



Newsletter

# Sharp View

**November 2021**

**SHARP &  
TANNAN**

Assurance | Consulting | GRC | Taxation

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# November 21

In India, November marks the onset of winter and is celebrated for Diwali with great excitement and hope. With the COVID-19 vaccination doses crossing 100 crores, India is on a remarkable feat in this drive. This year, the Indian Government took various positive steps to accelerate production, attract FDI and make India a preferential location of doing business.

Few of the reforms include:

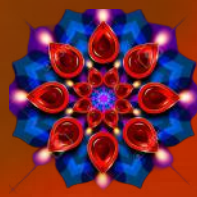
- Repeal of the retrospective taxation on indirect transfer of capital assets.
- Announcement of telecom relief package which includes moratorium on payment of statutory dues by telcos, rationalization of adjusted gross revenues, 100% FDI via automatic route, reduction in interest rates on spectrum charges.
- Roll-out of 13 production-linked schemes to create national manufacturing champions and generate employment opportunities. Sectors covered include auto components, electronics, food processing, metals & mining, pharmaceuticals, renewable energy, telecom, textiles.
- A 5 year-long reform-based result-linked power distribution scheme.

India also witnessed a steady rise in FDI inflows for Q1 and Q2 of 2021-22, the highest being in May 2021.

The country expects to regain its pre-COVID economic growth rate and is very positive about its performance in the coming quarters.

Happy Reading!

# Assurance



## External confirmations – relevance and reliability

Standard on Auditing 505 'External confirmations' issued by the ICAI requires the auditor to design and perform external confirmation procedures to obtain relevant and reliable audit evidence. The external confirmations include data validation checks, verification of outstanding account balances, bank confirmations, etc. Ms. Muskan Jain discusses various practical aspects and the challenges faced by the auditor while conducting the external confirmation procedures.



## Assurance | External confirmations – relevance and reliability

Standard on Auditing 505 'External confirmations' issued by the ICAI states that the auditor's objective is to design and perform external confirmation procedures (ECP) to obtain relevant and reliable audit evidence. The reliability of audit evidence largely depends upon its source, nature and the individual circumstances under which it is obtained.

The first and foremost step that an auditor performs is data validation checks. Here, the auditor ensures that the third-party contact details (postal address and email id) provided by the client for initiating confirmation requests are correct, by performing procedures such as:

- Direct telephonic confirmation with the party
- Inspection of the latest documents and cross-checking the same vis-a-vis the information available on the party's website or in public domain, e.g., listings, filings on the regulatory websites, etc.

The auditor shall decide the method of communication for external confirmations. The below approaches are in the best order of preference; however, the next-most preferential approach shall be followed in case of practical difficulties.

Preference	Approach
1	<b>Direct initiation through post</b> - Auditor to send the letter for confirmation directly to the parties by registered post/courier with acknowledgement due along with client authorisation letter.
2	<b>Direct initiation through online platforms</b> - Auditor to send the letter for confirmation directly to the parties through online platforms such as <b>confirmation.com, firmway.in</b> or by email.
3	<b>Controlled posting</b> - Client to send the letter for confirmation to the parties by aforesaid means under the auditor's supervision, instructing the party to reply directly to the auditor. As a common practice, client administration department may assist in posting confirmation requests from the audit team for large number of confirmations. In such cases audit team's supervision is of imperative to ensure there is no error or fraudulent modifications to the communication.
4	<b>Personal visit</b> – In case of non-responses from bankers in any of the above approaches, the auditor may personally visit the bank along with a client representative to collect the bank confirmations. This approach is not generally practiced for parties other than banks.

### Certain non-acceptable communications

Computer generated confirmation without sign, seal or date

Missing or incomplete details such as name of the client, uncertainty about debit /credit and the currency

Confirmations not legible / not addressed to the auditor

Manual corrections in a computer- generated confirmation

Confirmations not received directly from the party, i.e., routed via the client / e-mail received by the client forwarded as an attachment

Confirmation of an account statement / ledger without a covering letter

# Assurance | External confirmations – relevance and reliability

ECP is considered to be more relevant when addressing the assertions associated with account balances as enumerated below; however, they may also be used to confirm any other transaction or agreement depending on its materiality.

