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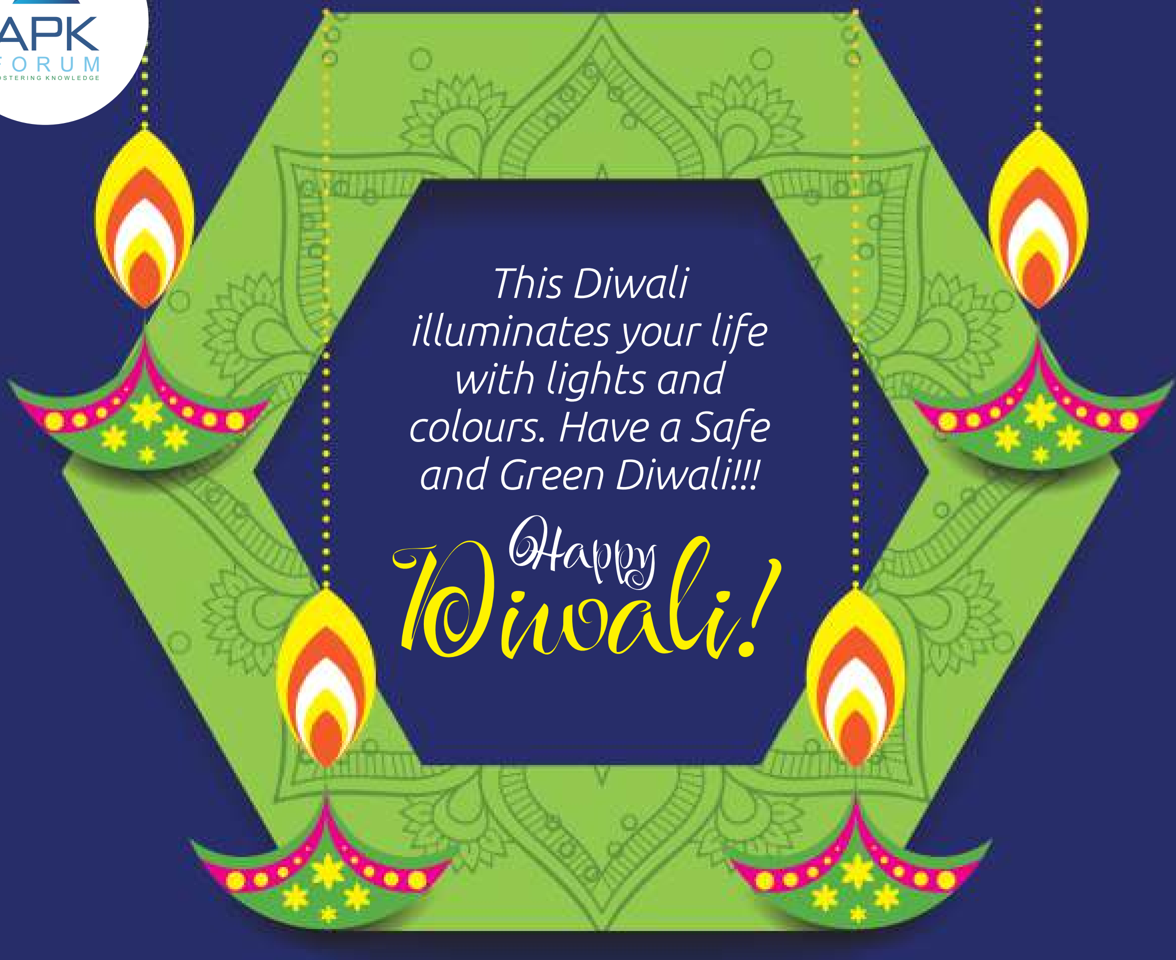

BY THE PROFESSIONALS FOR THE PROFESSIONALS

SUPREME COURT'S RESTRAINT ON 'IDEAL GST LAW'

UPHOLDS INVERTED DUTY STRUCTURE REFUND RESTRICTION

Background:
Inverted Duty Structure ('IDS') refund is prevalent in various countries to avoid cascading of taxes on account of output liable to tax at a lower rate than the input. Prior to GST regime, refund of unadjusted credit (may or may not be due to IDS) was allowed in certain State VAT legislations at the end of the year; however, it was absent in the Central legislations such as Excise and Service Tax. With the introduction of unified law for goods and services, viz. GST, refund even under IDS scenario was adopted. This allowed taxpayers to plough back the working capital blocked in GST credits due to accumulation. However, the quantum of eligible refund has been restricted by way of a formula prescribed in the CGST Rules, 2017.

The Controversy:
The legal provision in relation to IDS refund is contained in Sec. 54(3) to CGST Act 2017. As per the first proviso to Sec. 54(3), no refund of unutilized ITC shall be allowed in cases other than - (i) zero rated supplies made without payment of tax; (ii) **where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies** (other than nil rated or fully exempt supplies), except supplies of goods and services or both as may be notified by the Government on the recommendations of the Council.

Rule 89(5) of the CGST Rules, 2017 prescribes a formula to calculate “maximum refund amount” for IDS refunds. The said formula calculates the refund amount by considering

unutilized ITC pertaining only to 'inputs'. Thus, ITC availed on 'input services' which are subjected to a higher rate of GST, are simply left out of this formula. Whereas it has been argued that Sec. 54(3) does not make any such distinction in relation to ITC which would be the subject matter of such refund.

This omission in Rules divided the industry, tax experts and Revenue authorities alike. The Revenue

considered this to be a deliberate omission thereby restricting the amount of ITC eligible for IDS refunds to 'input goods', while the taxpayers contended that this omission was against the basic intent of the legislation i.e., to allow refund in cases where working capital is blocked due to higher rate of GST on inputs, viz. input goods, input services and capital goods, as compared to output supplies. It was only a matter of time for this contentious issue to become subject matter of litigation before various High Courts.

Contradictory rulings by High Courts:
The controversy highlighted above was first considered by Gujarat High Court in the case of **VKC Footsteps India Pvt. Ltd. vs. Union of India[1].** It was held that by prescribing a formula in Rule 89(5) to exclude refund of unutilized ITC accumulated on account of input services, the delegate of the legislature had acted contrary to the provisions of Sec. 54(3) which provides for a claim of refund of any unutilized ITC. Thus, noting the definition of ITC in Section 2(62), Gujarat High Court concluded that Rule 89(5) by restricting the refund only to input goods had acted ultra vires Sec. 54(3).

On the other hand, the Madras High Court while delivering its judgement in case of **M/s. TVL Transtonnelstroy Afcons JV's and Others Vs. Union of India**[2] declined to follow the view of the Gujarat High Court. It held that Sec. 54(3)(ii) not only curtails the class of registered persons who are entitled to refund but also the imposes a source-based restriction on refund entitlement and consequently, the quantum thereof. As a corollary, Rule 89(5) of CGST Rules, 2017 is in conformity with Sec. 54(3)(ii). Consequently, it was not necessary to interpret Rule 89(5) so as to include the words "input services".

The Supreme Court steps in:
It was inevitable that above matter be referred to the Supreme Court in view of the contradictory decisions of the two High Courts. The Supreme Court in a detailed and well-reasoned judgement [Union of India & Ors. vs. VKC Footsteps India Pvt. Ltd.[3]] has made the following key observations:

- **Interpretation of Sec. 54(3)**
  The fulcrum of taxpayers' argument was that clause (ii) of the first proviso prescribes a condition of eligibility and not a restriction on the entitlement to refund and once it is fulfilled, the refund is available on the entirety of unutilized ITC including the credit relatable to tax paid on input goods and input services.

  However, rejecting the aforesaid argument, the Court observed "The Court cannot redraw the legislative boundaries on the basis of an ideal which the law was intended to pursue." It observed inter alia that if

[1] R/Special Civil Appl No. 2792 of 2019 dated 24 Jul. 20

[2] W.P No. 8596 of 2019
[3] Civil Appeal No 4810 of 2021

the legislature has intended that the equivalence between goods and services should be progressively realized, then for the purpose of determining whether refund should be provided, the restriction of the kind imposed in clause (ii) of the proviso lies within the realm of policy.

The Court added, "Refund is a matter of statutory prescription" and affirmed the clear stipulation laid down by the Parliament that refund would be admissible only where the unutilized ITC has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.

- **Statutory provision cannot visualize every eventuality**
One of the key contentions of taxpayers was that unlike other provisions of the CGST Act, Sec. 54(3) does not contain any words (such as "prescribed") which indicate that specific authority has been granted for framing rules and therefore, Rule 89(5) is invalid.

The Court observed that absence of a specific rule making provision in Sec. 54 and its existence in some other sections of the same legislation does not lead to an automatic inference that Central Government does not have rule making power. Further, Sec. 164(1) of CGST Act, 2017 confers express rule making powers on the Central Government. The Court held that by its very nature, a statutory provision may not visualize every eventuality which may arise in implementing the provisions of the Act. Hence, it is open to the rule making authority to frame rules so long as they are consistent with the provisions of the parent enactment.

- **Whether Rule 89(5) overrides Sec. 54(3)**
The legality of the Rule vis-à-vis the Act was challenged on two limbs, viz. - i) the Rule cannot curtail substantive provisions of the CGST Act, and ii) Sec. 54(3) is a complete code in itself and hence, exercise of the rule making power is 'unnecessary' and 'unwarranted'.

However, the Court reiterated that clause (ii) of first proviso is not merely a condition of eligibility but a substantive restriction wherein refund of unutilized ITC can be availed of only when the accumulation is relatable to an IDS, viz. the tax on input goods being higher than the rate of tax on output supplies. There is, therefore, no disharmony between Rule 89(5) which restricts the IDS refund to only ITC pertaining to 'inputs' (and not 'input services') and Sec. 54(3).

- **Anomaly in the formula cannot result in invalidation**
Taxpayers demonstrated that the formula prescribed in Rule 89(5) results in inequality between taxpayers dealing in single line of goods (viz. goods involving IDS) and taxpayers dealing with goods having IDS and those not having IDS. It was submitted that the formula results in an aberration wherein a registered person with a single product under

an IDS is neither able to use the unutilized ITC for payment of tax, nor is allowed a refund.

Interestingly, the Court agreed that there is an anomaly in the prescribed formula; however, held that it cannot result in the invalidation of a fiscal rule framed in exercise of the power of delegated legislation. The Court, by referring to its past judgements, held that in exercise of its powers of 'judicial review', the Court cannot allow itself to become a 'one-time arbiter' of any and every anomaly of a fiscal regime. Instead, the Court put the onus on the GST Council and urged it to reconsider the formula and take a policy decision regarding the same.

In view of the above observations, the Apex Court affirmed the view of Madras High Court which had upheld the validity of Rule 89(5), while disapproving and setting aside the judgement of Gujarat High Court in VKC Footsteps India Pvt Ltd.

Conclusion and Way Forward:
The Supreme Court, while delivering this judgment, has given effect to the plain terms of the GST law. The Court has refrained from replacing the wisdom of the legislature or its delegate with its own; recognizing that the ideal of a GST framework which Article 279A(6) embodies has to be progressively realized. The silver lining to this judgment is that it has come out very quickly, which has avoided confusion and exposures for tax payers across India due to contradictory positions adopted by various High Courts.

