"Power is gained by sharing knowledge and not hoarding it"

EMERGING THOUGHTS

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Chartered Accountants

TABLE OF CONTENTS

Update 91
Amendment in GST Act

Amendment to Central Goods & Services Tax Act, 2017

[Published on: 30th August 2018 | Amendment w.e.f. Notification awaited]

Insertion of Section 43A in CGST Act, 2017

A quick recap:

GSTR – 1	**GSTR – 2A**	**GSTR – 3B**
Sales data	Purchase data	Details of both input & output tax credit
Detailed invoice level return	View only return	Summarized monthly return
Monthly return (Quarterly option available to taxpayers having turnover less than 1.5 Crores)	Auto-populated from information furnished by the supplier in his GSTR-1	Availing ITC & payment of taxes

Amendment:

Before insertion of section 43A	After insertion of section 43A
Taxpayer was claiming entire input tax credit for the purchases made in a tax period (month) in GSTR-3B on provisional basis. This means he was claiming input tax credit for all the purchase invoices booked in the month irrespective of the credit available to him in his GSTR-2A.	Taxpayer can claim input tax credit only to the extent available in GSTR-2A. Further with respect to the purchase invoices not appearing in GSTR-2A, the taxpayer can claim the credit on a provisional basis which shall not exceed 20% of the ITC available as per GSTR-2A.

- CHIRAG JAIN

Update 92
Stock Options

Ever wondered how a trader has control over the risks in the stock market ? -
Any trader in the stock market covers his risk and earns income with the help of "Stock Options".

So, What are these Stock Options ?
Stock options are sold by one party to another, that give the option buyer the right, but not the obligation, to buy or sell a stock at an agreed-upon price within a certain period of time.

A Stock Option may be to "Buy" or to "Sell". In stock market we term it as "Call" and a "Put" option respectively.

What is a "Call" and a "Put" option ?

1. A Call is when the buyer has right to purchase but not obligation to purchase a stock at a specified price before the option expires.
2. A put option is when the buyer has the right to sell stock at a specified price before expiration.

When do people buy a "Call" / "Put" Option ?

Call Option -The purchaser of a call option believes that the underlying stock will increase in price, while the seller of the option thinks otherwise. The option holder has the benefit of purchasing the stock at a discount from its current market value if the stock price increases prior to expiration.
Example : Current market price of a security is Rs 100. A trader believes that the prices would go up. Therefore, he buys a call option of strike price - Rs. 120, paying a premium of Rs 5. In future if the price goes up to Rs 150, he'd buy the stock at Rs 120 and makes a profit of Rs 25. If it goes down to Rs 90, the option lapses.

Put Option - If the option buyer believes a stock will decline in value, he buys a put option as this gives him the right to sell the stock at the strike price before expiration. If the underlying stock loses value prior to expiration, the option holder makes money.

Example : The Current market price of a security s Rs 100. If a trader who has that security believes that the prices would go down and therefore buys a put option of strike price Rs. 120, paying a premium of Rs. 5. If in future the prices go down to Rs 90, he will exercise the option and makes a profit of Rs 25. If the price goes up to Rs. 150, the option lapses.

Writing Options

While some trader buys options, other need to write them. The writer receives the premium for writing the option. This is their maximum profit.

Also note that, the writer is on the opposite side of the trade as the buyer.

Writer of Call Option - Writers of Call Option can protect themselves by writing "covered calls". This is a common strategy. An investor already owns shares of a company. Instead of selling the stock directly, they write call options for a strike price above the current stock price. For this they receive the premium. If the stock does rise above the strike price, they simply sell the call buyer their own shares.
Example : The current market price of a security is Rs 100. A trader believes that the prices would go down and writes a call option of strike price Rs 120 , receiving a premium of Rs 5. If in future, the prices go up to

Rs 150, he is obliged to sell at Rs 120. If the prices go down to rs 90, option gets lapsed and premium will be his income.

Writer of Put Option - Selling or writing a put is a strategy that traders or investors can use to generate income, or to buy stock at a reduced price. Profit on put writing is limited to the premium received, yet losses can be quite large if the price of the underlying stock falls below the strike price. Because of the uneven risk/reward dynamic, it may not be immediately apparent why someone would take such a trade, yet there are good reasons for doing so under certain conditions.
Example : The current market price of a security is Rs 100. A trader believes that the prices would go up and therefore writes a put option of Rs 120. receiving a premium of Rs 5. If in future, the prices go down to Rs 90, he is obliged to buy at Rs 120. If he prices go up to rs 150, the option gets lapsed and premium will be his income.

This was all about the use of options in stock market. Now, how can we apply the same in our business ?

Use of Options in Commodity Market
Manufacturers often face increasing prices on the raw materials they buy. Higher costs for raw materials can cut into a company's profit margins, especially if competition hamstrings a company's ability to raise prices on its finished goods.
To cover the above risk, one can hedge using the options.
The mechanism of "Call option" and the "Put options" in stock market remains the same here as well.
i.e a) If a manufacturer thinks that the prices of raw material go up, he can buy a call option
b) If he thinks that the price of the raw materials go down, he can go for a put option and thereby reduce his risk.

Also note that, the advantages of options in commodity market is not only for the manufacturers to cover themselves against fluctuation in prices, but also for the farmers in covering themselves from the risk of price fluctuation and earning income by :

- Buying a call option
- Writing a call option
- Buying a put option
- Writing a put option.

- VIDYASHREE MADHYASTHA

Update 93
Securities Transaction Tax

Securities Transaction Tax (STT) is levied by Finance ministry under Chapter VII **Finance Act,2004**. (Just like how Service Tax was levied under Finance Act, 1994)
It was introduced in the Budget 2004-05 citing reasons to curb tax avoidance on capital gains. Earlier, many people usually didn't declare their profits from sale of stocks and avoided paying capital gains tax.
To be precise, STT is paid on all On-Market transactions.

Scope of STT

Now, the Act does not define "**Securities**" and has borrowed definition from (read as "referred to") the Securities Contracts (Regulation) Act, 1956 for definition of the term "Securities".

- According to the **Securities Contracts (Regulation) Act, 1956**, "Securities" include
  - Shares, bonds, debentures, debenture stock, or other marketable securities of a similar nature, or of any incorporated company, or other corporate bodies
  - Derivatives
  - Units or any other instruments issued by any collective investment scheme to the investors in such schemes
  - Security receipt as defined in section 2(zg) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
  - Government securities of equity in nature
  - Rights or interest in securities
  - Equity-oriented mutual funds

Just to clarify, although the term "securities" as defined above **includes Debt instruments, but are excluded from levy of STT**
Also, STT is not applicable for any off-market transaction. i.e, transactions not done through a recognized stock exchange.

When is it Levied???

- Shares - Both Purchase or sale of Shares of any company listed in Recognized stock exchange, i.e., NSE/BSE or so on.
- Other Securities - Sale of Equity oriented funds, option in securities, including options which are exercised, futures in securities, Equity oriented mutual funds.
- STT is also levied Sale of unlisted shares under an offer for sale to public included in IPO and where such shares are subsequently listed in stock exchanges

Also, As is STT is levied on Securities transaction, we have Commodity Transaction Tax (CTT) levied for Commodities traded on MCX or NCDEX.

What about shares of Foreign companies??

Shares of foreign companies are listed in India by way of Indian depository receipts.
The concept of IDR was introduced in late 2004 and the STT Act did not define IDR. Hence STT is not levied on transactions involving IDR.
Thus, we have separate provisions for IDRs in Income Tax as well.

Rates of Tax

So, the rates for STT varies on types of scripts traded. Below are the rates of tax captured -

Transaction	Rate	Incidence of tax
EQUITY DELIVERY	0.1%	Buy and Sell Side

EQUITY INTRADAY	0.025%	Sell side
EQUITY FUTURES	0.01%	Sell side
EQUITY OPTIONS	0.05%	Sell side (on premium)

Now, to the Taxation of transactions suffered with STT.

As you all must be aware of, the Income Tax act clearly mentions separate taxation policy for transactions suffering STT.

For Long term capital gains, The gains more than Rs. 1 Lakh shall be taxable @10% u/s. 112A. (As implied by Finance Act, 2018.)
Whereas short term capital gain is taxed at 15%.
Also, you can claim STT as deduction from your Business income in case your business is to buy and sell shares.
However, you cannot claim STT as a deduction from your income in case you declare the income from sale of shares under Capital gains.

STT certificate – Form 10DB

Every person who has paid STT can obtain certificate for the same from the Deductee, ie., their Broker.
It serves as an evidence while claiming tax exemptions for LTCG or special tax rate for STCG.

- CHIRAG SOLANKI

Update 94
Recent opinion from Expert Advisory Committee of ICAI : On Disclosure of Impairment Loss on Long-Term Investments as Exceptional Item.

A. Facts of the Case

1. A company was incorporated in 1984 for procuring, transmission, processing and marketing of natural gas. The company has an authorised share capital of ` 2,000 crore, out of which ` 1,691.30 crore is paid-up share capital. The Government of India holds 54% equity of the company at present. The securities of the company are listed on National Stock Exchange, Bombay Stock Exchange and London Stock Exchange.

2. The company has prepared its accounts as per Indian Accounting Standards (Ind ASs) w.e.f. 1st April 2016. In compliance with the Companies (Indian Accounting Standards) Rules, 2015, the company has prepared its financial statements for FY 2016-17 with comparative figures for FY 2015-16. Further, the holding company, subsidiaries, joint ventures, or associate companies of the company have also made transition to Ind AS w.e.f. 1st April 2016.

3. As per the provisions of Indian Accounting Standard (Ind AS) 36, 'Impairment of Assets', the company is conducting impairment test for investments in subsidiaries, associates and joint ventures that are accounted for at cost in the standalone financial statements. In line with the provisions of Ind AS 36, an impairment test is conducted, when internal and external indicators of potential impairment exist.

4. The company has an equity investment amounting to 974.31 crore, in a joint venture company, 'R'. 'R' is in the process of restructuring its business by way of de-merger of its LNG business into a separate company effective from 1st January 2016. The company has carried out an assessment of impairment of 'R' as on 31st March 2017, considering the accumulated losses and restructuring of the business. The company has provided ` 783 crore in the books of account towards impairment loss in respect of carrying amount of equity investment in 'R' for the FY 2016-17.

5. The company also has an equity investment amounting to 8.10 crore in an associate company, 'F', an Egyptian company as on 31st March 2017. In November 2016, Egyptian Government devalued the Egyptian Pound (EGP) which resulted in erosion of about 50% value of EGP vis-à-vis US Dollar. Considering the same, the company has carried out an assessment of impairment of its investment in 'F' as on 31st March 2017 and made provision of ` 5.04 crore in the books of account towards impairment loss in respect of the carrying amount of the investment in 'F' for the FY 2016-17.

6. The company has disclosed impairment loss on long-term investments as "Exceptional Item" on the face of the statement of profit and loss, considering the transaction as exceptional in nature as it is

a) not the ordinary business activity;
b) not being an item occurring on regular basis in due course of business; and
c) not temporary in nature

Further, it has also materially affected or substantially reduced the profit of the company.

7. Although the term "Exceptional Item" has not been defined in Ind ASs, however, paragraph 97 of Ind AS 1, 'Presentation of Financial Statements', requires that when items of income or expense are material, an entity shall disclose their nature and amount separately, either in the statement of profit and loss or in the Notes to Accounts.

Considering the above aspects and transaction not being the ordinary business activity and also not temporary in nature, the company has disclosed impairment loss on equity investment of long-term nature as "Exceptional Item" on the face of the statement of profit and loss for FY 2016-17.

8. The C&AG, while conducting supplementary audit under section 143(6) of the Companies Act for the financial year 2016-17, has made observation on disclosure of impairment loss on long-term equity investments as an "Exceptional Item" on the face of statement of profit and loss. The C&AG was of the opinion that the impairment loss should be treated as an ordinary item and should not be considered as an "Exceptional Item" and disclosed as such.

9. It was submitted to the C&AG that the Institute of Chartered Accountants of India has issued Educational Material on Ind AS 1 and in response to Question No. 32 on treatment of "Exceptional Item", the educational material states that as per Ind AS 1, materiality depends on the size and nature of the omission or misstatement judged in the surrounding circumstances. The size or nature of the item, or a combination of both, could be the determining factor. Considering the same and transaction not being the ordinary business activity, and also not temporary in nature, the Company has disclosed impairment loss on long-term investment as an "Exceptional Item" on the face of statement of profit and loss.

10. The C&AG, however, has not accepted company's/joint statutory auditors' replies. According to the C&AG, Accounting Standards categorically state that only the actual losses, which are permanent in nature and relate to ordinary activities, can be classified as "Exceptional Item", whereas the provision for impairment losses can be reversed in future as and when the financial condition of the entity is improved.

11. There is no specific guidance available on the matter in Ind AS 1 towards disclosure of "Exceptional Item", particularly of the nature described in general and herein above.

B.Query to Expert Advisory Committee -

In view of the above, the querist (the company) has sought the opinion of the Expert Advisory Committee on the following issues:

(i) Whether the disclosure of ` 788.04 crore towards impairment loss of long-term equity investments as an "Exceptional Item" on the face of the statement of profit and loss for FY 2016-17 by the company for the reasons mentioned in paragraphs 7-9 above is correct as per Ind AS 1.

(ii) In case the answer to (i) above is not in the affirmative, what should be the form and manner of disclosure for impairment loss of long-term equity investments in the financial statements of such nature and materiality.

C.Points considered by the Committee

1. The Committee notes that Part II of Division II of Schedule III to the Companies Act, 2013 (hereinafter referred to as the 'Ind AS Schedule III'), which prescribes the format of statement of profit and loss applicable for companies adopting Ind ASs, requires presentation of 'Exceptional Items' as a separate line item in the statement of profit and loss. Further, Note 7 of the 'General Instructions for Preparation of Statement of Profit and Loss' applicable for companies adopting Ind ASs requires that a company should disclose by way of notes, additional information regarding aggregate expenditure and income on some items. One of the items to be disclosed in this regard is 'details of items of exceptional nature'. However, the term 'exceptional item' is not defined in 'Ind AS Schedule III'. Further, the term 'exceptional item' is neither defined nor used in Ind ASs.
2. The Committee notes the following paragraphs of Indian Accounting Standard (Ind AS) 1, 'Presentation of Financial Statements', notified under the Rules:

"31 Some Ind ASs specify information that is required to be included in the financial statements, which include the notes. An entity need not provide a specific disclosure required by an Ind AS if the information

resulting from that disclosure is not material except when required by law. This is the case even if the Ind AS contains a list of specific requirements or describes them as minimum requirements. An entity shall also consider whether to provide additional disclosures when compliance with the specific requirements in Ind AS is insufficient to enable users of financial statements to understand the impact of particular transactions, other events and conditions on the entity's financial position and financial performance."

"82 In addition to items required by other Ind ASs, the profit or loss section of the statement of profit and loss shall include line items that present the following amounts for the period:…… (ba) impairment losses (including reversals of impairment losses or impairment gains) determined in accordance with Section 5.5 of Ind AS.

"85 An entity shall present additional line items, headings and subtotals in the statement of profit and loss, when such presentation is relevant to an understanding of the entity's financial performance.

"86 Because the effects of an entity's various activities, transactions and other events differ in frequency, potential for gain or loss and predictability, disclosing the components of financial performance assists users in understanding the financial performance achieved and in making projections of future financial performance. An entity includes additional line items in the statement of profit and loss, and it amends the descriptions used and the ordering of items when this is necessary to explain the elements of financial performance. An entity considers factors including materiality and the nature and function of the items of income and expense. For example, a financial institution may amend the descriptions to provide information that is relevant to the operations of a financial institution. An entity does not offset income and expense items unless the criteria in paragraph 32 are met."

"97 When items of income or expense are material, an entity shall disclose their nature and amount separately."

"98 Circumstances that would give rise to the separate disclosure of items of income and expense include:
(a) write-downs of inventories to net realisable value or of property, plant and equipment to recoverable amount, as well as reversals of such writedowns;
(b) restructurings of the activities of an entity and reversals of any provisions for the costs of restructuring;
(c) ……"

Further, the Committee notes that the term 'material' is defined in paragraph 7 of Ind AS 1 as below: *"Material* Omissions or misstatements of items are material if they could, individually or collectively, influence the economic decisions that users make on the basis of the financial statements. Materiality depends on the size and nature of the omission or misstatement judged in the surrounding circumstances. The size or nature of the item, or a combination of both, could be the determining factor."

The Committee also notes that while paragraphs 97 and 98 are placed under the caption 'Information to be presented in the statement of profit and loss or in the notes' 'Ind AS Schedule III' requires presentation of 'exceptional items' as a separate line item in the statement of profit and loss with disclosure of individual items in the notes.
From the above, the Committee notes that subject to legal requirements, only material items need be presented as line items and/ or disclosed in financial statements and this principle is applicable even for items mentioned in paragraph 82 of Ind AS 1 (as evident from paragraph 31 of Ind AS 1). The Committee notes that the querist has drawn attention to the Educational Material on Ind AS 1 issued by the Institute of Chartered Accountants of India on the meaning of 'Exceptional items' as per which it appears that all material items are not exceptional items and exceptional items are those items which meet the test of 'materiality' and 'incidence'. Definition of the term 'Material' as per paragraph 7 of Ind AS 1 is reproduced

in paragraph 18 above. The Committee is of the view that 'incidence' refers to frequency of occurrence. Further, the Committee notes that 'Guidance Note on Division II-Ind AS-Schedule III to the Companies Act, 2013' (hereinafter referred to as 'the Guidance Note') issued by the Institute of Chartered Accountants of India deals with 'exceptional items'. While noting the absence of definition of the term 'exceptional items' in Ind ASs as well as 'Ind AS Schedule III', paragraph 9.6 of the Guidance Note states that Ind AS 1 has reference to such items in paragraphs 85, 86, 97 and 98 of that Standard.

3. Now the Committee addresses the issue of presentation/ disclosure of impairment loss on the long-term equity investments. In the extant case, the investments in the joint venture and associate are accounted for at cost in the standalone financial statements of the company, which is permitted by paragraph 10 of Ind AS 27, 'Separate Financial Statements', notified under the Rules. Hence, these investments are outside the scope of Ind AS 109, 'Financial Instruments', notified under the Rules. Consequently, the impairment of such investments is covered by Ind AS 36, 'Impairment of Assets', notified under the Rules, since, paragraph 2 of Ind AS 36 scopes out financial assets, only if they are within the scope of Ind AS 109. The Committee notes that Ind AS 36 does not deal with presentation of impairment loss in the statement of profit and loss. The Committee notes that paragraph 126 of Ind AS 36 states as follows:"126 An entity shall disclose the following for each class of assets: (a) the amount of impairment losses recognised in profit or loss during the period and the line item(s) of the statement of profit and loss in which those impairment losses are included."

