



Newsletter

# Sharp View

January 2022

**SHARP &  
TANNAN**

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# January 2022

January marks the beginning of the new Gregorian year. As per the Indian almanac, January witnesses Uttarayan followed by Makarsankranti, where the northward movement of the Sun begins.

January 2022 also marked various legal, tax and regulatory changes enacted by the Government of India. These include:

**1. E-tokenisation by RBI:** To reinforce safety and security of card data while continuing the convenience in card transactions, RBI has mandated all the merchant bankers and payment aggregators to purge the debit/credit card data on their servers stored by the customers for making recurring/periodical payments. Instead, the customer will now be asked to enter his card details, which will be encrypted to form a token. The tokenisation of card data shall be done with explicit customer consent requiring Additional Factor of Authentication (AFA). RBI assures the same degree of convenience to the customers post this amendment.

**2. Corporate Governance: Independent Directors - Review of Regulations:** SEBI independent directors' regulations have come into effect from 1 January 2022. They deal with the independent directors' eligibility, appointment, the composition of 2/3rds majority on the audit committee and the remuneration aspects. Placing 'independence' at the forefront will strengthen the decision-making process. Making the Boards operationally independent will help strike a healthy balance between the interests of the promoters, minority shareholders and other stakeholders.

**3. GST:** The rising e-commerce activity has attracted lawmakers to bring them under the GST regime. From 1 January 2022, under certain circumstances, the e-commerce food delivery operators will be liable to charge, collect and pay 5% GST under restaurant services. Similarly, the online transport aggregators will be liable to charge GST @5%.

Extensions in tax and corporate filings beyond 2021 proved to be a significant relief for the assesseees. Many more positive changes are in the pipeline this year, and we await more ease of operating measures to be introduced in the business environment.

Happy reading!