The sentiments of industry will definitely be hurt by this judgment since GST was introduced with the intent of bringing Good ands Services at par and avoid cascading of taxes. Exclusion of ITC pertaining to 'input services' from IDS refund would result in accumulation of credit thereby leading to blockage of working capital. The Supreme Court, too, has taken cognizance of the anomaly in the formula and has urged the GST Council to reconsider the same. The GST Council ought to take heed of the Apex Court's observations and basis the several representations of industries that are reeling under the IDS burden, seek to provide relief by introducing amendments through the ongoing comprehensive review of the GST law.

It would also be interesting to see if the Supreme Court also entertains any review petitions or references to a higher bench in this case. Till then, the taxpayers would be forced to look at solutions within the contours of existing provisions to maximize the quantum of IDS refunds.

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INTERMEDIARY TRANSACTIONS
GREEK TO INDIAN TAXPAYERS

GST is often termed as old wine in a new bottle by tax experts. This is because, the country got a brand-new tax regime with legacy issues. There is not even an iota of doubt that with GST we have resolved many historic indirect tax challenges, but we have also carried forward some snags. This is the reason that even though the GST regime is only four years old, the issues in the regime seem much older.

One such issue is the classic spillover of the service tax problem – the taxability of intermediary transactions!

What is *INTERMEDIARY?*

Under Service Tax:

Intermediary means a broker, an agent, or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account

Under GST

Intermediary means a broker, an agent, or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account

If the above definition is dissected, the following emerges:

- Intermediary means a broker, agent or any other person by whatever name called : This means that the term intermediary can include a broker, agent or any such person carrying out similar functions, even if called by a different name.
- Who arranges or faciliates supply of services/ goods/ both between two or more persons : The intermediary has to coordinate or set up supply of goods and/or services between two persons or more.
- Excludes suppliers supplying goods and/or services on his own account.

Taxability under the Service Tax regime and the GST regime

Rule 2(f) of Place of Provision of Services Rules, 2012 prescribed the place of provision of intermediary services as the place of service provider. This was an exception to the general rule where place of provision of services was the location of service recipient.

Similarly, as per Section 13(8)(b) of the IGST Act, 2017, the place of supply of intermediary services shall be the location of the service proivder.

Moreover, Section 2(6) of the IGST Act, 2017, defines 'export of services' to mean the supply of any service when:

(I) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

To qualify as an export of service, one important condition is that the place of supply of services should be outside India. Hence, in case of intermediary transactions rendered by a supplier in India to a recipient outside India, the place of supply is in India and the transaction becomes taxable in India. Thus, it shall not be an export of service.

Due to the above anomaly in the law whereby even an export transaction can be classified as taxable transaction merely because of its nature, the disputes and litigations arise.

Judicial Precedents

Under Service Tax

- In the case of ***GoDaddy India Web Service Private Limited vs***

Commissioner of Service Tax, Delhi-Iv [2016 (3) TMI 355 - AUTHORITY FOR ADVANCE RULINGS] the applicant had entered into an agreement with its holding company situated in the USA for provision of marketing services. Under such services, the applicant advised the holding company on the right medium to advertise, events and places to market products, and other ways to create awareness about its offerrings. The AAR in this case held that such services cannot be construed to be intermediary services as they are merely marketting support services.

- In the case of ***Lubrizol Advanced Materials India Pvt Ltd vs. Commissioner of Central Excise, Belapur*** [2019-VIL-38-CESTAT-MUM-ST], it was held that since the consideration received for providing such services is based upon cost plus mark-up and is nowhere connected with the main supply of goods, the company is not engaged in facilitating supply between the overseas entity and its Indian customers, and is therefore not an intermediary.

- Similarly, in the case of ***Chevron Phillips Chemicals India Pvt Ltd vs. Commissioner of CGST & Central Excise, Mumbai East*** [2019-VIL-763-CESTAT-MUM-ST], the CESTAT observed that the service provider did not play any role in price fixation or negotiations on behalf of the overseas entities. Therefore, even though the remuneration for the sales promotion activities was being received as a percentage of net sales of the overseas entity to their customers in India, the transaction was held to be outside the scope of intermediary services.

Under GST

Several AARs have pronounced rulings on which transactions shall be construed as intermediary transactions. Some these rulings are:

- The much controversial ruling in the case of ***Vserv Global (P.) Ltd.*** (2018-TIOL-263-MHAAR-GST) opened the pandora's box. Vide the said ruling, the AAR held that the back office IT support services are intermediary services and hence do not qualify as export of service. This ruling encouraged revenue authorities across, to reject refund claims of firms rendering ITes services to recipients outside India. This ruling was also confirmed by the AAAR [2019-TIOL-37-AAAR-GST].

- In the case of ***Toshniwal Brothers (SR),*** KAR/AAAR/06/2018- 19, dated 9 January, 2019, the AAR held that any promotion done for the products of a third person shall qualify as intermediary service.

- The constitutionality of intermediary provisions was also questioned. In the case of ***Material Recycling Association of India vs. Union of India & Ors,*** the Gujarat High Court upheld the constitutional validity of intermediary provisions. However, in the case of Dharmendra M. Jani vs. Union of India & Ors., the Bombay HC pronounced a split verdict on the constitutional validity of the intermediary provisions.

Circular issued by CBIC

Considering the country was entering into a complete pandemonium state as far as taxability of intermediary transactions were considered, the CBIC came ahead to provide some respite by way of providing clarifications through various circulars. The following circulars were issued:

- Circular No. 107/26/2019-GST, dated 18 July 2019 was issued in respect of ITes services. Instead of clarifying the stance on such services being intermediary or not, the circular further made the issue more complex and added to the misery of industries like BPOs, KPOs and shared service centres.

Subsequently, on receiving many representations from the industry, the said circualr was withdrawn ab-initio.

- Recently, as an outcome of the 45th GST Council meeting, the CBIC rolled out various circulars to clarify complex issues. One such circular was issued on intermediary transactions. Circular no. 159/15/2021-GST dated 20 September, 2021 clarified various aspects. The Circular enlisted the primary requirements of an intermediary transactions, which are:

    - There should be **minimum three parties**, two of which are transacting parties and one is the arranger or the facilitator.
    - There should be **two distinct supplies** – one is the main supply of goods or services and another is the ancillary supply of facilitation which is clearly distinuishable from the main supply.
    - The service provider should be in the nature of **broker, agent, or any other person** by whatever name called. The definitio includes the term 'means'; therefore the definition is restrictive and shall only include supporting activities.
    - It does not include **supply made on own account**.
    - **Sub-contracting** is not intermediary services.
- Further, the said circular has also cited certain illustrations for better understanding. Nonethess, an important aspect which cannot be missed is the disclaimer at the end of the circular which states that the illustrations are generic in nature and the conclusion can differ basis the facts of each case and terms of contract.
- However, the circular remains silent on whether the promotion and marketting services would be contrued as an intermediary or not. This could be because such arrangements vary from case to case basis and no straight jacket formula can be applied on the same. Nonetheless, if a direct answer was difficult to provide, what the circular could have done is give certain principles to follow such as how the manner of remuneration could make a difference, to what extent can the agent or broker get involved in order to qualify as intermediary etc.

Our view

Intermediary as a concept was first envisaged in the Service tax regime. Therefore, it seems only logical to go back to the Service tax regime in order to understand the concept. The Education Guide issued by the CBIC in 2012 identified three factors for considering a service as intermediary service. These factors were:

- Nature and value: An intermediary cannot alter the nature and value of a supply. Any discounts, negotiations should be informed to the principal.
- Separation of value: The intermediary's service should be separately identified from the value of main supply.
- Identity and title: The service

provided by the intermediary is clearly identifiable.

While we have moved to the GST regime, the concept and the meaning of intermediary remains largely the same. The abover circular also endorses this.

Even after some landmark rulings pronounced in the Service tax regime, the GST authorities do not pay heed to these rulings under the garb of the classic excuse that - GST is a 'different' regime. What probably they do not cogitate is that though the regime has changed, the concept is completely borrowed from Service tax and there is no reason to differentiate between the stand taken in the erstwhile regime and the current regime. Therefore, in our view, the concepts and principles laid down by the judiciary in the erstwhile regime are equally relevant, even today.

As far as GST regime is considered, the circular provides some clarity to the BPO, KPO sector. The other sectors are still in a limbo. The department wherever observes a broker or an agent rendering services to an overseas parties, issues a notice without even digging into the facts. The AARs have muddled the scenario even further. The decisions seem to be some revenue digging exercise proposing to tax all and any transactions that may even come close to being an intermediary.

To conclude, whilst the CBIC has certainly done a noble deed by issuing the circular, it has left some corners open. As highlighted above, various taxpayers have obtained advance rulings and such rulings have in most cases held the taxpayer to be an intermediary. Subsequently, such taxpayers and other assessees have started paying GST on such transcations. As a result of the recent circular, it is difficult to predict the fate of taxes already paid on transactions which may fall out of the intermediary net. Moroever, if such transactions are not classified as intermediary, they could have qualified as export of services; in which case the taxpayers could have applied for export refunds. Therefore, the issue here is not only about the refund of taxes already paid, but also of the refund claims on export supplies which may now have become time barred. Therefore, this is a dual whammy which shall make the taxpayers suffer.

Although we may not be able to request a clarification in respect of a clarification, the revenue authorities and the AARs presided by the revenue authorities, certainly need some guidance and instructions to have a balanced approach. The idea to have an AAR is to reduce the burden on the judiciary system; however, by issuing decisions without any fact finding exercise is going to do exactly the opposite.

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LIABILITY OF THE PERSONAL GUARANTOR UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

FROM THE FRYING PAN INTO THE FIRE

The Government of India notified the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("Insolvency Rules") and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 ("Bankruptcy Rules"). The Rules were made effective from December 1, 2019.

In addition to the Rules, several provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC") pertaining to initiating insolvency and bankruptcy proceedings against personal guarantors of corporate debtors were also notified.

Personal guarantors were outside the ambit of the IBC till November 23, 2017. The IBC was amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2018[1] to inter alia include personal guarantors within the scope of insolvency and bankruptcy proceedings.

Per Section 60(2) of the IBC, where a corporate insolvency resolution process ("CIRP") or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal ("NCLT"), an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before the National Company Law Tribunal

Per Section 128 of the Contract Act, 1882 ("Contract Act"), the liability of a guarantor is co-extensive to that of the principal debtor unless otherwise provided by the contract. The Contract Act recognizes the co-existing liability of both the corporate debtor and the personal guarantor and it does not restrict a creditor from initiating proceedings of recovery / insolvency against a personal guarantor before the creditor initiates any proceedings against the corporate debtor. Further, it may be noted that Section 133 of the Contract Act states that any recourse to discharge the liability of the surety on account of variance in terms of the

[1] *Effective from November 23, 2017*

contract, without her or his consent, stands invalid.

