSR in India

CSR – the corporate belief that a company needs to be responsible for its actions: socially,ethically, and environmentally. CSR has become the need of growing business. Businessesneed to practice their activities to earn good reputation.

Many other organizations have been doing their part for the society through donations andcharity events. Today, CSR in India has gone beyond merely charity and donations to community development through various projects, and is approached in a more organized manner. It has become an integral part of the corporate strategy. Companies have CSR teams that devise specific policies, strategies and goals for their CSR programs and set aside budgets to support them. These programs, in many cases, are based on a clearly defined social philosophy or are closely aligned with the companies business expertise. Employees become the backbone of these initiatives and volunteer their time and contribute their skills, to implement them. CSR Programs could range from overall development of a community to supporting specific causes like education, environment, healthcare etc.

The Companies Act, 2013 has introduced the idea of CSR to the forefront and through its disclose-or-explain mandate, is promoting greater transparency and disclosure. Schedule VII of the Act, which lists out the CSR activities, suggests communities to be the focal point. On the other hand, by discussing a company's relationship to its stakeholders and integrating CSR into its core operations, the draft rules suggest that CSR needs to go beyond communities and beyond the concept of philanthropy. It will be interesting to observe the ways in which this will translate into action at the ground level, and how the understanding of CSR is set to undergo a change.

Advantages of the CSR programme

(i) Communities provide the licence to operate :

Apart from internal drivers such as values and ethos, some of the key stakeholders that influence corporate behaviour include governments, investors and customers. In India, a fourth and increasingly important stakeholder is the community, and many companies have started realising that the 'licence to operate' is given by communities that are impacted by a company's business operations and no longer governments alone.

(ii) Attracting and retaining employees:

Several human resource studies have linked a company's ability to attract, retain and motivate employees with their CSR initiatives. Interventions that encourage and enable employees to participate are shown to increase employee morale and a sense of belonging to the company.

(iii) Communities as Suppliers:

There are certain innovative CSR initiatives emerging, wherein companies have invested in enhancing community livelihood by incorporating them into their supply chain. This has benefitted communities and increased their income levels, while providing these companies with an additional and secure supply chain.

(iv) Enhancing corporate reputation:

The traditional benefit of generating goodwill, creating a positive image and branding benefits continue to exist for companies that operate effective CSR programmes. This allows companies to position themselves as responsible corporate citizens.

(v) Costs reductions:

Companies reduce cost by:

- Hiring more efficient staff and retention.
- Implementing energy savings programs
- Manging potential risks and liabilities more effectively
- Less investment in traditional advertising

The Companies Act 2013

In India, the concept of CSR is governed by clause 135 of the Companies Act, 2013. The CSR provisions within the Act is applicable to companies with an annual turnover of 1,000 crore INR and more, or a net worth of 500 crore INR and more, or a net profit of five crore INR and more in the immediately preceding financial year. The new rules is applicable from the fiscal year 2014-15 onwards.

CSR Rules define the term, net profit'. The Rules also provide for calculation of net profit for the purposes of foreign company. However, explanation to Section 135(5) provides that for the purpose of this provision, the average net profit' shall be calculated in accordance with Section 198.

Section 135 is applicable to companies which falls within the threshold of the specified net worth or turnover or net profit and are required to constitute the CSR Committee in any financial year. Amendment to Section 135 of the Act allows composition of CSR committee with two or more directors in case the company is not required to appoint Independent Director under section 149(4).

Rule 5(1) of CSR Policy Rules, 2014, permits unlisted companies to have the Committee without Independent Directors, where they are not required to appoint Independent Directors. Likewise, this rule provides for some relaxation for private companies and foreign companies. So, in case of companies where Independent Directors are not required to be appointed as per Rule 5(1), it was not clear as to how many minimum directors are required in CSR Committee. With the amendment, it is clarified that in case of such companies, the CSR Committee may be formed with two or more Directors.

