



The Institute of Chartered Accountants of India

(Setup by an Act of Parliament)

Ahmedabad Branch (WIRC)

E-NEWSLETTER



MAY 1

GUJARAT DAY

Volume: 11 | ISSUE NO: 03 | May-2024

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# Index

Sr. No.	Particular	Page
01	Chairman's Message	03
02	Editorial	05
03	RBI Updates	06
04	NFRA - An Independent Audit Regulator	08
05	Provision of Tax Deducted at Source From Rent – Section 194 I	12
06	Channelize the 45-Day MSME Payment Rule:	14
07	Indian Labour Laws - Termination & Severance Pay!	16
08	Driving Economic Growth:	18
09	Notices Under GST Act:	20
10	Everything About Gold From An Income Tax Perspective	23
11	Pre Shipment Export Finance :	25
12	The Ramayana: Ancient Wisdom for Modern Day Battles	28
13	The Verdict Under Scrutiny:	30
14	Media Gallery	36
15	Event in Images	37

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Dear Esteemed Members,  
I hope this message finds you in good health and high spirits. As we step into the vibrant month of May, I am pleased to share with you the latest updates and highlights from the Ahmedabad Branch of ICAI.

April was a month filled with enriching activities and insightful events that brought our community together, fostering collaboration, learning, and growth. From seminars to training programs, each initiative aimed to elevate our profession and empower our members with knowledge and skills to navigate the evolving landscape of the profession.

1. **Seminar on Future of Internal Audit And Enterprise Risk Management (06.04.2024):** I express our heartfelt gratitude to Vikas Jain, Chairman for the Members In Industry committee, for spearheading an insightful seminar on the evolving landscape of internal audit and enterprise risk management. The event provided invaluable insights into the future trajectory of these critical aspects of our profession.
2. **WICASA Change Over Ceremony (07.04.2024):** Congratulations to the newly elected team of WICASA – Ahmedabad led by Chairman WICASA, CA Rinkesh Shah. I am Quite confident that new team will keep of WICASA activities up to the mark by achieving newer heights.

3. **Members' Meet (10.04.2024):** A sincere thank you to all our esteemed members who actively participated in the enriching members' meet with our President CA Ranjeetkumar Agrawal and Vice President CA Charanjot Singh Nanda. This event became more remarkable with presence of Gujarat CM Bhupendrabhai Patel. I am thankful to CA Aniket Talati immediate Past President ICAI and CA Purushottam Khandelwal CCM for making this event memorable.
4. **Seminar on Outsourcing - Opportunities And Issues (19.04.2024):** I congratulate CA Rinkesh Shah, Chairman of the Ind AS, Accounting, and Auditing committee, for penal discussion on outsourcing opportunity where more than 250 CA participated, the seminar was shedding light on the myriad opportunities and challenges surrounding outsourcing. The seminar provided a comprehensive understanding of this evolving aspect of our profession.
5. **2 Days Training Programme for Economic Offence Wing of Gujarat Police on Financial Crime Investigation (19 & 20.04.2024):** Kudos to the unwavering efforts of CA Aniket Talati, Immediate Past President ICAI, and CA Purushottam Khandelwal CCM for organizing a highly beneficial training program aimed at enhancing financial crime investigation skills. Your dedication is truly commendable.
6. **Seminar on Peer Review (20.04.2024):** This was the event which was need of an hour as many firms are under Peer review. The event offered valuable insights into maintaining and upholding quality standards within our profession, fostering excellence and credibility.
7. **संवाद Viksit Bharat@2047 (20.04.2024):** The संवाद Viksit Bharat@2047 event was indeed thought-provoking where Finance Minister of Government of India Smt. Nirmala Sitharaman highlighted the upcoming steps of Government for journey towards Vikshit Bharat 2047, and I extend my gratitude to all



participants for their invaluable contributions. Together, we envision a brighter future for our beloved nation.

**8. One Day Conference on Insolvency And Bankruptcy (27.04.2024):** Special commendations to CA Sunit Shah, Secretary, and CA Ajnali Choksi, Chairperson of the Insolvency study group, for organizing a highly successful conference addressing critical issues in insolvency and bankruptcy. Your efforts have significantly contributed to the advancement of our profession.

I extend my heartfelt gratitude to all the committee members, volunteers, and participants who dedicated their time and efforts to make these events a resounding success. Your commitment and enthusiasm are truly commendable and serve as a testament to the strength and unity of our community.

As we look ahead, let us continue to strive for excellence in everything we do. Let us embrace new challenges with courage and determination, knowing that together, we can

overcome any obstacle and achieve remarkable success.

#### Upcoming Events for May

3rd May - Seminar on GST

4th May - Seminar on Financial Reporting under Schedule III & Accounting

6th May - Seminar on Valuation

11th May - Changes in ITR forms & Drafting of Appeals.

18th May - Use of IT & Forensic Tools.

25th May - Seminar on Capital Markets.

27th - 28th - 29th May - Three days GST Series

I encourage all members to actively participate in upcoming events, engage in meaningful discussions, and continue to contribute to the growth and prosperity of our profession.

Thank you for your unwavering support and dedication. Together, let us make May another month filled with inspiration, achievement, and progress.

#### CA Sunil Sanghvi

Chairman, ICAI - Ahmedabad Branch (WIRC)



Happy  
Gujarat Day





## Editorial



Dear Esteemed Members and Readers,  
As we step into the new financial year 2024-25, I trust you have meticulously planned your financial and professional targets. Welcome to the latest edition of the Ahmedabad Branch newsletter, where our aim is to provide you with a rich tapestry of insights and knowledge from the realms of accountancy and finance.

In this issue, we are delighted to present a diverse collection of articles crafted by esteemed professionals, spanning a broad spectrum of topics pertinent to our field. We extend our heartfelt gratitude to all the contributors who have generously shared their expertise and perspectives, enriching our community with invaluable insights. We are also excited to extend an invitation to fellow members to contribute articles for upcoming editions of our newsletter. We believe in fostering a culture of knowledge exchange and continuous learning within our community, and your contributions play a pivotal role in achieving this goal.

Here's a sneak peek into the thought-provoking articles featured in this edition:

1. Channelize the 45-Day MSME Payment Rule: Insights into Section 43B(h) and its Implications by CA Swati Panchal
2. Everything about Gold from an Income Tax Perspective by CA Dainik Gohel
3. From the RBI by Mayur Modha
4. Indian Labour Laws - Termination & Severance Pay! by CA Kankshil Parikh
5. NFRA - an independent audit regulator

by CA Parag Raval

6. NOTICES UNDER GST ACT MODES, TYPES OF NOTICES, COMMON AREAS OF ISSUES by CA Tarjani Shah
7. Pre-Shipment Export Finance: Intricacies / Some issues and Running Account Packaging Credit by Rahul Sharma
8. PROVISION OF TAX DEDUCTED AT SOURCE FROM RENT by CA Ajit Shah
9. The Ramayana Ancient Wisdom for Modern Day Battles by CA Kirangi Kansara
10. Driving Economic Growth: Leveraging Professional Expertise in Personal Guarantor Insolvency Resolution under the IBC by CA Jigar Bhatt
11. The Verdict Under Scrutiny: The Saga of Madras High Court Decision for GST on Hostels by CA Yash Shah

We trust that these articles will prove both informative and thought-provoking, igniting fresh ideas and insights in your professional journey. We eagerly anticipate your continued support and contributions as we endeavor to make our newsletter a platform for knowledge sharing and professional growth.

***In our ongoing pursuit of excellence, we invite all members to contribute articles on various aspects of professional development and other matters of interest. Additionally, if any member has received social recognition or accolades, please do not hesitate to inform us. We are keen to publish relevant content that adds value to our profession.***

Please feel free to reach out to the Newsletter Committee with your article submissions or ideas for future editions. Together, let us uphold the highest standards of professional excellence and knowledge sharing within our esteemed community.

Thank you once again for your invaluable contributions and steadfast support.  
Warm regards,

**CA Rinkesh Shah**

Editor and Chairman, Newsletter Committee  
ICAI-Ahmedabad (WIRC)





## RBI Updates



**Contributed by:  
CA. Mayur Modha**



**भारतीय रिज़र्व बैंक**  
**RESERVE BANK OF INDIA**

In the month of April-2024, the Monetary Policy Committee (MPC) in its meeting on April 5, 2024 following point has been decided:

- Keep the policy repo rate under the liquidity adjustment facility (LAF) unchanged at 6.50 per cent.
- Consequently, the standing deposit facility (SDF) rate remains unchanged at 6.25 per cent and the marginal standing facility (MSF) rate and the Bank Rate at 6.75 per cent.

The MPC also decided to remain focused on withdrawal of accommodation to ensure that inflation progressively aligns to the target, while supporting growth. These decisions are in consonance with the objective of achieving the medium-term target for consumer price index (CPI) inflation of 4 per cent within a band of +/- 2 per cent, while supporting growth.

There are various Master directions, Master circulars, notifications issued by RBI, Summary and brief understanding of few of them are as under:

**Date of issue:** 15.04.2024

**Master directions/ Master circulars/ notifications No.:** RBI/2024-25/16

DoR.RET.REC.12/12.01.001/2024-25

**Applicability:** All Commercial Banks

**Brief understanding: IMS Project Implementation - Submission of Statutory Returns (Form A, Form VIII and Form IX) on CIMS Portal:**

Following the launch of Reserve Bank's next generation data warehouse, viz., the Centralised Information Management System (CIMS), it has been decided to shift the

submission of Form A, Form VIII and Form IX Returns from the XBRL Portal to the CIMS Portal. Banks shall, accordingly, submit the fortnightly Form A Return from the Reporting Friday June 14, 2024, monthly Form VIII Return from May 2024 and the annual Form IX Return from December 31, 2024 respectively on the CIMS Portal only.

Banks shall continue to submit Form A & Form VIII both on XBRL as well as CIMS portals concurrently till the date/month indicated above.

**Date of issue:** 15.04.2024

**Master directions/ Master circulars/**

**notifications No.:** RBI/2024-25/18

DOR.STR.REC.13/13.03.00/2024-25

**Applicability:** All Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks, excluding Payments Banks)

All Primary (Urban) Co-operative Banks, State Co-operative Banks and Central Co-operative Banks

All Non-Banking Financial Companies (including Housing Finance Companies)

**Brief understanding: Key Facts Statement (KFS) for Loans & Advances:**

As announced in the Statement on Developmental and Regulatory Policies dated February 8, 2024, it has been decided to harmonize the instructions on the subject. This is being done in order to enhance transparency and reduce information asymmetry on financial products being offered by different regulated entities, thereby empowering borrowers for making an informed financial decision. The harmonised instructions shall be applicable in



cases of all retail and MSME term loan products extended by all regulated entities (REs).

1. REs shall provide a KFS to all prospective borrowers to help them take an informed view before executing the loan contract, as per the standardised format given in the Annex A to this circular. The KFS shall be written in a language understood by such borrowers. Contents of KFS shall be explained to the borrower and an acknowledgement shall be obtained that he/she has understood the same.
2. Further, the KFS shall be provided with a unique proposal number and shall have a validity period of at least three working days for loans having tenor of seven days or more, and a validity period of one working day for loans having tenor of less than seven days.
3. The KFS shall also include a computation sheet of annual percentage rate (APR), and the amortisation schedule of the loan over the loan tenor. APR will include all charges which are levied by the RE. Illustrative examples of calculation of APR and disclosure of repayment schedule for a hypothetical loan are given in Annex B and C respectively to this circular.
4. Charges recovered from the borrowers by the REs on behalf of third-party service providers on actual basis, such as

insurance charges, legal charges etc., shall also form part of the APR and shall be disclosed separately. In all cases wherever the RE is involved in recovering such charges, the receipts and related documents shall be provided to the borrower for each payment, within a reasonable time.

5. Any fees, charges, etc. which are not mentioned in the KFS, cannot be charged by the REs to the borrower at any stage during the term of the loan, without explicit consent of the borrower.
6. The KFS shall also be included as a summary box to be exhibited as part of the loan agreement.

#### Exemptions:

Credit card receivables are exempted from the provisions contained under this circular.