Pursuant to the notification of the Insolvency Rules, several writ petitions were filed before the various High Courts challenging the constitutionality and validity of the said rules contending that the same was issued in excess of the authority conferred upon the Union of India under Section 1(3) of the IBC. The Supreme Court, in exercise of its powers under Article 139A of the Constitution of India transferred all these proceedings from the High Court to itself since they involved interpretation of common questions of law, in relation to the provisions of the IBC. These matters were heard along with Lalit Kumar Jain v. Union of India and others[2] ("Lalit Jain case"), where the constitutionality and validity of Insolvency Rules were challenged inter alia on the grounds that the Central Government exceeded the power conferred on it under Section 1(3) of the IBC.

While upholding the constitutional validity of the Insolvency Rules, the Hon'ble Supreme Court noted that "……. the scheme of the Code (i.e., Section 2 (e), Section 5 (22), Section 29A, and Section 60), clearly show that all matters that were likely to impact, or have a bearing on a corporate debtor's insolvency process, were sought to be clubbed together and brought before the same forum."

The mandatory requirement of Section 60 (2) of the IBC is evident in Insta Capital Private Limited v. Ketan Vinod Kumar Shah[3], the Hon'ble National Company Law Tribunal ("NCLT"), Mumbai clarified that "an application for insolvency for resolution against the personal guarantor is not maintainable unless that CIRP/liquidation is ongoing against the Corporate Debtor." Further, the Hon'ble NCLT, Delhi, relying on the Lalit Jain case, in PNB Housing Finance Ltd. v. Mohit Arora[4], held that where application(s) in relation to the corporate debtor for initiation of CIRP is pending at the NCLT) then, initiation of CIRP of the corporate debtor is not a prerequisite for maintainability of an application under Section 95 of the IBC, 2016 filed for initiating insolvency proceedings against the personal guarantor of that corporate debtor before the NCLT.

The Hon'ble Supreme Court in the Lalit Jain case held that the approval of a resolution plan does not ipso facto discharge or absolve a personal guarantor of her or his liabilities under the contract of guarantee since the release or discharge of a corporate

[2] *Transferred Case (Civil) No. 245/2020*
[3] *CP (IB)/ 1365/MB-IV/2020*
[4] *Company Petition No. (IB)-395(ND)2021*

debtor from the debt owed by it to its creditor is by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding.
On the other hand, it has been held that where the resolution plan reduces the liability of the corporate debtor, the creditor is entitled to recover the claim the balance amount from the guarantor[5].

In so far as the issue of unjust enrichment and double recovery by the creditor was concerned, the Hon'ble Supreme Court further observed that "There are enough safeguards against double recovery as provided under (a) the settled principle of contract law that simultaneous remedy against the co-obligors does not permit the creditor to recover more than the total debt owed to it, and (b) the provisions of the Code itself." It also noted that the right of double dip of a creditor was spoken of, in recent judgment PAFCO 2916 INC. C/o Pegasus Aviation Finance Company vs. Kingfisher Airlines Limited[6].

In this regard, it may be noted that the Hon'ble National Company Law Appellate Tribunal ("NCLAT") in Dr. Vishnu Kumar Agarwal Vs. Piramal Enterprises Limited[7], held that while there is no bar under the IBC for filing simultaneously proceeding against the corporate debtor and the corporate guarantor(s) or both, once a claim application under Section 7 filed by the creditor is admitted against one of them, the second application for same set of claim and default cannot be admitted against the other. However, in State Bank of India v. Athena Energy Ventures Private Limited[8], the NCLAT held that CIRP can proceed against both the corporate debtor as well as the guarantor.

Per Section 134 of the Contract Act, a surety would stand discharged of his liability upon discharge of the debt of the creditor by the corporate debtor. Further, in terms of Section 140 of the Contract Act, once the personal

[5] Gouri Shankar Jain v. Punjab National Bank and Others, AIR 2020 Cal 90; IDBI Bank Ltd. v. EPC Constructions India Limited, MA 2738/2019 & MA 354/2019 in CP No.1832/IBC/NCLT/MB/MAH/2017
[6] 2016 SCC OnLine Kar 5991
[7] Company Appeal (AT) (Insolvency) No. 346 of 2018
[8] Company Appeal (AT) (Ins) No.633 of 2020

guarantor makes payment to the creditor of all that he is liable for, the personal guarantor would be invested with all the rights which the creditor had against the corporate debtor. However, extinguishment of such a right under the resolution plan has been held to be valid[9]. The Hon'ble Courts have relied on the non-obstante clause of the IBC while upholding such extinguishments of the rights of the guarantor against the corporate debtor.

The preamble to the IBC states that it is an Act to inter alia "……. consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons …….. in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship ………. and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues …….."

However, while the various decisions of the Hon'ble Court, the NCLT and the NCLAT have focussed on the maximisation of the value of the assets of the corporate debtor and the interests of the financial creditors and the successful resolution applicant, it has failed to balance the interests of the promoters, corporate and personal guarantors by stripping them of all the rights that they would have otherwise been entitled to, including the right of subrogation under the Contract Act.

Financial creditors are known to take large haircuts while approving a resolution plan. While, the quantum of haircuts has come down to about 61% on an average, there are instances where the haircut is around 95%. Given the decisions of the Hon'ble Court, the NCLT and the NCLAT, the significant financial burden with respect to the haircut amount (in other words, the amount not recovered by the financial creditors from the corporate debtor) falls on the shoulders of the guarantors. It may be noted that the Standing Committee on Finance in its report "Implementation of Insolvency and Bankruptcy Code - Pitfalls and Solutions" dated August 3, 2021 has recommended that a benchmark be set for the quantum of haircut, comparable to global standards.

While reducing the amount of haircut that a financial creditor could agree to, might reduce the burden or liability of a guarantor, it may not be adequate to safeguard the interests of the guarantor.

[9] *State Bank of India v. Calyx Chemicals & Pharmaceuticals Limited, 2018 SCC OnLine NCLT 28227 and IDBI Bank Ltd. v. EPC Constructions India Limited, MA 2738/2019 & MA 354/2019 in CP No.1832/IBC/NCLT/MB/MAH/2017; Lalit Mishra & Ors. v Sharon Bio Medicine Ltd. & Ors , Company Appeal (AT) (Insolvency) No. 164 of 2018 Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Others, 2019 (16) SCALE 319*

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GST

ADVANCE RULING

Eligibility to Apply

The concept of Advance Ruling in matters of GST is incorporated in Section 97 of the Central Goods and Services Act, 2017 ("CGST Act"). GST being a recent introduction in the taxation jurisprudence of the country, it was thought pertinent to provide an Advance Ruling Mechanism to the taxpayers. Advance Ruling provides certainty in relation to tax liability of a taxpayer in advance. The issues that may be typically raised in Advance Ruling *inter alia* are classification of goods and services, determination of input tax credit and applicability of notifications issued under the CGST Act. Recently, the Maharashtra Bench of the GST Authority for Advance Rulings (AAR) in an application made by M/S USV Private Limited[1], held that only a supplier of goods or services can apply for Advance Ruling and not the recipient of such goods or services. While this decision is in consonance with the general principles of GST in India wherein a supplier is required to discharge the responsibility of paying GST, it brings to the fore the question that does this mandate defeat the very purpose for which the concept of Advance Ruling was created. Moreover, how would this decision fit with the reverse charge mechanism, wherein under certain circumstances, it is the buyer or recipient of the goods and services who has to pay the GST.

Through this article, we shall explore the concept of Advance Ruling and analyse the implications of this decision.

What is Advance Ruling in GST?
Section 95 of the CGST Act defines Advance Ruling as, *"decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 of the CGST Act, 2017, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant."* The questions outlined under Section 97 of the CGST Act on which Advance Ruling may be sought are:

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

Section 100(1) provides for an appellate mechanism in the event the applicant is dissatisfied from an Advance Ruling.

[1] Order No. GST-ARA-91/2019-20/B-77

M/S USV Private Limited Order by Maharashtra AAR

In the recent decision by Maharashtra AAR, the facts were that a Swiss Pharma Company called the Novartis AG assigned certain trademarks to M/S USV Private Limited, an Indian pharmaceutical company. M/S USV applied for an Advance Ruling to confirm whether the assignment of trademarks would qualify as supply of goods or supply of services. The AAR after hearing the arguments of the applicants and the GST authorities observed and held that according to Section 95 of the CGST Act only a supplier can apply for an Advance Ruling and not a recipient. It further held that Advance Ruling can only be sought for supply that is either being undertaken or proposed to be undertaken, in the current scenario, the deed of assignment had already come into effect and hence, the AAR held that this was not a case eligible to come for Advance Ruling.

AAR while rendering its decision stated that there are two important ingredients of Section 95 that need to be fulfilled for an application to qualify for Advance Ruling. These are:

a. The question should be in relation to the supply undertaken by the applicant, or;
b. The question should be in relation to the supply being undertaken or proposed to be undertaken by the applicant.

In the fact situation of the case, it was Novartis AG that was assigning the trademarks to M/S USV and hence, the AAR held that it was Novartis AG that was the supplier and not M/S USV. Hence, in accordance with Section 95, M/S USV does not have the right to apply for an Advance Ruling. The AAR did not go into the merits of the case and disposed it stating that the case was not eligible for Advance Ruling.

Judicial Position on Eligibility to Apply for Advance Rulings

The judicial position with respect to

eligibility to apply for Advance Rulings is also in consonance with the Maharashtra AAR's decision. In the case of Erode Infrastructures Private Limited[2], the Appellate Authority of Tamil Nadu has ruled that only a supplier is empowered to receive an advance ruling under the GST Act. The applicant, Erode Infrastructure, applied to the Advance Ruling Authority and requested to know whether the development of a complex near the Erode railway station would be exempt under the GST.

The AAR did not analyse the merits of the claim. Instead, the AAR stated that since Erode Infrastructure is only receiving the land on a temporary lease from the government, they are properly considered a recipient and not a supplier. Quoting Section 95(a) of the Act, the AAR said that since the provision only permits advance rulings “in relation to the supply of goods”, only a supplier can request an advance ruling. Hence, Erode Infrastructure's claim was rejected.

They appealed to the AAAR (Tamil Nadu) against this decision. Erode's primary contention was that they were a provider of MFC services and that a harmonious construction of Sections 95 and 97 clearly meant that a company acting as both a supplier and recipient would be entitled to seek an advance ruling.

The AAAR upheld the decision. Section 103 states that a ruling is only binding on the applicant and not any other similarly placed party. It reasoned that a harmonious construction of Sections 95(a), 97(2) and 103 would only include persons with respect to their inward supplies and not to a recipient or even for a person conducting their own sale of goods. Thus, the AAAR seemed to state that an advance ruling can only be availed if a company is acting as a producer and not a recipient of inward supply.

A number of other decisions have supported this proposition. In Ramohalli Krishnarao Karthik[3], the Karnataka AAR stated that advance ruling can only apply with respect to supplies undertaken by the applicant and not another party. This same reasoning was used in Erode Infrastructure Private Limited, where the AAAR held that Erode could not seek information about supplies from the government. The Gujarat AAR in Hyflextar Private Limited[4] also utilised a similar reasoning to the AAAR in *Erode Infrastructure* and held that only sellers can apply for an advance ruling. An identical conclusion was reached in Hubli-Dharwad Municipal Corporation[5].