The Act lists out a set of activities eligible under CSR. Schedule VII indicates the broad areas of activities for spending as CSR.Companies may implement these activities considering the local conditions after seeking Board approval. Accordingly, for liberal interpretation and to bring more clarity, instead of providing that CSR policy must indicate the activities to be undertaken by the company as specified in Schedule VII.

The company can implement its CSR activities through the following methods:

- Directly on its own
- Through its own non-profit foundation set- up to facilitate this initiative
- Through independently registered non-profit organisations that have a record of at least three years in similar such related activities
- Only CSR activities undertaken in India will be taken into consideration
- A format for the board report on CSR has been provided which includes amongst others, activity-wise , reasons for spends under 2% of the average net profits of the previous three years and a responsibility statement that the CSR policy, implementation and monitoring process is in compliance with the CSR objectives, in letter and in spirit. This must be signed by either the CEO, or the MD or a director of the company.

Issues and challenges for the implementation of CSR initiatives

- Lack of awareness of general public in CSR activities
- Need to build local capacities
- Issue of Transparency
- Non- availability of well organised Non – governmental Organisations
- Visibility factor
- Narrow perception towards CSR activities
- Non – availability of clear CSR guidelines
- Lack of consensus on Implementing CSR Issues

Audit of CSR activities

An increased emphasis on governance, stricter monitoring and reporting obligations require companies to be more disciplined and strategic in their approach. The role of Board and CSR Committee has been defined clearly thereby ensuring accountability right at the top.

What are the regulatory requirements in India – for CSR

- The Board is responsible toensure a minimum spend of 2 percent of profit on CSR activities, report reason for any unspent amount in the Director's report and disclose its content on the Company's website.
- Developing a transparent monitoring mechanism is a specific requirement as per the Companies Act 2013.
- The CSR Committee of the company is directly responsible for monitoring the implementation of the CSR policy under section 135(3) (c).

Companies are required to evaluate its CSR activities for efficient governance, alignment with its core purpose and values, efficient structure to facilitate implementation, credible partners for delivery on the ground, robust monitoring, evaluation and reporting frameworks.

Companies are expected to develop a sustainable CSR road map to help determine both compliance and social relevance with the Act. This can help to ensure that the CSR activity is undertaken in a program mode with an objective to enhance impact, while ensuring compliance with the Act.

Recent Amendments under the Companies (Amendment) Act 2019

(I) Transfer of unspent CSR Amounts to government fund:

Amount remaining unspent under subsection (5) pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account.

(II) Penalties and Punishment for Contravention of Section 135:

Companies: The company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty – five lakh rupees, and

Officer in default: every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both

Conclusion:

Corporate Social Responsibility is the duty of business corporations, governments, individuals because the income is earned only from the society and therefore it should be given back Society expectations are increasing towards the social development by the companies. So, it has become necessary for the companies to practice social responsibilities to enhance their image in the society. Even though companies are taking serious efforts for the sustained development, some critics still are questioning the concept of CSR. The reality is that CSR is not a ploy for brand building; however, it creates an internal brand among its employees. Indulging into activities that help society in one way or the other only adds to the goodwill of a company.

Being a good corporate citizen is increasingly crucial for commercial success and the key lies in matching public expectations and priorities, and in communicating involvement and achievements widely and effectively.