#### Applicability and Commencement:

All new retail and MSME term loans sanctioned on or after October 1, 2024, including fresh loans to existing customers, shall comply with the above guidelines in letter and spirit without any exception. During the interregnum, the relevant provisions on 'KFS/Factsheet' under the extant guidelines shall continue to remain applicable, including the 'Guidelines on Digital Lending', the Master Direction on 'Regulatory Framework for Microfinance Loans', and the circular on 'Display of Information by Banks'.



## HAPPY GUJARAT DAY

Let's celebrate and take the culture, traditions and customs of Gujarat ahead



## NFRA - An Independent Audit Regulator



**Contributed by:  
CA. Parag Raval**

The National Financial Reporting Authority (NFRA) is a statutory body notified on 1<sup>st</sup> October 2018 under Section 132 of the Companies Act, 2013. The main objective of NFRA is to protect public interest and the interests of investors, creditors and others associated with companies or bodies

corporate by establishing high-quality standards of accounting and auditing and exercising effective oversight of accounting functions performed by the companies and bodies corporate and auditing functions performed by the auditors.

### Why NFRA?

1. It was experienced at various forums that the existing regulatory apparatus provided under the Chartered Accountants Act, of 1949 was unable to maintain required discipline and accountability amongst Chartered Accountancy professionals due to the challenges posed by self-regulation of the profession.
2. The Standing Committee on Finance-Companies Bill 2009, while discussing the role of auditors, discussed the need for establishment of an independent audit regulator.
3. The Companies Law Committee Report, 2016, highlighted unsatisfactory oversight over the profession prior to establishment of NFRA.
4. The Hon'ble Supreme Court of India vide its judgment dated 23 February 2018, in the matter of S. Sukumar vs The Secretary, Institute of Chartered Accountants of India & Ors., stated that the Union of India should consider appropriate legislation and mechanism for oversight of profession of auditors on the lines of Sarbanes-Oxley Act, 2002.

5. Therefore, in line with the global trend of regulatory shift from self-regulatory organisations to an independent regulatory and oversight body, the Parliament, after due deliberation and on the recommendations of various expert committees, created an independent regulatory body with the establishment of NFRA in terms of section 132 of the Companies Act, 2013.

### Who are covered under NFRA:

Rule 3 of NFRA Rules 2018, provides for the companies and class of companies over which NFRA has jurisdiction. The Rule states that NFRA shall have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service under sub-section (2) of section 132 of the Companies Act, 1932 or undertake investigation under sub-section (4) of such section of the auditors of the following class of companies and bodies corporate, namely:-

- a) companies whose securities are listed on any stock exchange in India or outside India;
- b) unlisted public companies having paid-up capital of not less than Rs. 500 Cr. or having annual turnover of not less than Rs. 100 Cr. or having, in aggregate, outstanding loans, debentures and deposits of not less than Rs. 500 Cr. as on the 31st March of immediately preceding financial year;
- c) insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act;
- d) any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the Authority by the Central Government in public interest; and
- e) a body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred





to in clauses (a) to (d), if the income or net worth of such subsidiary or associate company exceeds 20% of the consolidated income or consolidated net worth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).

### **Powers & Functions of NFRA :**

As per Sub Section (2) of Section 132 of the Companies Act, 2013, notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall-

- (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
- (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
- (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
- (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

NFRA shall-

- (a) have the power to investigate, either suo motu or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949 (38 of 1949):

Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;

(b) have the same powers as are vested in a civil court under the Code of Civil

Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely: -

- (i) discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority;
  - (ii) summoning and enforcing the attendance of persons and examining them on oath;
  - (iii) inspection of any books, registers and other documents of any person referred to in clause (b) at any place;
  - (iv) issuing commissions for examination of witnesses or documents;
- (c) Where professional or other misconduct is proved, have the power to make order for-
- (A)** imposing penalty of-

I. not less than Rs. 1,00,000/-, but which may extend to five times of the fees received, in case of individuals; and

II. not less than Rs. 5,00,000/-, but which may extend to ten times of the fees received, in case of firms;

**(B)** debarring the member or the firm from-

I. being appointed as an auditor or internal auditor or under taking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or

II. performing any valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years as may be determined by the NFRA.

Explanation.--- For the purposes of this sub-section, the expression "professional or other misconduct" shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949 (38 of 1949).





### Auditors – Be vigil:

1. In course of discharge of its statutory functions, NFRA has noticed that auditors are not fulfilling their statutory responsibilities relating to reporting of fraud as mandated under the Companies Act, 2013 (CA 2013) read with the relevant Rules and the applicable Standards on Auditing (SAs).
2. The CA 2013, the Companies (Auditor's Report) Order (CARO) and the Standards on Auditing (SAs) place mandatory reporting obligations on auditors to report fraud and/or suspected fraud to the Central Government and the Board/Audit Committee.
3. Section 143 (12) of CA 2013 and related Rules places certain reporting obligations on the auditor, in relation to frauds:
 

*“Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed: ...”*
4. Rule 13 of the Companies (Audit and Auditors) Rules 2014, prescribes detailed steps that need to be followed by the auditor if he has **reason to believe** that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees. The auditor is required to report the matter to the Board or Audit Committee and to the Central Government in the form of a statement as specified in **Form ADT-4**.
5. Clause (xi) of Companies (Auditor's Report) Order, 2020 ((Additional matters to be reported in the Auditor's Report in terms of Order issued by the Central Government in exercise of powers u/s 143 (11) of the CA 2013.)) also requires auditors to make statements relating to reporting of fraud in his/her report.
6. Section 140 (5) of the CA 2013, contains consequences for auditors if they have acted, directly or indirectly, in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers. Under the section, the auditor shall also be liable for action under section 447 of CA 2013 apart from removal and debarment for a period of five years. In this regard, it is pertinent to note that the definition of fraud under section 447 of CA 2013 is wide and states that, “fraud” in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss” (emphasis supplied).
7. SA 240 ((Standard on Auditing 240, The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements (SA 240) )) -The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements-elaborately deals with the auditor's responsibilities relating to fraud in an audit of financial statements. The SA requires the auditor to maintain professional skepticism throughout the audit and states:
 

“12. In accordance with SA 200, the auditor shall maintain professional skepticism throughout the audit, recognizing the possibility that a material misstatement due to fraud could exist, notwithstanding the auditor's past experience of the honesty and integrity of the entity's management and those charged with governance.”
8. The guidance provided in paras A59-A66 of SA 240, details the Communications to Management, Those Charged with Governance (TCWG) and Regulatory and Enforcement Authorities regarding





reporting of the fraud/suspected fraud.

9. There is a misconception amongst some Auditors that resigning from an audit engagement absolves them of their reporting obligations relating to fraud and the consequences under CA 2013 for nonreporting of fraud.

In this regard, the Hon'ble Supreme Court of India in a recent judgment dated 03.05.2023 (Union of India and Another versus Deloitte Haskins and Sells LLP & Anr CRIMINAL APPEAL NOS.2305-2307 OF 2022), has held that the consequences of section 140 (5) of CA 2013 will be applicable also on those auditors who resign from their audit engagements without reporting fraud/suspected fraud. The Hon'ble Apex Court observed:

*"7.... Therefore, on true interpretation, even on resignation by an auditor of a company even during the enquiry/proceedings under section 140(5) or even prior to that, there shall not be any termination of the proceedings under section 140(5) as observed and held by the High Court. At the cost of repetition, it is observed that in a given case, an auditor, who in fact has, directly or indirectly, acted in a fraudulent manner, to avoid any further consequence under the second proviso to section 140(5), resigns to avoid any consequence under the second proviso to section 140(5), it cannot be permitted.*

*14...Acting in a fraudulent manner, directly or indirectly, by an auditor is a very serious misconduct and therefore the necessary consequence of indulging into such fraudulent act shall follow."*

10. Statutory Auditors are under a mandatory obligation to report fraud or suspected fraud if they observe

suspicious activities, transactions or operating circumstances in a company that indicate reasons to believe that an offence of fraud is being or has been committed against the company by its officers or employees. In such an event, the Statutory Auditor shall initiate the steps prescribed under Rule 13 of Companies (Audit and Auditors) Rules 2014 which begins with reporting the matter to the Board/Audit Committee within TWO days of his/her knowledge of the fraud.

In the case of reporting of a fraud involving or expected to involve individually an amount of rupees one crore or above, the Statutory Auditor fails to get any reply / observations from the Board/Audit Committee within 45 days, the Auditor shall forward a report in the specified form viz., ADT-4 to Secretary, Ministry of Corporate Affairs, Government of India.

11. The Statutory Auditor is duty bound to submit Form ADT-4 to the Central Government u/s 143 (12) even in cases where the Statutory Auditor is not the first person to identify the fraud/suspected fraud.
12. Resignation does not absolve the Auditor of his responsibility to report suspected fraud or fraud as mandated by the law.
13. The Statutory Auditor shall exercise his/her own professional skepticism while evaluating fraud, and need not be influenced by legal opinion provided by the Company or its Management.

#### **Disciplinary Orders:**

In pursuance of powers under section 132 (4), NFRA, passed the many disciplinary orders during the year. As at the end of March 2023, a total of 74 disciplinary cases were in progress at various stages of the disciplinary process.

*"Hard work never brings fatigue. It brings satisfaction."*

*– Leonardo da Vinci*





## Provision of Tax Deducted at Source From Rent – Section 194 I



**Contributed by:  
CA. Ajit C. Shah**

Section 194 I of the Income Tax Act, 1961, state as under:

*Any person, not being an individual or a Hindu Undivided Family, who is responsible for paying to (resident) any income by way of rent, shall, at the credit of such income to the account of the payee or at the time of payment thereof in*

*cash or by the issue of cheque or draft or by any other mode, whichever is earlier, deduct income tax there on at the following rates:*

**On and from 1<sup>st</sup> April, 2019 payment of rent paid Rate of tax is to be deducted TDS**

- If the amount of rent paid does not exceed Rs. 2,40,000 on any machinery or plant or Equipment 2%
- If the amount of rent paid does not exceed Rs. 2,40,000 on land or building (including Factory building) or furniture or fittings 10%

If an individual or Hindu Undivided Family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceeds, one crore rupees in case of business or fifty lakh rupees in case of profession, during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income tax under this section.

No deduction shall be made under this section where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate, referred to in Section 10(23FCA), owned directly by such business trust.

**Rent** means any payment, by whatever named called, under any lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any:

- Land; or
- Building (including factory building); or
- Land appurtenant to a building (including factory building); or
- Machinery; or

- Plant; or
  - Equipment; or
  - Furniture; or
  - Fittings,
- Whether or not any or all of the above are owned by the payee.

Where any income is credited to any account, whether called

'Suspense account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

As per Section 197A, if any person (other than Company or Firm) in receipt of rent has no taxable income, can supply Form No 15G / 15H for no deduction of tax.

### **Important clarification regarding Tax Deducted At Source (TDS)**

As per notification no 718 dated 22<sup>nd</sup> August, 1995 by Central Board of Direct tax following clarification are made for TDS under section 194I.

(1) For the use of Land or building, tenant is paying nonrefundable deposit, it will be considered as rent and Tax is to be deducted on that amount under section 194I. If the amount of deposit is refundable, no tax is to be deducted. If only interest is to be paid on this deposit, as per section 194A will apply and if amount of interest exceeds, tax is to be deducted.

(2) We have seen above that where housing charges are also to be considered as rent and tax is to be deducted on the amount of where housing charges.

(3) If the tenant has to pay municipal tax, land rent etc, for land or building, this payment is not to be considered as rent, hence no tax deduction is required.

(4) If rent is paid for land or building for using part of the property, then tax is to be deducted. As per notification no 4/2001 dated 2<sup>nd</sup> March, 2001, if owner of the property is receiving Rent in advance, and tax is to be deducted on that rent, it was difficult to get credit of tax deduction at source, that under which year this amount to be claimed? The following clarification are made in this notification.

- If an advance rent is paid for more than one financial year, tax deduction certificate is issued for





that amount, credit of this deduction of tax will be available on that base of Single certificate in the year of deduction.

- After an advance rent received, the owner of property has cancelled the agreement of rent, repaid the amount of advance rent or sold the property, and the amount of advance rent is transferred to new owner, new owner will get benefit of that amount of tax deducted in the year of transfer of the property.