[2] Order No. AAAR/07/2021

[3] Advance Ruling No. KAR ADRG 34/2021

[4] Advance Ruling No. GUJ/GAAR/R/47/2021

[5] Advance Ruling No. KAR ADRG 26/2021

Hence, the judicial position is in consonance with the recent decision of Maharashtra AAR in M/S USV Private Limited.

Practical Implications of Restricting the Eligibility to Apply for Advance Ruling

The judicial stance is clear, but there are important impacts as a result of the current policy. It can be seen that most of these cases revolved around a company that was both a supplier and recipient in different capacities. In such cases, the AAR has held that if the applicant is a recipient in the transaction in question, then they are not empowered to seek an advance ruling.

As a matter of law, this stance is sustainable. However, the consequentialist outcomes can often be harmful. The delay in the Indian legal system and the pendency of cases is well-known. Tax disputes are locked up within the judiciary for decades. This has significantly affected foreign interest in India, since the dispute resolution system is overburdened and paralyzed.

In fact, the recognition of judicial pendency as an issue was a catalyst for the creation of the system of advance ruling under the CGST Act. To ensure that many of these disputes never crop up in the first place, the system of advance ruling was introduced. In this context, it is unclear why the facility of advance ruling was restricted to only suppliers in that particular transaction. It is possible for the AARs to justify Section 95 in a liberal manner and cover all the parties that may be conducting supply in a different but related transaction. Thus, while Erode was not a "supplier" in the lease transaction, it would be considered a supplier when it began construction on the complex. Both of these transactions are distinct but undoubtedly related, and thus advance ruling can be justified.

In the M/S USV order, the exclusion may be justified, however, if one views from a practical perspective, such a blanket rule may cause concern. A departure from the common rule that it is always the supplier who bears the burden of GST is the concept of reverse charge mechanism, wherein under certain circumstances such as buying from an unregistered supplier, the recipient has to pay the GST. Moreover, if the supplier is stationed in a non-taxable territory, as in the case of M/S USV Private Limited and the supply is that of services, then as per Section 5 of the Integrated Goods and Services Tax Act (IGST) it is the recipient who would be required to discharge the liability. In such circumstances it becomes pertinent for the recipient to know in advance whether they would be exposed to any tax liability or not and hence blanketly restricting their access to the Advance Ruling Mechanism is defeating the very purpose for which it was created.

Conclusion

A strict reading of Sections 95, 97 and 103 may warrant the current judicial position wherein only suppliers and not recipients can ask for Advance Ruling. However, in the larger spirit of the rationale behind the Advance Ruling Mechanism, a more expansive and liberal interpretation of the given provisions is required. Few exceptions should be laid down wherein even recipients with genuine queries may approach the AAR for Advance Ruling. This would reduce scope for further disputes and would consequentially reduce the burden on courts.

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DECADE IN REVIEW

Indo-German M&A Landscape

Mergers and Acquisitions (M&A) have been a popular route of entry and expansion for companies in the Indo-German corridor. Already ranked as the third most active European acquirer in India, Germany is also among the Top 5 M&A destinations for Indian companies globally.
Commemorating 70 years of diplomatic relations and 20 years of strategic partnership between India and Germany, Nexdigm (SKP) and Ebner Stolz have jointly released a report titled 'Enabling Collaborative Development: Indo-German Deals in a Decade'. The report details the investment trends and M&A landscape in the Indo-German corridor over the past decade and has revealed that 171 M&A deals valued at USD 4.5 billion took place during that period.
The report also provides insights on the complementary areas that are likely to drive investments in the years to come.

Acquisitions by Indian companies in Germany:

As per the report, Germany is the most popular M&A destination for Indian auto companies as the country *is the global hub* for auto innovation and the second-largest export market for Indian auto component manufacturers.

Indian investments in software companies have also been following an increasing trend. Given the rapidly evolving nature of the industry, cash-rich Indian IT companies have been making global acquisitions to enhance their technology portfolio and tap into experienced talent, along with expanding their customer base.

Speaking of these observations, **Dr.**

Christoph Eppinger, Partner at Ebner Stolz, said, *"While the UK has been the leading investment destination in Europe for Indian companies in the past, Brexit may propel Germany's popularity as a foothold for Indian companies in the EU, as they need an alternative to consolidate and manage their EU operations."*

The report stated that 70 % of all acquisitions by Indian companies in Germany have been complete buy-outs, on the back of a more organized and mature economy.

<u>Acquisitions by German companies in India</u>

German acquisitions in India are fueled by the country's large captive consumption market and its positioning as a value-efficient base to cater to the world. With India's improving R&D competencies, German companies are also viewing the country as an R&D hub. M&A trends emphasize the strengths of the two countries as sectors such as automotive, pharmaceuticals, and software lead deal activity, highlighting the synergistic opportunities.

Considering the complex and distinct business environments of India and Germany, the corridor has been ripe with collaborations, with over 600 Indo-German joint ventures in India.

The report found that less than 30% of all acquisitions by German companies in India were complete buy-outs, suggesting German companies' preference to retain Indian promoters to counter challenges of operating in the subcontinent with their local know-how and on-ground management.

M&A trends post-pandemic

Emerging from the initial shock of the pandemic, businesses are increasingly looking beyond sustainability and toward their growth plans. The financial strain, operational and travel restrictions, and economic uncertainties had forced many companies to pause their inorganic growth plans in 2020, especially in the case of cross-border deals. However, with businesses coping with the new normal, they now have a strong will to come back to the M&A playfield and make up for missed/delayed opportunities. The lull observed in the cross-border activities in the pandemic year is expected to be countered on account of fresh deals and the reopening of dialogs in halted transactions.

According to **Tanwir Shirolkar, Senior Director at Nexdigm**, "The transactional trend in the next few years is geared towards digitalization. E-health, ed-tech, and e-retail are among the sectors which have observed a flurry of deals in the past year and a half, and this interest is only expected to pique further." The report suggests that post-pandemic, artificial intelligence, cloud adoption, data security, health-tech, and green energy are some of the key areas that will drive deal activity.

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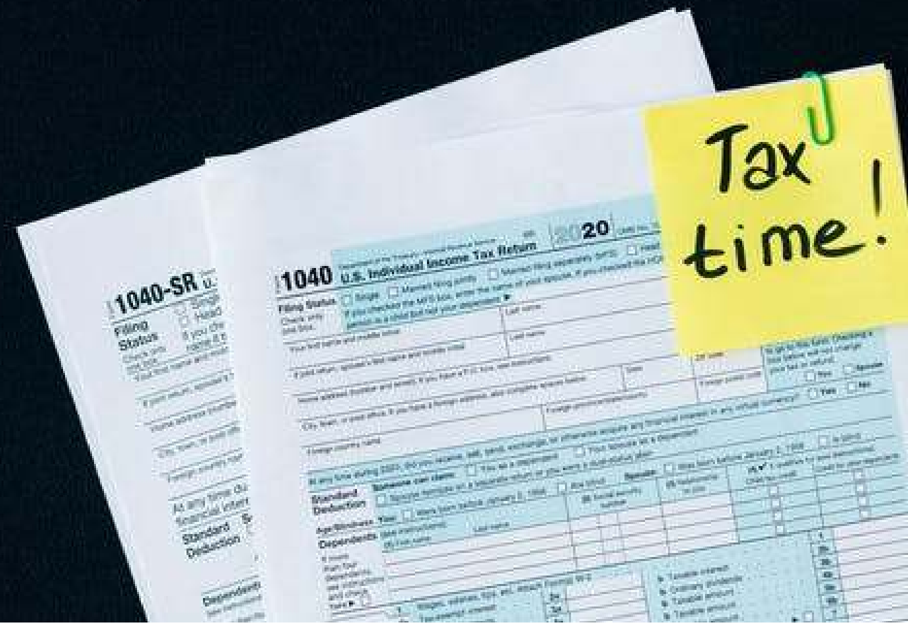
TAXABILITY JOINT DEVELOPMENT AGREEMENT UNDER GST ACT



Background

The provisions of GST as far as the real estate sector is concerned are very complex. There are multiplicity of rates depending upon the way a transaction is structured. An attempt in this article has been made to discuss the GST implications in a Joint Development Agreement (JDA).

In a JDA, the landowner gives the development rights of his land to the developer to construct the project. In exchange, the landowner gets a certain number of flats in the project. It is an arrangement between the Landowner and the Builder/Developer, where the Landowner contributes his land and the Developer takes the full responsibility of obtaining approvals, construction, launching and marketing the project with the help of financial resources.

Under the GST law, the term 'supply' is defined in very wide terms which also includes barter/ exchange of goods or services, whereas the term 'services' is defined to be anything other than goods. Further, Entry No. 5 of Schedule III of the CGST Act, 2017, excludes sale of land from the scope of supply. There was certain ambiguity regarding taxability of transfer of development rights under JDA, as to whether the same are liable to GST or not. However, the Notification No. 4/2018-Central Tax (Rate) dated 25.01.2018, clarifies that the transfer of development rights from the landowner to a developer is taxable in the hands of landowner. In case of JDA entered on or after 01-04-2019, for the transfer of development rights by landowner, GST need to be discharged by Developer or Builder under Reverse Charge Mechanism.

1. Types of transactions in JDA

a) Transfer of Development Rights by Landowner to Developer or Builder against consideration, wholly or partly in the form of construction service of complex, building or civil structure – [Notification No. 4/2018-Central Tax (Rate) dated 25.01.2018 & Notification No. 3/2019-Central Tax (Rate) dated 29.03.2019]

b) Transfer of Construction services by Developer or Building to Landowner against consideration, wholly or partly, in the form of transfer of development rights – [Notification No. 4/2018-Central Tax (Rate) dated 25.01.2018 & Notification No. 3/2019-Central Tax (Rate) dated 29.03.2019]

c) Normal sale of Developed area by Landowner and Developer

2.1 Transaction 1: Transfer of development rights by Landowner to Developer or Builder

Sl. No.	Particulars	JDA (Residential Real Estate Project) entered before 31.03.2019	JDA (Residential Real Estate Project) entered on or after 01.04.2019	JDA (Commercial Real Estate Project) entered before or after 31.03.2019
1.	**Who needs to pay GST**	Landowner needs to pay GST	Developer or Builder needs to discharge GST under Reverse Charge Mechanism	Landowner needs to pay GST
2.	**Value of Supply**	Value must be determined as per Section 15 of the CGST Act, 2017 read with Rule 27 of the CGST Rules, 2017	The Developer shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be	Value must be determined as per Section 15 of the CGST Act, 2017 read with Rule 27 of the CGST Rules, 2017
3.	**Time of Supply**	Date of transfer of possession or right in the constructed complex, building or civil structure, to the person supplying the development rights by entering a conveyance deed or similar instrument	Date of completion or first occupation of the project, as the case may be, whichever is earlier	Date of transfer of possession or right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument
4.	**Rate of GST**	18%	*1% for affordable residential apartment or 5% for non-affordable residential property [Effective GST rate after considering abatement of 1/3rd towards value of land]	18%