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

GST

PRACTICAL ISSUES IN GSTR- 9 AND GSTR-9C -

Contributed by CA Sri Harsha & Sai Ram A

Coverage

- ❑ Press Release
- ❑ Practical Issues

Press Release

Press Release – 3rd July 19

Issue	Clarification
Role of chartered accountant or a cost accountant in certifying reconciliation statement	• There are apprehensions that the chartered accountant or cost accountant may go beyond the books of account in their recommendations under GSTR -9C. The GST Act is clear in this regard. With respect to the reconciliation statement, their role is limited to reconciling the values declared in annual return (GSTR -9) with the audited annual accounts of the taxpayer.
Payment of Unpaid Tax	• Section 73 of the CGST Act provides a unique opportunity of self – correction to all taxpayers i.e. if a taxpayer has not paid, short paid or has erroneously obtained/been granted refund or has wrongly availed or utilized input tax credit then before the service of a notice by any tax authority, the taxpayer may pay the amount of tax with interest. • In such cases, no penalty shall be leviable on such tax payer. Therefore, in cases where some information has not been furnished in the statement of outward supplies in GSTR-1 or in the regular returns in GSTR-3B, such taxpayers may pay the tax with interest through GST DRC-03 at any time. • In fact, the annual return provides an additional opportunity for such taxpayers to declare the summary of supply against which payment of tax is made.

Primary data source for declaration in annual return	• Ideally, information in GSTR-1, GSTR-3B and books of accounts should be synchronous and the values should match across different forms and the books of accounts. If the same does not match, there can be broadly two scenarios, either tax was not paid to the Government or tax was paid in excess. • In the first case, the same shall be declared in the annual return and tax should be paid and in the latter all information may be declared in the annual return and refund (if eligible) may be applied through GST RFD-01A. • Further, no input tax credit can be reversed or availed through the annual return. If taxpayers find themselves liable for reversing any input tax credit, they may do the same through GST DRC-03 separately.

Practical Issues

Practical Issues

S. No.	Issue	Resolution
1	Pre GST Returns vs Financials	• There might be a difference in turnover reported in statutory returns filed during pre-GST period when compared to the Financials for the same period. • Even though auditor is asked to reconcile the GST turnover with Financials, an understanding of said over/under reporting would help to better certify the GSTR-9C. • If there is a huge difference, appropriate steps has to be taken to see that such turnover does not pertain to GST period.
2	Short-Payment of Pre-GST taxes	• GST auditor is not expected to reconcile the pre-GST taxes payable and paid. However, since the reco is being done for entire FY, if at all there is certain short-payment, it would be better if management is appraised.
3	Error in disclosure of Advances	• We have observed that in certain instances advances instead of being converted into invoices, they are being adjusted and amended simultaneously. Because of which advances for which invoices have not been raised at the end of the Financial Year have became negative. • Hence, there would be a difference between advances disclosed in Financials and advances in GSTR-9. It would be advised to amend GSTR-9 to the actual position.
4	Transportation Charges	• In certain instances, transportation charges collected from the customers are being setoff with the expenditure rather than showing as Income and expenditure separately. • Due to which there would be reconciliation difference between Financials and GSTR-9 as transportation charges would be treated as taxable turnover in GSTR-9. • It would advised to adjust the same under reasons not listed above in GSTR-9C.

Practical Issues

Practical Issues

S. No.	Issue	Resolution
5	Payment of CT & ST in GSTR-3B but declared as IT in GSTR – 1 and vice versa	• In certain instances where IT would have been instead of CT & ST in GSTR-3B, however same would have been disclosed as IT in GSTR-1. Due to which there would be excess payment of IT and short payment of CT & ST. • It is advised to adjust the excess paid amount in the current GSTR-3B return or claim refund in Form RFD-01A. Short paid tax shall be paid along with interest through DRC-03.
6	Excess Payment of Tax	• In certain instances, CNs for period Jul-17 to Mar-18 have been disclosed in FY 18-19 and the benefit of excess paid tax would have been taken in FY 18-19. Due to which there would be an excess payment of tax in GSTR-9 and 9C. • Provide the reasons for such excess payment in GSTR-9C, if the excess payment of tax had taken in FY 18-19. Else suggest for a refund.
7	Missed Out Credit – Short Availed as per Financials	• We observed in certain instances where there is short availment of Credit in Financials as compared to GSTR-9. The reason would be credit missed out in 17-18 has been availed in 18-19 which would be reflected in GSTR-9, but not in Financials. • Since the credit is reflected in GSTR-9 during 18-19, auditor has to get covered such credit in MRL and also suggest management to make necessary disclosure in subsequent Financials.
8	Missed out credits – Short Availed as per GST Returns	• We have observed in certain instances where there is short availment of Credit in GSTR-9 (after considering 2018-19 adjustments) as compared to Financials. • As the time limit for availment of credit has lapsed, the said credit cannot be claimed in GSTR-9.
9	Excess Availment of Credit –Erroneous & Others – In GST Returns	• In certain instances there would be excess availment of credit in GST returns as compared to Financials. • In such cases, such excess credit has to be reversed using DRC-03 along with interest.