As per notification no 4/2008 dated 28<sup>th</sup> April, 2008, it clarifies that tenant's payment of service tax on amount of rent is not considered as income of rent and there is no need of tax deduction on

this amount of service tax.

**Tax deduction under section 194IB:**

A person, individual or Hindu Undivided Family, who is not liable for tax audit, but if they pay rent per month of more than Rs. 50,000, they are liable to deduct tax on the amount of rent at the rate of 5%, which is applicable from 1<sup>st</sup> June, 2017.

Relief has been given to the tenant as under.

- There is no need to obtain Tax Deduction Number (TAN).
- Once in a year they can make the payment of TDS, it may be in the month of March.

It is advisable to be careful while paying rent, during the year.



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## Channelize the 45-Day MSME Payment Rule: Insights into Section 43B(h) and its Implications



**Contributed by:**  
**CA. Swati Panchal**

Micro, Small and Medium Enterprises (MSME) sector has emerged as a highly vibrant and dynamic sector of the Indian economy over the last five decades. MSMEs not only play crucial role in providing large employment opportunities at comparatively lower capital cost than large industries but also help in

industrialization of rural & backward areas, thereby, reducing regional imbalances, assuring more equitable distribution of national income and wealth. MSMEs are complementary to large industries as ancillary units and this sector contributes enormously to the socio-economic development of the country. 96% of the industrial units belong to small companies in the Indian economy. The small companies account for 40% of the nation's overall industrial production and 42% of all Indian exports. Small companies also offer various opportunities in the rural and urban areas of the country. The Indian economy generally experiences unemployment and small firms have helped increase the employment chances for the people.

In India, 7.56 lakh employment was created, home to 75,000 recognized start-ups, 12% cater to Information Technology services, 9% of the healthcare and life sciences, 7% to education, 5% to commercial and professional services and 5% to agriculture. Over the last six years, there has been a 110% yearly increase in the creation of jobs.

the year 2024-25 marks a significant milestone with the introduction of a new tax compliance guideline reshaping the dynamics between companies and small businesses. Under Section 43B(h) of the Income Tax Act, companies are now mandated to settle pending bills with MSMEs within 45 days to avoid additional tax burdens for the preceding fiscal year. This regulatory shift not only underscores the importance of financial prudence but also holds profound implications for business operations,

money circulation, the Indian economy, and the survival of SMEs and MSMEs.

### **Udyam Registration: Empowering MSMEs**

At the heart of this regulatory transformation lies the Udyam Registration, a digital platform established by the Indian government to streamline MSME registration processes. By replacing previous systems with a more efficient mechanism, Udyam Registration aims to empower MSMEs with easier access to credit, subsidies, and exemptions, thereby fostering a conducive environment for their growth and sustainability.

### **Impact on Business Dynamics: Catalyzing Financial Prudence**

Compliance with Section 43B(h) heralds a new era of financial prudence, driving companies to prioritize timely payments to MSMEs. This not only strengthens business relationships but also enhances money circulation in the market, fueling economic growth and fostering a vibrant business ecosystem.

### **Working Capital Dynamics: Optimizing Resource Utilization**

For businesses, adherence to payment timelines under Section 43B(h) holds profound implications for working capital management. By expediting supplier payments, companies can optimize working capital utilization, mitigate financial risks, and bolster operational agility, thereby enhancing their competitive edge in the market.

### **Unlocking Opportunities: Fostering Collaboration and Expansion**

Timely payments to MSMEs not only mitigate tax liabilities but also pave the way for fostering long-term partnerships and securing future orders. Udyam registered units can leverage compliance with Section 43B(h) as a strategic advantage, enhancing their credibility, and positioning in the market while driving sustainable growth and expansion initiatives.

### **Investment Options and Economic Impact: Driving Growth and Innovation**

Compliance with Section 43B(h) not only ensures regulatory adherence but also stimulates investment opportunities and innovation within the MSME sector. By fostering an environment conducive to business growth,





the regulatory framework catalyzes economic development, job creation, and wealth generation, thereby fortifying the foundation of the Indian economy.

**Building Trust and Reputation: Strengthening Stakeholder Confidence** Compliance with Section 43B(h) not only ensures regulatory adherence but also plays a pivotal role in building trust and reputation for Udyam registered units. Timely payments reflect positively on the integrity and reliability of businesses, fostering enduring relationships with customers, suppliers, and other stakeholders.

### **Challenges and Limitations for Indian SMEs and MSMEs**

While the introduction of Section 43B(h) under the Income Tax Act brings significant opportunities for businesses, it also presents several challenges and limitations, particularly for Indian SMEs and MSMEs:

**Cash Flow Constraints:** Adhering to the 45-day payment timeline may strain the cash flow of SMEs and MSMEs, especially if they rely on timely payments from larger companies to meet their own financial obligations.

**Regulatory Complexity:** Understanding and crossing the intricacies of tax compliance regulations can be daunting for small businesses with limited resources and expertise in financial matters. Compliance with Section 43B(h) may require additional administrative efforts and resources.

**Working Capital Impact:** The stringent payment timeline mandated by Section 43B(h) could adversely affect the working capital management of SMEs and MSMEs. Delayed payments from clients could disrupt their cash flow and hinder day-to-day operations.

**Survival Challenges:** For small businesses already grappling with market uncertainties and operational challenges, the additional pressure to comply with tax regulations may pose a threat to their survival. Non-compliance could result in financial penalties, further exacerbating their financial woes.

**Limited Bargaining Power:** SMEs and MSMEs, often operating on thin profit margins, may have limited bargaining power to negotiate favorable payment terms with larger corporations. Compliance with Section 43B(h) could further tilt

the balance of power in favor of larger entities, potentially impacting the competitiveness of small businesses.

**Impact on Growth and Expansion:** Strict adherence to payment timelines may divert resources and attention away from growth and expansion initiatives for SMEs and MSMEs. The focus on compliance may detract from strategic investments in innovation, technology adoption, and market expansion, limiting their long-term growth prospects.

**Access to Finance:** Non-compliance with tax regulations, including Section 43B(h), could adversely impact the creditworthiness of SMEs and MSMEs, making it challenging for them to access financing from banks and financial institutions for business expansion and working capital needs.

**Operational Disruptions:** Delays or disruptions in payment from clients due to compliance issues may lead to operational disruptions for SMEs and MSMEs, affecting production schedules, inventory management, and overall business continuity.

In crossing these challenges, SMEs and MSMEs must adopt proactive measures such as seeking expert guidance, leveraging digital tools for financial management, and exploring alternative financing options to ensure compliance with tax regulations while sustaining their growth and viability in the competitive business landscape. Collaborative efforts between government agencies, industry associations, and financial institutions are also essential in providing support and assistance to small businesses in meeting their regulatory obligations and driving sustainable growth.

**Conclusion: Driving Sustainable Growth Through Compliance:** In conclusion, compliance with Section 43B(h) of the Income Tax Act is imperative for Udyam registered units seeking to drive sustainable growth and foster economic resilience. By prioritizing timely payments to MSMEs, businesses can unlock a myriad of opportunities, fortify market positioning, and contribute to the vibrancy of the Indian economy. Embracing a proactive approach to tax compliance, leveraging Udyam Registration benefits, and fostering collaboration across the ecosystem are integral steps in navigating the evolving regulatory landscape and driving sustained growth in the dynamic business environment.



## Indian Labour Laws - Termination & Severance Pay!



**Contributed by:  
CA. Kankshil Parikh**

In today's ever-changing business world, layoffs are happening more often. This is because of many reasons like economic uncertainty, new technology, company restructuring, employee misconduct etc. This shows that companies are facing new challenges in staying flexible and competitive. It also makes people worry more about keeping their jobs, both for employers and employees.

Employer-employee engagement can end temporarily or permanently through various means, including:

- (a) Lay-off/Termination,
  - (b) Retrenchment,
  - (c) Voluntary retirement,
  - (d) Superannuation,
  - (e) Non-renewal of contract upon expiry, and
  - (f) Misconduct.
- etc.

In this article, we will specifically focus on (a) Lay-off/Termination and (b) Retrenchment and the rules/processes associated to it as per the Indian labour laws. In India, labour laws are enforced by both the Central Government and the State Governments. These laws, in many cases, provide more benefits to workers. Terms and conditions of employment, including those related to termination, are regulated under various acts such as the Industrial Disputes Act, 1947 ("ID Act"), the Model Standing Orders of the Industrial Employment (Standing Orders) Act, 1946, and the laws governing shops and commercial establishments enacted by individual States.

### How is Lay-off/Termination different from Retrenchment?

Lay-off/Termination is a broader term that encompasses various reasons for ending employment, while retrenchment specifically refers to layoffs due to redundancy or restructuring. Retrenchment typically involves

legal and procedural requirements to ensure fairness and compliance with labour laws, whereas termination can occur for a wider range of reasons and may or may not involve similar legal obligations depending on the circumstances.

### Rules of Lay-Off/Termination & Retrenchment

When an employee is terminated, the company (employer) usually pays a severance salary or a compensation to the employee for termination. But how much should the severance pay, or compensation be - a month's full salary (including allowances) or just the basic salary? Further, is it legally mandatory for the employer to pay compensation for termination?

The amount of severance payable to an employee usually depends upon the law that applies to them and/or the terms of their employment contract. It is important to note that severance pay is not mandatory for all employees under the current labour laws.

Currently, an employee can be governed under the central government's Industrial Disputes Act, the States' Shops and Establishments Acts or both. As the labour laws in force are old, an employee may or may not be covered under these laws - in India, 'workmen' class of employees is largely a protected category and the law prescribes certain protocols for effecting release of such class of workers. There are many conditions under Industrial Dispute Act and States' Shops and Establishments Act. However, employment contract of an employee prevails for payment of severance pay, if he/she is not covered under the ID Act or any of the other applicable legislation.

### Severance Pay as per Industrial Disputes Act, 1947

In India, employment laws and regulations may vary depending on the specific circumstances and the industry in which the employee works. For instance, assume an employee is covered under the Industrial Disputes Act, 1947. Under the ID Act, employees in certain types of establishments who have worked continuously for one year cannot be retrenched without:-

1. Serving one month's written notice explaining the reasons for termination/retrenchment, or providing





payment in lieu of such notice.

2. Providing retrenchment compensation equal to prescribed amounts. As per this Act, every employee who has been in continuous service for at least one year is entitled to retrenchment compensation. This compensation is calculated as 15 days of average pay for every completed year of continuous service or any part thereof in excess of six months (this does not apply to termination in cases of non-retrenchment).

Additionally, in cases of retrenchment, employers must fulfill additional administrative requirements. These may include adhering to the last-in-first-out principle, reviewing the seniority list of employees, obtaining prior approval for certain establishments, and providing notification for others.

The only scenario where the employer need not give notice is if misconduct is the cause for termination. However, the employee, in such circumstances, should have an opportunity to reasonably explain the charge against them prior to termination.

This act covers most employees/workers but has limited application to employees in managerial or supervisory roles. If an employee is not covered under any law, the severance pay will be governed by the employment contract. Each state has its own States' Shops and Establishments Act. The rules in the Act can vary from state to state. Hence, one needs to check the state laws that are applicable to them for severance pay. If an employee is covered under Industrial Disputes Act and/or States' Shops and Establishments Act, then rules under the Act will prevail over the employment contract.

### **Severance Pay as per Employment Contract**

If an employee is not governed under the current labour laws, the terms of severance pay is dictated by the employment contract. The severance package is equivalent to the notice period, which is normally in the range of 30 to 90 days unless there are special circumstances which are also governed by the contract.

### **Other Exit Benefits payable to an Employee Gratuity**

When an employee is terminated, he may be entitled to benefits other than severance pay. If the employee has worked for a minimum of five years, gratuity has to be paid under the Payment of Gratuity Act, 1972, if the employee is covered

under it.

### **Leave Encashment**

An employee is also entitled to leave encashment in addition to a severance package, as per the company's HR policy, which is subject to the States' Shops and Establishments Act of the relevant state, as applicable.

The formula for calculating such leave could differ from state to state. But if the employee is eligible for earned leave or privilege leave as per the respective States' Shops and Establishments Act - for instance, if an employee entitled to privilege leave is discharged by his employer before he had been allowed the leave, or if, having applied for and having been refused the leave, he quits his employment before he has been allowed the leave, the employer shall pay him full wage for the period of leave due to him.