Therefore, Ind AS 36 merely requires, *inter alia*, disclosure of the line item(s) of the statement of profit and loss in which the impairment losses are included. The Committee notes that while paragraph 82 of Ind AS 1 requires, inter alia, presentation of impairment losses (including reversals of impairment losses or impairment gains) determined in accordance with Section 5.5 of Ind AS 109 as a line item, it does not specify a similar requirement for presentation of impairment losses determined in accordance with Ind AS 36. Further, the Committee notes that 'Ind AS Schedule III' does not specify impairment loss either as a separate line item in the statement of profit and loss or as part of any other line item. Hence, it is clear that only if the impairment loss on long-term investments is material, it is required to be disclosed separately as per paragraph 97 of Ind AS 1 (either on the face of the statement of profit and loss or in the notes) or is required to be presented as a separate line item in the statement of profit and loss in accordance with paragraph 85 of Ind AS 1. The Committee notes that item (a) cited in paragraph 98 of Ind AS 1 (reproduced in paragraph 18 above) represents impairment of inventories and property, plant and equipment and also reversals of such write-downs. These items are examples only. The Committee is of the view that impairment of long-term investments should also be disclosed, if material, as required by paragraph 98 of Ind AS 1. The issue whether such impairment loss can be presented as exceptional item is discussed in paragraph 21 below.

4. As stated in paragraph 19 above, an issue arises as to whether material items without any additional criteria can also be described as exceptional items. The Committee is of the view that this issue need not be examined, since, the querist's argument is that impairment loss in the extant case is *both* material and expected not to occur regularly. As stated by the querist in paragraph 7 above, in the extant case, the impairment loss has materially affected or substantially reduced the profit of the company. Assuming the correctness of these features, both the materiality and incidence tests are met. Consequently, based on the discussion so far made, the Committee is of the view that in the extant case impairment loss on the longterm equity investments can be presented as 'exceptional item' or part of exceptional items, if there is any other exceptional item, on the face of the statement of profit and loss, with disclosure of individual items in the notes to accounts in the latter case. The Committee also viewed that the disclosures as required by paragraph 126 of Ind AS 36, Impairment of Assets should be given.

5. The Committee does not agree with the views that the impairment loss is not related to ordinary activities. Further, an exceptional item can be an estimated amount (gain or loss) also and it need not be permanent. Mere possibility that the provision for impairment losses can be reversed in future as and when the financial condition of the entity will improve does not prevent it from its classification as an exceptional item. This is

evident from the example of reversal of write-downs given in the Educational Material on Ind AS 1 and the Guidance, which is also found in paragraph 98 of Ind AS 1, reproduced in paragraph 18 above.

Opinion

On the basis of the above, the Committee is of the following opinion on the issues raised by the querist -

The disclosure of impairment loss of longterm equity investments as an "Exceptional Item" on the face of the statement of profit and loss for F.Y. 2016-17 by the company in this case, appears to be appropriate, assuming that the querist's claim on materiality and incidence aspects and quantification of impairment loss are correct and if the disclosures as required by Ind AS 36, Impairment of Assets are appropriately given.

- SOWMYA SHREE G

Update 95
DOUBLE IRISH WITH A DUTCH SANDWICH STRATEGY

Double Irish with a Dutch sandwich—it sounds like a fancy meal, but it's actually a tax strategy leveraging a combination of Irish and Dutch subsidiaries.
Double Irish and a Dutch Sandwich is a term given for tax avoidance strategy which as observed was used by technology-based firms such as Apple Inc, Google Inc, Microsoft Corporation to name a few.

FUNDAMENTAL CONCEPTS OF INCOME TAX EXPLOITED BY TAX EVADERS

The two fundamental concepts in income tax that are often exploited by tax payers are "**Basis of Income**" and "**Manner of determining Residency**".

a. **Basis of income**: Taxability under Income tax are generally based either on
   i. Source of income (territorial system), or
   ii. Residency of the taxpayer (worldwide system).

   In source-based system of taxation, the taxpayer will be liable to pay tax on income earned within the jurisdiction of the taxing state.
   In residency-based system of taxation, once a taxpayer is deemed to be a resident in the taxing state they will be liable to pay income tax on their worldwide income.

b. **Manner of Determining the Residency**: Whether a corporation is resident for the purpose of taxation is tested either based on:
   i. Place of incorporation, or
   ii. Place of effective management and control being situated-The centre of management and control is determined by reference to the location where the strategic and policy aspects of the company are determined.

   For example, India determines the residential status of company other than domestic company using the test of Place of Effective Management and Control **(PoEM).** United States determines the residential status of the company based on place of incorporation.

IRISH TAX PROVISIONS

1. **Default Rule**: A company incorporated in Ireland will be treated as resident of Ireland for tax purposes.

2. **Exception to the above rule**: A incorporated company will not be treated as resident of Ireland if it is a ***relevant company***.

3. "**Relevant company**": It is a company which is controlled by a company residing in a country which has double taxation treaty with Ireland.

   Eg: US has a double taxation treaty with Ireland and thus wholly owned subsidiary of US incorporated Ireland is a relevant company.

BUILDING THE GROUP STRUCTURE OF THE COMPANY TO ENABLE THE WORKING OF DOUBLE IRISH AND DUTCH SANDWICH STRATEGY

1. Parent company in US will set up a Subsidiary "P" in Ireland. "P" will have its effective place of management in a tax haven (Say Bermuda), and therefore will be treated as a tax resident of the tax haven for the purpose of Irish taxation.

2. "P" is being treated as a relevant company in Ireland whose holding company is incorporated in US.

3. "P" will also avoid US residency because US follows source-based system of taxation and in the present case, the source is Ireland and not US.

4. Hence, if "P" has its effective place of management in Bermuda, it will not be subject to any corporate income tax, as there is no corporate income tax in Bermuda.

5. "P" in turn sets up a wholly owned Irish subsidiary "R". "R" is a resident of Ireland as it is incorporated in Ireland and also the place of its effective management and control is in Ireland.

6. The ultimate parent company will license its intellectual property rights to subsidiary P at a very nominal price.

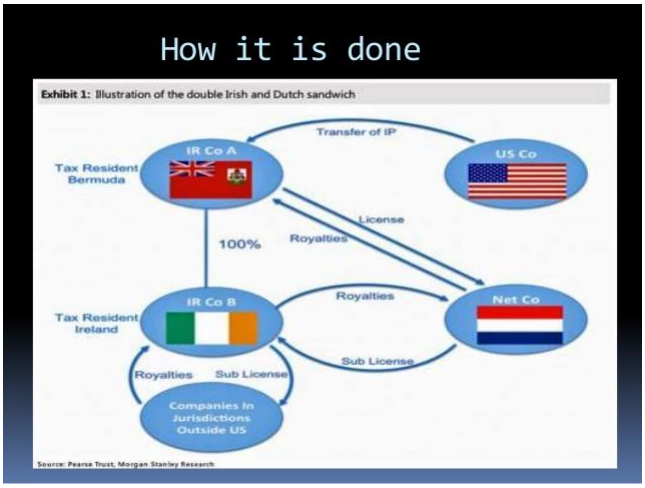
7. "P" will set up another wholly owned subsidiary called "Q" in Netherlands, which is a shell company and "Q "will be treated as resident of Dutch for all tax purposes.

8. Subsidiary P will then grant a sublicense of the intellectual property rights to subsidiary Q (Dutch). This is further Sub-licensed to R (Ireland). R company collects the income from customers as it is entering into Customer contracts (outside of USA)

9. This sublicense enables subsidiary Q to exploit the rights, meaning that all income from sales and use of the intellectual property outside of the parent company's home state will be collected by subsidiary R. Royalty payments by one Irish company to any European companies are exempt from Irisih witholding tax.

10. Subsidiary R will then pay substantial royalties and licence fees to Subsidiary Q for their use of the intellectual property. Q will in turn pay to P. This essentially funnels the majority of income to Subsidiary P, where it can sit tax free in an offshore tax haven.

11. Now here it is observed that P is cash rich. By way of debt financing with USA the money goes to USA. Again the same is capital transaction no taxes involved till sale. Repatriation of profits could attract taxes and hence companies find ways out other than repatriation of profits.



The Irish government closed the tax loophole that permitted "Double Irish" tax arrangements in 2015.

AND HOW WAS IRISH GOVERNMENT ABLE TO PLUG IN THE LOOPHOLE??

In 2014, the Irish government announced that companies would no longer be able to incorporate in Ireland without also being tax resident there, a measure intended to counter the arrangements similar to the "Double Irish". Irish Finance Minister Michael Noonan addressed the "Double Irish" during the presentation of his 2015 budget.
Under the new rules, companies not already operating in the country may not pursue the "Double Irish" scheme as of 1 January 2015; and those already engaging in the tax avoidance scheme have a five-year window until the end of 2020 to find another arrangement.

HOW THE US HAS PLUGGED OR FOR TIME BEING PLUGGED:

New Law
For years, US tax law has given American companies an incentive to keep their foreign earnings offshore by allowing them to defer U.S. taxes until they return those profits to the U.S. But changes are made; the U.S. tax law passed will require companies to pay taxes on the overseas income they've stockpiled at one of two rates: 15.5 percent for income held as cash or cash equivalents and 8 percent for less liquid assets.
Going forward, US companies that pay relatively low global effective tax rates -- a sign that they're using tax havens – would pay a minimum U.S. tax. That new tax, which begins at a rate of 10.5 percent, wouldn't apply in cases where a company's global effective tax rate is 13.125 percent or higher.

- VAISHNAVI G R

Update 96
Significant Beneficial Owner

Who is a Significant Beneficial Owner (SBO)?

As per Section 90(1) – Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than 10 % or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company.

COMPLIANCE REQUIREMENT

Compliance from SBO:

Every SBO shall file a declaration in **Form No. BEN-I** to the company in which he holds the significant beneficial ownership within 90 days from such commencement and within 30 days in case of any change and every individual on acquiring significant beneficial ownership.

Compliance from Company:

1. Where any declaration in Form BEN-I is received by the company, it shall file a return in **Form No. BEN-2** with the Registrar within 30 days from such receipt with prescribed fee
2. The company shall maintain a register of significant beneficial owners in Form **No. BEN-3.**
3. Company shall give notice seeking information within 30 days **in Form No. BEN-4** , if a company knows or has reasonable cause to believe
   a) to be a significant beneficial owner of the company
   b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
   c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.

Recourse available to Company when SBO fails to reply to BEN-4

If the person fails to provide information within 30 days or the information is not satisfactory, then the company within 15 days from the notice apply to Tribunal for an order directing that the shares in question be subject to restrictions.

Penalty to SBO for non-filing of BEN-1

If any person fails to make a declaration in BEN-1, he shall be punishable with fine which shall not be less than 100000 but which may extend to Rs. 10,00,000 and where the failure is a continuing one, with a further fine which may extend to Rs. 1000 for every day after the first during which the failure continues.

Penalty to Company for not maintaining BEN-3

If a company, required to maintain register in Form BEN-3 and file the information in Form BEN-3, fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than 10,00,000 but which may extend to Rs.

50,00,000 and where the failure is a continuing one, with a further fine which may extend to Rs. 1000 for every day after the first during which the failure continues.
If any person willfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.

Non Applicability:

These rules are not made applicable to the holding of shares of companies/body corporates, in case of pooled investment vehicles/investment funds such as Mutual Funds, Alterative Investment Funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (lnvlTs) regulated under SEBI Act.

As per Companies (Significant Beneficial Owners) Rules, 2018 ,

"Significant beneficial owner" means an individual referred to in sub-section (1) of section 90 (holding ultimate beneficial interest of not less than ten per cent.) read with sub-section (10) of section 89, but whose name is not entered in the register of members of a company as the holder of such shares, and the term 'significant beneficial ownership' shall be construed accordingly.

Reason for introduction of the aforementioned rules:

The concept that companies are independent corporate personalities and have separate juristic nature has been often misused for illicit purposes, including money laundering and other illegal activities. To bring transparency to the manner in which shares of companies are held, and in compliance of India's obligations to align its regulatory framework with the recommendations of Financial Action Task Force, an intergovernmental organization constituted to formulate policies to combat money laundering and terror financing, the Ministry of Corporate Affairs (MCA) notified on 13 June 2018 (i) Section 90 of the Companies Act, 2013 (Act); and (ii) the Companies (Significant Beneficial Owners) Rules, 2018 (SBO Rules). These prescribe detailed requirements for identifying the individuals who hold 'ultimate' control over a company.

- SUMEDHA G N

Update 97
Forms and due dates for filing Federal Tax Return

Ever wondered what to do if your client is resident in both India and the US?

For instance, Mr. A, being a green card holder (in the US), has to pay taxes in the US for the Fiscal year 2017 for incomes earned in the US. He also has to file ITR for being resident in India for previous year 2017-18. What to do in such situation?

Here is the solution:

a) Form 4868 - Application for Automatic Extension of Time To File U.S. Individual Income Tax Return : -

Applicability: This is to be applied by the US residents residing abroad requesting the department to extend the due date to 15th of October.

Details to be provided: Estimated income and estimated tax liability for the relevant Fiscal Year

Due date: 15th April

ii) **Due dates for filing Federal Tax Return by US taxpayers living/Residing outside United States for the CY 2017:**

The due date for filing the Federal Tax Return is 15th April, 2018 for the fiscal year, 2017. However, extension(inclusive of automatic) is granted for the following US residents residing/living abroad (outside US):

1. US Citizen
2. Resident Alien including Green Card holders
3. Military personnel

Note:

iii) The above mentioned tax payers are granted an automatic extension of 2 months upon payment of penalties for late filing. Therefore the due date for such tax payers is 15th June, 2018 for the fiscal year 2017

iv) Furthermore, the above mentioned tax payers may also request for further extension up to 15th October by filing an application with Department of the Treasury Internal Revenue Service in Form 4868 within 15th of April. (Details of the same are explained below)

ii. Few other Forms/Reports Applicable for US taxpayers for filing Federal Tax Return :

Details of some of the forms which are to be filed with the Department of the Treasury Internal Revenue Service:

b) Fin CEN Form 114 – Report on Foreign Bank and Financial Accounts (FBAR) (formerly TD F 90-22.1) : -

Why FBAR? – This is basically the tool used by United States law to identify or trace funds used for illegal purpose or to identify unreported income maintained or generated abroad.

Applicability: FBAR must be filed if the assessee has a financial interest in or signature authority over any financial account(s) outside of the United States and the aggregate maximum value of the account(s) exceeds $10,000 at any time during the calendar year.

Financial account includes:

v) Bank accounts
ii) Securities Accounts such as brokerage accounts or other financial instruments accounts
iii) Commodity futures or options accounts
iv) Insurance Policies
v) Mutual Funds

c) Form 8938 – Report on FATCA (Foreign Account Tax Compliance Act):

vi) Under FATCA, certain U.S. taxpayers holding financial assets outside the United States must report those assets to the IRS on Form 8938, Statement of Specified Foreign Financial Assets. FATCA requirement is in addition to the long-standing requirement to report foreign financial accounts on FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)

ii) FATCA mandates certain foreign financial institutions to report, directly to the IRS information about financial accounts held by U.S. taxpayers or by foreign entities in which U.S. taxpayers hold a substantial ownership interest.

Non-Compliance with Form 8938 Reporting Requirements:

Failure to report foreign financial assets on Form 8938 may result in a penalty of $10,000, an additional penalty of up to $50,000 for continued failure to file after IRS notification, and a 40 percent penalty on an understatement of tax attributable to non-disclosed assets.

- SURESH POUDEL

Update 98
Loan from a Subsidiary Company to its Ultimate Holding Company | A practical assignment

Here's an interesting practical assignment on which I had worked, under the guidance of Arun Kumar Sir. Happy Reading!

Overview of the assignment- the applicable provisions of the Companies Act,2013 and Income Tax Act,1961 for a company to transfer its surplus fund as a loan to its ultimate holding Company, where there are common directors. (Also, I have attached an appendix for all the sections mentioned in this update)

Following are the facts and requirements of the case.

- Subsidiary company (SCPL) is having surplus funds of Rs.15 Crores.
- Ultimate holding company (UHCL) would like to utilize these surplus funds for its business operations.
- SCPL intends to lend this money to UHCL as loan.
- Both SCPL & UHCL have common directors.

- **Provisions of Companies Act, 2013:**

<u>Section 185-</u>

There is a common misinterpretation that a company cannot give a loan to another company in which the directors are interested. However, upon thorough reading of the said provision we concluded the following-

Sub-section (1) deals with lending of money to directors or director's relatives or the firms in which such directors are partners. However, in this case we do not intend to give loan to a director, a director's relative or a firm in which the directors are partners.

Further, sub-section (2) deals with lending of money to a company in specific cases where the director of lending company is having interest in the borrowing company. Accordingly, the following are the specific cases in which the director is said to have interest in the borrowing company:

a) The borrowing company is a private company and the director of lending company is either director or shareholder. In the present case, UHCL is not a private company, it is a listed company.

b) The borrowing company at a general meeting of which not less than twenty-five percent of the total voting power may be exercised or controlled by any such director, or by two or more such directors. In the present case, such common directors of SCPL are not holding voting power of 25% or more in UHCL.

c) The borrower company is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. The board of SCPL is not giving any directions to the board of UHCL.

Based on the above, the present case does not satisfy the conditions stipulated under 185 and hence the provisions of section 185 is not applicable for SCPL and UHCL transaction. **Accordingly, irrespective of common directors in SCPL and UHCL, SCPL can lend to UHCL.**

Section 186-

This section provides various conditions for a company providing loan or guarantee or security to any person or other body corporate. Non-compliance of the same shall attract fine. The conditions are as provided below:

a) the loan shall not exceed sixty per cent of its paid-up share capital, free reserves and securities premium account or one hundred per cent of its free reserves and securities premium account, whichever is more.

b) A special resolution has to be passed if loan exceeding the limit mentioned in the previous point has to be taken.

c) No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

d) The lender company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon cannot lend until such default subsists.

e) every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in form MBP-2

f) the company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security

As the SCPL has satisfied all the conditions mentioned under section 186, the company has reasonably complied with the provisions of Companies Act,2013 and the company can extend a loan to UHCL.