2.2 Transaction 2: Transfer of construction services by Developer or Builder to Landowner

Sl. No.	Particulars	JDA (Residential Real Estate Project) entered before 31.03.2019	JDA (Residential Real Estate Project) entered on or after 01.04.2019	JDA (Commercial Real Estate Project) entered before or after 31.03.2019
1.	**Who need to pay GST**	Developer needs to pay GST	Developer needs to pay GST	Developer needs to pay GST
2.	**Value of Supply**	Value must be determined as per Section 15 of the CGST Act, 2017 read with Rule 27 of the CGST Rules, 2017	Value of service must be determined based on the total amount charged by the promoter for similar apartments in the project from independent buyers, other than the landowner, nearest to the date on which such development right is transferred to the promoter, less the value of transfer of land, if any, as prescribed in Para 2 of Notification No. 11/2017-CT(R) dated 28.06.2017	· **Before 31.03.2019**: Value must be determined as per Section 15 of the CGST Act, 2017 read with Rule 27 of the CGST Rules, 2017 · **After 31.03.2019:** Value must be determined based on the total amount charged by the promoter for similar apartments in the project from independent buyers, other than the landowner, nearest to the date on which such development right etc. is transferred to the promoter, less the value of transfer of land, if any, as prescribed in Para 2 of Notification No. 11/2017-CT(R) dated 28.06.2017
3.	**Time of Supply**	Date of transfer of possession or right in the constructed complex, building or civil structure, to the person supplying the development rights by entering a conveyance deed or similar instrument	Date of completion or first occupation of the project, as the case may be, whichever is earlier	· **Before 31.03.2019:** Date of transfer of possession or right in the constructed complex, building or civil structure, to the person supplying the development rights by entering a conveyance deed or similar instrument · **After 31.03.2019:** Date of completion or first occupation of the project, whichever is earlier
4.	**Rate of GST**	*Effective GST rate of 12% (18% less 1/3rd deduction of value for land) if developer opt to pay under old scheme, else effective GST rate\ of 1% f\o\r affordable residential apartment or 5% for non-affordable residential property (1.5% or 7.5% less 1/3rd deduction of value for land)	*Effective GST rate of 1% for affordable residential apartment or 5% for non-affordable residential property (1.5% or 7.5% less 1/3rd deduction of value for land)	Effective GST rate of 12% (18% less 1/3rd deduction of value for land)

2.3 Transaction 3: Normal sale of Developed area by Landowner and Developer (applicable for both commercial & residential estate project)

Sl. No.	Particulars	Provision
1.	**Value of Supply**	Transaction value as per Section 15 of the CGST Act, 2017.
2.	**Time of Supply**	As per Section 13 of the CGST Act, 2017, date of invoice or date of payment whichever is earlier.
3.	**Rate of GST**	· **<u>Project commenced before 31.03.2019:</u>** Effective GST rate of 12% on value of supply (18% less 1/3rd deduction of value for land) · **<u>Project commenced after 31.03.2019:</u>** *If he opts to pay under new scheme - 1.5% or 7.5% for affordable or non-affordable respectively on value supply, (effective GST rate of 1% or 5% respectively). Else, Effective GST rate of 12% on value of supply (18% less 1/3rd deduction of value for land). In other words, in case of sale of flats by Landowner: · If flats are booked before obtaining Completion certificate, GST payable at 5%. · If flats remain unbooked till obtaining Completion certificate GST is payable by Builder under RCM @ 5%. Note: Wherever GST rate 5% is used, it is assumed that project is non-affordable housing project. If affordable housing project, GST rate is 1%.

** Conditions for new effective tax rate of 1% or 5%*

The new tax rates (1% or 5%) shall be applicable subject to following conditions, -

(a) The input tax credit shall not be available and GST liability to be discharged in cash only,

(b) 80% of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas] used in supplying the service shall be received from registered supplier only.

(c) Wherever value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short of the 80%, tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of 18% on reverse charge basis (On cement RCM @ 28%).

(d) The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the

end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year.

(e) The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the FY.

3. **Issues along with Advance Rulings**

3.1 **Issue 1:** A new tax structure for real estate sector was introduced with effect from 01.04.2019 onwards by amendment of Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017 by Notification No. 03/2019-Central Tax (Rate), dated 29.03.2019 and also made provisions therein for continuing the old rate of tax (as it existed upto 31.03.2019) for the ongoing projects. Now, the issue was arising that whether such option of paying tax at old rate (i.e. 18% with input tax credit) can be exercised in respect of part of a project or it should be exercised for the entire project as a whole.

The same has been dealt by the AAR of Kerala in the case of **M/s Victoria Realtors – AAR Kerala dated 28.05.2018:** The Applicant was engaged in the business of construction of gated community villa project. One such project was 'Vrindhavan' in which there were 20 units out of which, 9 units were already booked. It opted for old GST rate of 18% as per Sl. No. 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 for 9 units only. It's filed an application for advance ruling to determine whether new tax rate of 7.5% would be applicable to 11 unbooked units.

The Authority for Advance Ruling

observed that the option envisaged under item (if) of Sl. No. 3 of the said Notification (i.e. payment of tax at old rate of 18% with input tax credit) is in respect of entire ongoing project and not in respect of part of project. The option exercised by applicant in respect of ongoing project 'Vrindhavan' would be applicable for entire 20 villas comprised in project and therefore, the old rate of tax at 18% with input tax credit would be applicable for all apartments/villas comprised in project.

3.2 **Issue 2:** Sale of land shall be treated neither as a supply of goods nor a supply of services as per Para 5 of Schedule III of the CGST Act, 2017 and therefore does not attract GST. Even, after completion of the structure, sale of land along with constructions upon it, whether it is residential or commercial would not attract GST as it is sold as an immovable property (i.e. after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier), as per Para 5(b) of Schedule ll of the CGST Act, 2017.

However, following models of JDA have been subjected to scrutiny by the Department:

- Landowner(s) and developer(s) come together and jointly develop a property.
- A piece of own land is developed by the landowner himself and sells plots thereafter to prospective buyers.

The same issue is also observed by the AAR of Madhya Pradesh as under-

M/s Vidit Builders (Developer)- AAR Madhya Pradesh dated 06.01.2020: The Developer has entered into JDA with the landowner. It undertakes the development of plots which includes construction of concrete roads and compound walls, development of garden, construction of drain and water supply system and erection of electric poles and transformer, etc. The proceeds from sale of developed plots would be shared between landowner and developer in a fixed ratio as per the terms of the JDA. The agreement further provides that any expenses incurred by the developer will be recovered from the purchaser and would be shared between landowner and developer in a fixed ratio.

The developer sought clarification on whether the said activity will be covered in para 5 of Schedule III (Sale of Land) or classified under works contract and if it is covered under works contract, how the valuation would be done.

The Hon'ble MP AAR observed that the services provided by the Applicant are regarding the development of the site which includes civil construction and amenities regarding the site in order to make it ready for the purpose of residence. The services provided by the Applicant are based on an agreement signed between the landowner & the Applicant which comes under Works Contract. Further, the Applicant receives consideration equal to 40% of the value at which each of the plots is sold. This amount constitutes consideration for services as provided by the Applicant. It is seen here that the Applicant does not get physical possession of 40% of the plots as understood by the Applicant. This shows that the consideration that the Applicant receives is in the form of money and not in the form of land. Therefore, in terms of Section 15 of the CGST Act, the Applicant receives the value of taxable supply made by them.

Accordingly, the AAR held that the activities performed by the Applicant/ developer amount to the supply of services under Works Contract Services and liable to be taxed under Rule 31 of the CGST Rules, 2017. GST would be applicable on the amount received/receivable by the developer which is equal to 40% of the amount on which the plots are sold.

From the above provision and ruling, it can be said that where merely land development activities are undertaken under a JDA, the same are likely to be taxed under GST. However, where development of land is naturally bundled with sale of land and sale is the principal supply in the bundled transaction, the transaction may be construed as composite supply not liable to GST. Thus, it would be relevant for the taxpayers to agree upon exact scope of services under a JDA to determine its taxability.

4. **Concluding Remarks**

The government has made efforts from time to time to streamline & lower the tax burden on the output side for the builders and developers by bringing in various notifications in relation to JDA. Accordingly, the GST provision with respect to JDA have undergone a major change with effect from April 1, 2019. However, the restriction of availability of input tax credit on inward purchases for the builders and developers would require to be omitted including the capping of inward purchases from registered suppliers along with the RCM burden to provide relief to this sector. If this is not done then, it will create huge pile of unutilised input tax credit in the hands of Builder/Promoter which would ultimately impact the cash flow of the taxpayer.

Further, FAQ released by the Government dated 14.05.2019 (Q 18.) has clarified that value of exempted supplies need to be included in the value of supply of goods or services received from unregistered person for the purpose of calculating 80% threshold. It implies that developer needs to pay GST on such exempted supplies @18% under RCM if there is any shortfall with no input tax credit of such payment of tax. This aspect also requires to be revisited by the authorities.

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GST COUNCIL RECOMMENDATIONS

COMMANDMENTS or SUGGESTIONS?

The ten commandments are not suggestions

– Pat Riley

Introduction

Under Goods and Services Tax ('GST'), India follows a dual structure of taxation. The structure has inherent challenges including the potential tussle between Centre and the States to levy and collect GST. To address this, a constitutional federal body is established i.e., GST Council. The responsibility of the Council, *inter alia*, includes providing recommendations on specified matters under Article 279A of the Indian Constitution.

This brings us to the issue as to the interpretation of the word '***recommendation***'. To address this, following four questions need deeper consideration:

1. Is recommendation of GST Council mandatory for notifying or amending certain provisions?

2. Should the recommendation be a prior one or a post-amendment ratification by GST Council would suffice?

3. Is it mandatory to enact the recommendations of GST Council?

4. Can the recommendations of the GST Council be modified by the Central Government?

GST Council – Establishment and Purpose

GST Council is a constitutional body comprising elected/representative members both at State and Centre level. Every State has adequate representation in the Council. The decision within the Council is taken basis the majority of not less than three-fourths of the weighted votes of the members present and voting.

Therefore, it is not wrong to say that GST Council is a constitutional body representing the people of India.

Article 279A(4) states that the Council shall make recommendations on the specified matters. The word 'shall' bear huge importance that it is making it mandatory for Council to make

recommendations.

The purpose of Council is well-defined and principle to be followed by the Council is also very clear in the Constitution. The Constitution requires that the Council should run on the principle of harmonised structure of GST.

GST Laws vis-à-vis Council's Recommendation

With respect to Council's recommendation, the following expressions are used in the GST Laws:

- *As may be notified by the Government on the recommendation of the Council*'

- *the Government may, on the recommendations of the Council, specify, by notification*'

- *the Government shall, on the recommendations of the Council, by notification, specify*'

Notable, that the expression 'on the recommendation of the Council' is either a direct condition in a sentence or preceded and succeeded by a comma which again makes it an independent condition.

Further, when Article 279A is mandating GST Council for recommendation, this expression must be read in a sense that government is also obliged to obtain such recommendations. Else, the constitutional mandate on GST Council will become a dead letter.