### **New Labour Laws**

The government is planning to replace the current labour laws with new labour codes. The Parliament has passed these codes but the date of implementation of the new law has not been announced. Will anything change for employees regarding severance pay under the four new labour codes?

There is no change in position regarding the payment of severance pay to an employee. When the new labour codes come into effect, the severance pay would either be dictated by the applicable labour law (if an employee is covered under the law) or by the terms of the employment contract (if not covered under the law).

### **Termination v/s Retrenchment v/s Resignation/Constructive Dismissal – Consulting?**

The labour laws of the country are so stringent and quite employee friendly such that non-adherence to certain processes may land companies on the wrong side of the house – fighting legal battles with employees taking undue advantage. Here's where companies need professional consultants who have this kind of expertise. We 'Parikh Assurance' is one such company that helps with "Payroll and/or Labour Law Compliances and related policies to help you navigate your end-to-end HR processes & practices while complying with the labour laws of the country! A hassle-free end to end service to outsourced HR and compliances!



## Driving Economic Growth:

### Leveraging Professional Expertise in Personal Guarantor Insolvency Resolution under the IBC



**Contributed by:**  
**CA. IP. Jigar Bhatt**

In the ever-evolving landscape of financial regulations, the Insolvency and Bankruptcy Code, stands out as a cornerstone, providing a robust framework for resolving insolvencies in India. While much attention has been focused on corporate debtors, recent amendments have brought

personal guarantors into the spotlight, creating new avenues for professionals in the realm of insolvency advising. The provisions under the IBC now extend to personal guarantors to corporate debtors, offering a structured pathway for resolution by proposing a repayment plan.

The dynamic landscape of financial regulations, professionals wield a unique opportunity to not only apply their expertise but also catalyze economic growth through their guidance in the Insolvency Resolution Process for Personal Guarantors under the Insolvency and Bankruptcy Code ("IBC" or "Code"). As the IBC extends its provisions to personal guarantors to the corporate debtor, professionals are poised to play a pivotal role in navigating this evolving terrain. By leveraging their specialized knowledge and experience, they can facilitate the resolution of insolvencies, thereby revitalizing economic activities and fostering sustainable growth.

The process of preparing a repayment plan for personal guarantors under the code presents a significant professional opportunity for advisors specializing in financial restructuring and debt management. Regulation 10 of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Regulations, 2019 ("Regulation") mandates the preparation of a comprehensive statement of affairs for the guarantor, encompassing crucial financial details such as assets, liabilities, income, and creditor obligations. This statement forms the foundation for devising a robust repayment plan tailored to the guarantor's financial

situation. Section 105 of the code delineates the framework for developing the repayment plan, emphasizing collaboration between the debtor and the resolution professional. Advisors play a pivotal role in guiding debtors through this process, ensuring the inclusion of justifications, fee provisions, and other essential elements required for creditor acceptance. Additionally, Regulation 17 specifies the contents of the repayment plan, ranging from the repayment schedule and funding sources to the treatment of excluded assets and debts. Professionals adept in financial analysis and negotiation are well-equipped to navigate these complexities and craft comprehensive repayment plans that address the interests of both debtors and creditors.

The flexibility afforded by Section 105 and Regulation 17 allows for tailored solutions, including asset sales, debt reduction, and income allocation strategies. Advisors proficient in financial modeling and risk assessment can devise innovative approaches to maximize repayment efficiency while safeguarding the guarantor's financial stability. By providing strategic guidance and expertise throughout the repayment planning process, professionals have the opportunity to facilitate equitable resolutions that pave the way for financial recovery for the creditors and sustainable debt management for personal guarantors.

In the intricate process of preparing a repayment plan for personal guarantors under code, professionals have a pivotal role in navigating the multifaceted provisions outlined in Regulation 17. These provisions delineate the essential components that must be addressed within the repayment plan to ensure its viability and effectiveness in resolving the guarantor's financial obligations.

- 1. Term and Implementation Schedule:** Professionals need to carefully analyze the financial capabilities of the guarantor and develop a repayment schedule that aligns with their income streams and ability to repay debts. They must ensure that the term of the repayment plan is realistic and feasible, considering factors such as income stability and fluctuating expenses.





2. **Source of Funds:** Evaluate the available sources of funds for covering resolution process costs and prioritize these payments to maintain the integrity of the repayment plan. They must explore options such as personal savings, liquidation of non-essential assets, or potential financial assistance from family members or investors.
3. **Minimum Budget:** Considering the minimum budget required for the guarantor's living expenses and immediate family members, professionals should conduct a thorough assessment of their financial needs. They need to strike a balance between meeting essential expenses and allocating sufficient funds for debt repayment, ensuring financial stability throughout the repayment plan.
4. **Financing Requirements:** Identify the financing required for implementing the repayment plan, whether through bank loans, restructuring existing debts, or seeking investment opportunities. They should evaluate the feasibility of these financing options and negotiate favorable terms to support the successful execution of the plan.
5. **Business Operations:** If the guarantor owns a business, advisors should assess its viability during the repayment plan period and outline strategies for its continued operation. They must collaborate with the resolution professional to define the role and responsibilities concerning business management, ensuring alignment with the overall objectives of the repayment plan.
6. **Management of Funds:** Establish clear guidelines for the management of funds held for the repayment plan, considering factors such as investment opportunities, liquidity needs, and creditor priorities. They must ensure transparency and compliance with legal and regulatory requirements in handling these funds.
7. **Functions of Resolution Professional:** Delineate the functions and responsibilities of the resolution professional in supervising and implementing the repayment plan. They must facilitate effective communication and collaboration between the guarantor, resolution professional, and creditors to ensure seamless execution of the plan.
8. **Variation of Contract Terms:** Assess the feasibility and implications of varying onerous terms in contracts involving the guarantor. They should negotiate favorable terms with creditors to alleviate financial burdens and enhance the likelihood of successful plan implementation.
9. **Excluded Assets and Debts:** Conduct a thorough review of excluded assets and debts as covered under sub-section (14) and (15) of Section 79 of the code, to ensure clarity and prevent disputes during the repayment plan period. They must communicate these exclusions effectively to all stakeholders and address any concerns or discrepancies promptly.
10. **Discharge Conditions:** Finally, advisors need to outline clear and equitable terms and conditions for the discharge of the guarantor from their obligations. They should negotiate with creditors to establish reasonable criteria for discharge, considering factors such as debt repayment performance and compliance with the repayment plan.

Professional expertise plays a pivotal role in proposing a repayment plan that optimizes outcomes for both creditors and personal guarantors. By meticulously analyzing the financial capabilities of the guarantor, professionals can tailor a realistic repayment schedule aligned with income streams and expenses, ensuring feasibility and sustainability. Evaluating diverse funding sources, from personal savings to potential investments, maintaining plan integrity by prioritising all legal obligations and balancing essential expenses with debt repayment, professionals can secure financial stability for the guarantor throughout the plan. By establishing transparent fund management guidelines, delineating resolution professional roles, and negotiating favorable contract terms, professionals foster effective plan execution and creditor satisfaction.

In conclusion, the Insolvency and Bankruptcy Code presents a significant professional opportunity for Chartered Accountants and Insolvency Professionals to advise guarantors in the preparation of the repayment plans. By leveraging their expertise in financial management, strategic planning, and negotiation, professionals can craft repayment plans that not only facilitate the discharge of guarantors from their obligations but also to maximize realization for the creditors. This dual objective not only provides relief to guarantors but also enables them to restart economic activities, contributing to the overall growth and stability of the economy. As trusted advisors, professionals can play a crucial role in guiding guarantors through the intricacies of the repayment planning process, ultimately fostering financial recovery and revitalizing economic productivity.





## Notices Under GST Act:

### Modes, Types of Notices, Common Areas of Issues



**Contributed by:**  
**CA. Tarjani Shah**

GST notices—talk of the town, whether they are from AI, system-generated, or otherwise. Is ease of doing business truly ease of doing business? I wonder how. When the same notices are issued by two different departments, sometimes a matter already resolved by one department is questioned again by another investigator for the same reason. Or, it may be that, due to a mistake not on the taxpayer's part at all, a system-generated algorithm leads to the issuance of notices, and its response becomes a time-evolving process. Let's discuss the scope of notices in GST and the areas in which notices can be issued. In this article, we will talk about GST notices. Communication sent by GST Authorities to assessee is named as notice under GST. A notice can be called by different name. I.e. Show cause notice, demand notice, scrutiny notice etc.

another investigator for the same reason. Or, it may be that, due to a mistake not on the taxpayer's part at all, a system-generated algorithm leads to the issuance of notices, and its response becomes a time-evolving process. Let's discuss the scope of notices in GST and the areas in which notices can be issued. In this article, we will talk about GST notices.

Communication sent by GST Authorities to assessee is named as notice under GST. A notice can be called by different name. I.e. Show cause notice, demand notice, scrutiny notice etc.

#### VALID MODES OF SENDING GST NOTICES:-

Section 169 of the CGST Act states the different means of communicating the notices under GST. Taxpayers must note the different modes of getting notices can be as follows:

- 1) Hand-delivering
- 2) By registered post or a speed post or a courier
- 3) Communication to the email address

#### TYPES OF NOTICES UNDER GST LAW:-

Under the Goods and Service Tax Law, there are multiple situations where we encounter the provision for issuance of show cause notice.

Topics	Subject For The Notice	Brief About Notice
Registration	Denial of option to pay tax under composition scheme	Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under composition scheme, he may issue a notice.
	Amendment of Registration	Where the proper officer is of the opinion that the amendment sought is either not warranted or the documents furnished therewith are incomplete or incorrect, he may serve a notice requiring the registered person to submit his clarifications or additional documents.

- 4) Making it available on the GST portal
- 5) By publication in a regional newspaper

The taxpayer need not act upon the notice or communication if it is received in any other modes apart from what is notified by GST law from time-to-time.

#### SOME OF THE COMMON AREAS OF ISSUES ARE LISTED AS UNDER:

- Mismatch in details reported between GSTR-1, GSTR-3B & E-Way Bill portal.
- Differences in Input tax credit claims made in GSTR-3B vis-a-vis GSTR-2A/2B.
- Reversal of ITC invoking Rule 36(4) – Reversal of ITC to the extent not reflected in GSTR 2A.
- Difference in turnover between Monthly/Quarterly Return (i.e, GSTR-1 , GSTR-3B) and Annual Return (GSTR-9).
- ITC related to RCM shown under Table 4(A)(5) as "All other ITC" while filling GSTR-3B.
- Section 17(5) contains provisions related to blocked credits. If a taxpayer is eligible for such credit as per the provision, but is still considered in the general category, notices are issued to them. For example, motor vehicle credit is a blocked credit, but there are certain exceptions to this, like if you are in the business of driving school classes, you are eligible for that vehicle credit. However, system-generated notices will ignore this nature of business.
- Best judgment assessments for non-filers of returns.