- **Provisions of Income tax Act,1961**

Section 2(22)(e)-

The definition lays down two conditions and upon satisfying both the conditions, the loan will be termed as dividend to the extent of loan or accumulated profits of the lending company whichever is lower. Following are the two conditions laid down in the said section:

a) **Not being a company in which public are substantially interested** (definition under section 2(18)) – As per section 2(18), to be a company in which public are substantially interested, the company's share must be held by the government at least to the extent of 40% or it must not be

a private company. As the shares of the company are not held by the government and it is a private company the first condition is satisfied. Hence, the lending company is not a company in which public are substantially interested.

b) **Any one of the following 3 points must be satisfied:**

i. **by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares holding not less than ten per cent of the voting power** – As the loan will not be given to a shareholder or a beneficial owner, but to a third party who is not a shareholder or beneficial holder of the lending company, this condition is not satisfied.

A beneficial owner is not defined under Income Tax Act and hence the definition under Companies Act is adopted for understanding. It is a person who can exercise the rights attached to such shares or who can receive or participate in the dividend of such shares. As the borrowing company does not have any right on the shares of the lending company and is not receiving any dividend directly from the lending company it cannot be called as a beneficial owner of the lending company's shares.

ii. to any concern in which such shareholder is a member or a partner and in which he has a substantial interest or any payment by any such company on behalf – the shareholder of the lending company is not a member or partner of the borrowing company (as the borrowing company is the member of the shareholders of the lending company) and the loan is not given as a payment to the borrowing company on behalf of the shareholder of the lending company. Hence, this condition is not satisfied.

iii. for the individual benefit of any such shareholder- as the loan is not given to the shareholder, no shareholders of the lending company are benefited individually from this transaction.

As none of the points under 2nd condition is satisfied, we concluded that 2nd condition is not satisfied. **Hence, the loan from SCPL to UHCL would not be treated as dividend under section 2(22)(e).**

- PRASHANTH GOEL M

Update 99
How to invest in Global Stock Markets

Many of you are regular traders in stock market. Have you considered exploring stock trading at global level?

Here's a small tour on certain procedures for investing in Global Stock Markets

Opening a trading demat account: Like you open a trading account here in India with a broking company (i.e. Zerodha, Kotak Securities, IIFL etc), to invest in shares listed on NSE or BSE or any other stock exchange, an individual interested in investing in global markets is required to follow a similar process to open a trading account with an Indian broking house to invest in shares of some foreign companies listed on the stock exchanges of their respective countries as there is no restrictions for opening a demat account for such investments.

To facilitate you to do the same, an Indian stock broker has to enter into a tie-up with a foreign broking partner (Eg: Penson Financial Services Inc.) who has the license to act as an intermediary and execute the trades on your behalf in the foreign markets.

The Indian stock broker will act as an introducing intermediary between you and the foreign broking house. The Indian stock broker will also help you in getting your account opened and completing the formalities of Know Your Customer (KYC) applicable for that country. You just need to fill an application form and provide your identity proof such as passport or PAN card and residential address proof such as Voters ID card or latest bank statement as the documents required to open a Demat account.

Once your necessary details are registered, you will be provided the bank account details of the foreign broker to which funds are to be transferred.

Charges to open Demat Account & Brokerage on the same: In present scenario, Kotak securities is charging Rs. 750/- to open a Demat account and Brokerage for trading is 0.75% on traded value or $9 whichever is lower and is based upon the terms & conditions.

Access for Demat Account: Once your account is opened and funds are transferred, you will be provided with a client Login ID and password to have an immediate access to the foreign broker trading platform to buy and sell shares of the listed foreign companies. All dealings like trading, delivery of shares/funds etc. will be done directly with the foreign broker without any involvement of the Indian stock broker.

Brokers providing this facility here in India: Only a few Indian broking companies like Kotak Securities, ICICI Direct, IIFL, Reliance Money and Religare, are offering these trading services to Indian investors.

In 2007, ICICI became the first company to have a tie up with US-based broking firm, (Penson Financial Services), for its overseas trading platform with access to NYSE Euronext and Nasdaq. Subsequently, Kotak Securities, IIFL and Reliance Securities has an arrangement with Saxo capital, Interactive Brokers LLC and US-based option Xpress financial services respectively.

You can transact on over 80 international stock exchanges with IIFL (Eg: NASDAQ, London Stock Exchange (LSE), Australian Stock Exchange (ASX), Hong Kong Stock Exchange (HKEX) and Singapore

Exchange (SGX). Wherein, ICICI Securities and Reliance Money facilitate you to transact only in the US markets.

In order to open a trading account, a minimum amount of deposit should be paid based on the terms & conditions and the same would be refunded at the time of closure of account after deduction of charges .

Demat account in this case: Unlike here in domestic markets, where you buy shares and the same would be credited to your Demat account in T+2 days, when you buy shares in foreign markets the shares remain in a pool account with the Brokerage custodian but it will start reflecting in your trading account immediately after buying and the Profit/Loss on the same would also be reflected.

Unlike with most Indian brokers, margin trading and short selling will not be allowed with a foreign broker **(i.e. Intraday Trading)**. You will be able to **buy shares** only when there is **sufficient balance** in your account and **sell shares** only when you already **hold** them. The objective of this restriction is to ensure that speculative trading is not orchestrated.

Anyone can have the access to all their transactions, account history and ledger balance on the trading platform (i.e. Mobile Application). Further, they will also get the contract notes for their executed trades in their mailbox.

Some of the Stock Exchanges Timing as per IST:

STOCK EXCHANGE	COUNTRY	OPENING TIME (IST)	CLOSING TIME (IST)
NASDAQ	USA	7:00 PM	1:30 AM
New York Stock Exchange	USA	7:00 PM	1:30 AM
London Stock Exchange	UK and Italy	1:30 PM	10:00 PM
Hong Kong Stock Exchange	Hong Kong	6:45 AM	1:30 PM
Japan Exchange Group	Japan	5:30 AM	11:30 AM
Shenzhen Stock Exchange	China	7:00 AM	12:30 PM

Funds Transfer – Pay-In/Pay-Out Process: As per the remittance norms of the Reserve Bank of India (RBI), an Indian citizen can remit a maximum of USD 2,50,000 in a financial year, from any of the authorised banks in India, including for investments in international capital markets. Further, the prior approval of CG/RBI is required for any investments exceeding the above-mentioned value during the financial year.

To remit funds to the foreign brokerage custodian bank account, you will be required to visit your bank branch, duly **fill Form A2** and submit it there along with your PAN card copy.

The foreign brokers accept funds originating **from your bank account only** and will reject any third-party fund transfer. It will take 24 to 48 hours for the funds to transfer from your bank account to your trading account with the foreign broker.

To get your money back, you need to fill Bank Transfer Request (BTR) form online and send it to the foreign broker. Once the pay-out request is acknowledged, the amount will be credited to your bank account. It will take round 48 to 72 hours to transfer money from your trading account to your bank account.

You may remit funds in one of the many global currencies from your bank account to your trading account but you need to decide the base currency in which you want to settle your transactions. So, if you set USD as the base currency in your account, then all stock exchanges which accept payments in USD will settle your transactions in USD automatically.

For your trades on other exchanges, which do not accept payments in USD, the foreign broker will convert your base currency, USD in this case, to the currency of that exchange at the market rate to execute the transaction.

The process of transacting in equity markets overseas is not that complicated, but we need to understand the dynamics of global equities.

Taxability in India for the shares listed outside India: For shares that are not listed in India and STT is not being charged on the same either at the time of buying or selling

a. If the holding period is more than or **equal to 36 months then it would be treated as Long-term Capital asset** - To be taxed @ 20% with indexation benefit.

b. If the holding period is Less than **36 months then it would be treated as Short-term Capital asset** - To be taxed @ Normal slab rates.

Taxability on Capital gains in foreign countries:

The Taxability on above mentioned shares will depend upon the Tax Rules & Regulations of the respective foreign nations.In addition to the above, the provisions of DTAA b/w India and the foreign country (i.e., where the shares are listed) needs to be verified.

Further, such tax amount can be claimed either by way of relief or foreign tax credit in the computation of Total income as the case may be.

- **MADHU SUDHAN REDDY B**

Update 100

Trust in Life v/s Trust in Law

'Maximizers search for better options even when they are satisfied.'

You'll be tickled pink to know that today, we are completing 100 updates. Thank you for following and executing the idea and making this initiative a success. Looking forward to many more 100's.

Trust in Life v/s Trust in Law

Trust in Life:
Trust means a firm belief in the reliability, truth, or ability of someone or something. As known, the very first job of a leader is to inspire trust. Trust is the single most essential element to our ability to deliver extraordinary results in an enduring way. **Trust is integral to build high-performance because it enables an organization to work as it should; it's the first defense against dysfunction and the first step towards delivering better outcomes.**

Trust in Law:

Introduction:
The origin of 'Trusts' can be traced back to the ancient times when human motivation to do charity and dedicate property for charitable and religious purposes. In addition to public endowments, private trusts can also be formed for looking after the welfare, age, disability or any other reason.

Definition of Trust:
As per section 3 of Indian Trust Act, 1882, 'A Trust is an obligation annexed to the ownership of the property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.'

Why to form a Trust?
A trust is mainly created because it helps the author to manage his property and nominate his property for the benefit of a third person in comparison to creating a will, as it does not require probate and hence there is no delay in legal consent.

Other reasons being;

- Charitable and/or religious sentiments of settler of the trust, ensuring public benefit.
- Claiming Income tax exemption under section 10 or 11, applied to income from charitable or religious purposes.
- For the welfare of family members and/or other relatives dependent on the settler of the trust;
- Proper management and preservation of property;
- Moreover, for regulating the affairs of a provident fund, superannuation fund or gratuity fund or any other fund constituted for the welfare of employees.

How to create a Trust?

Trusts are created when the settlor of the property transfers property or provides benefits for the welfare of beneficiaries or for the usage of public purposes. Four essential conditions are necessary to bring into being a valid trust.

- The person who creates a trust (settlor) should make an unequivocal declaration binding on him.

- He must transfer an identifiable property under irrevocable arrangement and totally divest himself of the ownership and the beneficial enjoyment of the income from the property.
- The objects of the trust must be defined and specified in trust deed.
- The beneficiaries are specified.

Who can create a Trust?

As per Section 7 of the Indian Trusts Act, 1882, a trust may be created by every person competent to contract and by or on behalf a minor, with the permission of a principal court of original jurisdiction. Following are also eligible to create a Trust:

- Trust by an Hindu Undivided Family;
- Trust by a Minor;
- Trust by a Woman;
- Association of Persons;
- Company (eg: Debenture-Redemption Fund Trust for redemption of its debentures);

Types of Trust:

PRIVATE TRUST:

A trust is called a 'Private Trust' when it is constituted for the benefit of one or more individuals who are, or within a given time may be, definitely ascertained. Private trusts are governed by the Indian Trusts Act 1882. A private trust may be created inter vivos or by will.

The following are the requisites for creation of a trust:

- The existence of the author/settlor of the Trust or someone at whose instance the Trust comes into existence and the settlor to make an unequivocal declaration which is binding on him.
- There must be a divesting of the ownership by the author of the trust in favour of the trustee for the beneficial enjoyment by the beneficiary.
- A Trust property.
- The objects of the trust must be precise and clearly specified.
- The beneficiary who may be particular person or persons.

Unless all the above requisites are fulfilled, a trust cannot be said to have come into existence.

PUBLIC TRUST:

A trust is called as Public Trust when it is constituted wholly or mainly for the benefit of Public at large, in other words beneficiaries in the Public trust constitute a body which is incapable of ascertainment. The Public trusts are essentially charitable or religious trusts and are governed by the general law.

Once a valid trust is created and the property is transferred to the trust, it cannot be revoked, If the trust deed contains any provision for revocation of the trust, provisions of sections 60 to 63 of the Income-tax Act, 1961 will come into play and the income of the trust will be taxed in the hands of the settlor as his personal income.

The difference between a public and private trust is essentially in its beneficiaries, A private trust's beneficiaries are a closed group, while a public trust is for the benefit of a larger cross-section having a public purpose.

However, there may be trusts which are a blend of both and are known as **Public-cum-Private Trusts**.

What are Public-cum-Private trusts?

There may be certain trusts whose part of the income may be applied for public purposes and a part may go to a private person or persons, Such trusts are known as Public cum Private Trusts. Such trusts, in respect of the portion of the income going to private person or persons are assessable as private trusts and in respect of that portion of the income which is applied for public purposes.

Do we have to register the Trust?

In case of a Private Trust having movable property, there is not need to **register**. However, a **private trust** with immovable property needs to be **registered** under the **Registration** Act, 1908.

In case of Public Trust, whether in relation to movable property or an immovable property created under a will registration is optional but desirable. **There are mainly two conditions for registration of a trust namely :**

1. An application to be made for registration in the prescribed form (Form 10A)
2. Where the total income of the trust or institution without giving effect to the provisions of section 11 & 12 exceeds the maximum amount not chargeable to tax in any previous year, the accounts of the trust or institution for that year has to be audited by a chartered accountant The report of audit should be in Form No. 10B prescribed in the Income-tax Rules, 1962 and said audit report has to be furnished along with the return of income.

Note: Private or family trusts are not allowed such exemptions u/s 11 or 12 and cannot obtain 12A registration

Advantages of a Trust

1. A trust can be formed for Charitable/Religious purposes which enables the settlor to discharge his sentiments for public benevolence, amelioration of human suffering, advancement of knowledge etc., in a regulated and proper way.
2. From taxation point of view, a charitable or religious trust enjoys several tax exemptions and benefits
3. Donations to eligible charitable institutions are also deductible from taxable income of the donor.
4. A trust can also be formed for the welfare of family members and relatives dependent upon the settlor.
5. The Institution of a trust enables the settlor to preserve his property from division and transfer to outsiders.

Taxation of Trusts:

Private trusts:

When shares of individual beneficiaries are determinate:

- The shares of all beneficiaries are liable to be assessed, either by the trustee(s) as a representative assessee or sometimes directly in the hands of the beneficiary entitled to income. The assessment is made at the rate that is applicable to total income of each beneficiary.
- If the income of the trust consists of profits and gains of business, income tax is charged in the hands of trustee(s) on the whole of the income & at maximum marginal rate. This provision is not applicable, in case of a trust which has been declared by anyone exclusively for the benefit of a relative dependent on him and if this trust is the only trust so declared by him.

When individual shares of beneficiaries are indeterminate:

a. As a representative assesses, the **Trustee(s)** is/are liable to tax.
b. If the income consists of profits and gains of business, then the entire income of the trust is charged at maximum marginal rate of tax, except in cases the trust that has been declared by a person exclusively for the benefit of a relative dependent on him and if this trust is the only trust so declared by him.

However, the maximum marginal rate of tax is not applicable in the following cases, and the income will be chargeable to tax as if it were income of an association of persons(AOP) :-

a. Where none of the beneficiaries has any other income chargeable to tax under the Income Tax Act and none of the beneficiaries is a beneficiary under any other trust or
b. Where the relevant income or part of relevant income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him or
c. Where the trust is created on behalf of a provident fund, superannuation fund, gratuity fund, pension fund or any other fund created bona fide by a person carrying on a business or profession exclusively for the benefit of persons employed in such business or profession.

In cases of (a) & (b) the relevant income is taxable in the hands of trustees as if it were the total income of an association of persons, while income falling under (c) supra is exempt from tax.

Public trusts:

Section 11 to 13 of the Income-tax Act, 1961 deals with taxation of Charitable Trust/Institution, in addition to following as follows

- Section 11 provides the manner in which income is exempt from income-tax.
- Section 12 provides the income of trust or institutions from contributions.
- Section 12A provides the conditions as to registration of trusts, etc.
- Section 12AA provides the procedure for registration.
- Section 13 provides section 11 not to apply in certain cases.

Other conditions of taxability of income of charitable & religious trusts are as follows

- Filing of return of the income U/s 139(4A) of the Income Tax Act, 1961 by trustees of a charitable or religious trusts if total income of the trust exceeds the minimum amount that is chargeable to income-tax without giving an effect to provisions of Section 11 and 12.
- Liability of the trustees as 'representative assessees' U/s 161 the Income Tax Act, 1961 wherein they are liable to tax for their representative capacity in respect of the income of trust.

U/s 80G of the Income Tax Act, 1961 , deductions (or special exemptions) in respect of donations to certain funds, or charitable institutions, etc is granted for doners. For being eligible under this section, the charitable trusts or institutions require to obtain a valid certificate by given an application to them in Form 10G. The basic condition for claiming exemption of income by the trust/institution is that "Income should be derived from the property held under a trust and the said income should be applied to charitable or religious purpose in India".

Note: The other important change made by the **Finance Act, 2017** is that any donation under section **80G** has to be made otherwise than in cash, if the amount exceeds Rs. **2,000**/-.

-'If people like you, they will listen to you. But if they trust you, they will do business with you.'

- **VENKAT NARAYANA REDDY K**

Update 101
Business Model of BCCI-IPL

For all the cricket Enthusiasts out there,
Here's a small tour on the "Business Model of BCCI-IPL"
The inventor or the Boss called as **'Board of Control for Cricket in India'** commonly referred to as 'BCCI' registered under **Tamil Nadu Societies Registration Act,1975** which started the IPL in the year 2008. Suppose BCCI wants to create a new IPL franchise, it will ask for bids from potential buyers in a sealed envelope and you bid for your team and win the highest bid. (eg; 600 cr)

This implies that you own that team for 10 years, provided you pay BCCI the full amount within a fixed period. So, if there are 10 teams then, BCCI earns INR 6000 Crores on an average for about 10 years. (This is one part of their earning from the IPL).
Let me point down the sources through which all the Franchise and the BCCI earn money -

MEDIA RIGHTS :
The BCCI sells the broadcasting rights of the tournament to a channel based on similar bids. For example, **Star India** bagged IPL media rights for a **record $2.55bn or Rs 16,347.5 crore from 2018-2022**
"EACH IPL BALL BOWLED TO BE WORTH Rs 23.3 LAKH FOR BCCI"
Previously, **SET Max** had the rights to telecast the Live matches and that cost them around **8200 crore for 10 years** from 2008-2017.
So, the franchise fees and the money generated through selling the broadcasting rights of the tournament are the main sources of income for BCCI.
For the channel, the only way of earning is by telecasting advertisements (remember Strategic Timeout? it was introduced so that the channel could telecast more ads).
SPONSORSHIP :
The next step for BCCI would be to find sponsors for the tournament, again through a similar bidding process BCCI finds a title sponsor (DLF, Pepsi) and other sponsors (Citibank, Karbon Mobile etc). These rights are generally sold for 5 years. Pepsi had paid BCCI 250 Crores for 5 years before IPL season 6. So, on an average BCCI collects about 500 crores for 5 years from these sponsors.
Currently, VIVO, TATA Motors, Future Enterprises, Paytm, CEAT, STAR India Private Limited are currently the exclusive sponsors and partners of the VIVO IPL. VIVO has retained the title sponsorship for IPL 2018-22 with a record figure. They bid **Rs 2,199 Crores, a 554% increase over the previous contract.**
NOW, talking about the teams and their agreements with the BCCI board

FRANCHISOR – FRANCHISEE – FRANCHISE AGREEMENT
The franchisor is the original or existing business which sells the right to use its name and idea. Franchises are a very popular method for people to start a business, especially for those who wish to operate in a highly competitive industry.