- Cash, bank balances, loans (bankers, lenders)
- Trade receivables and payables (customers and suppliers / vendors, MSME parties)
- Loans and Investments (related parties, investees, mutual funds)
- Probable outcome of the pending litigations and contingent liabilities (lawyers)
- Derivatives
- Deposits – Security, Rental

## Process



## Challenges in obtaining confirmations

### 1. Non-responses

The probability of 'no response' is higher for 'Receivables' confirmation while 'exceptions/reconciliations' are more probable while obtaining 'Payables' confirmations. The manual process involved in ECP often delays the audit completion, however, the introduction of online platforms has helped in the smooth management of the ECP in electronic and paper forms, all within a secure and centralised environment. Further, it saves the time-consuming approach of manual confirmations and thereby improves efficiency. The recent pandemic situation has pushed both the auditors and clients to embrace digital processes to complete such procedures.

**2. Reminders / follow-ups**

The auditor may send an additional / follow-up reminders when a reply has not been received within a reasonable time. In case of such delays, the auditor shall also call for the client to coordinate with the respective parties to respond. Sending manual reminders for confirmations may lack regularity, documentation and trail. Use of digital platforms for ECP ensures an automated, timely follow-up at reasonable intervals as well as the audit documentation of the entire process.

**3. Confirmation from government parties**

Obtaining external confirmation from government parties is generally challenging. In such cases, auditors are encouraged to access the information on the Information Utility (IU) platform and other databases set up by various government agencies such as National e-Governance Services Limited.

**4. Management refusal for ECP and non-responses**

The client refuses to allow the auditor to communicate with the parties due to legal disputes, ongoing negotiations, sensitive matters or in case of non-response. In such situations, the auditor is required to evaluate whether there is a scope limitation, assess fraud risk, risk of material misstatement and perform alternative audit procedures including review of creditors ageing, inspection of subsequent transactions and cash in/outflows, analytical review procedures, test of controls and review of journal entries. The auditor shall investigate the exceptions to determine whether or not they are indicative of misstatements or suspected fraud.

**5. Disclaimers in bank statements**

Computer generated bank statements downloaded from the bank’s website are not reliable evidences as the banks do not accept responsibility for the accuracy of the same. Hence, a confirmation duly signed by the bank’s authorised personnel has utmost importance. Certain indicative disclaimer statements given on the website of any bank on the correctness of the online bank statements are as follows:

<b>Extract from a bank statement of a private bank</b>	Unless the constituent notifies the bank immediately of any discrepancy found by him/her in this statement of Account, it will be taken that he/she has found the account correct. The closing balance as shown/displayed includes not only the credit balance and / or overdraft limit, but also funds which are under clearing. It excludes the amount marked as lien, if any. Hence the closing balance displayed may not be the effective available balance.
<b>Extract from a bank statement of a public sector bank</b>	Contents of this statement will be considered correct if no discrepancies are reported in writing immediately. Value Date shown is the effective date for Debits and Credits in the account. Balance shown includes debit, credit, overdraft limit, funds under clearing and does not include the amount marked as lien. There the available balance may differ from the balance displayed in the account statement.



# GRC



## National Apprenticeship Promotion Scheme

National Apprenticeship Promotion Scheme is the Government of India's scheme to promote apprenticeship by providing financial incentives, technology and advocacy support to the employers and other stakeholders. Accordingly, the GOI reimburses a certain minimum stipend to the employers and basic training costs to the basic training providers irrespective of the number of apprentices engaged. Mr. Sajan Gaur and Ms. Aarti Joshi throw light on the current legal provisions of the NAPS.



National Apprenticeship Promotion Scheme (NAPS) is a scheme of Government of India to promote apprenticeship by providing financial incentives, technology and advocacy support to the employers and other stakeholders of the scheme. The scheme was introduced to incentivize the employers to increase the apprentice engagements to 50 lakhs across the country. The monetary incentives provided by the GOI include reimbursement of stipend to employers and training costs to the basic training providers (BTPs). BTP is an entity who has the facilities for imparting basic training to apprentices. The GOI has notified most of the trades / occupations as 'designated' trades. In addition, certain trades and occupations of the employer's choice (falling under the GOI schemes viz. PMKVY/MES) qualify as 'optional trades' for NAPS.