Topics	Subject For The Notice	Brief About Notice
Cancellation of Registration	For cancellation of regular registration	<ul style="list-style-type: none"> <li>Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he shall issue a notice.</li> </ul>
	For rejection of application for revocation of cancellation of registration	<ul style="list-style-type: none"> <li>The proper officer shall, before passing the order, issue a notice requiring the applicant to show cause as to why the application submitted for revocation of cancellation should not be rejected.</li> </ul>
	For cancellation of provisional registration	<ul style="list-style-type: none"> <li>Where the particulars or information specified have either not been furnished or not found to be correct or complete, the proper officer will issue a show cause notice.</li> </ul>
Return	Notice to non-filers of Returns/Scrutiny Return	<ul style="list-style-type: none"> <li>A notice shall be issued, electronically, to a registered person who fails to furnish return under Section 39 or Section 44 or Section 45 or Section 52.</li> <li>Where any return furnished by a registered person is selected for scrutiny and in case of any discrepancy is observed by the officer then, he shall issue a notice to the said person in FORM GST ASMT-10.</li> </ul>
Refund	Rejection of refund claim	<ul style="list-style-type: none"> <li>Where any deficiencies are noticed in refund application, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically.</li> <li>He may ask him to file a fresh refund application after rectification of such deficiencies.</li> </ul>
Assessment	Assessment under Section 63 GST-ASMT-14	<ul style="list-style-type: none"> <li>If a taxable person fails to register when required, or if their registration is cancelled but they still owe taxes, the proper officer can estimate their tax liability for the relevant periods and issue an assessment order within five years from the specified date.</li> </ul>
Revision	Notice to person and order of revisional authority in case of revision	<ul style="list-style-type: none"> <li>Where the Revisional Authority decides to pass an order in revision under section 108 which is likely to affect the person adversely, the Revisional Authority shall serve on him a notice in FORM GST RVN-01.</li> </ul>
Audit	Section 65: - Audit by tax authorities (Notice regarding Conduct of the audit by tax authorities)	<ul style="list-style-type: none"> <li>Where it is decided to undertake the audit of a registered person in accordance with the provisions of Section 65, the proper officer shall issue a notice in FORM GST ADT01 in accordance with the provisions of the said section.A</li> </ul>





### **Show cause notice under Section 73,74,76 of the CGST Act, 2017**

- Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason, show cause notice can be issued under the Section 73,74,76.
- The basic differences between Sections 73, 74 and 76 are presented in the following table:

No.	Section 73	Section 74	Section 76
1.	No allegation of fraud, wilful mis-statement or suppression.	Allegation of fraud, Wilful mis-statement or suppression.	Collection of amounts by way of tax and not paying to the Government is sufficient to invoke this section.
2.	Show cause notice shall be issued within 2 years and 9 months from the due date of Filing of annual return.	Show cause notice shall be issued within 4 years and 6 months from the due date of Filing of annual return.	No time limit is prescribed for Issuance of SCN.
3.	The final order needs to be passed within the time limit of 3 years from the due date of filing of annual return or refund of input tax credit.	The final order can be passed within the time limit of 5 years from the due date of filing of annual return or refund of input tax credit.	The final order needs to be passed within 1 year from the date of issuance of SCN.
4.	Option for zero penalty is available when the disputed amount is other than self-assessed tax or any amount collected as tax. Penalty is 10% of tax liability or Rs.10,000/-whichever is higher.	No question of zero Penalty. Penalty will be imposed at 15%, 25%, 50% and also up to 100% of tax liability.	No question of zero Penalty. 100% of tax will be imposed as penalty.

### **Before Responding to Any Notice or Any Other Communication, The Taxpayer Must Ensure The Following:**

- Whether the notice is issued by the proper jurisdictional officer?
- Whether the officer who has issued the notice is empowered to do so?
- Whether the service of notice is valid?
- Whether notice issued is valid considering the statutory provisions and settled jurisprudence?

In the above article, we discussed the modes of the notices, the reasons for the notices, and important scenarios when a

notice can be received. Once a notice is served to the assessee, the taxpayer needs to assess the issues. Before answering the notice, it is necessary to consider a few aspects. However, there is a saying: "Be cautious before the flood actually comes." Therefore, before receiving notices, we need to assess a few important aspects, and even after receiving a notice, proper documentation checking and a detailed reply help us at all stages of litigation.

*“Labor Day is a time to honor the hard work and dedication of workers around the world. All labor that uplifts humanity has dignity.”*

*– Martin Luther King Jr.*



# Everything About Gold From An Income Tax Perspective



**Contributed by:**  
**CA. Dainik Gohel**

## Introduction:

In the current market, gold has become a hot topic of discussion, particularly as it recently reached a lifetime high. There's even speculation among experts that we might witness gold reaching a significant milestone of 1 lakh for 10 grams in the upcoming financial year. Views on this vary, but

one aspect that remains constant, especially in Indian culture, is the deep-rooted affection towards gold, particularly among parents or, more specifically, mothers.

In today's age, whether it's a religious festival, a wedding, an anniversary, or any form of celebration, it's almost customary for Indians to consider purchasing gold. This enduring tradition persists despite fluctuations in the market. Investing in gold has consistently been a preferred choice, given its historical trend of price appreciation over the past few years, even in adulthood. However, it's rare to find someone willing to sell their gold, even during financial hardships.

Yet, the landscape of gold investment has evolved, offering multiple avenues such as jewellery, bullion, sovereign gold bonds, Gold ETFs, and gold derivatives. My focus here, though, is to delve into everything about gold from a taxation perspective.

### Glimpse about Gold Control Act, 1968

The Gold Control Act, 1968 is a repealed act of the Parliament of India which was enacted to control the sale and holding of gold in personal possession. Back then, the Gold Control Act was a big deal because it gave the government control over almost every gold transaction. People had to get licenses just to buy or sell gold, and there were limits on how much you could own.

But times change, and so do the rules. The Gold Control Act was scrapped in 1990, opening up the gold market in India. Nowadays, while we don't have those strict old laws, there are still some rules around gold. Things like taxes on gold imports, GST, and quality standards for gold jewelry are reminders of the days when gold was heavily regulated. So even though the old Gold Control Act is history, its legacy

still lingers in today's gold market policies.

### Taxation on Gold:

As I said above, we can invest in gold in various forms. Briefly, we can say that below are the three categories in the gold in which we can invest :

1. Physical Gold (Jewellery, Bullion, etc.)
2. Paper Gold (Gold Exchange Traded Funds (ETFs), Gold Mutual Funds and Sovereign Gold Bonds (SGB))
3. Gold Derivatives

Before moving further, it's crucial to highlight a fundamental aspect of taxation: **the period of holding**. In the case of gold, the period of holding is typically 3 years. Gold held for less than 3 years falls into the short-term category, while those held for longer are classified as long-term assets. Understanding this distinction is vital for determining tax implications and planning investment strategies effectively.

### 1. Physical Gold

- For generations, physical gold in the form of jewellery, biscuits, ornaments, and coins has remained a beloved choice for Indians, symbolize both tradition and tangible wealth.
- When selling physical gold, it's important to note that long-term capital gains are subject to a 20% tax, along with a 4% cess, effectively totaling 20.8%. Short-term capital gains, on the other hand, are determined according to the individual's income slab.
- Here are some key points to consider:
  - ✓ Indexation benefit can be availed while calculating long-term capital gains, helping to adjust for inflation and potentially reducing taxes.
  - ✓ When purchasing physical gold, a Goods and Services Tax (GST) of 3% is applicable. However, opting for paper gold can result in GST savings.
  - ✓ One of the major drawbacks of physical gold is the need for storage and the relative lack of transactional convenience compared to paper gold.





## 2. Paper Gold

- Taxation on Gold ETFs and Mutual Funds mirrors that of physical gold. However, Sovereign Gold Bonds (SGB) follow a distinct taxation system.
- Profits from selling units of ETFs or mutual funds are considered capital gains.
- Like physical gold, long-term capital gains from ETFs and mutual funds are taxed at 20.8%, while short-term gains are subject to the individual's income slab.
- Opting for Sovereign Gold Bonds offers an additional benefit of earning 2.5% interest annually. This interest income falls under the category of "income from other sources" and is taxed according to the individual's income slab.
- Returns obtained upon maturity of SGBs are entirely tax-free.
- Most SGBs come with a lock-in period of 5 years. If you decide to sell before maturity, any returns are treated as long-term capital gains.
- Direct Investment in SGBs is not allowed for Non-Resident Indians.
- TDS provisions are not attracted to the interest earned from SGB's.

## 3. Gold Derivatives

- One more option for investment in gold is gold derivatives for the investors. Gold derivatives with gold as the underlying asset. Investment in derivative contracts through the commodities market attracts tax similar to the commodities F&O trading tax rate. "Income from such derivatives is termed as non-speculative business income, allowing investors to claim an expense against the income generated.
- In this scenario, investors have the option to opt for presumptive taxation, as provided for under Section 44AD of the Income Tax Act, 1961.

### Taxation on Gold Received as a Gift or an Inheritance

- The majority of individuals possess some amount of physical gold, often inherited or received as gifts from family members. There is no tax implication under income tax upon inheritance or receipt of gold from blood relatives. However, upon selling, one becomes liable to pay capital gains tax on it.
- To calculate the capital gains on gold, you need to determine the cost of acquisition. The cost of acquisition in the case of gold received as a gift or an inheritance is the cost of acquisition of the parent or relative from whom it has been inherited/gifted. It means that you need to consider the cost of the previous owner while taking the benefit of indexation.
- If the person from whom such gold was received as a gift or an inheritance had originally purchased the gold before 1 April 2001, there is an option to

consider the fair market value (FMV) as on 1 April 2001, instead of the actual cost of the said gold.

- However, in case a gift is received from a non-relative and the value is more than ₹50,000, then it will be taxed under the head of 'Income from other sources'.

### Section 69A and 115BBE of the Income Tax, Act

The Income Tax Act of 1961 contains another critical provision, Section 69A, which becomes particularly relevant when examining the tax implications of gold under the broader scope of income tax. Section 69A specifically addresses unexplained money, bullion, jewellery, and similar assets owned by any taxpayer. When an assessee or taxpayer claims ownership of such jewellery/bullion but lacks evidence of their inclusion in his/her books of accounts or fails to substantiate ownership through credible means, Section 69A comes into play.

Under Section 69A, the assets (i.e., gold) are subject to taxation as per the provisions of Section 115BBE of the Income Tax Act. This section imposes an effective tax rate of 78%, comprising a 60% tax component along with a 25% surcharge and a 4% cess.

### Exemption on LTCG of Gold:

Facing a flat 20% tax on long-term capital gains from gold investments may seem like unavoidable. However, investors have one option to evaluate to reduce their tax liabilities which is as below:

Under Section 54F, one option is to reinvest your LTCG into a residential property, provided all conditions of this section are met. By doing so, you can enjoy complete tax exemption on your earnings.

### Schedule AL Reporting in ITR:

- Individuals and HUFs with an annual income exceeding Rs 50 lakh must mandatorily file Schedule AL. Also, individuals and HUFs carrying on any business or profession are required to file details of assets and liabilities through a Balance Sheet.
- Schedule AL enables a taxpayer to disclose assets and the corresponding liabilities in the ITR filed by the taxpayer. The values of the assets and liabilities standing at the end of the year are required to be disclosed in the schedule AL.
- Hence, individuals/HUFs subject to Schedule AL must also report gold holdings within this schedule. It's crucial to note that failure to report gold holdings in the preceding financial year before a sale could trigger higher tax assessments and potential scrutiny or re-assessment by the assessing officer.

Therefore, individuals and HUFs should ensure accurate reporting in their ITRs before any gold transactions to avoid potential tax implications.



## Pre Shipment Export Finance : Intricacies / Some issues and Running Account Packaging Credit



**Contributed by:**  
**CA. Rahul Sharma**

**Pre Shipment Export Finance** – Financial assistance extended to the exporter from the date of receipt of the export order till the date of shipment is known as pre shipment credit. Such finance is extended for the purpose of procuring raw material, processing, packing, transporting, warehousing of goods

between the export order holder and the manufacturer.

### Pre – Shipment Credit in Foreign Currency (PCFC):

PCFC facility is granted to exporters in foreign currency for domestic and imported inputs of exported goods at LIBOR/EURO LIBOR/EURIBOR related rates. This is an additional window for providing pre shipment credit to Indian Exporters at Internationally competitive rates and applicable to only cash exports. The exporters will have following options to avail of export finance:

- Pre Shipment credit in rupees and then the Post Shipment credit either in rupees or discontinuing/ re discontinuing of export bills in foreign currency under (EBR) Abroad Scheme (dealt separately)
- Pre Shipment credit in foreign currency and discounted / re discounting of the export bills in foreign currency in the (EBR) Scheme.
- Pre Shipment credit in rupees and then converted draws into PCFC at the discretion of the bank.

meant for exports.

Pre Shipment Export Financing can be in the form of : Export Packing Credit (EPC) in rupees, Packing Credit in foreign currency (PCFC), Advance against government incentives covered under ECGC policy, Advance against receivables – Duty Drawback Scheme, Advance against cheques/ drafts received in advance of exports.