Board of IPL will not allow for a foreign entity to become the franchisee of the IPL. However an foreign entity can invest in an Indian Company if it has to become the Franchisee. There are no restrictions on the same under Foreign Exchange Management Act, 1999.

IPL – 9 teams – Franchise agreement

BCCI – Franchisor

Teams – Franchisee

Here the 9 teams are the franchisees who have entered into franchise agreements with the BCCI for participation in the Franchisee based Twenty/20 tournament, India Premier League (IPL) which is conducted for a maximum period of 7 weeks.

HOW THE IPL OWNERS AND TEAMS EARN MONEY?

IPL team owners or franchise spend a lot of money in their team's training etc. But the winning amount is only 20 crores. How do they recover the spent money?

BROADCASTING RIGHTS:

BCCI does pay each team around 50% for the money it generated through selling the broadcasting rights of the IPL.

TICKET SALES:

The franchise also generates revenue through the tickets sold at stadium. For 8 home matches given for each team, the ticket sales are shared amongst the Organisers (IPL) and the home teams in the ratio 20:80.

SPONSORSHIP FOR FRANCHISEES:

The other and major part of the revenue comes for a franchise is through advertisement. Franchises advertise for various brands and earn money. KKR , even after not performing well (in fact was at the bottom of the ranking) in the initial IPL editions was the most profitable franchise, this is because of the big brands SRK brought with him to the team(Nokia, Lux Cozi etc.).

Downfall of few IPL teams:

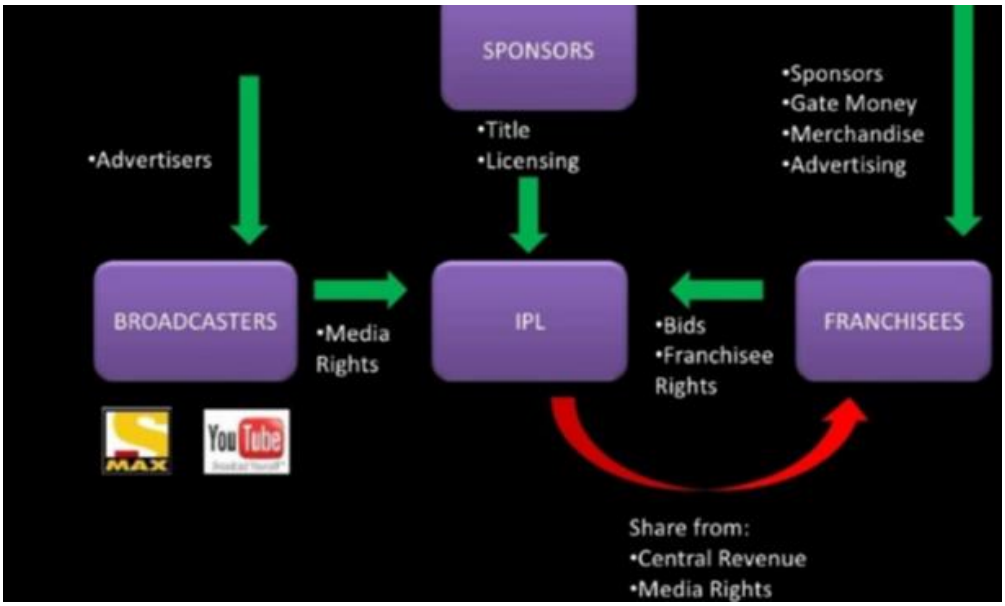
The **Deccan Charges (DC)** had to sell their franchise as they were unable to earn profit from their franchise as the team was not playing well and as a result the sponsors were not willing to pay good sum for their advertisement.

Remember Pune Warriors India Franchise? They got scrapped because they could not pay their annual franchise fee within a stipulated period as per guidelines of BCCI.

Kochi Tuskers Kerala IPL franchise was terminated by the BCCI because they failed to provide the bank guarantee to cover their annual fee. (10% bank guarantee of the total franchise fee that it was supposed to pay before the season began

This sums up the entire IPL business.

The facts are based on my reading of various articles on IPL over a period of 6-7 years



GST implications on the sporting event

GST loves to tag along with the supply of goods and services and **IPL is perfect marriage of both**. This will be the first ever IPL season after the roll out of GST. Whether GST will make any significant changes in tax position compared to the Service Tax regime? well as a professional we are going to find out the same along with some IPL fun.

This article broadly covers the analysis and applicability of GST on:

- some of the significant transactions in an IPL season
- outward supplies and inwards supplies of an IPL franchisees
- services rendered by the players.

"In the first part we shall analyse the GST on significant IPL transactions and Services rendered by the players"

Before going into the analysis of GST on IPL we have to figure out whether any of the services rendered or received in IPL is covered under the **exemption notification no. 12/2017** of the CGST tax rate.

S. No.	Services covered under exemption	Conditions to avail the said exemption
1	Service by way of right to admission to a sporting event	Sporting event must a **"recognized sporting event"** (as per the explanation provided in the notification)
2	Service provided by an individual as player, referee, umpire, coach or team manager	Service provided by an individual for participating in a sporting event must be organized by a **"recognized sports body"**

Conclusion: Board of Cricket Council of India (BCCI) is considered to be a recognized sports body for the purpose of GST. Hence most of the services in relation to conducting an international cricket match will be outside the ambit of GST. In other words, any domestic matches will be liable for GST. *(A federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India. A federation or a body which regulates a sport at international level - ICC. Its affiliated federations or bodies regulating a sport in India – BCCI)*

Services rendered by the players, coach or team manager for participating in "sporting event" organized by a "recognized sports body" is exempted. Even though the players are supported by BCCI a recognized sports body, the actual IPL playing contract is between the player and BCCI and also by understanding the essence of the contract between the player and franchise, it cannot be described as BCCI is sub-licensing or assigning the player's services to the franchisee. Hence the services rendered by players to IPL franchisee is not covered under the GST exemption.
As far as IPL is concerned some of the service such as services provided by umpires directly to BCCI for supporting IPL matches will be exempted and rest of the services will be liable to GST *(The notification does not cover the services of support staffs of IPL team and commentators. It will remain taxable without any reference to the explanations in the said notification.)*

NOTE : For the definition of recognised sport event, refer the exemption notification number given above
GST rates on the various income earned :

IPL title sponsorship: Taxable at 18% reverse charge
Brand Promotion Services: Taxable at 18% reverse charge
Franchise service: Taxable at 18%
Sale of IPL media rights: Taxable at 18%

But we have missed one more significant transaction ***"Player's services"*** to an IPL Franchisee. Players identity are the hot selling property for an IPL franchisee, they play a very important role right from the establishment fan base to securing high value corporate sponsorship deals. No corporate will prefer less popular player over **MS Dhoni and Virat Kohli** for sponsoring. Our study will remain incomplete if we did not analyze the services rendered by players.

Following are the various modes of income earned by the players in an IPL tournament and taxability of the same.
- **Player fee :** for featuring in IPL matches representing for a franchise: It can be either in way of Retention money (if a player is retained by the franchise before the auction) or by way of sale price in auction. Such income will be taxed under the head **Profit & Gains from Business and Profession**
- **Mid-year swap price :** Agreement between the franchise by which a franchise is entitled to utilize the services of an unutilized player in another franchise. However, this facility is still at proposal stage. Detailed procedures and settlement between the franchise is yet to be announced. Such income will be taxed under the head **Profit & Gains from Business and Profession.**
- **Individual performance related price money :** Awards such as man of the match, maximum sixes, best catch etc., during every matches and Rewards such as Orange cap, Purple cap, Emerging player, Most valuable player, Man of the tournament at the end of the season. Such income will be taxable under the head **Income from Other Sources.**
- **Team performance related incentives :** Incentives provided by the franchise, price money etc. Such income will be taxable under the head **Profits & Gains from Business and Profession.**

- NAVEEN J V

Update 102

Grandfather clause - A new revolution in long term capital gains

GRANDFATHER CLAUSE-A NEW INSERTION U/S. 112A OF INCOME TAX ACT, 1961

What is a grandfather clause?

A grandfather clause is a provision in which an old rule continues to apply to some existing situations while a new rule will apply to all future cases. Those exempt from the new rule are said to have grandfather rights or acquired rights, or to have been grandfathered in.

Grandfather clause in the Income Tax Act, 1961 (u/s. 112A)

Grandfathering is a legal provision. Here it will mean that long term capital gain made up till 31 January will not be affected. Only the gains made after that date will be taxed. Previously, long term capital gains arising from transfer of long term capital assets, being equity shares of
a company or an unit of equity oriented fund or an unit of business trusts, is exempt from income-tax under clause (38) of section 10 of the Act provided the transactions in such long term capital assets carried out on a recognized stock exchange are liable to securities transaction tax (STT). It led to significant erosion in the tax base resulting in revenue loss. The problem has been further compounded by abusive use of tax arbitrage opportunities created by these exemptions. In order to minimize economic distortions and curb erosion of tax base, it is proposed to withdraw the exemption under clause (38) of section 10 and to introduce a new section 112A in the Act to provide that long term capital gains arising from transfer of a long term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust shall be taxed at 10 per cent. of such capital gains exceeding one lakh rupees

When has the new rule come into effect?

The new rule came into effect from 1 April 2018. If you sell your stocks and equity funds by 31 March, LTCG will be exempt from tax. Remember, there is no tax on gains made till 31 January 2018. Only gain made after 31 Jan 2018 will be taxed if the investment is sold after 31 March 2018.

Let us take an example to understand this:

Particulars	Date	Amount (in Rs)	Effect/Explanation
Amount invested in stocks or equity funds	March 2016	2,00,000	
Value of the above	31 January 2018	4,00,000	
Sold subsequently	31 March 2018	5,20,000	LTCG will be calculated using the 31 Jan 2018 price. So, the gains will be only Rs 1,20,000.
LTCG		**1,20,000**	**Rs 1,00,000 will be tax free in a year and only**

			Rs 20,000 will be taxed at 10%.

How does the rule help?

If you sell after 31 March 2018, you can also book your long-term losses. Till now, there was no benefit if you incurred losses on stocks and equity funds held for over a year. But under the new rules, that will be allowed and you can set off the losses. The loss you have incurred can be adjusted not only against long-term gains from stocks and equity funds but also debt funds, gold and property. Your losses from stock investments can now bring down your tax.

Here is a closer look at what this means:

Particulars	Date	Amount (in Rs)	Effect/Explanation
Amount invested in stocks or equity funds	September 2016	2,00,000	
Value of the above	31 January 2018	1,00,000	
Loss, if sold before	1 April 2018	1,00,000	Neither can be set off nor carried forward
Loss, if sold after	1 April 2018	1,00,000	Can be adjusted against other long-term capital gains
If, LTCG	subsequent years	2,00,000	We won't have to pay any tax. Rs 1,00,000 will be tax free while Rs 1,00,000 can be adjusted against the Rs 1,00,000 loss shown above.

Note: Unadjusted losses can be carried forward and set off against gains for up to eight financial years.

Do you get indexation benefit?

No, the indexation benefit is not available to stock and equity fund investors. Since the cost is already as on 31/01/2018, the government is of the view that indexation benefit is already availed, therefore there is no indexation benefit given.

- B S RAHUL MURTHY

Update 103
Artificial Intelligence can replace human's job

Stephen Hawking says "The primitive forms of artificial intelligence(AI) we already have, have proved very useful. But I think the development of full artificial intelligence could spell the end of the human race."

A Swiss think-tank has warned that artificially intelligent robots can displace more than half of the human workforce by 2025, and could trigger a 'fourth industrial revolution'.

What can AI replace?

Everything that a computer system, a mechanical arrangement, can take care of will be sooner than later assigned to the machines. Which means that all pattern-based jobs – work that involves repetition and adherence to procedures – will go to machines. This is happening, and will happen, not only in engineering, **accounting and management** fields, but in all fields of human activity.

Artificial intelligence will wipe out half the banking jobs, accounting jobs in a decade. Truck drivers will soon be replaced by automation. Cashiers and store clerks are replaced. Robots will replace surgeons and doctors in healthcare. AI will replace programmers by 2040. Machine learning and natural language processing technologies will be so advanced that they will be capable of writing better software code faster than the best human coders. Automated journalism is already writing articles.

Any activity that can be captured and described in a computer algorithm will necessarily go to a machine, for the obvious advantages that machines have over humans in such works.

What is then left for a human being to do? What is it about a human being sthat a machine cannot duplicate? Where would humans be then needed in the whole industrial chain?

1. No machine can ever offer **creativity**. Machines can repeat, synchronise, rearrange, superimpose, juxtapose. Creativity is causeless and beyond reason. Creativity is not a product of the usual processes of the mind. Creativity requires freedom and faith, neither of which are possible to a system put together by the mind. Hence, the right place of human beings will on the high peaks of creativity.
2. A machine can follow, analyse, explain – all based on its programming – but no machine can ever **understand**.
3. No machine can **empathise or love**. No machine design can incorporate compassion.

AI in Auditing

To give an example, AI and deep learning technologies can be applied to lease **accounting process**. AI is used to streamline data capture from contracts, by identifying the relevant clauses for **accounting treatment**, such as lease commencement date, payment amounts, and renewal or termination options. By easing data capture from these contracts, teams are able to work much more quickly and efficiently, while better supporting clients in their transition to new **accounting standards**.

EY recently announced a global proof of concept to expand the use of drones in **inventory observations**. In order to enhance audit quality, project is using technology to improve the accuracy and frequency of inventory count data collection. By innovating the stock count process using ground breaking drone technology, AI and machine learning, will create a capability that can revolutionize areas of manufacturing, supply chain and inventory management.

Impact On Audit Profession?

There has been a lot of discussion around the idea that intelligent machines will take over the roles of humans, effectively making many of us replaceable. But society is still a long way from reaching a point where AI can replace human judgement, skepticism or personal experience, yet clearly there will be ongoing change to existing business models and alteration to the way organizations operate. But auditors will be called on to bring a broader range of **experience and knowledge** to the table. **Specialization** will take on more importance and auditors will need to build their skill sets. Audit teams will require a greater diversity of perspectives and backgrounds, with the ability to work across accountancy and specialist industries, and interact with innovative technology.

- ANAND M B

Update 104
Indian Depository Receipts

Indian Depository Receipts

Indian Depository Receipt (IDR) is financial instrument denominated in Indian Rupees in the form of a depository receipt. The IDR is a specific Indian version of the similar global depository receipts.

It is created by a Domestic Depository (custodian of securities registered with the Securities and Exchange Board of India) against the underlying equity of issuing company to enable foreign companies to raise funds from the Indian securities Markets. The foreign company will deposit shares to an Indian depository. The depository would issue receipts to Indian investors against these shares. The benefit of the underlying shares (like bonus, dividends etc.) would accrue to the depository receipt holders in India.

History:

IDR's are based on the original American depository receipts that were first introduced in 1927 in the US.

The Ministry of Corporate Affairs of the Government of India, using section 642 read with section 605A had prescribed the Companies (Issue of Indian Depository Receipts) Rules, 2004 (IDR Rules) vide notification number GSR 131(E) dated February 23, 2004.

The rules for IDRs were operationalised by the Securities and Exchange of India (SEBI)—the Indian markets regulator in 2006. Operation instructions under the Foreign Exchange Management Act were issued by the Reserve bank of India on July 22, 2009. The SEBI has been notifying amendments to these guidelines from time to time.

Standard Chartered PLC is the first and the only global company to issue Indian depository receipts in India way back in 2010.

Eligibility to Issue IDR's

The conditions are as per section 642 read with section 605A of the Companies Act, 1956 specifies any foreign issuing IDRs company shall have-:

- Pre-issue paid-up capital and free reserves of at least US$ 50 million and have a minimum average market capitalization (during the last 3 years) in its home country of at least US$ 100 million;
- A continuous trading record or history on a stock exchange in its home country for at least three immediately preceding years;
- A track record of distributable profits for at least three out of immediately preceding five years;
- Its pre-issue debt equity ratio is not more than 2:1.
- Listed in its home country and not been prohibited to issue securities by any Regulatory Body and has a good track record with respect to compliance with securities market regulations in its home country.

The size of an IDR issue shall not be less than Rs. 50 crores.

Issue Process:

- According to SEBI guidelines, IDRs will be issued to Indian residents in the same way as domestic shares are issued. The issuer company will make a public offer in India, and residents can bid in the same format and method as they bid for Indian shares.

- The general body of investors will get a chance to read and review the DRHP examined by SEBI as it is a public document, available on the websites of SEBI and the book running lead managers. After SEBI gives its clearance, the company sets the issue dates and files the document with the Registrar of Companies.

- After getting the Registrar's registration ticket, the company can go ahead with marketing the issue. The issue will be kept open for a fixed number of days as mentioned in the prospectus, and investors can submit their application forms at the bidding centres.

- The investors will bid within the price band and the final price will be decided to post the closure of the Issue.

- The receipts will be allotted to the investors in their Demat account as done for equity shares in any public issue.

On 26 October 2010, SEBI notified the framework for rights issue of Indian Depository Receipts (IDRs).

Eligibility for Investors:

According to SEBI guidelines, the minimum bid amount in an IDR issue is Rs 20,000 per applicant. Like in any public issue in India, resident Indian retail (individual) investors can apply up to an amount of INR 2,00,000 and non-institutional investors (also called high-net-worth individuals) can apply above INR 1,00,000 but up to applicable limits.

Reservations in IDR issues:

According to current regulations,

- at least 50% of the Issue is to be allocated to Qualified Institutional Buyers (QIBs),
- 30% of the issue to the retail individual investors
- 20% of the issue to non-institutional investors and employees. The ratio of non-institutional investors and employees is at the discretion of the company to decide.

The issue will fail if the company does not get QIB investors to the extent of 50% of the issue size.