However, the expression 'may' or 'shall' will govern whether the Government is obligated to enforce such recommendations or not. Within this discretion, the problem may arise where the Centre is not inclined to act on the recommendations, but some States wish to enforce such recommendations. Can those States content to divert basis the argument of fiscal autonomy?

The answer would probably be 'NO' since Article 279A(6) requires that recommendation shall be based on the principle of harmonious structure and development of harmonious market in India. Therefore, if some States are choosing to divert from the Centre or the other States, such a divergence cannot be considered to be based on a recommendation of the Council which is a re-requisite.

In last 4 years, many States have actually enforced different procedures e.g., threshold for e-waybill. Notable that almost all such divergences were first approved by GST Council.

Therefore, it seems that the States may divert their stand basis the recommendation of the Council.

Recommendation – Prior or post-facto

The amendment to disallow Input Tax Credit ('ITC') of input services in case of Inverted Duty Structure was brought in on April 18, 2018, however, the GST Council ratify the amendment in its meeting on May 4 & 5, 2018.

The matter relating to this amendment went upto the Apex Court, however, this question of law was not framed in the matter unfortunately. Therefore, it is reasonable to presume that the question is not yet answered. It is, therefore, imperative to understand the meaning of the word 'recommendation'.

As observed by the Supreme Court in the case of ***V.M. Kurian v. State of Kerala (2001) 4 SCC 215***, the dictionary meaning of the word 'recommend' is to advise. In Law Lexicon, it is defined to express commendation or suggests. The Apex Court, however, noted that where the word 'recommendation' is not defined in the law under consideration, it has to be understood in the context of the object behind the provision and the law.

In GST context, the object is to have representation of the States and Centre to be incorporated in the recommendation. The process of recommendation by Council starts from inviting representations from all the stakeholder on a particular subject matter.

It is beyond the basic prudence to accept that a recommendation can be made on a subject when the subject has already been enforced by the Government unless there are evidence to show that recommendation can also be by ratification.

Thus, it seems that the expression 'on the recommendation' may be read in terms of a prior recommendation.

Modification of the Recommendations

Where one concludes that obtaining recommendation is not mandatory, then the question ends there. However, if one proves that it is mandatory to have a recommendation by the Council, the next question would be whether it is obligatory to enforce such recommendation.

Simply put, if the government has power not to enforce such recommendation, whether it also has the power to enforce it partly or with modification?

Assuming, GST Council recommends that rate on Branded Rice be decreased to 5 percent. Central Government notifies GST rate on Branded Rice and Branded Sugar to be reduced to 5 percent. Following questions arise in such a scenario:

1. When GST Council did not recommend rate to be decreased on Branded Sugar, can Central Government extend the recommendation or notify rate without recommendation?

2. Where the Centre decreased the rate on Branded Sugar to 5 percent, Can States decline to decrease the rate since it was not recommended by the Council i.e., no voting happened on this decision.

These questions have to be understood

basis the structure of law-making process under GST, the object behind constituting the GST Council.

The Supreme Court in many landmark decisions has held that in Constitutional laws, the words must yield to the constitutional principles.

In one of the cases before the Supreme Court in context of Appointment of Judges, it was argued that the expression 'consultation' means 'mere consultation of view'. The word 'consultation' is used more than 30 times in the Indian Constitution which would mean 'mere opinion or views'.

However, with respect to Appointment of Judges, the Nine Judges Bench in the case of ***Supreme Court Advocates on Record Association v. UOI, WP(C) of 2015***, held that the word 'consultation' with the Chief Justice of India ('CJI') would mean the concurrence with the CJI and/or other senior judges. It was also held that the word 'consultation' was used instead of 'concurrence' to indicate that an opinion of CJI alone, though have a primacy, will not overrule the executive and other senior judges.

Similarly, the word 'recommendation' has been used around 50 times in the India Constitution. At some places, it is used in the context of a mandate and somewhere is used in the context of a suggestions. Thus, merely by relying on the plain text, one should not come to conclusion that recommendation of GST Council can be ignored and / or modified. One must look into the principle on which this Constitutional Body is standing on.

Therefore, there is great risk in treating GST Council recommendations as optional or susceptible to modification by Centre and / or States. It may defeat the very principle of GST and Article 246A may become merely an extension of Article 246.

Conclusion

It is a trite that in tax laws, literal interpretation must be afforded to unambiguous or clear words. However, it is also a trite under Constitutional laws that words must yield to the principals. Thus, assigning a literal meaning to the word 'recommendation' without giving heed to the principle on which it stands, may lead to disastrous outcomes under GST.

Concluding in the words of Late Shri Arun Jaitley (8th GST Council Meeting):

"That the Council represented a pooled sovereignty and, therefore, a tradition needed to be built that the recommendations of the Council shall be binding on both the Central and the State Governments. Technically, the Parliament and the State Legislatures were sovereign entities but if each such body chose to depart from the recommendation of the Council, then GST would not work."

Yogesh Gaba
Managing Partner
GABA & CO.

Saurabh Sharma
Associate
GABA & CO.

A DECADE OF DRAMATIC DEVELOPMENTS IN INDIAN AND INTERNATIONAL TAXATION

Last decade has seen frenzied activity in the world of Indian taxation. Supreme Court's celebrated verdict in the case of Vodafone came in 2012, only to be countered by the contentious retrospective amendment by Parliament, followed by battles invoking non-tax legal instruments such as Bilateral Investment Protection Agreement, to finally culminate recently in a rare retreat by the Government in the face of adverse international arbitral award. Advanced Pricing Agreements, Safe harbor, Thin capitalization provisions were all introduced in transfer pricing only in the last 10 years. Black Money law offered a window to errant taxpayers to atone for the past tax evasion. One of the stated objectives of controversial demonetisation of 2016 was to clean the tax closet of skeletons. Year 2017 saw one of the most sweeping changes in the form of GST, which took protracted negotiations with a score and a half states, constitutional amendments and remarkable political will to come through. Concepts such as General Anti Avoidance Rule, Place of Effective Management were codified and the tax treaties with Mauritius-Singapore-Cyprus saw their treaty shopping utility being consigned to history. Although the much-expected Direct Taxes Code never saw light of the day, the tax authorities managed to log into the online world and went faceless for assessments as well as appeals. Quite an astonishing set of changes in a span of just 10 years!

International tax scene

While all this was happening in India, international tax scene was no less dramatic. Globalisation of the last few decades, accompanied by communication revolution saw exponential rise in digital ways of doing everything, including business. While digitalization of economy brought great convenience to consumers and immense wealth to companies and their shareholders, it also facilitated a great deal of tax avoidance. The antiquated framework of the international tax rules was not upgraded enough to respond to the complexities and opportunities of the new online world. When questioned by the US senate members about his company's tax planning strategies which seemed a bit underhand to tax authorities, Tim Cook, the head of Apple, unapologetically proclaimed that his company was playing by the existing tax rules. Too bad, if those rules left the tax authorities feeling deprived. This was unacceptable and governments had to act. They also needed to augment revenues to address fiscal pressures in the aftermath of global financial crisis. In 2013, G20 – a group of 20 nations that make most of the biggest economies of the world – decided that tackling tax avoidance should be a priority. By 2015, the Base Erosion and Profit Shifting Package of 15 actions was adopted by G20, Action 1 dealing with the digitalization of the economy.

Key problems

Digitalisation cum globalization has mainly created ***two problems*** for the century-old tax system based on source-residence based taxation rights. ***First:*** Existing system provides that the profits of a foreign company can only be taxed in another country where the foreign company has a physical presence, commonly known in tax jargon as permanent establishment. In the digitalised world, it has become possible to conduct business in any country without much substantial presence on the ground. The biggest example of this would be companies like Google which can sell their services directly anywhere in the world to anyone who has an internet connection. So how can a country bring a Google into its tax net when the Company has little physical presence on ground yet millions of users? In other words, whether the source of today's multinational enterprise's (MNE's) income lies more inside a country where its customers are or where it conceptualises and creates services for those customers? ***Second:*** Compared to physical assets like plant and machinery and inventory, it is easy to move around intangibles like brands, copyrights, patents across countries. Just like water finding its way to low-lying area, such new age assets find home in low-tax countries and companies can shift those easily. Further, it is difficult to pin down the ownership, control and management of an MNE to a particular country. In this age of jet travel, video conferences and multi-national staff, it is not unthinkable for an Isreali registered company listing on a US stock exchange, holding its intangible assets in Switzerland, while making most of its money from customers in Asian countries. Which country should then have residence-based right to tax profits of such an MNE? Some countries have taken advantage of this confusion, offering irresistible tax regimes to MNEs, weaning them away from their home countries as well as market jurisdictions. For instance, US-origin technology giants have used Ireland as a base for their non-US business from countries like India. Effectively, Ireland encroached upon the revenues that would have ordinarily belonged to either India or the US or both.

OECD estimates that the above problems cause countries to lose between US$100-240 billion annually in tax revenue, which is equivalent to 4-10% of global corporate income-tax revenues.

Solution proposed

136 out of 140 member jurisdictions of the OECD/G20 Inclusive Framework on BEPS, representing more than 94% of global GDP, reached a political agreement recently on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy as well as a Detailed Implementation Plan. Tables below summarise the key aspects of the Two-Pillar Solution:

Pillar 1: Market jurisdictions get more taxing rights	Impact in India	
Objective	More allocation of taxing right to market jurisdictions, i.e., countries where goods or services are used or consumed	No more requirement of permanent establishment in India to capture business profits of foreign companies
Taxpayers covered	MNEs (other than those engaged in extractives and regulated Financial Services) with · Global turnover >20 billion euros · Profitability >10%	About 100 biggest and most profitable MNEs get covered by this threshold rule
Countries covered	Those from which the above MNEs derive at least 1 million (250,000 in case of small countries with GDP<40 billion) euros in revenue	If Indian revenue of any of the above 100 MNEs is <1 million euros, India will miss out on any allocation in respect of that MNE
Reallocated tax base	25% of profit in excess of 10% of revenue, using revenue based allocation key	E.g. While Alphabet, parent of Google will get covered, Amazon, because of its <10% profit margin, may escape the net
Computation of tax base	Using financial accounting income, with a small number of adjustments; Losses allowed to be carried forward	No need to prepare separate tax accounts only for this purpose
Dispute resolution	Mandatory and binding mechanism to be set up and followed by countries to ensure tax certainty to the above MNEs	Provides tax certainty to MNEs, though their tax compliance and cost may increase
Administration	Streamlined tax compliance through a single entity	
Obligation of market jurisdictions	Remove all unilaterally imposed digital services taxes for all companies and commit to not introduce new	Equalisation levies imposed under Section 165 (@6% on online advertisement etc.) and under Section 165A (@2% on ecommerce supply and services) of the Finance Act, 2016 will have to be abolished by India **for all companies**, not just the MNEs covered by Pillar 1.
Method of implementation	Through a Multilateral Convention (MLC)	
Timeline for implementation	Text of the MLC and its Explanatory Statements to be finalised and signed in 2022; Entry into force and effect in 2023	FY 2023-24 may be the first year to compute MNE's tax dues in India under Pillar 1.