(RBI Master Circular DBOD No.Dir. (Exp). BC19/04.02.002/2014-15 dated July 1,2014)

### **Sharing of EPC under PCFC**

i. The rupee export packing credit is allowed to be shared between an export order holder and the manufacturer of the goods to be exported. Similarly, banks may extend PCFC also to the manufacturer on the basis of the disclaimer from the export order holder through his bank.

ii. PCFC granted to the manufacturer can be repaid by transfer of foreign currency from the export order holder by availing of PCFC or by discounting of bills. Banks should ensure that no double financing is involved in the transaction and the total period of packing credit is limited to the actual cycle of production of the exported goods.

iii. The facility may be extended where the banker or the leader of consortium of banks is the same for both the export order holder and the manufacturer or, the banks concerned agree to such an arrangement where the bankers are different for export order holder and manufacturer. The sharing of export benefits will be left to the mutual agreement

The facility may be extended in one of the convertible currencies viz. US Dollars, Pond Sterling, Japanese Yen, Euro, Operational flexibility is provided by extending PCFC in one convertible currency in respect of an export order invoiced in another convertible currency. The risk and cost of cross currency transaction will be that of the exporters. Banks are permitted to extend PCFC for exports to ACU countries. The applicable benefits to the exporters will accrue only after the realization of the export bills or when the resultant export bills are discounted on “Without Recourse” basis.

**Source of Funds for Banks:** Banks are permitted to utilize the foreign currency balance available with the bank in Exchange Earner Foreign Currency Account (EEFC), Resident Foreign Currency Account [RFC (D)] and foreign currency (Non Resident) Account Scheme, and the foreign currency balances available under Escrow account and Exporters Foreign Currency Account for financing the pre shipment credit in foreign currency. In addition, banks may arrange for borrowings (Line of





Credit) from abroad without RBI approval provided the rate of interest on the borrowing does not exceed 100 basis points over six months LIBOR/ EURO LIBOR/ etc. Banks may also avail lines of credit from other banks in India in case they are not in a position to raise loans from abroad subject to the condition that the ultimate cost to the exporter should not exceed 200 bps above LIBOR/EURO/EURIBOR etc.

**Spread:** In respect of export credit to the exporters at internationally competitive rates under the schemes of 'Pre shipment credit in foreign currency' (PCFC) and "Rediscounting of Export bills abroad" (EBR), banks are free to determine the interest rates on export credit in foreign currency with effect from May 5, 2012. Banks shall collect interest of PCFC at monthly interval against sale of foreign currency or out of balances in EEFC accounts or out of discounted value of the export bills if PCFC is liquidated.

**Period of Credit:** The PCFC would be determined on case to case basis and will be available for maximum period of 360 days. For extension of PCFC within 180 days, banks, banks are free to determine the interest rates on export credit in foreign currency with effect from May 5<sup>th</sup>, 2012. Further extension will be subject to the terms and conditions fixed by the bank concerned and if no export take place within 360 days, the PCFC will be adjusted at T.T. selling rate for the currency concerned.

**Disbursement of PCFC:** In case full amount of PCFC or part thereof is utilized to finance domestic input banks may apply appropriate spot rate for the transaction. Based on the operational convenience, banks may stipulate the minimum lots taking into account the availability of resources, etc.

## Liquidation of PCFC Account

### I. General

PCFC can be liquidated out of proceeds of export documents on their submission for discounting/rediscounting under the EBR Scheme detailed in para 6.1 or by grant of foreign currency loans (DP Bills). Subject to mutual agreement between the exporter and the banker, it can also be repaid / prepaid out of

balances in EEFC A/c as also from rupee resources of the exporter to the extent exports have actually taken place.

### ii. Packing credit in excess of F.O.B. value

In certain cases, (viz. agro based products like HPS groundnut, defatted & deoiled cakes, tobacco, pepper, cardamom, cashew nuts, etc.) where packing credit required is in excess of FOB value, PCFC would be available only for exportable portion of the produce.

### iii. Substitution of order/commodity

Repayment/liquidation of PCFC could be with export documents relating to any other order covering the same or any other commodity exported by the exporter or amount of balance in the EEFC Account. While allowing substitution of contract in this way, banks should ensure that it is commercially necessary and unavoidable. Banks should also satisfy about the valid reasons as to why PCFC extended for shipment of a particular commodity cannot be liquidated in the normal method. As far as possible, the substitution of contract should be allowed if the exporter maintains account with the same bank or it has the approval of the members of the consortium, if any.

### Cancellation/non-execution of export order

i. In case of cancellation of the export order for which the PCFC was availed of by the exporter from the bank, or if the exporter is unable to execute the export order for any reason, it will be in order for the exporter to repay the loan together with accrued interest thereon, by purchasing foreign exchange (principal + interest) from domestic market through the bank. In such cases, interest will be payable on the rupee equivalent of principal amount at the rate applicable to ECNOS at pre-shipment stage plus a penal rate of interest from the date of advance after adjustment of interest of PCFC already recovered.

ii. It will also be in order for the banks to remit the amount to the overseas bank, provided the PCFC was made available to exporter from the line of credit obtained from that bank.

iii. Banks may extend PCFC to such exporters subsequently, after ensuring that the earlier cancellation of PCFC was due to genuine reasons.



### Running Account Facility for all commodities

i. Banks are permitted to extend the 'Running Account' facility under the PCFC Scheme to exporters for all commodities, on the lines of the facility available under rupee credit, subject to the following conditions:

- a. The facility may be extended provided the need for 'Running Account' facility has been established by the exporters to the satisfaction of the bank.
- b. The PCFC will be marked off on the First in First Out (FIFO) basis. It can also be marked off with proceeds of export documents against which no PCFC has been drawn by the exporter.
- c. Bank should closely monitor the production of the firm order or LC subsequently by exporters and also the end use of funds. It has to be ensured that no diversion of funds is made for domestic use. In case of non utilization of PCFC draws for export purposes, the penal provisions stated above should be made applicable and the 'Running Account' facility should be withdrawn for the concerned exporter.
- d. Banks are required to take any prepayment by the exporter under PCFC Scheme within their foreign exchange position and Aggregate Gap Limit (AGL) that occur as indicated below. With the extension of 'Running Account' Facility mismatches are likely to occur for a long period involving cost to the banks. Banks may charge the exporters the funding cost, if any, involved in absorbing mismatches in respect of pre payment

beyond one month period.

- e. Banks may extend the facility only to those exporters whose track record has been good.
  - f. In all cases, where pre-shipment credit 'Running Account' facility has been extended, the LCs or firm orders should be produced within a reasonable period of time.
  - g. PCFC can also be marked-off with proceeds of export documents against which no PCFC has been drawn by the exporter.
  - h. Banks may arrange for borrowings from abroad. Banks may negotiate lines of credit with overseas banks for the purpose of grant of PCFC to exporters without the prior approval of the RBI, or may avail lines of credit from other banks in India if they are not in a position to raise loans from abroad on their own, provided the bank does not have a branch abroad. The spread between the borrowing and lending bank is left to the discretion of the banks concerned.
- ii. Banks should closely monitor the production of firm order or LC subsequently by exporters and also the end-use of funds. It has to be ensured that no diversion of funds is made for domestic use. In case of non-utilisation of PCFC draws for export purposes, the penal provisions stated above should be made applicable and the 'Running Account' facility should be withdrawn for the concerned exporter.





## The Ramayana: Ancient Wisdom for Modern Day Battles



**Contributed by:**  
**CA. Kirangi Kansara**

In the tapestry of human history, *the Ramayana*, written by Sage Valmiki to narrate the tale of Lord Rama's life, shines brightly as an ancient Indian epic full of timeless wisdom and deep insights. For those of us in today's corporate world, facing deadlines, office politics, and competition, the

Ramayana offers valuable guidance and inspiration. Its stories of characters dealing with moral dilemmas, leadership challenges, and conflicts reflect the struggles we encounter in our work lives.

In the busy world of today's corporate life, finding a balance between work and personal life is crucial. As we strive for success in our careers and also want to nurture our relationships and personal growth, the everlasting wisdom of the Ramayana guides us, giving us comfort, strength, and clarity during the challenges we face at work.

The main reason I chose to delve into this subject is that very few understand the crux of the Ramayana. Many focus only on acquiring superficial knowledge, merely scratching the surface of its deep teachings. Unfortunately, this often results in disconnect between understanding and application, as the wisdom gathered from the epic remains underutilized in practical life.

I am excited to embark on this journey of exploring each significant character and their story in the Ramayana from my perspective. While I am not an expert or a life coach, I am eager to delve into each character's story through my creative lens and share my insights in a series of articles. I don't have a detailed plan, but my curiosity and passion for the topic motivate me to uncover the wisdom within this epic tale. I pray to Lord Hanumanji to guide and inspire me along my destined path as I embark on this creative journey.

Every character in the Ramayana shows qualities, weaknesses, and experiences similar to ours, giving us important lessons and solutions for our own challenges. When we

carefully consider each character's actions and reasons, we uncover wisdom that helps us in our personal and professional lives. By connecting with the characters and their stories, we can find guidance to overcome difficulties and grow.

Let's kick off this exciting journey and explore what more we can learn from the characters discussed in this article as we continue reading further.

### **Maharshi Valmikiji : The Skilled Author of the Ramayana**

In the very core of the Ramayana, we find the brilliance of Maharshi Valmiki, a skilled storyteller whose careful writing still inspires people today.

To me, Maharshi Valmiki isn't just someone to admire; he's a guiding influence in my professional journey. As Chartered Accountants, we know how crucial it is to keep accurate records, be precise, and stay alert in our work. Similar to how Valmiki carefully wove together every part of the Ramayana, we also pay close attention to detail and excel in financial reporting. Whether it's documenting financial transactions or creating narratives about a company's financial journey, we're committed to maintaining high standards and following Standard Operating Procedures (SOPs). Just like Valmiki's vigilance in capturing every detail of the epic, we're diligent in examining financial data to ensure accuracy and honesty. The balance sheet, like the storyline of the Ramayana, tells a clear story that helps stakeholders understand the financial situation. With detailed explanatory notes, we offer valuable insights that help stakeholders navigate the complexities of financial matters. Absolutely, it's all about taking raw data and crafting it into compelling narratives that offer clarity and valuable insights for stakeholders. Let's continue to uphold the professionalism and dedication exemplified by Valmiki, ensuring that our work reflects these high standards. And this principle applies not just to our profession, but to any other as well.

### **The Eight Ministers of Ikshvaku King Dasharatha**

The eight Ministers under King Dasharatha's rule exemplify tact, skill, and a strong dedication to their kingdom's prosperity. Their profound understanding of scriptures informs their flawless execution of duties, while their



adeptness in gathering intelligence allows them to make proactive decisions. Renowned for their eloquence and expertise, they navigate complex political terrains with integrity, safeguarding state secrets, and advocating for the welfare of their people with unwavering determination.

In today's business world, it's crucial for the CEO's team to embody these qualities. Modern executives and their teams need to reflect these attributes to navigate the complexities of the corporate landscape successfully. This means carrying out their responsibilities with skill and integrity, ensuring that every decision and action aligns with the organization's goals and values.

Moreover, in an era marked by rapid change and fierce competition, the ability to anticipate market trends and emerging challenges is essential. By mastering intelligence-gathering techniques and staying ahead of industry developments, the CEO's team can identify opportunities and threats proactively, helping the organization to adapt and flourish in dynamic market conditions.

Furthermore, building trust and loyalty among stakeholders is vital for long-term success. Upholding moral integrity and ethical standards not only boosts the organization's reputation but also strengthens relationships with customers, employees, and partners. Safeguarding sensitive information and

maintaining transparent communication further contribute to establishing trust and credibility, which form the basis for sustained growth and prosperity.

Hence, if the CEO's team adopts the qualities of tact, skill, and dedication demonstrated by the ministers of Ikshvaku kings, they can effectively navigate challenges, foster innovation, and guide the organization toward long-lasting success in today's competitive corporate environment.

### To Conclude:

The timeless wisdom of the Ramayana still guides us through today's complexities, whether in our personal lives or corporate challenges. As we ponder Maharshi Valmiki's skill and the impressive qualities of King Dasharatha's ministers, we are reminded of how these ancient teachings continue to shape our journey.

Stay tuned as in the upcoming parts of this article series, we will delve into the rich array of characters and stories in the Ramayana, discovering valuable lessons that can motivate and strengthen us as we pursue growth and success. I would love to hear your thoughts and suggestions on the article, as well as which characters you would like me to delve into more deeply. Your input is valuable as we navigate through this exploration together.