Fungibility:

The Indian depository Receipts shall not be automatically fungible into underlying equity shares of issuing company. IDR Holders can convert IDRs into underlying equity shares only with the prior approval of the Reserve Bank of India (RBI) and IDRs shall not be redeemable into underlying equity shares before the expiry of one year period from the date of issue of the IDR's. Upon such exchange, individual persons resident in India can hold the underlying shares only for sale within a period of 30 days from the date of conversion of the IDRs into underlying shares. SEBI has recently allowed shareholders to convert their depository receipts into equity shares of the issuer company and vice versa and it is decided to allow partial fungibility of IDRs (i.e. redemption/conversion of IDRs into underlying equity shares) in a financial year to the extent of 25% of the IDRs originally issued.

Intermediaries involved in issuance in IDR's

- Overseas Custodian Bank is a banking company which is established in a country outside India and has a place of business in India and acts as custodian for the equity shares of issuing company against which IDRs are proposed to be issued in the underlying equity shares of the issuer is deposited.

- Domestic Depository who is a custodian of securities, registered with SEBI and authorised by the issuing company to issue Indian Depository Receipts;

- Merchant Banker registered with SEBI who is responsible for due diligence and through whom the draft prospectus for issuance of the IDR and due diligence certificate is filed with SEBI by the issuer company.

Whether the draft prospectus for IDRs must be filed with SEBI?

Yes. Foreign issuer is required to file the draft prospectus with SEBI while complying with the requirements of SEBI (ICDR) Regulations, 2009. Any changes specified by SEBI shall be incorporated in the final prospectus to be filed with Registrar of Companies.

Taxation:

Long term Capital gains:

Where, IDRs are held for at least 12 months and since, IDRs are listed securities (though not equity shares), the benefit of the concessional rate of long-term capital gains tax as per section 112 of the Income tax act is applicable; accordingly, the tax would be lower of

- 20% of the gains computed with indexation of cost, or
- 10% of the gains computed without indexation of cost

Short term Capital gains:

Normally, in the case of sale of shares of an Indian company on a stock exchange, if the shares have been held for at least 12 months, long-term capital gains that accrue are totally exempt. If such shares have been held for a lesser period, capital gains are taxed at a concessional rate of 15%. This exemption is available only to equity shares of a company on the sale of which securities transaction tax (STT) has been paid. This benefit would not extend to any capital gains that is made on the sale of IDRs of a foreign company since transactions in such IDRs are not subject to STT as per section 98 of Finance (No.2) Act - 2004, hence provision of Section 111A of Income Tax Act does not apply.

Dividend Income:

Dividends received in respect of equity shares of an Indian company are not taxable at all since the Indian company pays dividend distribution tax (DDT) on the dividend distributed by it. In case of IDRs, the foreign

company does not pay DDT u/s 115-O, and the dividend received in respect of such IDRs is, therefore, not exempt from tax. It is taxable at normal tax rates applicable.

Investment by Persons resident in India / FIIs / NRIs in IDRs

The FEMA Regulations shall not be applicable to persons resident in India as defined under section 2(v) of FEMA, 1999, for investing in IDRs and subsequent transfer arising out of transaction on a recognized Stock Exchange in India. Foreign Institutional Investors (FIIs) including SEBI approved sub-accounts of the FIIs, registered with SEBI and Non-Resident Indians (NRIs) may also invest, purchase, hold and transfer IDRs of eligible companies resident outside India and issued in the Indian capital market, subject to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified vide Notification No.FEMA 20 / 2000-RB dated May 3, 2000, as amended from time to time. Further, NRIs can invest in the IDRs out of funds held in their NRE / FCNR(B) account, maintained with an Authorised Dealer / Authorised bank.

- ADARSH S

Update 105
Masala Bonds

Masala Puri - Rescue for hunger; Masala Bonds – Rescue for gliding rupee!!

Today's spicy update is about "Masala Bonds"

Masala Bonds are rupee-denominated bonds issued to overseas buyers.

Masala is an Indian word and it means spices. The term was used by the International Finance Corporation (IFC) to evoke the culture and cuisine of India. Unlike dollar bonds, where the borrower takes the currency risk, masala bond makes the investors bear the risk.

The first Masala bond was issued by the World Bank- backed IFC in November 2014 when it raised 1,000 crore bond to fund infrastructure projects in India. Later in August 2015 International Financial Cooperation for the first time issued **green masala bonds** and raised Rupees 3.15 Billion to be used for private sector investments that address climate change in India.

In July 2016 HDFC raised 3,000 crore rupees from Masala bonds and thereby became the first Indian company to issue masala bonds. In the month of August 2016 public sector unit NTPC issued first corporate green masala bonds worth 2,000 crore rupees. As of now it is being traded only at London Stock Exchange(LSE)

Examples of similar bonds issued by other countries:

1. Samurai Bonds - Japan
2. Kangaroo Bonds - Australia
3. Panda Bonds – China
4. Dim Sum Bonds – Hongkong

The purposes for which the proceeds of rupee bonds can be used:

The proceeds can be used for all purposes except for the following:

1. Real estate activities other than for development of integrated township / affordable housing projects;
2. Investing in capital market and using the proceeds for equity investment domestically;
3. Activities prohibited as per the Foreign Direct Investment (FDI) guidelines;
4. On-lending to other entities for any of the above objectives; and
5. Purchase of land.

Maturity period: Minimum original maturity period for Masala Bonds raised upto USD 50 million equivalent in INR per financial year should be 3 years and for bonds raised above USD 50 million equivalent in INR per financial year should be 5 years.

The taxation aspect :

Particulars	194LC	194LD
Issuer	1. Specified company or 2. a business trust	Any person
Investor	1. Non resident not being a company 2. Foreign Company	Foreign Institutional Investor or a qualified foreign investor
Rate of tax on such interest payments	5%	5%

How can Masala bonds rescue sliding rupee?

The bonds are directly pegged to the Indian currency. So, investors will directly take the currency risk or exchange rate risks. If the value of Indian currency falls , the foreign investor will have to bear the losses, not the issuer which is an Indian entity or a corporate. If foreign investors eagerly invest in Masala bonds or bring money into India, this would help in supporting the rupee.

For example:

Particulars	**Amt in ₹**	**₹/$**	**Amt in $**	
Issue of bonds	1,000	50	20	
Redemption - Case 1	1,100	60	18	**Lower the value of rupee, lower is the inflow of dollars to investor**
Redemption - Case 2	1,100	44	25	**Higher the value of rupee, higher is the inflow of dollars to investor**

Also, there is a ***press release*** on 17th September, 2018 according to which, the interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India during the period from 17th September, 2018 to 31st March, 2019 shall be exempt from tax, and consequently, no tax shall be deducted on the payment of interest in respect of the said bond under section 194LC of the Act.

P S : Legislative amendments in this regard shall be proposed in due course.
PFA : Press Release

- SIDHI CHOPRA

Update 106
SWEEP FD

Like ***Warren Buffet's*** *rules for investing,*
"Rule No. 1: Never lose money. Rule No. 2: Never forget rule No.1"
Let us also have some rules in investing:

SWEEP FD

- A Sweep In/Out or auto sweep facility is a balance that's in excess of the stipulated amount which is transferred into a fixed deposit for a tenure of 1 year. The amount transferred will earn you a higher rate of return.

- The sweep facility is a kind of fixed deposit, and it is linked to your savings account or current account depending on which account you hold with the bank.

- If the bank has the sweep facility, under your instructions you can specify the threshold above which you want to sweep into a fixed deposit.

- The other benefit of a sweep facility you can make withdrawal from such fixed deposits for any emergencies, without affecting your savings or even breaking the deposit amount, or even worrying about the interest since it will still continue to earn interest on deposit amount.

Important terms are:

- ***Sweep Out*** - The automatic transfer of money to an FD account. Sometimes just called as Sweep.

- ***Sweep In*** - When the money from FD is moved into the savings account to meet the excess withdrawal requirement. Sometimes it is also called as reverse sweep.

How it works ?

If one chooses to go with such a sweep-in deposit, any amount above a certain threshold limit in the saving account is automatically converted
into an FD. Say, if you have Rs 1.8 lakh in your savings account and the threshold limit is Rs 20,000/-, then Rs 1.6 lakh will automatically be
moved out and converted into an FD. And, in case you have insufficient funds i.e., less than Rs. 20,000/- (threshold limit) in your savings
account, the deficit will be made good by withdrawals from your FD and funds will be moved back into the savings account.
Setting up of threshold limit lies with Account holder.

What can be the Advantages of Sweep-in Facility?

There are many advantages of this facility, below are some them:

- With this facility being available, you can now draw the exact amount you require and need, instead of an overdraft where that is a stipulated amount to be draw which more often that not ends up being more than you need.
- You don't lose interest on the fixed deposit, you lose interest only on the amount drawn or swept.
- The interest earned as well, will be higher than a regular savings account. For example, if the money in a savings account earns you a rate of 4.8% p.a the same money swept into a fixed deposit will earn you almost double the 4.8% p.a.
- Many banks even offer you the facility to link multiple fixed deposits to your sweep account.

What can be the Disadvantages of Sweep-in Facility?

Just like every plan has its pros and cons, even this has got a few.

- If you make frequent withdrawals, you might need to withdraw from your FD before 30 days, then it may not be beneficial for you.

- Interest earned on amount deposited for less than 30 days is less than 4% (after tax), which makes it a negative affair.

- There is a penalty on early withdrawal of funds, which can vary from 0.5 - 1% depending on the bank.

Manner of withdrawals

- The manner in which the funds will move between the savings account and the sweep FD is also an important factor to consider. They can be either on 'Last in First Out (LIFO) or on 'First in First Out (FIFO) basis.

- In general the LIFO method will earn better because the first FD sweep earns interest for a longer period, but if you make frequent withdrawals, FIFO method might be better.

Taxation Aspect

The interest earned in a savings account under section 80 TTA, is tax-exempt up to Rs 10,000 a year. However, the interest earned in a FD (including sweep FD) is taxable as per one's income slab. Therefore, sweep-in will suit those in the lower tax bracket than someone paying 30.9 per cent tax, as the net returns after considering taxation aspects would be low.

Thereby, it is wiser to have sweep FDs which will earn better returns than savings interest with liquidity options.

So, what we can conclude is that when you earn enough to be able to save something at the end of every month, you would like to invest them in an avenue that gives you the flexibility to access your savings during contingencies and yet give handsome returns when it is idle in your bank account, sweep FD is one of the best choice.

Sweep Out / In Facility

High Returns (FD)

+

High Liquidity (Savings)

- GHANASHYAM M

Update 107
IPO WITHOUT BANKS

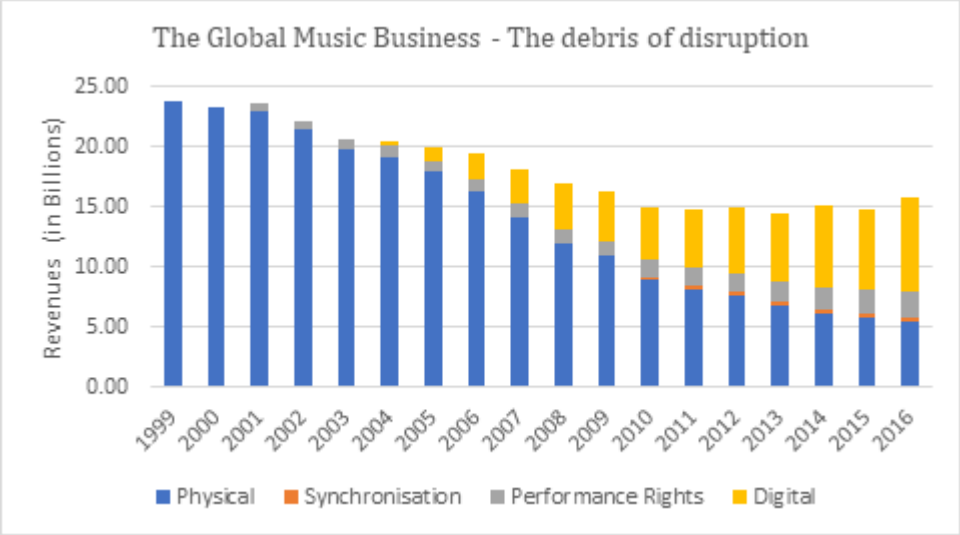
Ever heard of an IPO *WITHOUT BANKS*??!!!!

While audio streamers in India like Gaana, Wynk are facing an uphill struggle to flourish, Spotify, a US based audio streaming company went for an IPO with an unusual revolutionary structure which has drawn the world's attention.

Spotify poised to be a $25bn company on eve of IPO.

Spotify: The Back Story

Spotify was founded in 2008 in Sweden, by Daniel Ek and Martin Lorentzon, as a digital music streaming service. The timing was opportune, since the company caught and contributed to a shift in the music business, as **users have moved away from paying for physical (records, CDs) to digital**, as evidenced in the graph below:



Spotify Business Model

The Spotify business model is a simple one and it is as follows:

- Listeners can subscribe to a free version, with limited customization features (playlists, stations etc.) and online ads.
- Alternatively, they can subscribe to a premium version of the service, paying a monthly fee, in return for a plethora of customization options, and no ads.
- The company's standard service cost $9.99/month in the United States in 2018, with a family membership, where up to six family members living at the same address, can share a family service for $14.99/month, while preserving individualized playlists and stations.
- Spotify pays for its music content, **based upon how often a song is streamed**.

A few observations as mentioned below help us to get a sense of where Spotify stands right now and how it got there:

1. Explosive Growth

 Spotify saw explosive grow, with premium members climbing from about 31% of total subscribers in 2015 to 45% of subscribers in 2017.

2. Subscription Revenue dominates Ad Revenue

 While other companies focused on deriving revenues from Ads, Spotify's focus was on improving its premium subscriptions, where subscription revenues have accounted for 90% of revenues each year from 2015 to 2017.

 The one discordant note is that average revenue per premium subscriber has dropped over the same period 7.06 Euros/month to 5.24 Euros/month, a change that the company ascribes to family memberships, but a problematic trend nevertheless.

3. Content Costs coming down

 The company has been able to lower its content costs as a percent of revenues as it does not purchase the music instead it pays artists for the number of times a song is played.

4. Other costs trending up

 There are three other buckets of cost at Spotify -R&D, Selling & Marketing and G&A- and these costs are not only growing but eating up larger proportion of revenues.

 The collective load of these expenses is creating operating losses, and while margins have become less negative, it is primarily through the content cost controls.

Year	**2015**	**2016**	**2017**
Revenues	€ 1,940	€ 2,952	€ 4,090
Content costs	€ 1,714	€ 2,551	€ 3,241
R&D	€ 136	€ 207	€ 396
Sales & Marketing	€ 219	€ 368	€ 567
G&A	€ 106	€ 175	€ 274
Operating Income(Loss)	-€ 235	-€ 349	-€ 388
R&D as % of sales	7.01%	7.01%	9.68%
Marketing Cost as % of Sales	11.29%	12.47%	13.68%
G&A Cost as % of Sales	5.46%	5.93%	6.70%
Operating Margin	-12.11%	-11.82%	-9.49%

At this stage of its story, Spotify is a growth company with lots of potential (no irony intended) but lots of rough spots to work out. Since these rough spots caused it not to be the silver bullet, Spotify went for an IPO.

The Spotify IPO – *How is it different?*

1. No Banks:

 In a typical IPO, the issuing company seeks out an investment bank, which not only sets an offering price (backed up by a guarantee) but also creates a syndicate with other banks to market the IPO, in roadshows and private client pitches.

- But in this case both the company and what it does is well-understood worldwide and hence it is able to skip the traditional roadshow process where executives explain the company to potential investors.
- The Spotify IPO will dispense with the bankers and go directly to the market, letting demand and supply set the price on the opening day.

2. Cashing Out:
   - In most IPOs, the cash that comes in on the offering, from the shares that are bought by the public, is kept in the company, either to retire existing financing that is not advantageous to the firm, or to cover future investment needs.
   - Spotify is aiming to raise about $1 billion from its offering, but none of it will go to company. Instead, existing equity investors in the company will be receiving the cash in return for their holdings.

What are the perks??

1. **No bankers, no problem:**
   - The banking role in IPOs is overstated, especially for a company as high profile as Spotify. Bankers don't value IPOs; they price them, usually with fairly crude pricing metrics, though they often reverse engineer DCFs to back up their pricing. Their guarantee on the offering price is significantly diluted in value by the fact that they set offering prices 10% to 15% below what they think the market will bear, and their marketing efforts are more useful in gauging demand than in selling the securities.
   - Spotify said it chose this process because it allows the company to list without selling shares, offers liquidity to shareholders, and would provide equal access to buyers and sellers. It also wanted the process to be transparent and allow the market to set the price of shares.
2. **Control or Growth**:
   - It is odd that a company like Spotify, growing at high rates and losing money while doing so, would turn away a billion in cash that could be used to cover its growth needs for the near future by letting the existing investors cash out. The structure of the share offering, with voting and non-voting shares, indicates a **consolidation of control** with the founders, and the offering may provide an opportunity to get rid of dissenting voices.

Thus, this revolutionary IPO structure earned Spotify its success.

- NAMRATHA L R

Update 108
E-Way Bill

Ever Wondered how an E-way Bill works?

What is E Way bill?

E-Way Bill is the short form of Electronic Way Bill. It is a unique document/bill, which is electronically generated for the specific consignment/movement of goods from one place to another, either inter-state or intra-state and of value more than INR 50,000, required under the current GST regime.

E way Bill is Effect from :

i. As per the update on 23rd Mar 2018, Generation of the e-Way Bill has been made compulsory from 1st April 2018. Inter-state implementation of e-way bill is notified to be implemented from 1st April 2018 and Intra state implementation of e-way bill is notified to be implemented from 15th April 2018.
ii. When e-Way Bill is generated, a unique E-Way Bill Number (EBN) is made available to the supplier, recipient and the transporter.
iii. The e-Way Bill replaces the Way Bill, which was a physical document and existed during the VAT regime for the movement of goods.

Who should generate an E-Way Bill :

GST Registered Person:

a. When a registered person causes the movement of goods/ consignment, either in the capacity of a consignee (i.e., buyer) or consignor (i.e., seller) in his/her vehicle or hired vehicle or railways or by air or by ship, then either the registered person or the recipient should generate the e-Way Bill in Form GST EWB 01 electronically on the common portal by furnishing information in Part B.
b. When a registered person causes the movement of goods and hands these over to the transporter for transportation by road, but the e-Way Bill has not been generated, then it is the transporter who needs to generate the bill. The registered person will first furnish the information relating to the transporter in Part B of Form GST EWB. After which, the transporter will generate the e-Way Bill by the information furnished by the registered person through Part A of Form GST EQB 01.