### Number of apprentices

An establishment shall engage apprentices in a band of 2.5% to 10% of the total manpower strength of the establishment including contractual staff. An establishment with total strength of 100 can engage minimum of 3 and maximum of 10 apprentices.

### Reimbursement structure

1. Reimbursements to employers: 25% of prescribed stipend subject to a maximum of Rs. 1,500/- per month per apprentice to be reimbursed by the GOI to all employers engaging apprentices.
2. Reimbursements to Basic Training Providers (BTPs): Cost of basic training (upto a limit of Rs. 7,500 per apprentice for a maximum of 500 hours/3 months) by the GOI to BTPs in respect of apprentices who come directly for apprenticeship training without any prior formal training.

Regional Directorates of Apprenticeship Training (RDAT) are the implementing agencies for Central PSUs and private sector establishments who operate in 4 or more States.

### Non-compliance by employers in respect of number of apprentices

Contraventions of the provisions of the Apprentices Act, 1961 are dealt with in section 30-32 of the Act (Offences and penalties). It specifies a monetary fine to the offending employer who fails to appoint the prescribed number of apprentices.

### Clarification by the Government (Ministry of Skill Development and Entrepreneurship)

It was observed by the ministry that the implementing agencies were not reimbursing the expenditure for basic training and stipend to the establishments engaging apprentices less than 2.5% of the total workforce strength. The ministry has specifically clarified that the implementing agencies shall reimburse the above said expenses to the establishments even if they fail to engage apprentices less than 2.5% of their total workforce. Such non-compliances shall be separately dealt in by applying the provisions of section 30-32, 'Offences & Penalties', where monetary fines shall be imposed.

The reimbursement of the expenses to the employers engaging apprentices below the required threshold will encourage the employers/establishments to engage apprentices under the Skill Development Programme of the GOI. This is in line with the national skill mission of the GOI to empower the youth of the country with skill sets making them more employable and productive in their work environment. Removing of such monetary hurdles is definitely a positive step by the GOI.



# Taxation



## GST - Denial of refund claimed by rectifying the time-barred returns

The Supreme Court, in its recent ruling, denied GST refund where the assessee claimed refunds by rectifying the time-barred returns. The Court, however, observed that the assessee can rectify such errors/omissions in the return to be furnished for the month or quarter in which such omission or incorrect particulars are noticed. Mr. Shouvik Roy lucidly simplifies the apex court ruling.

### Supreme Court disallows the refund claimed by belatedly rectifying GSTR 3B returns for earlier periods UOI vs Bharti Airtel Ltd.

(Civil Appeal no. 6520 of 2021 decided on 28 October 2021)

#### Brief Facts

- The Civil Appeal, decided by the Supreme Court (SC), was filed by the Appellant-(Department/UOI), challenging the Delhi High Court's judgment dated 5 May 2020 in favour of the assessee, Bharti Airtel (Airtel).
- The dispute period involved was July-September 2017, and the amount of ITC purportedly under-claimed was INR 923 crore.
- During the initial phase of GST implementation, due to various technical issues, Airtel did not have the complete details to claim Input Tax Credit (ITC) accurately and fully. Hence, it filed monthly returns in Form GSTR-3B by recording ITC on an estimated basis. (Based on self-assessment) As per the assessee (Airtel), this was due to a delay in operationalization of Form GSTR-2, GSTR -2A and GSTR-3.
- As the complete details of ITC were not known to Airtel & were under-estimated/under-reported, it discharged its output tax liability in cash.
- Subsequently, it obtained the correct & complete ITC details (made available through matching with suppliers' GSTR 1 & GSTR 2A). Airtel belatedly realized that the ITC figures were incorrect, resulting in an erroneous discharge of the tax liability in cash.
- Thereafter, it sought to rectify its earlier returns (i.e., Form GSTR-3B). However, paragraph 4 of Circular No 26/26/2017-GST restricted such a belated rectification. Hence, it could not rectify the same.
- Airtel then filed a Writ in Delhi High Court (HC), seeking relief against this time bar in taking ITC for earlier periods.
- Vide its judgement dated 5 May 2020, the Delhi HC allowed the writ petition by "reading down" (i.e., diluting or interpreting the provision less stringently) paragraph 4 of the said circular to the extent it restricted the rectification of Form GSTR-3B for the earlier period. The High Court allowed Airtel to rectify Form GSTR-3B filed for July 2017 to September 2017, with a beneficial impact of INR 923 crore, leading to a refund claim of the same amount.
- The Department challenged the HC order in SC through this SLP.