## The Verdict Under Scrutiny: The Saga of Madras High Court Decision for GST on Hostels



**Contributed by:**  
CA. Yash Shah

The Madras High Court's recent ruling exempting hostels from Goods and Services Tax (GST) in the case of Thai Mookambikaa ladies hostel has stirred controversy, prompting scrutiny and debate amongst the industry members. The decision, hailed by some as a win for affordable lodging,

has left others skeptical, awaiting further clarity.

Amidst a legal clash over the interpretation of GST exemption clauses, hostel operators, primarily catering to female students and working women, found themselves at odds with the Tamil Nadu Authority for Advance Ruling (TN AAR). While the High Court's ruling favored hostel operators, questions linger regarding the definitions of 'residential dwelling' and the distinctions between hostels and hotels.

With the Supreme Court's potential intervention pending and the initiation of Special Leave Petitions (SLPs) looming, the fate of hostel operators and the broader hospitality sector hangs in the balance, underscoring the complexity of tax jurisprudence in the hospitality industry.

### □ **Facts**

**The motive:** In a bustling city, the Thai Mookambikaa Ladies Hostel emerges as a haven (a place that offers safety, shelter, or favorable opportunities) for college students and working women, offering comfortable accommodations and hearty meals amidst their academic and professional pursuits.

**Tariffs and Inclusivity:** The hostel welcomes residents with open arms, offering very reasonable monthly rates ranging from Rs. 1200/- to Rs. 6,500/-, ensuring affordability for individuals from various budget backgrounds & even including the individuals having high aims in their life but due to some financial constraints they have been unable to pursue.

**Cloud of Uncertainty:** Despite the harmony within the hostel, uncertainty looms as the management finds themselves entangled in a legal saga, seeking clarity on the applicability of Goods and Services Tax (GST) exemption on accommodation charges.

**Petition for Clarity:** Believing in the noble nature of their enterprise, the hostel's management approaches the Tamil Nadu State Appellate Authority for Advance Ruling, fervently arguing for GST exemption, emphasizing the essential services they provide to students and working women.

**Denied Exemption:** Despite passionate pleas, the Authority for Advance Ruling (AAR) and the Appellate Authority for Advance Ruling (AAAR) deny the exemption, citing intricate clauses within GST laws and deeming the petitioner ineligible.

**Financial Ramifications:** The denial of GST exemption places a significant burden on the hostel, adding extra taxes to accommodation charges and impacting operational costs and pricing structures, posing challenges for future endeavors.

**A reminder of Complexity:** The Thai Mookambikaa Ladies Hostel case serves as a poignant reminder of the complexities faced by small businesses in navigating tax laws, highlighting the resilience of the hostel amidst adversity.

### □ **The Petitioner's Arguments**

The petitioner, operating a residential hostel for boarding and lodging under Section 5 of the Tamil Nadu Hostels and Home for Women and Children (Regulation Act) of 2014, contends that the accommodation provided falls within the purview of a "hostel" as defined by the Hostel Regulation Act.

This definition distinctly separates hostels from hotels, as hostels primarily cater to long-term accommodation for students and working individuals, whereas hotels provide temporary lodging. Moreover, the petitioner emphasizes





that the hostel operates with a motive to offer safe residence at nominal charges, ensuring a clean environment without profit motives.

Furthermore, the petitioner highlights the legal distinction between a hostel and a hotel, drawing attention to the definitions provided by relevant legislation. While a hostel falls under residential regulations, a hotel is governed by commercial regulations.

The reference has been specifically made to Section 2(e) of the Tamil Nadu Hostels and Home for Women and Children (Regulation) Act, 2014, the term hostel or lodging house in common parlance is defined to mean a building in which accommodation is provided for women or children or both, either with boarding or not & hence it can be concluded that residential dwelling includes hostels.

Also, referring to Para 4.13.1 of the Service Tax Education guide issued by CBIC, the expression 'residential dwelling' has to be understood in terms of the normal trade parlance as any residential accommodation but does not include hotel, motel, inn, guest house, campsite, lodge, house boat, or like places meant for **temporary stay**.

Generally, renting a residential dwelling involves letting out any building or part of the building by a lessor to a person for rent towards the rental premises which form part of a house as kitchen, bedroom, living room, etc., overall, as a residence. Thus, an ordinary understanding of the term "residential dwelling" is one where people live treating it as a home.

The petitioner also underscores the significance of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act of 2017, asserting that the relationship between the hostel owner and the inmates constitutes a form of tenancy, with the inmates regarded as sub-tenants.

The petitioner relies on a series of legal precedents and case law to support their arguments:

- I. **Kishore Chandra Singh Vs Babu Ganesh Prasad Bhagat (AIR 1954 SC 316)**: The Supreme Court established that "residence" encompasses activities such as eating, drinking, and sleeping, irrespective of ownership.
- II. **Jagir Kaur Vs Jaswant Singh (Criminal appeal 143/1961)**: The Supreme Court's decision clarified the meaning of "reside."
- III. **VL Kashyap Vs R P Puri (Delhi High Court, 22.09.1976)**: The Delhi High Court's judgment elucidated the concept of a "dwelling house" or "residential

house."

IV. **Indo International Industries Vs Commissioner of Sales Tax (SC, 25.03.1981)**: The Supreme Court affirmed that in the absence of a statutory definition, a dictionary or popular meanings can be applied.

V. **CCE Vs Air Conditioning Corporation (SC, 13.09.2006)**: This case underscored the importance of interpreting legal terms by their ordinary meaning.

VI. **Balakrishna Vs Sakuntala Bai (AIR 1942 MAD 666)**: The Madras High Court's ruling established that "reside" implies an intention to remain at a place, not merely a temporary visit.

VII. **Dennis Philips and Royna Goddard Vs Martin Francis (England and Wales High Court, 24.03.2010)**: This decision reinforced the common understanding of the terms "residence" and "dwelling."

VIII. Additionally, the petitioner cites the decision of the Hon'ble Karnataka High Court in the case of **Taghar Vasudeva Ambrish vs. Appellate Authority for Advanced Ruling, Karnataka**, which upheld the exemption available to residential hostels under relevant tax notifications.

IX. As per the **Black Laws Dictionary**, Residence is a place where one lives or has his home. Dwelling means the house or other structure in which a person or persons live, the structure used as a place of habitation.

The petitioner argues that the hostel's operations align with the legal definition of residential dwelling and therefore warrant exemption from GST, supported by both legislative provisions and judicial precedents.

#### □ **The Respondent's Contention**

The revenue department argues that the applicant mainly aims to operate a ladies' hostel for profit. They acknowledge that the applicant charges fees for accommodation and food services, which fall within the definition of "supply" under Section 7 of the TNGST/CGST Act.

The applicant is duly registered under various acts to conduct its business activities. According to Section 2(17) of the TNGST/CGST Act, their activities qualify as "business," encompassing various endeavors pursued for pecuniary gain. Contrary to the applicant's stance, the revenue department asserts that their services don't align with "services by way of renting of





residential dwelling for use as a residence. " Instead, they argue that the applicant merely rents out individual rooms to different occupants for varying durations, without formal rental agreements. Thus, their operations fall outside the scope of the Tamil Nadu Rent Regulation Act.

Moreover, the revenue department notes that the applicant fails to adhere to tax deduction at source (TDS) regulations under section 194 I of the Income Tax Act concerning rental income. Consequently, the claim of providing residential dwelling rentals for residence use is deemed invalid.

Furthermore, the state jurisdictional authority contends that the applicant's services constitute renting of immovable property with a business motive for financial gain. They classify these services under Heading 9963 (Accommodation, food, and beverage services) and specifically under Entry No. 7 (ix) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017. This entails that the applicable tax rate for the applicant's services is as per the aforementioned notification.

In summary, the revenue department maintains that the applicant's activities constitute taxable services falling under the category of accommodation, food, and beverage services, as per relevant tax notifications.

The respondent argues that when it comes to interpreting exemption notifications, there's already a clear legal precedent set by the Supreme Court. According to the Supreme Court's decision in the case of '**DILIP KUMAR AND COMPANY AND OTHERS,**' exemption notifications should be interpreted very strictly. This means that it's the responsibility of the taxpayer (the assessee) to prove that they qualify for the exemption mentioned in the notification.

In situations where there's any uncertainty or ambiguity in the exemption notification, which is already subject to strict interpretation, the benefit of the doubt can't be claimed by the taxpayer. Instead, it should be interpreted in favor of the revenue authority. This means that if there's any doubt about whether the taxpayer qualifies for the exemption, the interpretation should lean towards supporting the revenue authority's position. The burden to prove that they are eligible for exemption should be at the petitioner's end and they have to explain how they are eligible for the exemption, which they failed in the current case.

So, in this case, the respondent contends that the exemption notification should be read and applied very strictly, and any uncertainty should be resolved in favor of the revenue authority,

rather than the taxpayer.

#### ❑ **The SLP creates more Uncertainty.**

In the case of Taghar Vasudeva Ambrish vs. Appellate Authority for Advance Ruling, as delineated in MANU/KA/0327/2022, the esteemed Division Bench of the Karnataka High Court has decisively pronounced that the provision of services involving the leasing out of residential premises as hostels to students and working professionals falls within the ambit of exemption outlined in Entry No. 13 of Exemption Notification No. 9 of 2017. This ruling, marked by the Karnataka High Court, delineates that hostel services are indeed exempted from the imposition of GST.

It's noteworthy that after the issuance of this order by the esteemed Division Bench, the respondents have taken recourse to a Special Leave Petition (SLP) before the esteemed Apex Court. However, as it stands, no stay has been granted by the Hon'ble Apex Court against the aforementioned order of the Karnataka High Court. It's pertinent to note that despite the absence of a stay, the 2nd respondent asserts their prerogative to form an independent perspective on the matter. This stance is underpinned by the fact that the issue remains unsettled and sub judice before the esteemed Supreme Court of India, awaiting its final adjudication.

Thus, while the legal proceedings continue before the apex judicial authority, it's imperative to acknowledge the absence of a definitive resolution and to exercise prudence in interpreting and implementing the legal implications of the subject matter.

Additionally, with effect from 18<sup>th</sup> July 2022, vide Notification No. 04/2022 – Central Tax(Rate), an additional burden on the registered persons has been imposed under the reverse charge mechanism wherein they are availing the services of renting residential dwelling other than for use in personal capacity or on his on account.

#### ❑ **Conclusion**

In the swirling legal discourse surrounding the Madras High Court's recent ruling on GST exemption for hostels, divergent perspectives have emerged, highlighting the intricacies of tax jurisprudence in the hospitality sector. The high court has observed in the current case and gone beyond the normal understanding of the term residential dwelling and interpreted from the view of considering the following factors –

- a. Non-Commercial Purpose
- b. Similar to House or Home (Including Kitchen, Washroom, Beds, etc.)
- c. Comparison with the situation of Homeless persons



d. Renting of Home v/s Renting of Hostel Room

e. What is rented and the purpose behind renting?

On one hand, the petitioner fervently argues for exemption from GST, citing legislative provisions and judicial precedents that align with their interpretation of residential dwelling. Conversely, the Revenue Department contends that strict interpretation of exemption notifications places the burden of proof on the taxpayer, urging caution in extending the benefit of the doubt.

Amidst this legal conundrum, the reference to the Karnataka High Court's decisive pronouncement in Taghar Vasudeva Ambrish vs. Appellate Authority for Advance Ruling underscores the nuanced nature of the issue at hand. As the matter remains sub judice before

the esteemed Supreme Court of India, with the Special Leave Petition pending, it is imperative to exercise prudence in interpretation and implementation.

In navigating this legal landscape, a diplomatic approach is warranted, recognizing the complexities involved and the need for clarity in tax laws. The absence of a definitive resolution underscores the importance of awaiting the final adjudication while acknowledging the diverse perspectives. Ultimately, the pursuit of justice and equitable application of tax laws must guide our deliberations as we await the apex judicial authority's verdict.

**Views expressed are strictly personal and cannot be considered as a legal opinion in case of any query. For feedback or queries email us [yash@hnaindia.com](mailto:yash@hnaindia.com).**







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# A Help Desk for the ICAI Know Your Member (KYM)

## ACTIVITY

The ICAI KYM initiative aims to streamline and update the member records with accurate and up-to-date information. It is crucial for ICAI to maintain a comprehensive and current database. In light of this, we have established the Help Desk to ensure that you have a smooth and trouble-free experience while completing the KYM process.