Unregistered Person:

a. When an unregistered person causes the movement of goods, through his/her conveyance or hired conveyance or using the services of a transporter, then the e-Way Bill needs to be generated either by the unregistered person or by the transporter, by completing Form GST EWB-01.
b. When an unregistered person supplies the goods to a registered person AND the registered person is known to the unregistered person at the time of the start of the movement of goods, then it will be considered that the registered person is moving the consignment. In this case, the registered person or transporter shall complete the formalities of the e-Way Bill.

When Should E-Way Bill Be Issued

a. Ideally, e-Way Bill should be generated before the commencement of movement of goods above the value of INR 50,000 (either individual invoice or consolidated invoice of multiple consignments). The movement of goods will be either about a supply/ reasons other than supply (like return)/ inward supply from an unregistered person.
b. For purposes of an e-Way Bill, supply is considered either a payment in the course of business/ a payment which may not be in the course of business/ no consideration of payment (in the case of barter/ exchange).

How To Generate e-Way Bills

E-Way Bills are generated either via online e-way bill system or SMS. The bill needs to be generated before the start of the movement of goods about supply/ reasons other than supply/ inward supply from an unregistered person. [Supply being defined sale of goods and payment made/ branch transfer/ barter or exchange].

Steps to Generate E-Way Bill

E-way bill can be generated on the GST E-Way Portal. To use the portal, you will need a GST registration and transporter registration

Login to E-Way Bill Portal

Step 1: Access the E-way bill generation portal at https://ewaybill.nic.in/ and enter the login detail to enter the platform.

Step 2: Click on the **"Generate New"** option from the E-Way bill- Main menu page to generate a new E-Way bill.

Step 3: A new E-way bill generation form appears. Fill in the details required similar to creating a GST invoice.

i. Select outward, if you are the supplier and inward, if you are the recipient. Enter details of the supplier and recipient along with GSTIN, wherever applicable.
ii. When a registered GSTIN is entered in the field provided in the form, other details gets pulled into the empty fields. Before proceeding to the next step kindly check the details.

Step 4: The second half of the page will contain information to be filled as follows:

i. Product Name and Description must be completed similar to a tax invoice.
ii. HSN Code for the Product must be entered. Click here to find HSN code.
iii. IGST or CGST Rates applicable. IGST would be applicable for inter-state transport and SGST / CGST for intra-state transport.
iv. Approximate distance of transport. This would determine the validity of the E-way bill.

Step 5:Click on the **"SUBMIT"** button to generate the E-Way Bill. The E-Way bill gets displayed which contains the E-Way Bill number and the QR Code that contains all the details in the digital format. The printed copy of the bill should be provided to the transporter who will carry it throughout the trip till it is being handed over to the consignee.

Step 6:A consolidated E-Way bill can also be created which contains all the details on the transaction and is also easy to generate it by providing just the 'E-Way bill number' in the required field. Click on "SUBMIT" to generate the consolidated E-Way Bill.

GST E-Way Bill Format :

Below is the image of the e-Way Bill to be electronically generated after completing the Form GST EWB-01.

PART A	
A.1	GSTIN OF Recipient
A.2	Place of Delivery
A.3	Invoice or Challan Number
A.4	Invoice or Challan Date
A.5	Value of goods
A.6	HSN Code
A.7	Reason for Transportation
A.8	Transport Document Number
PART B	
B.	Vehicle Number

The bill comprises of 2 parts – Part A and Part B.

Part A of the form is to collect the details of the consignment, usually about the invoice:

GSTIN of Recipient: The recipient of the goods needs to provide the GST Identification Number

Place of Delivery: The Pin Code of the place where goods are to be delivered needs to be filled in.

Invoice or Challan Number: The Invoice or Challan number of the supplied goods, needs to be filled in.

Value of Goods: The total consignment value of the goods.

HSN Code: The HSN (Harmonized System of Nomenclature) code of the transported goods is required. If the turnover is up to INR 5 crores, then the first two digits need to be mentioned. For a turnover more than INR 5 crores, four digits of HSN code are required.

Reason for Transportation: One needs to select the most appropriate option from the list of reasons which is pre-defined.

Transport Document Number: One needs to enter the Goods Receipt Number/ Railway Receipt Number/ Airway Bill Number/ Bill of Loading Number.

In **Part B** of this form, one needs to fill in the vehicle number of the transported goods. The transporter will complete this information in the common portal.

- SAKETH P

Update 109
Business models of Online Food delivery companies in India

Start-ups in India have become the new trend setters and talk-of the-town in the global business economy in the past few years.
The Indian start-ups are finding that their secret ingredient for success in life is indeed, Food!
There are too many players today fighting to win the consumers hearts literally through their bellies. Food technology is the flavour of the season for Indian start-ups. Contrary to popular opinion, it is not about IT, but innovation in the consumption experience provided to the consumer using real food technology.

Business model -
The on-demand food industry has affected traditional markets by adopting a full cycle approach to the three basic components of a meal experience at a restaurant: Ordering, Cooking and Delivering.

- Ordering – Orders are customer requests to prepare and deliver food. All food on demand businesses receive orders via an app, a website or phone. The orders could be for their own kitchen or another meal provider they have partnered with.
- Cooking – Cooking is the process of preparing meals for customers. Meals could be pre-cooked or cooked after an order is received.
- Delivering – Delivery i.e., the transportation of goods is the backbone of any on demand business. Businesses can have different delivery models depending on various factors.

The table below gives examples of various 'food on demand' companies and the business model they are built on, depending on which component out of the three is owned by them

EXAMPLES	ORDERING	COOKING	DELIVERY
Just Eat, GrubHub, FoodPanda	Taken care of by the company	Partnered with Restaurants	Restaurants have their own delivery or use third party
Munchery, SpoonRocket, Sprig, Maple	Taken care of by the company	Taken care of by the company	Taken care of by the company
Postmates, Doordash, Caviar, Deliveroo	Taken care of by the company	Partnered with Restaurants	Taken care of by the company
RocketFood, Extra Plate	Taken care of by the company	Partnered with Home Chefs (Crowdsourced)	Taken care of by the company

Taxability –

1. Tax Withholding

Facilitation charges and Advertising charges collected by the Food aggregator from the Restaurant are liable for tax withholding @ 10% U/s 194J – Professional/ technical services.

2. Tax incentives on losses

On a general note, many of the companies mentioned in this update are incurring significant losses given the fact that they incur exceptionally high promotional expenses and offer heavy discounts. As they are start-ups and for them to penetrate into the market with cut-throat competition, they offer heavy discounts.

Losses incurred in initial phase offer a tax incentive for start-ups during the time of expansion as they are allowed to reduce their taxability on account of carried forward losses.
The average break-even time is about 6-7 years and there are high possibilities of these being acquired by other big entities in the market.

3. Tax exemption on investments above the fair market value

The government has exempted the tax being levied on investments above the fair market value in eligible start-ups. Such investments include investments made by resident angel investors, family or funds which are not registered as venture capital funds. Also, the investments made by incubators above fair market value is exempt.

Initially the food tech industry in India began with companies like Zomato trying to solve the problem of finding a good restaurant via a simple user-friendly platform. The next stage saw companies like FoodPanda trying to address the issue of ordering booking on these restaurants by working as an aggregator. The next stage had players like Swiggy tackling the issue of delivery in the value chain. Essentially these sums up the evolution of the Indian food tech market till date.

Swiggy

Swiggy is a food ordering and delivering company, founded by techpreneurs Nandan Reddy, Sriharsha Majety, and Rahul Jaimini in August 2014. It provides a single window for ordering from a wide range of restaurants and have their own exclusive fleet of delivery personnel pick up orders from restaurants and deliver it to customers. It is a complete food ordering and delivery solution that connects neighbourhood restaurants with urban foodies.
Swiggy's marketing strategy consists of both online and offline marketing campaigns. It promotes its campaigns via Facebook, Twitter, YouTube, Pinterest, and Instagram Swiggy uses its Social media not only for campaigning but to engage with its customers from solving the grievances to taking the feedback. But what sets Swiggy apart from Zomato & FoodPanda is their remarkable social media campaign strategies. Every campaign of theirs is extremely engaging, easy to consume and have an interactive quotient in them
Swiggy has two major revenue streams. The major part of Swiggy's revenue from commission it collects from restaurants for lead generation and for serving as a delivery partner. Swiggy also charges a nominal delivery fee from customers on orders below a threshold value which is 200 rupees for most cities.

Zomato

Zomato initially named as Foodiebay was started in 2008 by Mr. Deepinder Goyal. It is a restaurant searching platform providing in-depth details with autonomous reviews and ratings. Foodiebay, the initial name was changed to Zomato in November 2010 to increase their reach among people. To differentiate themselves from their competitors, Zomato concentrated on adding approx. 18,000 new places to eat from Zomato's advertising is very specific, when people search for specific keywords, ads of restaurants are shown for that specific keyword. This makes it highly targeted. This is also hyper local. Zomato sits on a pile of data and information. They have an in-built analytics platform that run a lot of queries and get valuable information out. Say if a person wants to open a new restaurant, they can connect with Zomato and find out the success rate of opening a restaurant in a particular location.
Very late to the game, Zomato started their online delivery service. Different from other players like Swiggy, Zomato does not have their own delivery system, they let users place the order through the website or the app and the restaurant fulfill that order through by their own.

Food Panda
Foodpanda GmbH is one of the most leading food deliveries in India. It was found in the year 2012 and its headquarters is in Germany and Berlin.
FoodPanda is the brand name and the Indian company Pisces Eservices Pvt. Ltd. is the Indian operations arm of it. Pisces Eservices Pvt. Ltd. was incorporated locally and funded by a Venture Capital company called Rocket Internet.
FoodPanda processes and sends orders directly to partner restaurants, which then deliver to their customers. The service is available via its websites and mobile applications.
FoodPanda is revisiting its strategy by outsourcing delivery and is also looking to start its own kitchen, a comparatively higher margin business, as it seeks to bolster its local business.

Interesting Fact – Ola acquires FoodPanda India business from German based Delivery hero group. It plans to further invest $200 million!
While the companies did not disclose the details of the deal size, sources have pegged the stock-based acquisition at under $50 million. The move will also see Ola invest another $200 million, as it takes on rival UberEats and incumbents like Zomato and Swiggy.

According to analysts, Ola has acquired the third largest player in the food delivery business in India and is focussed on broadening its range of services, including the food delivery segment, after Ola Cafe failed to take off in 2015.FoodPanda, the food experience platform has launched The Crave Party, its biggest food campaign till date. It was to cater to its users across its top-priority markets, offering desserts at just Rs 9. The campaign will witness a strong integration with Ola assets and properties, and will reach out to the aggregator's customer base for maximum impact.

Therefore, as you can see, the sole driver of these start-ups is technology. Companies like Swiggy, Zomato, FoodPanda, UberEats etc. have been able to garner such high valuation from investors because these companies solved problems with simple innovations. Companies like Swiggy, UberEats etc. allow you to order food from the smallest and farthest of places in your city. It solved the problem of choosing among restaurants only with delivery options. Zomato solved the problem of not knowing enough information about the restaurants in your city.

These companies have grown not solely because they have provided value on the customer-end, but also to the restaurants. They have provided a platform for these restaurants to reach out to an ever-increasing consumer base in the country which they could not have without these services. Hence, with technology and data analytics, these companies have been able to add value across the spectrum. The main reason for their success? It is by providing a service that eases the most basic of all human instincts, satisfying hunger.

- AFZA LAZEEB

Update 110
Types of Digital Payment Methods in INDIA

Types of Digital Payment Methods in India

1 Banking cards

2 USSD

3 Aadhaar Enabled Payment System (AEPS)

4 UPI

5 Mobile Wallets

6 Bank pre-paid cards

7 Bharat Interface for Money (BHIM) app

8 Point of Sale (PoS)

9 Internet Banking

10 Mobile Banking

1. Banking cards: Cards are among the most widely used payment methods and come with various features and benefits such as security of payments, convenience, etc. The main advantage of debit/credit or prepaid banking cards is that they can be used to make other types of digital payments. For example, customers can store card information in digital payment apps or mobile wallets to make a cashless payment. Some of the most reputed and well-known card payment systems are Visa, Rupay and MasterCard, among others. Banking cards can be used for online purchases, in digital payment apps, PoS machines, online transactions, etc. How to get Banking cards:

> Apply with your respective bank and provide Know Your Customer (KYC) details

> The card will get activated within a week and you will be allotted a 4-digit pin, which can be used for all transactions

2. USSD: Another type of digital payment method, *99#, can be used to carry out mobile transactions without downloading any app. These types of payments can also be made with no mobile data facility. This facility is backed by the USSD along with the National Payments Corporation of India (NPCI). The main aim of this type of digital payment service is to create an environment of inclusion among the underserved sections of society and integrate them into mainstream banking. This service can be used to initiate fund transfers, get a look at bank statements and make balance queries. Another advantage of this type of payment system is that it is also available in Hindi.

How to Use *99#:

> This service can be used by dialling *99#, after which the customer can interact with an interactive voice menu through their mobile screen.

> To use the service the mobile number of the customer should be the same as the one linked to the bank account

> The next step is to register for USSD, MMID (Mobile Number Identifier) and MPIN

3. AEPS: Expanded as Aadhaar Enabled Payment System, AEPS, can be used for all banking transactions such as balance enquiry, cash withdrawal, cash deposit, payment transactions, Aadhaar to Aadhaar fund transfers, etc. All transactions are carried out through a banking correspondent based on Aadhaar verification. There is no need to physically visit a branch, provide debit or credit cards, or even make a signature on a document, just have to visit near business correspondent. This service can only be availed if your Aadhaar number is registered with the bank where you hold an account. This is another initiative taken by the NPCI to promote digital payments in the country.

How to use AEPS:

> It is very simple to use AEPs, all you need to do is to provide the accurate Aadhaar number and the payment will be successfully made to the concerned merchant

4. UPI: UPI is a type of interoperable payment system through which any customer holding any bank account can send and receive money through a UPI-based app. The service allows a user to link more than one bank account on a UPI app on their smartphone to seamlessly initiate fund transfers and make collect requests on a 24/7 basis and on all 365 days a year. The main advantage of UPI is that it enables users to transfer money without a bank account or IFSC code. All you need is a Virtual Payment Address (VPA). There are many UPI apps in the market and it is available on both Android and iOS platforms. To use the service one should have a valid bank account and a registered mobile number, which is linked to the same bank account. There are no transaction charges for using UPI. Through this, a customer can send and receive money and make balance enquiries.

How to use UPI:

> Download the app on Android or iOS platform, eg : Tez, BHIM etc.

> Register for the service by providing bank account details

> Create a VPA, get an MPIN

5. Mobile Wallets: A mobile wallet is a type of virtual wallet service that can be used by downloading an app. The digital or mobile wallet stores bank account or debit/credit card information or bank account information in an encoded format to allow secure payments. One can also add money to a

mobile wallet and use the same to make payments and purchase goods and services. This eliminated the need to use credit/debit cards or remember the CVV or 4-digit pin. Many banks in the country have launched e-wallet services and apart from banks, there are also many private players. Some of the mobile wallet apps in the market are Paytm, Mobikwik, Freecharge, etc. The various services offered by mobile wallets include sending and receiving money, making payments to merchants, online purchases, etc. Some mobile wallets may charge a certain transaction fee for the services offered. How to use a mobile wallet:

> Download the app

> Register for the service by following instructions and providing all details

> Load money

6. Bank pre-paid cards: A prepaid card is a type of payment instrument on to which you load money to make purchases. The type of card may not be linked to the bank account of the customer. However, a debit card issued by the bank is linked with the bank account of the customer. For a business where numerous employess require regular petty cash it will be difficult for business to keep a track of these petty cash payments, instead of giving petty cash, business can provide prepaid cards to employess and business will be having access to load/transfer/stop the payments.

How to Use a Prepaid Card:

> Apply for the card

> Get pin

> Load money from your bank account/debit card

7. Bharat Interface for Money (BHIM) app: The BHIM app allows users to make payments using the UPI application. This also works in collaboration with UPI and transactions can be carried out using a VPA. One can link his/her bank account with the BHIM interface easily. It is also possible to link multiple bank accounts. The BHIM app can be used by anyone who has a mobile number, debit card and a valid bank account. Money can be sent to different bank accounts, virtual addresses or to an Aadhaar number. There are also many banks that have collaborated with the NPCI and BHIM to allow customers to use this interface.

How to Use BHIM App:

> Download and install the BHIM app

> Choose a language

> Register for the service by providing mobile number linked to bank account

> Add bank-related information and set up a UPI PIN by following the given instructions

8. PoS terminals: Traditionally, PoS terminals referred to those that were installed at all stores where purchases were made by customers using credit/debit cards. It is usually a hand held device that reads banking cards. However, with digitization the scope of PoS is expanding and this service is also available on mobile platforms and through internet browsers. There are different types of PoS terminals such as Physical PoS, Mobile PoS and Virtual PoS. Physical PoS terminals are the ones that are kept at shops and stores. On the other hand, mobile PoS terminals work through a tablet or smartphone. This is advantageous for small time business owners as they do not have to invest in expensive electronic registers. Virtual PoS systems use web-based applications to process payments. For eg : when ever an COD is placed by the customer, but while receiving package if customer have only card, ekart people will use mobile POS, because they cannot carry physical pos.

9. Internet Banking: Internet banking refers to the process of carrying out banking transactions online. These may include many services such as transferring funds, opening a new fixed or recurring deposit, closing an account, etc. Internet banking is also referred to as e-banking or virtual banking. Internet banking is usually used to make online fund transfers via NEFT, RTGS or IMPS. Banks offer customers all types of banking services through their website and a customer can log into his/her account by using a username and password. Unlike visiting a physical bank, there are to time restrictions for internet banking services and they can be availed at any time and on all 365 days in a year. There is a wide scope for internet banking services.

10. Mobile Banking: Mobile banking is referred to the process of carrying out financial transactions/banking transactions through a smartphone. The scope of mobile banking is only expanding with the introduction of many mobile wallets, digital payment apps and other services like the UPI. Many banks have their own apps and customers can download the same to carry out banking transactions at the click of a button. Mobile banking is a wide term used for the extensive range or umbrella of services that can be availed under this.

Benefits of Digital Payments

* Faster, easier, more convenient
* Economical and less transaction fee
* Waivers, discounts and cashback
* Digital record of transactions
* One stop solution for paying bills
* Helps keep black money under control

Disadvantages :

*Restrictions. Each payment system has its limits regarding the maximum amount in the account, the number of transactions per day and the amount of output.