10	Excess Availment of Credit – Erroneous & Others - In Financials	• In certain instances there would be excess availment of credit in Financials as compared to GST returns. • In such cases, appropriate disclosures has to be made in subsequent Financials.
11	Under reporting of income in GST returns – Eg - Other Income	• There would certain omissions/under reporting of income in GST returns as compared to Financials. Due to which there would be reconciliation differences between Financials and GSTR-9. • It would be advised to disclose the said differences in GSTR-9 and pay the appropriate tax, if payable along with interest to avoid reconciliation differences.
12	GSTR-1 vs GSTR-9	• While extracting GSTR-9 from GST portal, it is being observed that there are certain differences between GSTR-9 and GSTR-1 due to technical glitch. • It is advised to show the said differences as unreconciled turnover and provide the reasons.
13	Deemed supplies - Schedule - I	• There would be differences of turnover between Financials and GSTR-9 due to Schedule- 1 Supplies. • Adjustments have to be made in GSTR-9C w.r.t to such transactions
14	Supply of goods from SEZ to DTA	• There are instances where supply of goods from SEZ unit to DTA unit have been declared under B2B/ B2C supplies in GSTR-9. However, such supplies should not be declared in GSTR-1 as per the instructions to GSTR-1. • Such supplies should be reduced from GSTR-9 in B2B/B2C supplies and would be shown as a reconciliation item under GSTR-9C.
15	Supplies made under Casual Taxable Person	• Financial turnover consists of all supplies made through Regular Taxpayer/ Casual Taxable Person but annual return has to be filed for only regular tax payers. There would be mismatch of aggregate turnover of all GST registrations and Financials. • Thus, it would be advised to upload a statement along with annual return explain the differences of turnover due to Casual Taxable Person.

16	Financial Credit Notes	• It is not required to disclose any financial Credit notes in GST returns. However, we have observed that certain financial credit notes issued during FY 18-19 have been disclosed in GST returns due to which there would be differences in GSTR-9 and Financials. • It is advised to disclose such credit notes under reasons not listed above under GSTR-9C to avoid non reconciliation.
17	Reduction of Tax Liability vs Claiming of ITC	• We have observed certain instances where the client has taken Credit for the credit notes issued rather than adjusting the same with the output tax liability due to which there is an excess payment of tax and excess availment of Credit. • Though mathematically it does not have any impact, but it would be a wrong treatment as per the GST Laws. • It is advised to reverse the excess credit availed and claim the benefit of reduction of tax in pending GSTR-3B return/ apply for refund of excess paid taxes in RFD-01A
18	Invoices relating to Pre-GST has been issued in Post-GST period	• There would be cases where invoices relating to pre-GST period would have been issued during post-GST period. A doubt would arise whether to consider the same in Apr-17 to Jun-17 turnover or Jul-17 to Mar-18 turnover. • This would be crucial if such turnover is taken for Apr-17 to Jun-17, then GSTR-9C obligation would not arise. In such scenario, if the invoices has pre-GST taxes on it, it can be safely conclude that such turnover pertains to pre-GST period and to be taken for Apr-17 to Jun-17.
19	Ind AS vs GST	• In certain instances, it was observed that the difference in turnover between Financials and GSTR may arise due to difference in Ind AS vs Time of Supply. • It is advisable to show such as a reconciliation item GSTR-9C.

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