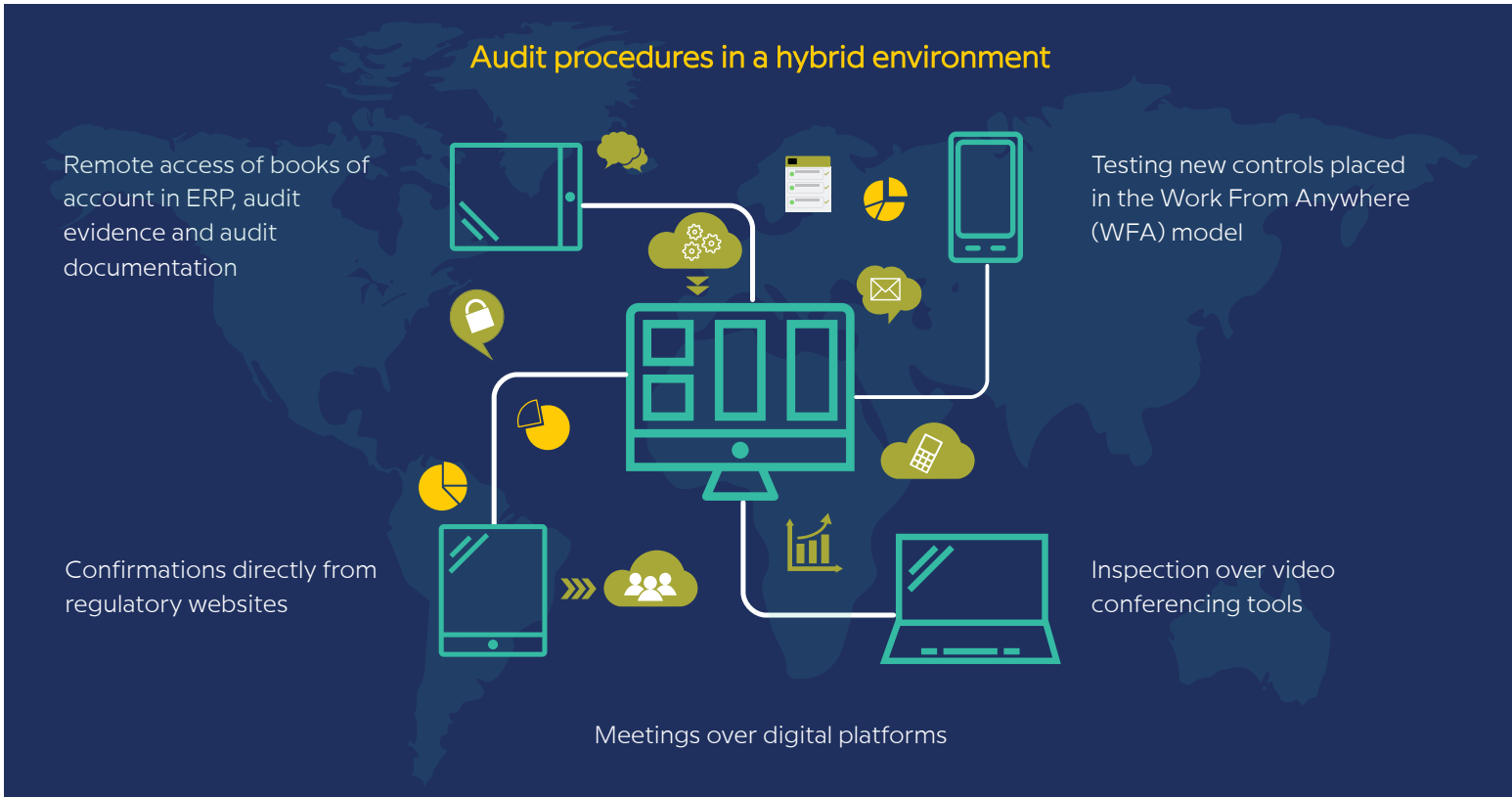
# Assurance

## **Auditing from anywhere - The endless transitions in auditing – 2022 and beyond!**

It's the beginning of Q4 of 2021-22 and the new audit season. The auditors are geared up for the task, and indeed, at this juncture, the audit procedures would be a hybrid mix of both conventional and digital methods. With the emergence of new variants of the virus, predicting and adapting to the future working scenario is challenging. It is recommended that the audit fraternity constantly reviews the circumstances and from the experiences gained in performing remote audits, upgrades its approach while conducting hybrid audits. Ms. Ashwathi Prashanth and Mr. Arjun M K explains how the conventional methods can be best modified in the present digital scenario to achieve the desired audit quality.

# Assurance | Auditing from anywhere - The endless transitions in auditing – 2022 and beyond!

The approaches and audit procedures took a complete shift in the last couple of years, though the audit objective of providing reasonable assurance and expressing a true and fair view on the auditee’s financial statements remained the same. The COVID pandemic and lockdown restrictions made it impossible to go through the routine course of audit procedures. While auditing in a remote environment, auditors had to brainstorm and plan different audit responses to the reassessed risks of material misstatements. Although audits are no longer wholly remote and work from auditee locations has resumed, some of the audit practices in remote audits continue even now. With the emergence of new variants of the virus and the world still trying to recover at the beginning of 2022 - predicting and adapting to the future working scenario is extremely difficult. It is recommended that the audit fraternity reviews the circumstances constantly and from the experiences gained in performing remote audits so far, upgrade their approach and audit procedures considering the future of hybrid auditing.



## Remote access of books of account in ERP, audit evidence and audit documentation

One of the significant challenges faced by the auditors is ensuring the reliability of the data provided for inspection, considering the increased risk of manipulation of evidence in remote audits. To reduce such risk, auditors obtain secured and restricted read-only access to live ERPs of the auditee without any rights to add/insert/delete/modify/update data. To create a user account for the auditor, management may require scanning the auditor’s laptops/desktop systems for viruses/ malware before accessing their servers and disabling USB ports for security reasons. Unlike previously accessing data using secured networks in the auditee’s locations, Virtual Private Networks (VPN) is a better alternative due to the convenience for the audit teams to access it anytime from anywhere. This also enables the auditors to keep track of version control of the trial balance, test the effectiveness of ERP period locking controls and review of closing journal entries.