*The risk of being hacked. If you follow the security rules the threat is minimal, it can be compared to the risk of something like a robbery. The worse situation when the system of processing company has been broken, because it leads to the leak of personal data on cards and its owners. Even if the electronic payment system does not launch plastic cards, it can be involved in scandals regarding the Identity theft.

* The necessity of Internet access. If Internet connection fails, you can not access the funds or make the payments.

- Adithya CV

Update 111

Carry forward and set off of losses in case of certain companies

Section 79(a) - Closely held companies (Other than eligible start-up)

Where a change in shareholding has taken place in a,previous year in the case of a closely held company **other than an eligible startup**, then no loss incurred in any year prior to such previous year shall be carried forward and set off against the income of the previous year unless on the last day of the previous year and on the last day of the year in which loss was incurred, the shares of the company carrying **not less 51%** of the voting power were beneficially held by same person.

It may be noted that section 79 is applicable notwithstanding anything contained Chapter VI. Therefore, the provisions of section 79 are applicable only in case carry forward of losses. The carry forward of depreciation is governed by section 32(2) and therefore, section 79 will not restrict carry forward and set off of depreciation. **[CIT v. Concord Industries Ltd ., SUPREME COURT]**

Section 79(b)- Eligible start-up (Added in Finance act, 2017)

Where a change in shareholding has taken place in a previous year in the case of a closely held company **being an eligible startup**, the loss incurred in any year prior to such previous year shall be carried forward and set off against the income of the previous year if, **all the shareholders** of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred,
i. continue to hold those shares on the last day of such previous year; and
ii. such loss has been incurred during the period of 7 years beginning from the year in which such company is incorporated.

Example-
Suppose a company was incorporated in June, 2016 as an **eligible start-up** and is a closely held company. The paid-up capital of the company is Rs 10,00,000 which **is held by Mr A and Mrs A**. The company incurred losses as under :
In PY 31/03/2017- 15,00,000
In PY 31/03/2018 - 21,00,000
Now the company is in **need of funds**. The company issues shares of paid up value of **Rs 50,00,000** to M/s Robot on **30/04/2018**.Now shareholding pattern is as under:
Mr A & Mr B : Paid up shares Rs 10,00,000
M/s Robot : Paid up shares Rs 50,00,000
Shareholding of Mr A and Mrs A which was 100% upto 31/03/2018 now **falls to 16.67%**

Loss of PY 31/03/2017 of Rs 15,00,000 and PY 31/03/2018 of 21,00,000 shall be carried forward to previous year 31/0/2019 since **all the shareholders** of the company who held shares on 31/03/2018 continue to hold those shares on 31/03/2019. Mr. A and Mrs. A were holding 1,00,000 shares of 10 each on 31/03/2018 and they continue to hold 1,00,000 shares of 10 each on 31/03/2019.

(**Note** - If the above company was not a eligible start-up company- section 79(a) applies and losses **could not** have been carried forward as shares carrying 51% of voting power as on last day of PY i.e 31/03/2017 & 31/03/2018 in which loss was incurred and last the day previous year i.e 31/03/2019 were not beneficially held by the same persons.)

Following changes in shareholding **not considered** as change in shareholding for **purpose of section 79**

i) Consequent upon the death of the shareholder.
ii) By way gift of shares to any relative of shareholder making the gift.
iii)A change in shareholding of an Indian company which is a subsidiary of foreign company as a result of amalgamation or demerger of the foreign company subject to the condition that 51% of the shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.

- Venkat Narayana Reddy K

Update 112
Supply Chain Management System

Today's update is about one of the Cost Management Strategies Supply Chain Management.

Elevating costs? Elevating prices? Increased Inflation?
Yet enterprises are able to survive. How? How do they achieve a competitive edge?

There are various cost management systems which help the enterprises to survive in every stage of Product Life cycle. One of the emerging cost management strategies is Supply Chain Management System.

What is it? How does it Work? -

Meaning of Supply Chain

A supply chain is the connected network of individuals, organizations, resources, activities, and technologies involved in the manufacture and sale of a product or service. A supply chain starts with the delivery of raw materials from a supplier to a manufacturer and ends with the delivery of the finished product or service to the end consumer. SCM oversees each touch point of a company's product or service, from initial creation to the final sale. With so many places along the supply chain that can add value through efficiencies or lose value through increased expenses, proper SCM can increase revenues, decrease costs, and impact a company's bottom line.

Supply Chain Management (SCM)

Supply chain management is the management of the flow of goods and services and includes all processes that transform raw materials into final products. It involves the active streamlining of a business's supply-side activities to maximize customer value and gain a competitive advantage in the marketplace. SCM represents an effort by suppliers to develop and implement supply chains that are as efficient and economical as possible. Supply chains cover everything from production to product development to the information systems needed to direct these undertakings.
The biggest challenge for a Supply Chain Manager is getting right inputs at right time, at right place, to the right person in order to provide the customer the desired output at a reasonable price.
A few essential SCM Tools are
a) Shipping status tools : Alerts and updates – Providing timely information on shipping.
b) Order processing tools - Order processing tools typically include several different types of metrics and identifiers to help the business with intake analysis, one of the many steps toward ensuring on-time delivery to your customers.

c)Warehouse Management tools - help companies manage a warehouse's day-to-day inventory operations and tools for evaluating the condition of inventory materials

d)Supplier Management - They can show the level of value and quality that each of their suppliers have brought to the process. These tools can help businesses get a better understanding of how they relate to their suppliers.

There are Supply chain managers who work with external partners to procure parts and raw materials needed to produce the product, create the inventory, and sell the product to outside markets. These professionals evaluate suppliers and negotiate contracts with vendors.
Becoming a supply chain manager requires some formal education. A bachelor's degree in business or a related field is required to pursue a career as a supply chain manager.

Breaking Down 'Supply Chain Management (SCM)'

Typically, SCM attempts to centrally control or link the production, shipment, and distribution of a product. By managing the supply chain, companies are able to cut excess costs and deliver products to the consumer faster. This is done by keeping tighter control of internal inventories, internal production, distribution, sales, and the inventories of company vendors. SCM is based on the idea that nearly every product that comes to market results from the efforts of various organizations that make up a supply chain. Although supply chains have existed for ages, most companies have only recently paid attention to them as a value-add to their operations.

How does SCM work?

Product Movement: Timely movement of a product from one unit to another, appropriate quality check at each point and quick delivery are the key components to completely satisfy customer's needs. SCM helps to define the process of product movement.

Information Sharing and Communication: Inappropriate communication can lead to disaster in businesses. SCM model will be designed such that it has an appropriate flow of information movement from one point to another while conducting business.

Timely Order to Delivery: Supply chain management model meets the deadlines well from the beginning till the end. Organization's success is solely depending on how successful the delivery of the product is when it reaches the customer's hands. Right from the order processing to manufacturing, receiving, quality checks and until delivery to the customer, SCM model will be fine tuned appropriately.

Service after delivery: Performance management is another important aspect to be considered to gain long term success. SCM model will have a system to regularly conduct performance reviews, quality checks after delivery so that the service after delivery is well taken care of. The continuous business growth needs to be considered while designing supply chain management system.

Finance: Supply chain management also includes managing finances of the organization. Accounts payable, inventory management, billing accuracies, possibilities of sharing costs across facilities are the few key finance activities that need to be defined well in the SCM model.

Examples of Entity's which has achieved success using SCM

Narayana Hrudayalaya

Narayana Health is a chain of multi-speciality hospitals, heart centres and primary care facilities with its headquarters in Bengaluru. Founded by Dr. Devi Shetty in year 2000.

How Doctor Devi Shetty makes Low cost Hospitals -

1. Use pre-fab building materials
2. Build for natural ventilation, no air-conditioning
3. Centralise purchase of drugs and consumables (Around 85%)
4. Leverage IT, share data on Cloud

Zara

Zara is one of the main clothing and accessory retailers internationally based in Spain. They are mainly focused on new, trendy and cutting-edge fashion for men and women alike. Currently it operates in 88 different markets worldwide, their main distributors are in Madrid and Zaragoza. Zara is known for its energy saving efforts and techniques, as well as their minimization and efficient waste management. This commitment with the environment is paramount within their operations across all plants and departments

and has helped create a collective conservation consciousness among members of the staff. In their fabrics, they used environmentally friendly fabrics like organic cotton amongst others. Their textile production comes from Spain, the Far East, India and Morocco. Biodiesel fuel is used to transport their products, according to their environmental policies. While other retailers use third-party production, Zara produces about 60% of the fabrics they use and use cutting-edge technology to cut and measure the handling of fabric so this is done in a precise and efficient manner, thus reducing waste overall.

The Coca-Cola Company

Main makers, marketers and distributors of drink concentrates and non-alcoholic syrups. The main office is located in Atlanta, GA but their products are distributed to virtually every country in the world. Their preparation, distribution and transportation logistics are in line with a segmentation strategy for their customers when it comes to the size and presentation of their products. Aside from having an extremely successful supply chain, Coca-Cola participates in sponsorships, partnerships, and alliances; thus, creating a great management and marketing of their products.

Amazon

Amazon's "online big box" concept is a perfect example of unique supply chains. As an e-commerce shop, obviously they cut the retail store out and ship from distribution centre to consumer's homes directly. Amazon's innovation is both in its supplier-side and its final supply chain link - delivery.

- Akshatha HN

Update 113
How do YouTubers earn money ?

Youtube is not just an entertainment platform , but it is also a platform for making money.

Who are YouTubers ?
Youtubers are those who makes videos and posts in YouTube by creating a Channel.They make money on the world's largest user-generated, video-centric social network.
Top YouTubers earn millions of dollars per year, and many small creators are also making a living through the status they've achieved on YouTube.
Prominent YouTubers are striking it rich through a combination of ad revenue, brand partnerships, personal business ventures and more.

How do YouTubers get paid.

1. Build the audience base.
You need to build up a library of quality videos, targeted at a specific audience, and work on promoting these videos, through social media or any other means you can think of, to gain subscriber base, before moving to the charging phase.
2. Setting up of channel for Monetization.
Once your have an audience, you can start to think about earning some money. Begin by enabling your account for monetisation. The first step of this is to join the YouTube Partner Program. You have to agree to their terms, basically agreeing that you won't do anything fraudulent.
3. Choosing the ad format

- **Display ads beside your video -** you will be paid either when a viewer sees or clicks on the ad, at the advertiser's discretion
- **Overlay ads (small ads at the bottom of a video) -** you only get paid if a viewer clicks on the ad to expand it
- **Skippable video ads (ads at the start of a video that a viewer can skip after five seconds) -** you get paid if a viewer watches the whole ad (or at least 30 seconds if it's longer). These are the most common type of YouTube ad.
- **Non-skippable video ads** (ads at the start which viewers can't skip over) and Bumper ads (short ads at the start of a video on mobile) - you get paid if a viewer watches an entire ad
- **Midroll ads (ads in the middle of a longer video)** - payment depends, but usually, a viewer has to watch an entire ad for at least 30 seconds)

4. Measurement of Performance
YouTube provides you with some analytical tools to help measure how well your monetized videos are doing. You can view the estimated earnings for your channel and videos in your YouTube Analytics Revenue report
* revenue from all Google-sold advertising sources for the selected date range and region
. * ad revenue split into Ad Sense revenue and Double Click Revenue
* transaction revenue derived from YouTube Rentals
* revenue from YouTube Red for the selected date range and region

5. Getting paid
Assuming that you have gone through the above process of setting up your channel for monetization, have advertisers happy to serve their ads on your videos, and have viewers watching (and not bypassing) your ads, you will start to earn some income

There are a few setup steps necessary for payment. You need to confirm that Google are using your correct payee name and address, and you need to verify your address.
You also need to select your form of payment from cheques, electronic funds transfer (EFT), EFT via Single Euro Payments Area (SEPA), wire transfer and Western Union Quick Cash.
Depending on your location you may need to provide Google with your tax details within your Adsense account.
Google won't pay you until you meet a payment threshold. This varies depending on your currency, but in the case of US dollars, the threshold is $100. This means that you need to earn at least $100 before Google processes your money and pays out. If you meet the payment threshold, and there are no problems with your account, Google will pay you at some point during the following month, the exact date depending on the payment method you selected.

Here's a small insight into the ways of making money through YouTube :

Branded integration - A branded integration on YouTube occurs when a brand is mentioned or featured in a video. There are three main types of content that are classified as a branded integration

- **"Brought To You By" Messaging:** In its most basic form, a branded integration may consist of an influencer stating that a certain video is "brought to you by *Brand X*".
- **Product Placement:** In the context of influencer marketing, product placement is when an influencer is paid to feature or promote a product within a piece of their social media content. On YouTube, **product reviews** and **"unboxing"** videos are some of the popular ways influencers integrate products into their published works.
- **Branded Entertainment:** In other cases, influencers will structure an entire video around a brand, producing highly creative content that is customized to showcase a brand or its products.
- **Brand ambassadors** - A brand ambassador (sometimes referred to as a "brand representative") is a YouTuber (or other social media influencer) who has entered into a public, long-term partnership with a business. These influencers will often be responsible for creating a certain number of sponsored posts, are sometimes featured in other forms of advertising, and may be asked to attend trade shows and other events as a representative of the brand
- **Affiliate marketing** - Putting links in content and/or video descriptions or offering promotional codes are popular ways YouTubers make money and get paid. Many of these links send users to e-commerce sites where product or services can be purchased. Known as affiliate links, these URLs are coded with a unique tracking IDs that give influencers a portion of each sale their link or promotional code generates.
- **Native advertising** - Through Google AdSense, YouTubers can earn money from advertisements shown within their content (often in the form of pre-roll videos and/or banner ads). A YouTuber's AdSense account can also be connected to other site and blogs they use to produce income.
- **Super Chats** - Super Chats are highlighted comments viewers can purchase during a YouTuber's live video stream that receive special placement in the comments section. YouTube gives content creators a share of the revenue that these messages produce during their broadcast.
- **Crowdfunding** - Many YouTubers make additional money through crowdfunding and donation sites like Patreon and Kickstarter. While Kickstarter is primarily used for raising large amounts of money around particular projects, Patreon is utilized by many YouTubers to earn a passive monthly income for themselves and their channel.
- **Merchandising** - Many influencers sell clothes and other goods that feature their likeness, channel, and/or brand name. However, like many forms of monetization, the success of merchandise is often reflective of the YouTuber and channel's popularity.

- **Individual Business Ventures :**
- Mobile apps, e-tutorials, and photo/video presents are some of the digital products YouTubers sell online to make money.
- Many popular YouTubers write books about their areas of expertise, or even about the life of being a social media influencer.
- Some YouTubers have made the linear leap to podcasting. Varying in frequency and topic, podcasts allow fans to keep up with their favourite YouTubers on the go. For YouTubers, selling ad space in their podcast content gives them yet another money making opportunity.
- From clothing to housewares, to nutritional supplements, YouTubers in almost every category have used their online fame to launch their own personal product lines.

Tax Implication on money earned from YouTube

The income from YouTube can be considered as income from "Business or Profession".

If an Individual or company is earning money from blogging then to earn that income the expenditure incurred for the business can be set off with the income to arrive at the net profit.

Example : Purchase of laptop,camera or any other equipments for uploading videos then the depreciation at the specified rate is allowable for deduction.

Example of Allowable expenditure : Blog Conference Fees, Website design fees.

Income from Business or Profession will be clubbed with other heads of income and tax is calculated as per Income Tax Slab rate

Advance Tax Implication

If an Individual or Company estimate that tax to be paid at the end of the year is more than Rs,10,000 .Then Advance tax provisions apply.

Example :

Suppose a person is having income from Salary Rs.2,10,000 and also blogging income which amounts to Rs.70,000

The person is liable to tax after clubbing both heads of income.

TDS Applicability :

No, Google is paying income .So, it is not liable to deduct TDS .The assessee should club that income with other heads and should pay taxes.

- Karthik Kumar P

Update 114
An insight on FATCA

What is FATCA?

The Foreign Account Tax Compliance Act (FATCA) is an important development in U.S. efforts to with an intention to tax evasion by U.S. persons holding accounts and other financial assets offshore.
Introduced by the United States Department of Treasury and the US Internal Revenue Service(IRS), the purpose of FATCA is to encourage better tax compliance by preventing US persons from using banks and other financial organisations to avoid US taxation on their income and assets.
A significant number of countries worldwide are expected to sign inter-governmental agreements (IGAs) relating to FATCA compliance with the United States government. These IGAs will result in the FATCA legislation becoming part of these countries' local laws

Impact of FATCA.
Under FATCA, certain U.S. taxpayers holding financial assets outside the United States directly or indirectly must report those assets to the IRS on Form 8938, Statement of Specified Foreign Financial Assets.
FATCA will also require certain foreign financial institutions to report directly to the IRS information about financial accounts held by U.S. taxpayers or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. The reporting institutions will include not only banks, but also other financial institutions, such as investment entities, brokers, and certain insurance companies. Some non-financial foreign entities will also have to report certain of their U.S. owners.

What are Specified Foreign Financial Assets?

Specified foreign financial assets include foreign financial accounts and foreign non-account assets held for investment (as opposed to held for use in a trade or business), such as foreign stock and securities, foreign financial instruments, contracts with non-U.S. persons, and interests in foreign entities.

How to know if You are affected?
FATCA legislation affects both personal and business customers who are treated as a US person for US tax purposes. The FATCA legislation also affects certain types of businesses with US owners.
The term 'US person' includes the following (but is not limited to):

- a citizen of the US, including an individual born in the US but resident in another country (who has not given up their US citizenship)
- a person residing in the US, including US green card holders
- certain persons who spend a significant number of days in the US each year
- US corporations, US partnerships, US estates and US trusts.

What does FATCA mean for me if I am a US person?
If you are considered a US person, you may be asked to supply to your Foreign Bank and Financial Institution with additional information or documentation.
If you are a specified US person, Foreign Banks and Financial Institution will be required to report information about you and your account to the local tax authority or the IRS on an annual basis.

Agreement with India.
The Foreign Account Tax Compliance Act (FATCA) came into effect from September 30, 2016 which has enabled automatic exchange of financial information between India and the US.

The Inter-Governmental Agreement (IGA) between India and US, signed in July, 2015 as part of FATCA

implementation, requires the Indian Financial Institutions to provide necessary information to Indian tax authorities, which will then be transmitted to the US automatically.

The rules prescribe reporting requirements on a staggered basis starting from 2014, and reporting of all details prescribed from 2017 onwards.