Pillar 2: Limiting tax competition among countries	Impact in India	
Objective	Providing a minimum tax on corporate profits, putting a floor on tax competition among countries	Indian parent gets to tax income of its foreign subsidiary if it has been subjected to lower than minimum tax in the other country; When India is a source jurisdiction, it gets to impose limited source taxation on certain related party payments of interest, royalties etc. subject to tax below a minimum rate in the payee jurisdiction
Taxpayers covered	MNEs (other than Government entities, international organisations, non-profits, pension funds, investment funds that are Ultimate Parent Entities) with consolidated group revenue of at least 750 million euros (other than international shipping income)	Indian MNEs having global group revenue of INR 6500 cr will get covered
Countries covered	Low tax jurisdictions (i.e., where the effective tax rate of the MNE's constituent entity, calculated with reference to financial accounting income is less than 15%)	E.g. Indian MNE's subsidiary in Mauritius, where its Effective tax rate is lower than 10%
Countries excluded	Jurisdictions where the MNE has revenues of less than 10 million euros and profits of less than 1 million euros	E.g. Indian MNE's subsidiary in Dubai where the revenues and profits are below these thresholds
Computation of tax base	Using financial accounting income, with a small number of adjustments; Losses allowed to be carried forward	No need to prepare separate tax accounts only for this purpose
Method of implementation	· Two interlocking rules (Income Inclusion Rule or IIR and Undertaxed Payments Tax or UTPR, collectively called Global anti Base erosion Rules or GloBE Rules) to be adopted by members countries in their respective domestic law · A treaty based rule called Subject To Tax Rule or STTR to be inserted in bilateral treaties through a multilateral instrument (MLI)	IIR is similar to Controlled Foreign Company (CFC) rules in some countries. India had once considered adopting CFC rules, but didn't. Now, India will include the IIR and UTPR in its domestic tax law based on a model text developed by the OECD-G20 India will become signatory to the MLI
Timeline for implementation	· Model GloBE rules to be developed by November 2021 · MLI to be developed by mid-2022	FY 2023-24 may be the first year to compute MNE's tax dues in India under Pillar 2.

Shashishekhar Chaugule
Partner, Tax & Regulatory services
Desai Haribhakti & Co

ACCOUNTING FOR **CRYPTOCURRENCIES** *IN INDIA*

Need of separate standard or not?

Cryptocurrencies or Cryptographic assets are transferable digital representations or tokens that are designed in a way that prohibits their Copying or duplication, which is recorded using a distributed ledger infrastructure/technology referred to as '**blockchain**'.

It is designed as a medium of exchange. It can also be used for other purposes like as a medium to provide access to blockchain based goods and services, or as a way to raise funding for an entity developing activities on that area

Currently 2 main Cryptocurrencies that are prominent are Bitcoin and Ethereum.

Commonly used terms

Blockchain : A digital, decentralised ledger that keeps a record Of all transactions that take place across a peer-to-peer network and that enables the encryption of information.

Token(coin) : It is a virtual currency or denomination of cryptocurrency, which represents a tradable asset/utility that resides on its own blockchain & allows holder to use it for investment or economic purposes.

Fiat currency : It denotes paper money or legal tender issued by government or any specified authority in a country having little or no intrinsic value in themselves and not convertible in gold or silver. Ex- INR, USD, Euro etc.

Initial coin offering (ICO) : It is similar to IPO in a cryptocurrency industry. A company looking to raise funds to create token, coin, apps launches an ICO.

Accounting perspective under Ind AS

Before moving to accounting treatment, we should understand :

- Primary purpose and utility of cryptocurrency, and
- How it derives it's value.

Since Cryptocurrencies currently operate independently of any central authority, it has no inherent value as it derives it's value based on demand and supply.

Applicable standard for Recognition
Since there is no specific accounting standard currently which deals with Cryptocurrencies, we shall analyse existing accounting standards to see which Ind AS talks about its recognition, measurement, presentation and disclosure.

Cash or currency
At first it might appear that cryptocurrency should be accounted for as cash because it is in the form of digital money. However it cannot be considered equivalent to cash/currency as defined in Ind AS 7 and 32 because

- Cryptocurrencies are not legal tender issued by government or state, and
- They are currently not capable of setting prices for goods and services directly.

Ind AS 7 defines cash equivalents as 'short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value'. Thus, cryptocurrencies cannot be classified as cash equivalents because they are subject to significant price volatility.
Hence Ind AS 7 is completely ruled out.

Financial Asset
Alternatively, it might appear that cryptocurrency should be accounted for as a financial asset at fair value through profit or loss (FVTPL) in accordance with Ind AS 9. However, it does not meet the definition of a financial instrument either because it does not represent cash, an equity interest in an entity, or a contract establishing a right or obligation to deliver or receive cash or another financial instrument. It is not a debt security, nor an equity security (although a digital asset could be in the form of an equity security) because it does not represent an ownership interest in an entity.
So, it should not be accounted for as Financial Asset.

Intangible Asset
Digital currencies appear to meet the definition of an intangible asset. Ind AS 38 defines an intangible asset as an identifiable non-monetary asset without physical substance. Ind AS 38 states that an asset is identifiable if it is separable or arises from contractual or other legal rights.
An asset is separable if it is capable of being separated or divided from the entity and sold, transferred, licensed, rented or exchanged, either individually or together with a related contract, identifiable asset or liability, regardless of whether entity intends to do so.
Thus, it appears that cryptocurrency meets the definition of an intangible asset in Ind AS 38 as it is capable of being separated from the holder and sold or transferred individually. Cryptocurrency holdings can be traded

on an exchange and therefore, there is an expectation that the entity will receive an inflow of economic benefits. However, cryptocurrency is subject to major variations in value and therefore it is non-monetary in nature.

Ind AS 38 allows intangible assets to be measured at cost or revaluation. Using the cost model, intangible assets are measured at cost on initial recognition and are subsequently measured at cost less accumulated amortisation and impairment losses. Using the revaluation model, intangible assets can be carried at a revalued amount if there is an active market for them; however, this may not be the case for all cryptocurrencies. The same measurement model should be used for all assets in a particular asset class. If there are assets for which there is not an active market in a class of assets measured using the revaluation model, then these assets should be measured using the cost model. IND AS 38 states that a revaluation increase should be recognised in other comprehensive income and accumulated in equity. However, a revaluation increase should be recognised in profit or loss to the extent that it reverses a revaluation decrease of the same asset that was previously recognised in profit or loss. A revaluation loss should be recognised in profit or loss. However, the decrease shall be recognised in other comprehensive income to the extent of any credit balance in the revaluation surplus in respect of that asset. It is unusual for intangible assets to have active markets. However, cryptocurrencies are often traded on an exchange and therefore it may be possible to apply the revaluation model. Where the revaluation model can be applied, Ind AS 113, Fair Value Measurement, should be used to determine the fair value of the cryptocurrency. Ind AS 113 defines an active market, and judgement should be applied to determine whether an active market exists for particular cryptocurrencies. As there is daily trading of Bitcoin, it is easy to demonstrate that such a market exists. A quoted market price in an active market provides the most reliable evidence of fair value and is used without adjustment to measure fair value whenever available.

Cryptocurrencies are a form of digital money and do not have physical substance. Therefore, the most appropriate classification is as an intangible asset.

Inventory

In certain circumstances, and depending on an entity's business model, it might be appropriate to account for cryptocurrencies in accordance with Ind AS 2, Inventories, because Ind AS 2 applies to inventories of intangible assets. Ind AS 2 defines inventories as assets:

- Held for sale in the ordinary course of business
- In the process of production for such sale, or
- In the form of materials or supplies to be consumed in the production process or in the rendering of services.

For example, an entity may hold cryptocurrencies for sale in the ordinary course of business and, if that is the case, then cryptocurrency could be treated as inventory. Normally, this would mean the recognition of inventories at the lower of cost and net realisable value. However, if the entity acts as a broker-trader of cryptocurrencies, then Ind AS 2 states that their inventories should be valued at fair value less costs to sell. This type of inventory is principally acquired with the purpose of selling in the near future and generating a profit from fluctuations in price or broker-traders' margin.

Thus, this measurement method could only be applied in very narrow circumstances where the business model is to sell cryptocurrency in the near future with the purpose of generating a profit from fluctuations in price.

Measurement considerations

The analysis above suggests that there are a number of different asset standards that might apply for cryptocurrencies.

The chart below summarises the different possible classifications and their associated measurement.

Applicable standard	Initial measurement	Subsequent measurement	Movements in carrying amount
Inventory (IND AS 2) - Other	Cost	Lower of cost and net realisable value	Movements above cost - N/A Movements below cost - Profit and loss
Intangible assets (IND AS 38) - Revaluation model (accounting policy choice but requires existence of active market)	Cost	Fair value less any accumulated amortisation and impairment*	Movements above cost - Other comprehensive income Movements below cost - Profit and loss
Intangible assets (IND AS 38) - Cost model	Cost	Cost less any accumulated amortisation and impairment*	Movements above cost - N/A Movements below cost - Profit and loss

Presentation and disclosure

As there is so much judgement and uncertainty involved in the recognition and measurement of crypotocurrencies, a certain amount of disclosure is required to inform users in their economic decision-making. Ind AS 1, Presentation of Financial Statements, requires an entity to disclose judgements that its management has made regarding its accounting for holdings of assets, in this case cryptocurrencies, if those are part of the judgements that had the most significant effect on the amounts recognised in the financial statements. Also Ind AS 10, Events after the Reporting Period requires an entity to disclose any material non-adjusting events. This would include whether changes in the fair value of cryptocurrency after the reporting period are of such significance that non-disclosure could influence the economic decisions that users of financial statements make on the basis of the financial statements.

So, accounting for cryptocurrencies is not as simple as it might first appear. As no standard currently exists, reference must be made to existing accounting standards (and perhaps even the Conceptual Framework of Financial Reporting). Entities should be prepared to adopt this approach in practical situations or scenarios because it allows them to substantiate their conclusion. Since this is an evolving area of accounting, entities should closely monitor developments, so that they can align their disclosures with market expectations and requirements.