### Ratio Decidendi of SC Decision - Key Points

- Being a registered person, the assessee is under a legal obligation to maintain books of accounts and records as provided under the Central Goods and Services Tax Act, 2017 (CGST Act) and the Rules. Thus, the assessee is not wholly dependent on the auto-generated information from the GST portal for discharging its tax obligation.
- Even in the pre-GST period, the assessee maintained such books of accounts and submitted returns on its own. It is the same pattern that needs to be followed in the GST regime.
- Thus, the non-operability of Form GSTR-2 would not impact the assessee's determination of tax liability. The assessee could have still computed the tax liability & the ITC through the self records maintained by it.
- Form GSTR-3B, though a stopgap /interim arrangement, is still a "Return" under the GST, and the provisions of Section 39(9) of the CGST Act and Rule 61 would apply in full rigour to the returns filed in FORM GSTR-3B.
- Payment of liability through cash or credit is a matter of option. Once an assessee exercises the option, it cannot be reversed belatedly. There is no express provision in the CGST Act / Rules that permits "swapping of entries" effected in the electronic cash ledger vis-à-vis the electronic credit ledger or *vice-versa*.
- Allowing the assessee to rectify the returns unilaterally will result in complete chaos and collapse of the tax administration, thereby affecting the liabilities of other stakeholders.
- Paragraph 4 of the impugned circular is consistent with the statutory provisions, and the HC erred in allowing rectification of returns in the teeth of the statutory provisions.
- The finding of the Delhi HC that as there was no possibility of getting a refund of the excess ITC, the only remedy for seamless utilization of credit was by allowing rectification of Form GSTR-3B is also wrong. The ITC amount remains intact in the credit ledger, which can be availed in the subsequent returns, including the next financial year.
- SC observed that the registered person is not denied the opportunity to rectify omission or incorrect particulars, *which he could still do in the return to be furnished for the month or quarter in which such omission or incorrect particulars are noticed. Thus, it is not a case of DENIAL of availment of ITC as such. If at all, it is only a POSTPONEMENT of availment of ITC.* The ITC amount remains intact in the electronic credit ledger, which can be availed in the subsequent returns, including the next financial year.
- Consequently, due to the factors listed above, the SC allowed Department's appeal and set aside the Delhi HC's judgment. Consequently, the refund of INR 923 crores was also cancelled.

## Taxation | GST - Denial of refund claimed by rectifying the time-barred returns

### Conclusion

Four clear factors emerge:

- GSTR 3B is indeed a full-fledged “return” u/s 39 of the GST Act.
- Assessee can rectify it in the manner specified in Section 39(9) read with Rule 61(5).
- The rectification can be done only in the return to be furnished in the month or quarter during which such omission or incorrect particulars are noticed and not in the return for the (prior) period to which it relates.

Assessees must therefore compute ITC in a timely and accurate manner while filing their GSTR 3B and ensure reliability and accuracy of their accounting and purchase records, instead of only relying on external sources like GSTR 2A /suppliers’ GSTR 1.



# Consulting



## Social Stock Exchanges in India

The idea of social stock exchanges is new and emerging concept in the Indian capital market. Mr. Raviraj Jethwa discusses briefly the concept, the key eligibility criteria and certain social disclosure & reporting elements of the same.



## Background

The idea of Social Stock Exchanges (SSEs) in India was first put forth in the 2019-20 Budget of the then Finance Minister. Consequently, SEBI constituted a working group (WG) on SSEs in September 2019, which set forth the concept of social enterprises, outlined the framework of SSEs, and the nature of instruments that can be raised under the framework and the uniform reporting procedures. For further refining the process, SEBI set up a Technical Group (TG) in September 2020. The TG report entails qualifying criteria and the exhaustive ecosystem in which such an SSE would function.