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Changing audit scenarios have a direct relationship with changes in audit documentation considerations. In remote audits, audit evidence in paper forms has reduced considerably and instead; scanned copies are sent by the management. In addition to the procedures performed to validate audit evidence, auditors can get representations from the management that scanned copies produced during audits are faithful replicas of the original document. Some of the ways of documentation in remote audits are listed below.

1. Photographs of closing stock of inventory with date stamps for stock with third parties
2. Video recordings of physical verification of inventories.
3. Video recordings of the meetings and discussions with management along with confirmation of minutes of the meeting
4. Digitally signed documents instead of paper sign-offs.
5. Reviews performed by the control owners that were initially documented through manual sign-offs have now been replaced by e-mails sent by the preparer accompanied by the explicit confirmation/approval by the reviewer over e-mail.

### Confirmations directly from regulatory websites

Prior to remote audits, where the auditors performed audits at auditee locations, the possibility of developing mistrust on the reliability and authenticity of the audit evidence provided by the management was less likely. The table below indicates a few instances where such information received shall also be corroborated with direct confirmation from regulatory websites and independent external sources. Such practises have gained more prominence during remote audits as well as hybrid audits.

Audit confirmations	Independent external source/action for inspection
MSME classification and status of a vendor	Verification of registration certificate with the MSME Udyam registration number from the regulatory website.
Financial creditors and operational creditors	Due to business disruptions caused by COVID, online platforms and information utilities such as National E-Governance Services Limited were widely used for direct external confirmation procedures instead of conventional methods by registered post on letterheads or personal visits.

### Testing new controls placed in the Work From Anywhere (WFA) model

In the last couple of years, corporate houses were forced to adopt WFA as a model to cope up with covid restrictions and as employee welfare measures. This was an unprecedented transition from a physical working environment to a remote one and thereafter to a hybrid mixture of both. The core of a hybrid model is the ability of the employees to combine working from home with working from an office or any other location. The management shall identify the various business risks arising from the hybrid model and test whether the existing controls can still mitigate such risks or there is a need for alternate/ compensatory controls. This is especially critical in the case of data privacy, override of controls by the management, adoption of unapproved procedures and deviation from the approved standards. Internal auditors have a significant role in making recommendations to management for exploring automating process controls.

**Assurance | Auditing from anywhere - The endless transitions in auditing – 2022 and beyond!**

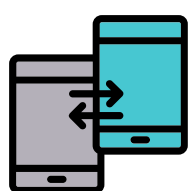
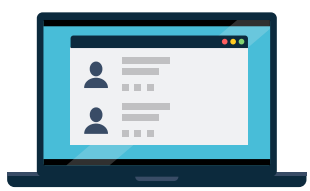
Processes deployed prior to pandemic	Processes deployed in the pandemic scenario
Dependency on outsourced professional services (E.g. accounting and HR.) Companies dependent on such third party organisations for specific business functions have increased risks due to the off-site shift.	Where the company relies on such outsourced services (third party professionals), the company’s business function depends on the effectiveness of the third-party’s adaptation to the changing working dynamic. Necessary controls for contingencies and possibilities of compensating controls should be assessed/incorporated.
Tracking, recording and reporting employee attendance through biometric devices and time sheets.	The system will track, record and report the location, date and time of employee check-in and check-out on the auditee sites they have attended during the day using GPS tagging and two factor authentication in the work computers or mobile devices.
Authorisation and segregation of duties and responsibilities.	In processes/circumstances requiring decisions to be made frequently, it is necessary to designate a person with ample competency in such process to make decisions in the absence of the control owner due to COVID.

**Inspection over video conferencing tools**



Physical verifications, process walkthroughs and system understandings, forming an integral part of audit procedures, hitherto required physical presence of management and audit staff. Whereas in case of audits with remote access to the ERP, supporting documents tagged and linked against every transaction can be easily examined. However, the auditor is expected to understand the entity’s business and its business environment to rely on digital verification.