Pankaj Maheshwari
Chartered Accountant

PAST EVENTS AND ACTIVITIES

Virtual Training Course on Transfer Pricing and Related Compliances

Virtual Training Course on Transfer Pricing and Related Compliances scheduled on 28th July, 2nd, 4th, 6th, 9th, 11th & 13th August, 2021. In this Introduction of Transfer Pricing was given by Pranshu Goel, Partner at Ashok Pranshu & Co whereas, Dilip Gupta, Founder & Advisor at Wecore Advisors LLP shared his insights on Transfer Pricing Policy & Compliance. Transfer Pricing Controversy Management was discussed by Vidur Puri, Senior Partner at SCV & Co. LLP. Types of Inter-Company Transactions was taken by Rajneesh Verma, Associate Partner at BSR & Co. LLP & Shruti Gupta, Manager at BSR & Co. LLP. Transfer Pricing of intangibles was explained by Rajneesh Verma, Associate Partner at BSR & Co. LLP & Saksham Jain, Manager at BSR & Co. LLP. Abhay Saboo & Lokesh Gupta from Sudit K Parekh & Co. LLP jointly present their thoughts on Business Restructuring (BR) and Valuation. Transfer Pricing – Interplay with other taxes was discussed by Rajneesh Verma, Associate Partner at BSR & Co. LLP & Hemlata Sharma, Associate Director at BSR & Co. LLP

Certificate Course on Detecting and Preventing Internal and External Frauds

Certificate Course on Detecting and Preventing Internal and External Frauds conducted on 2nd, 3rd, 4th, 5th & 6th August 2021, In this Shashank Karnad, Partner & CEO Forensic Services at Mahajan & Aibara discussed about The Fraud Problem. Conducting a Fraud Risk Assessment and Recognizing the Red Flags of Internal Fraud was taken by Amit Rahane, Vice President of ACFE Mumbai Chapter Partner – Forensic & Integrity Services at EY. Fraud Detection was explained by Rahul Lalit, Partner at PwC India, Vikram Santara, Chief Manager - Fraud Prevention Unit at Bajaj Allianz Life spoke upon Investigation Techniques, Last session on Fraud and Basic Principles was taken by Ankoosh Mehta, Partner at Cyril Amarchand Mangaldas.

PAST EVENTS AND ACTIVITIES

White Collar Crime: A Corporate Perspective - A Certification Programme

In this White Collar Crime: A Corporate Perspective - A Certification Programme conducted on 9th, 11th, 13th, 16th, 18th & 20th August, 2021. In this Understanding on White-Collar Crime was given by Ankoosh K Mehta, Partner at Cyril Amarchand Mangaldas & Geetanjali Chandra, Academic Leader, Bharat Vasani, Partner at Cyril Amarchand Mangaldas & Mahesh K. Radhakrishnan at Aditya Birla Capital jointly shared their insights on White Collar Crime related laws in India. Judicial process for White Collar Crime was discussed by Kapil Arora, Partner at Cyril Amarchand Mangaldas & Ghanshyam Hegde at Procter & Gamble. Session on Unmasking of fraud and role of experts was taken by Faraz Alam Sagar, Partner at Cyril Amarchand Mangaldas & Vinay Garodiya, Partner at EY Forensic & Integrity Services Ankoosh K Mehta, Partner at Cyril Amarchand Mangaldas & Ashwin Thool, Counsel both shared their views on Judicial trend in India in White Collar Crime, Last session on Cyber-crimes: Flip side of technological growth was taken by Akshay Garkel, Partner & Leader Cyber at Grant Thornton Bharat LLP.

Demystify the Ind AS /IFRS - A digital training on practical aspects

In this Demystify the Ind AS /IFRS - A digital training on practical aspects conducted on 23rd, 24th, 25th, 26th & 27th August 2021, where the Income and Expenses was discussed by Hansraj Jangir at Grant Thornton Bharat, Assets and Liabilities was taken by Sriram Gopalakrishnan, Partner and Head of IFRS at RSM Kuwait. Monish Sharma, Director at Sudit K Parekh & Co LLP shared his insights on Group Accounts, Presentation and Disclosures was discussed by Pratiq Shah, Partner at Deloitte Haskins & Sells LLP, Purvi Rathod at Grant Thornton Bharat spoke upon Financial Instruments and foreign exchange which received a lot of attention from the audience.

Internal Auditing - A Virtual Training Course

In this Internal Auditing - A Virtual Training Course scheduled on 6th, 7th, 8th, 9th & 10th September 2021, where Fundamentals of Auditing was discussed by Mohit Gupta, Partner - Governance, Risk, Resilience and Compliance at Mazars in India, whereas, Internal Auditing session was taken by Saket Mehra, Partner at Grant Thornton Bharat. Giridhar Janardana, Partner at BlueRidge Consulting Services spoke upon Risk Based Auditing & Internal Controls, Writing effective Audit Reports was explained by Sidheshwar Bhalla, Partner & National Leader GRRC at Mazars India LLP President IIA Delhi Chapter | Secretary IIA India, Last session on Cyber and IT Auditing was taken by Rohit Bharath Das, Associate Partner at Grant Thornton Bharat.

Workshop on Data Privacy, Digital Forensics and Cyber Investigations

In this Workshop on Data Privacy, Digital Forensics and Cyber Investigations scheduled on 14th, 15th, 16th & 17th September 2021. Data Privacy was discussed by Kartikeya Raman, Director at Grant Thornton Bharat LLP, Legal Implications of India's Data Protection & Privacy Bill was taken by Simrat Kaur, Associate Partner at LexOrbis. Swapnali Gawde, Associate Director at PwC India, Satish Garla, Associate Director at PwC India Digital Forensics & eDiscovery & Amulya Podile Pepalla, Manager at PwC India jointly shared their insights on Digital Forensics, Session on Redefining Cyber Crime was taken by Akshay Garkel, Partner & Leader Cyber at Grant Thornton Bharat LLP.

PAST EVENTS AND ACTIVITIES

Certificate Course on International Tax

In this Certificate Course on International Tax scheduled on 14th, 16th, 21st, 23rd, 28th, 30th September 5th & 7th October 2021, where the Introduction to International Tax was given by Shashishekhar Chaugule, Partner, Tax & Regulatory services at Desai Haribhakti & Co, International Tax Treaties were discussed by Deepika Kothari, Chartered Accountant & Aditya Jain, Chartered Accountant. Session on Double Taxation Avoidance Agreements was taken by Ramesh Ravisankar, Chartered Accountant & Prashanth Bala, Chartered Accountant, Prashant Maheshwari, Partner at EY shared his insights on International Tax Planning. Session on BEPS and MLI was taken by Girish Sundar, Chartered Accountant Rajneesh Verma, Associate Partner at BSR & CO LLP spoke upon Guiding Concepts of Transfer Pricing, Last session on Penalties and Dispute Resolution was taken by Vidur Puri, Senior Partner at SCV & Co. LLP.

Virtual Conference on Insolvency and Bankruptcy Code in India (IBC)

In this Virtual Conference on Insolvency and Bankruptcy Code in India (IBC) scheduled on 5th, 7th, 12th, 14th, 19th & 23rd October, 2021, Here, Overview of Insolvency and Bankruptcy Code, 2016 ("IBC/ Code") In India was given by NPS Chawla, Associate Partner at Vaish Associates Advocates & Surekh Kant Baxy, Senior Associate at Vaish Associates Advocates, IBC process from different perspectives were explained by CA. Anil Goel, Founder Chairman at AAA Insolvency Professionals LLP. Himanshu Srivastava, Partner, Business Advisory Services & Head - Japan Practice at ASA & ASSOCIATES LLP shared his insights on Liquidation (including Voluntary Liquidation), Fast track Insolvency Resolution Process and Personal Insolvency, Forensic / Transactional Auditing under the Code was taken by Gaganpreet Puri, Managing Director, Risk & Regulatory Leader at Alvarez & Marsal. Surekh Kant Baxy, Senior Associate at Vaish Associates Advocates shared his insights on Drafting and other issues. Defending / formulating strategies. Prashant Kumar, Principal Associate at Dua Associates gave the (60 Minutes) Presentation whereas, Adwaita Sharma, Advocate and Secretary at UNCITRAL National Coordination Committee India (UNCCI) as a Moderator along with her Panelists Shreyas Jayasimha, Advocate | Arbitrator | Mediator at Aarna Law (India) & Simha Law (Singapore), Sajeve Deora, Director at Integrated Capital Services & Satwinder Singh, Partner at Vaish Associates Advocates shared their views on Cross Border Insolvency/ Group Insolvency/ Pre Packs.

Virtual Conference on GST, Customs and International Trade

In this Virtual Conference on GST, Customs and International Trade conducted on 26th, 27th, 28th, 29th & 30th October & 1st November, 2021. Here, Sessions on Emerging Issues in GST instigating Litigation was discussed by Saket Patawari, Executive Director, Indirect Tax at Nexdigm (SKP), Refunds under GST was explained by Sanjay Chhabria, Director, Indirect Tax at Nexdigm (SKP).

Yogesh Gaba, Managing Partner- Indirect Tax at GABA & CO. shared his insights on Lucrative Customs Schemes and Litigation under Foreign Trade Policy, Session on Appeal, Revision, Offence, Penalty, Inspection, Search, Seizure, and Arrest in GST was taken by Ruturaj Bhide, Principal at Dhruva Advisors LLP. Kulraj Ashpnani, Principal at Dhruva Advisors LLP spoke upon Customs & Foreign Trade Policy, whereas last session was taken by Dharnendra Kumar Rana, Partner at NITYA Tax Associates & Sourabh Kumar, Managing Associate at NITYA Tax Associates.

Upcoming Events – 2021

Certificate Course on Practical Knowledge of Arbitration and Dispute Resolution

9th November 2021 – Session 1 | **10th November 2021** – Session 2 |
11th November 2021 – Session 3 | **12th November 2021** – Session 4 |

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Hands on Digital Training on Drafting Commercial Contracts

11th November 2021 – Session 1 | **16th November 2021** – Session 2 |
18th November 2021 – Session 3 | **23rd November 2021** – Session 4 |
25th November 2021 – Session 5 | **30th November 2021** – Session 6

Know more

Demystify the Ind AS /IFRS - A digital training on practical aspects- 2nd Edition

15th November 2021 – Session 1 | **17th November 2021** – Session 2 |
19th November 2021 – Session 3 | **22nd November 2021** – Session 4 |
24th November 2021 – Session 5 | **26th November 2021** – Session 6 |
29th November 2021 – Session 7 | **1st December 2021** – Session 8 | **3rd December 2021** – Session 9 | **4th December 2021** – Session 10

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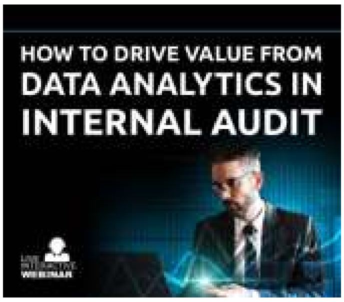

How to drive value from Data Analytics in Internal Audit

23rd November 2021 – Session 1 | **24th November 2021** – Session 2 |
25th November 2021 – Session 3 | **26th November 2021** – Session 4

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Upcoming Events – 2021

Virtual Session on Labour Codes - Key Issues and recent Amendments- 3rd Edition

1st December 2021 – Session 1 **|** **2nd December 2021** – Session 2 **|** **3rd December 2021** – Session 3 **|** **4th December 2021** – Session 4

[Know more]

Mitigating Risk and Fraud in Procurement

7th December 2021 – Session 1 **|** **8th December 2021** – Session 2 | **9th December 2021** – Session 3 | **10th December 2021** – Session 4

[Know more]

Virtual Training on Mergers and Acquisitions

7th December 2021 – Session 1 **|** **8th December 2021** – Session 2 | **9th December 2021** – Session 3 | **10th December 2021** – Session 4

[Know more]

Competition Law- Refresher Course with Focus on Contemporary Issues

13th December 2021 – Session 1 **|** **14th December 2021** – Session 2 | **15th December 2021** – Session 3 | **16th December 2021** – Session 4

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