## Concept of Social Stock Exchange

In its recent board meeting, SEBI came up with an innovative decision of creating Social Stock Exchange (SSE), which will operate like any other stock exchange or bond exchange. A Social Enterprise (SE) shall be eligible to raise capital from the investors like any other corporate.

To qualify as SE, 'For-Profit Enterprise' (FPE) or 'Not for Profit Organisation (NPO) must engage in a social activity out of the 15 broadly eligible social activities approved by SEBI. The SEs must have social intent & impact as their primary goals demonstrated through the focus on eligible social objectives for the underserved/underprivileged populations or regions. Investing in SE would be a new investment avenue for socially conscious investors. The listed SEs will have to make appropriate initial and continuous financial and social impact disclosures to make their investors aware of their activities.

SSE shall be a separate segment under the existing stock exchanges. SSE is not only a platform for listing securities or other funding structures but also is a set of procedures that act as a filter by selecting only those entities creating and reporting measurable social influence. Thus, an SSE provides the infrastructure for listing and disclosure of information of listed SEs.

## Key elements of social enterprise

To qualify as a social enterprise, the entities shall establish the primacy of social impact, which shall be determined by the application of the following 3 filters:

- a. 15 broad eligible activities of the SE. (based on Schedule VII of Companies Act 2013.)
- b. The target population segment or region: The eligible activities (that meet at least one of the 15 social objectives mentioned above) of the SE shall target underserved or less privileged population segments or regions that have recorded lower performance in the development priorities of national/state governments.
- c. The predominance of the eligible activity: SE shall have at least 67% of its activities qualifying as eligible activities to the target population in the overall work of the SE.

Once qualified as SE, the entity shall be eligible for onboarding the SSE and access to the SSE for fund-raising upon submitting a declaration as prescribed.

Eligible NPOs may raise funds through equity, Zero Coupon Zero Principal (ZCZP) bonds, Mutual Funds, Social Impact Funds, and Development Impact Bonds.

### Eligibility criteria

As per TG recommendation, an NPO is required to register on any of the SSE and thereafter, it may choose to list or not. However, an FPE can proceed directly for listing, provided it is a company registered under the Companies Act, 2013 and complies with the requirements in terms of SEBI Regulations for issuance and listing of equity or debt securities.

Further, the TG has recommended a set of mandatory registration criteria as mentioned below that NPOs shall meet.

#### A. Legal requirements

- a. Entity is legally registered as an NPO (Charitable Trust/ Society/Section-8 Company).
- b. Shall have the governing documents (MoA & AoA/Trust Deed/Bye-laws/Constitution) & disclose whether owned and/or controlled by government or privately.
- c. Shall have a registration certificate under section 12A/12AA/12AB, 80G registration and a valid PAN under the Income-tax Act.
- d. Shall have a Registration Certificate of minimum 3 years of its existence.

#### B. Minimum fund flows

The NPO wishing to register needs to ensure that it has an adequate track record of operations.

- a. Receipts or payments from Audited Accounts/ Fund Flow Statement in the last FY must be at least INR 50 lakhs.
- b. Receipts from Audited Accounts/ Fund Flow Statement in the last FY must be at least INR 10 lakhs.

#### C. Disclosure and reporting norms

Once the exchange has demarcated the FPE or the NPO (registered/listed) to be an SE, it must comply with a set of minimum disclosure and reporting requirements to remain listed/registered. The disclosure requirements are enlisted as follows:

##### ▪ For FPE

FPEs having listed equity/debt will have to disclose Social Impact Report on an annual basis and comply with the disclosure requirements as per the applicable segment such as mainboard, SME, IGP etc.

##### ▪ For NPO

NPOs (either registered or listed) will have to disclose the governance and financial aspects annually.

The disclosures will include vision, mission, activities, scale of operations, board and management, related party transactions, remuneration policies, stakeholder redressal, balance sheet, income statement, program-wise fund utilization for the year, auditors' report, etc.