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Team Ahmedabad

**CA. Sunil Sanghvi**  
*Chairman*

**CA. IP. Sunit Shah**  
*Secretary*





# Media Gallery

## સીએ ઇન્સોલ્વન્સી દ્વારા ઇન્સોલ્વન્સી એન્ડ બેંક્રપ્ટસિ પર સેમિનાર યોજાયો



નવગુજરાત સમય > અમદાવાદ

ICAIના ઇન્સોલ્વન્સી એન્ડ વેલ્યુએશન સ્ટાન્ડર્ડ્સ બોર્ડ દ્વારા અને અમદાવાદ બ્રાન્ચ (WIRC) દ્વારા ઇન્સોલ્વન્સી એન્ડ બેંક્રપ્ટસિ પર એક દિવસીય કોન્ફરન્સનું આયોજન કરવામાં આવ્યું હતું જેમાં NCLT સભ્ય સમીર કક્કડ મુખ્ય મહેમાન તરીકે તેમજ જાણીતા વકીલ સુમંત બત્રા મુખ્ય વક્તા

તરીકે હાજર રહ્યા હતા. સમગ્ર ભારતના સીએ, સીએસ, સીડબલ્યુએ, વકીલો અને અન્ય વ્યવસાયિકો સહિત 150થી વધુ સભ્યોએ તેમાં ભાગ લીધો હતો. આ કોન્ફરન્સમાં 18થી વધુ પ્રખ્યાત નિષ્ણાતો દ્વારા વિવિધ પાસાઓ પર ચર્ચા કરવામાં આવી હતી. સુમંત બત્રાએ આબોહવા પરિવર્તન અને નાદારીના મહત્વ તેમજ તેની સુસંગતતા વિશે વાત

કરી. તેમજ આઈસીએઆઈ બોર્ડના વાઈસ ચેરમેન દુર્ગેશ કાબરા, સેન્ટ્રલ કાઉન્સિલ મેમ્બર સી.એ. પુરુષોત્તમ ખંડેલવાલ, ડબલ્યુ આઈઆરસી અમદાવાદ બ્રાન્ચના અધ્યક્ષ સી.એ. સુનિલ સંઘવી, અમદાવાદ શાખાના સેક્રેટરી સી.એ. સુનિલ શાહ સહિતના નિષ્ણાતોએ નાદારી અને વ્યવસાયિક મહત્વ તેમજ તેમાં આવનારી તકો વિશે વાત કરી હતી.

### ‘Adjudication must be less time-consuming’

ICAI conf delves on various aspects of IBC



Over 160 experts participated in the conference

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A one-day conference was organised by Insolvency & Valuation Standards Board of ICAI and hosted by Ahmedabad Branch (WIRC) on Insolvency and Bankruptcy Code (IBC) wherein National Company Law Tribunal (NCLT) member Sameer Kakar was the chief guest and advocate Sumant Batra was the keynote speaker. Attended by more than 160+ participants including chartered accountants, company secretaries and lawyers from across India, the conference had more than 18 eminent speakers deliberating on diverse aspects.

Kakar called upon the insolvency professionals to be clear in their

approach and asked them to make adjudication effective and less time consuming.

Advocate Batra spoke on importance and relevance of climate change and insolvency.

CA Durgesh Kabra, Vice Chairman of the Board - ICAI & Central Council Member CA Purushottam Khandelwal spoke on the importance of insolvency profession and upcoming opportunities. CA Sunil Sanghvi, Chairman Ahmedabad Branch (WIRC) and CA Sunit Shah, Secretary Ahmedabad Branch (WIRC) also shared their insights.

The conference saw insolvency professionals from Reliance Infratel, Reliance Communication, Innovative Industries, GoAir, Ruchi Soya etc who shared their expertise and experience on IBC.







# Event in Images



Seminar on Future of Internal Audit And Enterprise Risk Management on 06.04.2024



WICASA Change Over Ceremony on 07.04.2024



Seminar on Outsourcing - Opportunities And Issues on 19.04.2024





Members' Meet on 10.04.2024





2 Days Training Programme for Economic Offence Wing of Gujarat Police on Financial Crime Investigation on 19 & 20.04.2024







Seminar on Peer Review on 20.04.2024



संवाद Viksit Bharat@2047 on - 20.04.2024





One Day Conference on Insolvency And Bankruptcy on 27.04.2024







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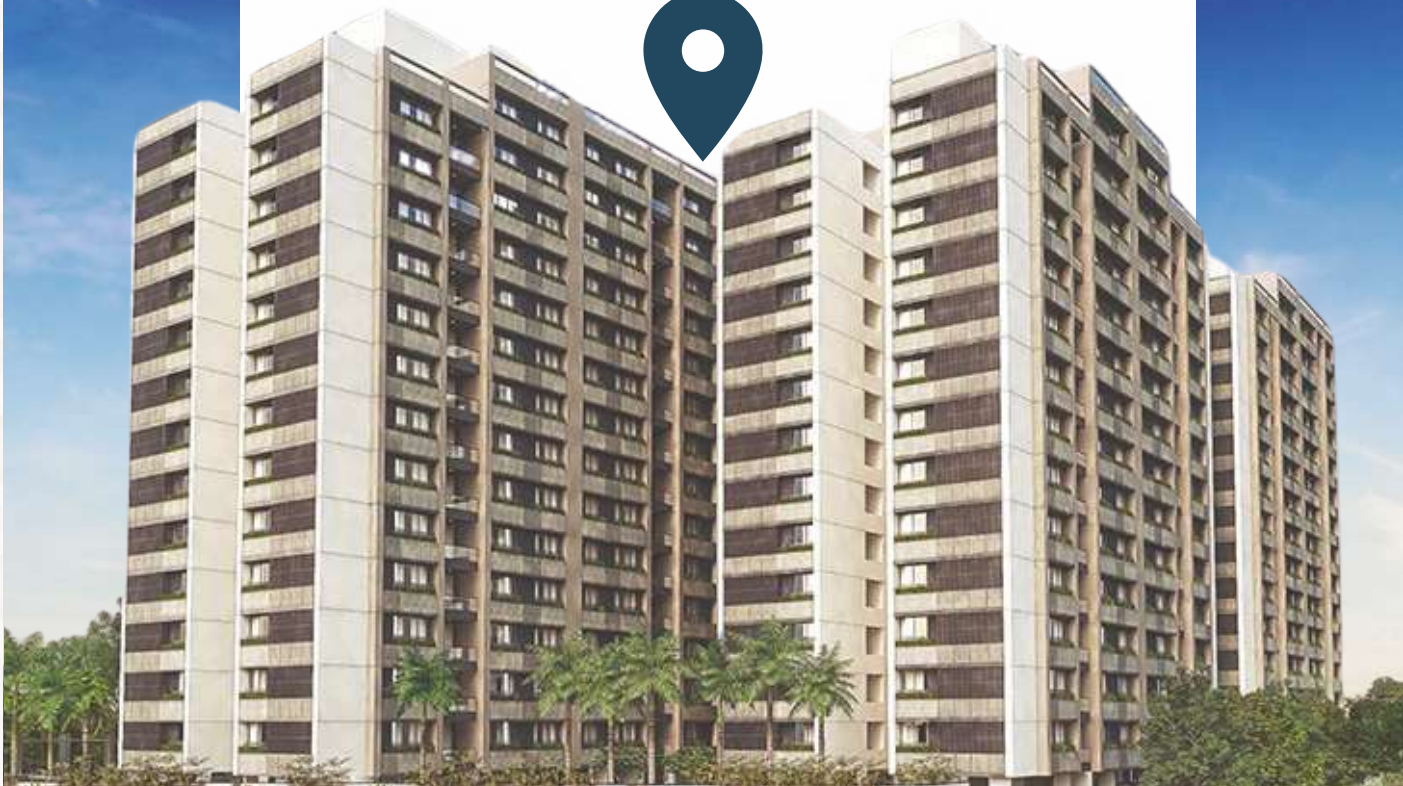
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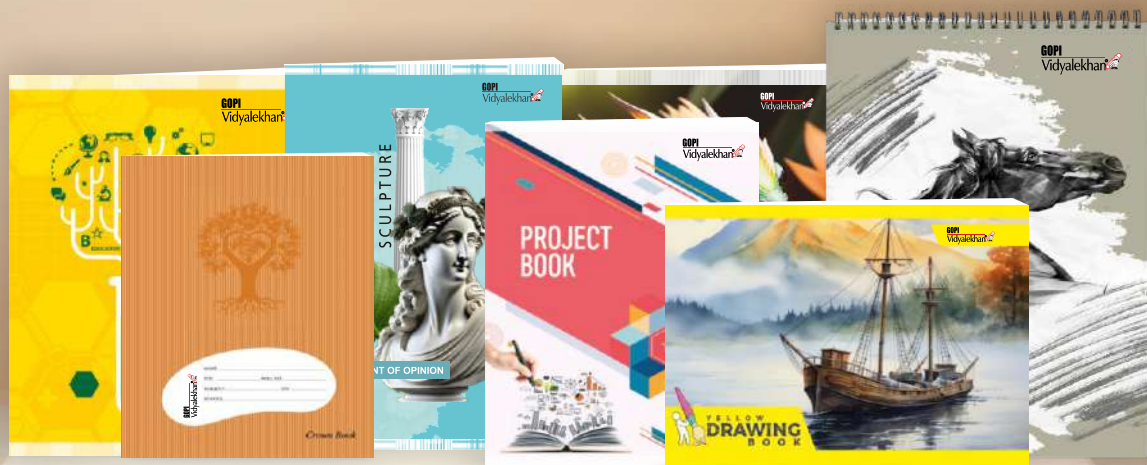
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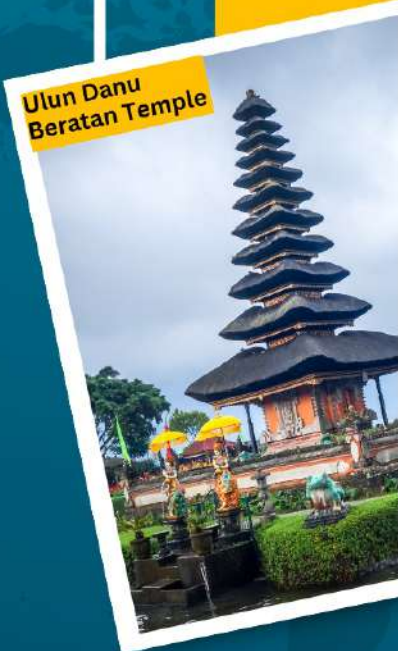
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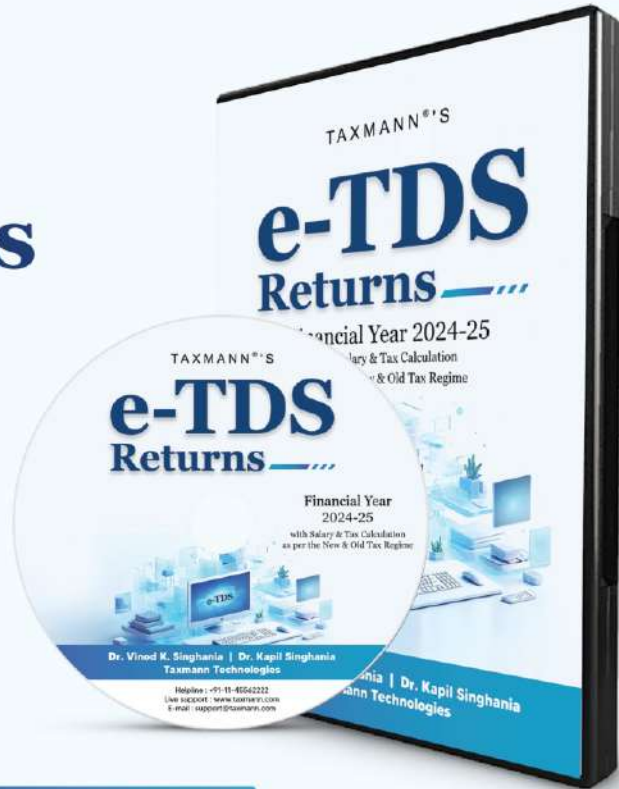


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