What does FATCA mean for me if I am not a US person?
FATCA has minimal impact, and there will be no action required.
However, Bank and Financial Institution may still contact you to confirm your status as a non-US person if we have reason to believe you are potentially a US person for FATCA purposes.

- Sumukh K A

Update 115
Section 158A and 158AA of the Income Tax Act, 1961

Today's update is about the status of pending litigation before High court or Supreme court/Supreme court

What happens when an assessee claims identical question of law pending before High court or Supreme court ??

Section 158A

Extract of the sub sec (1) -

(1) Notwithstanding anything contained in this Act, where an assessee claims that any question of law arising in his case for an assessment year which is pending before the Assessing Officer or any appellate authority (such case being hereafter in this section referred to as the relevant case) is identical with a question of law arising in his case for another assessment year which is pending before the High Court on a reference under section 256 or before the Supreme Court on a reference under section 257 or in appeal under section 260A before the High Court or in appeal under section 261 before the Supreme Court (such case being hereafter in this section referred to as the other case), he may furnish to the Assessing Officer or the appellate authority, as the case may be, a declaration in the prescribed form and verified in the prescribed manner, that if the Assessing Officer or the appellate authority, as the case may be, agrees to apply in the relevant case the final decision on the question of law in the other case, he shall not raise such question of law in the relevant case in appeal before any appellate authority or in appeal before the High Court under section 260A or in appeal before the Supreme Court under section 261.

Lets take an example to understand it in a better manner :

Issue in AY 2015-16 : The assessee has claimed additional Depreciation U/s 32 and his return was selected for Scrutiny and the additional depreciation claimed has been disallowed by the Assessing Officer during the Scrutiny Assessment and such decision is also upheld by the CIT(A) and ITAT questioning the eligibility of claiming Additional Depreciation. The Assessee has further moved on to High Court by disagreeing the decision of the lower authorities and such case is still pending in the Highcourt.

Issue in AY 2016-17 : The assessee has claimed additional Depreciation U/s 32 and his return is selected for Scrutiny. At this point in time, the Assessee may submit his representations before the concerned authority explaining that such a similar issue in his case pertaining to other assessment year is still pending before Highcourt on which the verdict is yet to be provided.

Further, other subsections of Sec 158A provides following procedure to be followed :

The Assessing Officer or the appellate authority, as the case may be, may, by order in writing,
(*i*) admit the claim of the assessee if he or it is satisfied that the question of law arising in the relevant case is identical with the question of law in the other case; or
(*ii*) reject the claim if he or it is not so satisfied.
Where a claim is admitted under sub-section (3),
(*a*) the Assessing Officer or, as the case may be, the appellate authority may make an order disposing of the relevant case without awaiting the final decision on the question of law in the other case; and
(*b*) the assessee shall not be entitled to raise, in relation to the relevant case, such question of law in appeal before any appellate authority or in appeal before the High Court under section 260A or the Supreme Court under section 261.

Further it has to be noted that, when the decision on the question of law in the other case becomes final, it shall be applied to the relevant cases with the same issues being questioned for different assessment years.

Sec 158AA - Procedure when in an appeal by revenue an identical question of law is pending before Supreme Court.

Similar to Sec 158A, where the verdict is against the Revenue in High Court and such case has already been appealed before Supreme court for which verdict is yet to be declared then the Commissioner/Principal Commissioner may direct the Assessing Officer to file an application to the Appellate Tribunal, having the same facts of the case for another assessment year, within sixty days, intimating that an appeal will be filed for the later assessment year after the declaration of verdict to the former case pending before the Supreme Court.

– Sathvik V

Update 116
$990 investment in Apple's IPO

What if we had invested $990 in Apple's IPO?

Apple Incorporated (NASDAQ: AAPL) is the world's largest company by market capitalization. On August 2, 2018, Apple became the first company ever to record a market capitalisation of over $1 trillion.

The incredible run of Apple Inc. stock, a major force in the technology sector, ground-breaking product by ground-breaking product.

It's sometimes an interesting exercise for investors to look back and consider the hypothetical question of, "If I had invested $100 several years ago in stock 'X', how much would that investment now be worth?"

How much Money we would have made if we had invested in Apple's IPO??

An investment of $990 on Apple's initial public offering (IPO) on Dec. 12, 1980, would have generated $5,68,865 after stock splits, not including dividends. We would have benefited more, if we included the dividends that Apple paid out since its IPO. In 2018 alone, Apple has declared 3 dividends which are the most recent in its long dividend pay-out history.

For a $990 investment in 1980, the current return on investment is **57,367**% (without considering dividends). PS: In this case there is a good return on investment as there is a steady growth of the company. However, there are numerous cases where there are only losses and no returns.

- Vishnu V N

Update 117
Nostro & Vostro Accounts

"I have no fear, that is why I am unarmed!"

When he visited the Northwest Frontier to meet his Pathan supporters, he was dwarfed by their height. They were tall and rugged, and all carried guns.

"Are you afraid?" he asked them. "Why else would you carry guns? "

They stared at him, stunned into silence. No one had ever dared to question their courage.

"I have no fear," continued Gandhiji. "That is why I'm unarmed. That is what Ahimsa (Non-violence) is all about."

The leader of the group, Khan Abdul Ghaffar Khan, threw down his gun, and the others followed suit.

Let us all observe **International Non-Violence Day** today celebrated across the world in honour of our dear **Bapu's Birthday!!!**

Let us also not forget to remember and honour the birthday of another great person, **Lal Bahadur Shastri**, on this day who also worked towards our Nation's freedom. Shastri joined the Indian Independence Movement in 1920s. He was the second Prime Minister of India and a senior leader of the Indian National Congress. He was a man who knew the strengths of Farmers and Soldiers and always told – **"Jai Jawan Jai Kisan!!"**

Now it's time for update of the day!!

With a growing economy, bank operations are not confined only to the national borders. Banks are opening branches in foreign countries. But the practical question is to ask - Is it possible for a bank to open branches in each and every other country?

The easiest way to handle this situation is to open an account in foreign country's bank!!

This is where Nostro and Vostro A/c come into play.

Nostro (Our) and Vostro (Your) are Italian terms that describe the same Bank A/c. These are the terms used when one bank has another Bank's money on deposit.

Nostro Account:

The Nostro Account, is the records of the bank whose money is on deposit at another bank. It is a way to keep track of how much of one bank's money is being held by another bank. Hence a Nostro account can be said as "Our account of our money, held by another bank". A Nostro account will be in foreign currency as it is a record or account of funds held by one country's bank in a foreign country's bank a/c in that currency. In other terms Nostro A/c is held in the currency of the country where the money is on deposit.

E.g.: Bank A of India keeping records of its monies held in Bank B of USA, in US Dollars. Such a record or account is known as Nostro Account.

Vostro Account:

Vostro A/c, to Bank that holds the money, is like any other bank A/c.
The account is a record of the money owed to or maintained by a third party (i.e. typically a bank, but it can be either a company or an individual). Hence a Vostro A/c can be said as "Your money that is on deposit at our Bank". A Vostro Account will always be in the Local currency of the bank where the money is being deposited.

E.g.: Vostro account is the term used by Bank B of USA, where Indian Bank A's money is on deposit.

Got confused right!? Let's look at an instance:

GT Bank, a Nigerian bank, gets a lot of money sent to its customers at home from the United States in the form of remittances. Since GT Bank does not have a physical presence in the United States, it enters into an agreement with Citibank where the latter has an account remotely opened for GT Bank in U.S. dollars. This way, money sent by U.S. customers and businesses to GT Bank account holders in Nigeria will be deposited in the account that GT Bank has with Citibank.
This money deposited will then be transferred by Citibank to GT Bank's U.S. dollar account in Nigeria. GT Bank receives the dollar denominated funds, converts it into the local currency i.e. the naira, and deposits it to the local accounts of the recipients.
From GT Bank's perspective, its US dollar account with Citibank is a Nostro account. From Citibank's perspective, it is holding a Vostro account for GT Bank in US dollars.

Here's another Instance:
For claiming GST Refund of credits where export of services is made without payment of tax, it is of utmost importance to prove that the consideration for the said services has been received in Convertible Foreign Exchange through the relevant FIRCs.

However, if the exporter has a facility with his bank to discount his Export bills, he may request the bank to do so. Once the bank receives the amount from overseas buyer into its Nostro Account, the bank would

adjust the said amount against the discounted bill after charging the relevant bank charges. In such situations the bank would give a Bill Discounted Advice stating the details of the bill that was discounted.

- Aishwarya R Bhat

Update 118
SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS

Topics to be discussed

- Basics
- SEBI Clarifications of SAST Regulations upon conversion of Company into LLP
  - Ø Synopsis
  - Ø Facts
  - Ø Question of law
  - Ø Tax and Regulatory Implications
  - Ø Informal guidance of SEBI
  - Ø Conclusion

BASICS

QUESTIONS	ANSWERS
What is meant by Takeovers & Substantial acquisition of shares?	When an "acquirer" takes over the control of the "**Target Company**", it is termed as Takeover. When an acquirer acquires "Substantial quantity of shares or voting rights "of the target company it results into **subsequent acquisition**
What is a 'Target Company'?	The company / body corporate or corporation whose equity shares are listed in a stock Exchange and in which a change of shareholding or control is proposed by an acquirer, is referred to as the**'Target Company'.**
Who is an 'Acquirer'?	Acquirer means any person who, whether by himself, or through, or with persons acting in concert with him, directly or indirectly, acquires or agrees to acquire shares or voting rights in, or control over a target company. An acquirer can be a natural person, a corporate entity or any other legal entity
What is an open offer under the SAST Regulations, 2011?	An open offer is an offer made by the acquirer to the shareholders of the target company inviting them to tender their shares in the target company at a particular price. The primary purpose of an open offer is to provide an exit option to the shareholders of the target company on account of the change in control or substantial acquisition of shares, occurring in the target company

SEBI Clarifications of SAST Regulations upon conversion of Company into LLP

Synopsis

•**The Securities and Exchange Board of India (SEBI),** by way of an informal guidance, clarified that acquisition/ transfer of shares in Target Company pursuant to conversion of existing shareholder and promoter (Acquirer), from private limited company into LLP, would fall within the meaning of 'succession' under SAST Regulations and would qualify for exemption from making an open offer. The exemption from making an open offer is subject to the shareholding of the LLP being the same as that of Acquirer in the Target Company, with no change in control.

Facts

θ**Fidelo Foods Private Limited (FFPL)** is the existing shareholder and promoter of **India Finsec Limited (Target Company)**, holding 18.19 per cent shares in the Target Company. The shares of the target company are listed on the BSE.

θFFPL proposed to change its status from private limited company to a Limited Liability Partnership (LLP) pursuant to which the shareholding of FFPL shall be transferred to/ or be acquired by the LLP.

θThere would be no change in the controlling interest of the Target Company.

Question of law

•The question that arose before SEBI is whether such transfer/acquisition upon conversion of a company into LLP, would trigger open offer obligations under Regulation 3 of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (SAST Regulations).

Tax and Regulatory Implications

♣In accordance with Regulation 3(1) of SAST Regulations, acquisition of/transfer of shares would trigger an open offer obligation, if it entitles the Acquirer along with the person acting in concert, to exercise 25% or more voting right in the Target Company.

♣However, Regulation 10(1)(g) of SAST Regulations states that the acquisition of shares by way of succession, transmission or inheritance is exempt from the obligation to make an open offer under Regulations 3 and 4 of SAST.

♣**Section 47(xiiib)** of the Income-tax Act, 1961 (the IT Act) provides the conditions that need to be satisfied in order for conversion of a private company/ unlisted public company into a LLP, and being exempt from capital gains tax in the hands of both the company as well as the shareholders. While Section 47(xiiib) imposes certain restrictions on post conversion transactions -such as

- restrictions on distribution of accumulated profits and change in profit sharing ratio -the conditions of allowing only a company having total turnover etc., up to INR 6 million and total assets up to INR 50 million in all the three years prior to the conversion, being eligible for the above exemption are the most burdensome.

-The above restrictions have impaired the ability of promoter holding companies to move into a more efficient model of a LLP. While a conversion into a LLP without complying with the conditions of Section 47(xiiib) could be explored, achieving tax neutrality (especially on the shareholders' side) based on general principles may be a long-winded and litigative proposition.

Informal guidance of SEBI

•It was stated that the acquisition/transfer of shares in Target Company is pursuant to conversion of a private limited company into a LLP and the ownership of business of FFPL was proposed to be transferred to the LLP without any change in the nature of business and control.

•SEBI clarified that the proposed conversion would fall within the meaning of 'succession' under regulation 10(1)(g) of the SAST Regulations and would qualify for an exemption from making an open offer, subject

to the shareholding of the LLP being the same as that of FFPL in the Target Company, with no change in control.

•SEBI further stated that upon conversion, the LLP would form part of the promoter group and therefore, LLP and the Target Company would be under an obligation to make necessary disclosures under the SAST Regulations, SEBI (Prohibition of Insider Trading) Regulations, 2015 and any other law wherever applicable.

•Such exemption (i.e open offer under SAST regulations) would be applicable subject to compliance of conditions prescribed in regulation 10 of the SAST Regulations

Conclusion

The SEBI informal guidance, though case and fact-specific, is important from the perspective of corporate restructuring. The guidance lays down the conditions for seeking an exemption from obligation to make an open offer on conversion of promoter entity organized as a company, into a LLP. However, different facts or conditions might lead to a different view/conclusion from SEBI.

- Harshitha Bohra

Update 119
Case Laws

Lets have a look on some of the case laws :-

1. Can Revenue take advantage of the extended period of limitation for imposing penalty by filing an appeal before ITAT and withdraw it later on:

Sec 275 of the Income Tax Act provides for the period of limitation for penalty proceedings.It provides that penalty proceedings shall be completed before the end of the financial year in which the proceedings for imposition of penalty has been initiated or six months from the end of the month in which the order of the CIT (Appeal) or ITAT is received by the Principal Chief Commissioner , whichever period expires later.

In a recent judgement of the Hon'ble Delhi High Court in the case of Salora International Ltd *v.* Commissioner of Income Tax [2018] 402 ITR 211 (Delhi), the issue before the Hon'ble High Court was regarding computation of period of limitation for completion of penalty proceedings where the appeal filed by the tax department before the ITAT was withdrawn.The Hon'ble High Court held that reading of Section 275(1A) clarifies that the expiry of six months prescribed is to be reckoned "from the date of completion of proceedings or from the end of the month in which the order is received and it culminates in the proceedings.

In the present case the appeal was withdrawn without an adjudicating order.Therefore, period of limitation cannot be extended where the appeal is withdrawn without an adjudicating order.

2. Doctrine of Mutuality:

The Doctrine of Mutuality means a person cannot make a profit from himself. An amount received from oneself, cannot be regarded as income and become taxable.

In the recent judgement of Apex Court in the case of ITO *v.* Venkatesh Premises Co-Operative Society Ltd. [2018] 402 ITR 670 (SC) the issue before the apex court was whether certain receipts by co-operative societies, from its members i.e. non-occupancy charges, transfer charges,etc. are exempt from income tax based on the doctrine of mutuality. The fact is based on that such receipts are in the nature of business income, generating profits and surplus, having an element of commerciality and therefore eligible to tax.

The Hon'ble Apex Court held that the income of a co-operative society from business is taxable under Section 2(24)(vii) and will be excluded from the principle of mutuality. The principle of mutuality lies in the commonality of the contributors and the participants who are also the beneficiaries.

The contributors to the common fund must be entitled to participate in the surplus and the participators in the surplus are contributors to the common fund. The law finds a complete identity between the contributors and the participants.The principle explains that what is returned is contributed by a member and any surplus in the common fund shall not constitute income but will only be an increase in the common fund meant to meet sudden requirements.

It was finally held that the surplus, if any, from the business was not shared by the members but was used for providing better facilities to the members and therefore, not taxable. Therefore, amount of surplus which is to be used for the common benefit of members cannot be taxable due to the Principal of Mutuality.

- Kunal Kashyap

Update 120
Applicability of Tax Audit

Applicability of Tax Audit when turnover is less than 1 crore & net profit is less than 8%/6%.
Till AY 2016-17, eligible assesses having turnover less than Rs.1cr and net profit less than 8% were not allowed to avail the presumptive taxation scheme and had to be mandatorily audited by chartered accountant.
From AY 2017-18, the general requirement for books of account and audit in each and every case where the net profit is lower than 8% / 6% is no more applicable. After amendment, the same is restricted only to the cases **where sub section (4) of section 44AD is applicable**.
Applicability of sub section (4) of section 44AD: It is applicable only in the case where the assessee has adopted presumptive basis for computation of net profit at the rate of 8% / 6% but **has not followed the same continuously for the next 5 years**.
DIFFERENCE BETWEEN PROVISIONS UNDER OLD SUB SECTION (5) AND NEW SUB SECTION (5) OF SECTION 44AD:
The basic difference between the old sub section (5) and new sub section (5) is that, in the earlier sub section, the requirements for books of account and audit was there when:
(a) the **net profit was lower than 8%** ; **and**
(b) the total income of the assessee was more than the basic exemption limit.

Whereas, as per the provisions of new sub section (5), the requirement for books of account and audit is there when:
(a) the **provisions of sub section (4) are applicable** to the assessee ; **and** (44AD(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).)
(b) the total income of the assessee is more than the basic exemption limit.
REQUIREMENT FOR BOOKS OF ACCOUNT AND AUDIT AFTER AMENDMENT:
Thus, after amendment, the liability for books of account and audit will arise only if the two conditions are met:
1st Condition: The provisions of sub section (4) are applicable.
2nd Condition: His total income for the present year is more than Basic Exemption Limit.
Both of the above conditions must be met. If only one is met or both are not met then there will be no liability for accounts and audit.
Below example explains the applicability of tax audit (for the sake of simplicity the minimum net profit is considered as 8% i.e. ignoring 6% provision):

Assessment Year	Turnover (Lakhs)	Net profit %	Tax audit applicability
2017-18	90	5%	No, as per above discussion, because not opted for 44AD and 1st condition is not met.
2018-19	85	7%	Return not filed earlier u/s 44AD and now net profit is less than 8% and therefore there is no breach of section 44AD(4) and so not under the purview of tax audit.
2019-20	90	7%	Same as above
2020-21	80	9%	Return now filed u/s 44AD as net profit higher than 8% therefore no tax audit.

2021-22	90	6%	Return now not filed as per sub-section (1) of 44AD and therefore tax audit will be applicable.
2022-23	80	9%	Because of restriction of Section 44AD(4) for further five years, irrespective of net profit % tax audit will be conducted.

Note: Relevant provisions in section 44AA and in 44AB are also got changed to give the above effects.

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