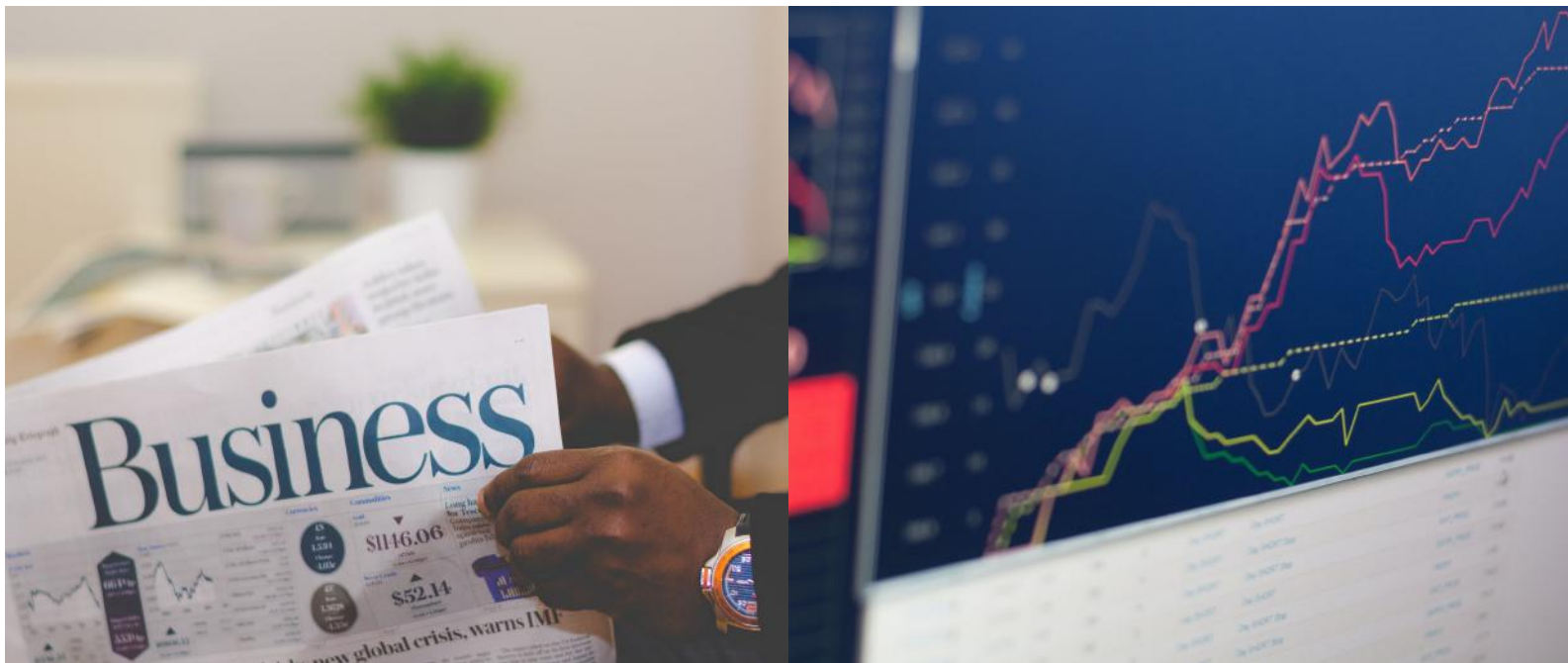
NPOs will have to report within 7 days any event that might have a material impact on the planned achievement of their outputs or outcomes to the exchange on which they are registered/listed. (Exit of key executives, disturbances in the implementation locations, regulatory restrictions, stoppage of funds by key donors, etc.) This disclosure will include details of the event, the potential impact and the measures taken by the NPO to overcome such impact.

### Social audit

Social audit of the enterprises shall compose of financial audit and non-financial audit, carried out by financial or non-financial auditors. To begin with, only reputed firms/institutions having expertise in the area of social audit shall be allowed to carry out the audits employing social auditors who have qualified the certification course conducted by NISM. A separate sustainability directorate under ICAI shall function as an SRO for Social Auditors.

### Conclusion

The pandemic has highlighted the importance of social sectors in India as we have seen many NGOs working for the betterment of the underprivileged during the testing time. Every great idea needs to be appropriately funded by the infusion of capital. The Social Stock Exchange provides the platform to the Social Enterprise to access the funds effectively and efficiently. With the introduction of the SSE, the SEs will be better- placed to access the public funds in a transparent way to achieve the broad social goals.





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