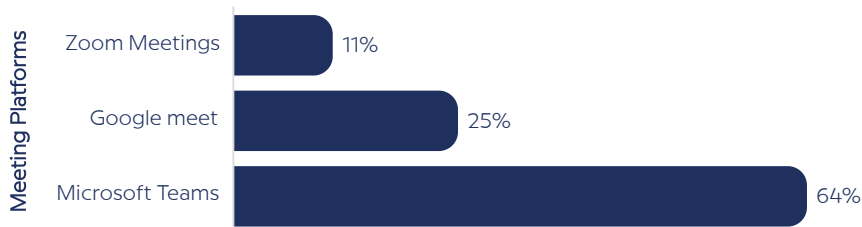
Using digital modes as an alternative to the physical audit may not provide reasonable assurance in all circumstances. Scanned documents provided by the management are considered less reliable due to the various risks affecting audit quality. Often, management may not be comfortable in sharing critical and confidential data such as price sensitive information, business transfer agreement, executed loan restructuring documents digitally. In such cases, the in-person verification procedure cannot be completely set aside and is advised to be carried on at least once every year or any other frequency appropriate to the auditor's professional judgment.



# Assurance | Auditing from anywhere - The endless transitions in auditing – 2022 and beyond!

## Meetings over digital platforms

Composition of usage (in %) of popular virtual meeting platforms



Although virtual meeting platforms existed prior to the pandemic, neither was it widely accepted nor was there a necessity to explore. It gained significant importance during the lockdown restrictions.



Covid restrictions are relaxed to a great extent, but we presume that there is no going back to the conventional practice of meeting physically after various participants have experienced comfort and convenience derived by using these digital platforms.

## Conventional audit procedures, modified in the current scenario

### Fraud risk procedures

There is a steep increase in the risk of material misstatement due to fraud in the 'work from anywhere' scenario.



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## Assurance | Auditing from anywhere - The endless transitions in auditing – 2022 and beyond!

The three factors of the fraud risk triangle, i.e., incentives/pressures, opportunity and justification of the rationale behind the fraud were easily exploitable. As people become more vulnerable financially due to the fear of loss of employment opportunities/access to medical means/facilities, the susceptibility to fraud risk increases. Also, businesses are under pressure to achieve pre-covid revenue levels. As a result, auditors have to relook at the previous risk assessment documents to explore possible fraud risks and devise methods of detecting the same. The element of unpredictability should be brought into the mix of audit procedures performed.

### Audit of consolidated financial statements

Auditors faced many stumbling blocks in remote audits in relation to the audit of consolidated financial statements, such as:

- Delay/non-receipt of group audit deliverables
- Component auditors unable to complete the audit and issue their report either due to the inability of management to deliver the required satisfaction for completion or internal issues
- Lockdown/movement restrictions due to diversity in geographical locations of the business units

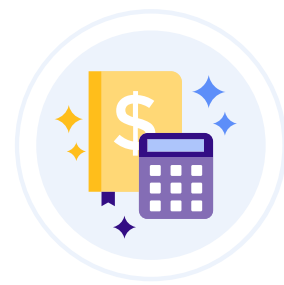
The auditors need to find solutions to avoid the issues previously faced to facilitate smooth functioning if that situation were to reoccur.

### Increased dependency on external confirmations

Auditors' dependency on external confirmations has increased not only for account balances but also for transactions. Initiating direct external confirmations through the electronic medium is expected to persist in future audits. However, performing data validation checks for ensuring the legitimacy of the source of confirmation becomes more relevant.

### Accounting estimates

Uncertainty is the only constant in the post-COVID world. Business environments can change at the drop of a hat. The probabilities of significant changes in estimates and judgements by the management are higher now than ever. Previously the auditors may have been able to evaluate estimates without the need for specialists. However, due to the volatile environment, auditors would have a higher dependency on specialist involvement to audit certain estimates to reduce the risk of material misstatement. Expected credit loss rates in respect of receivables and actuarial valuation due to higher attrition rate globally are a few areas where specialist involvement is crucial.





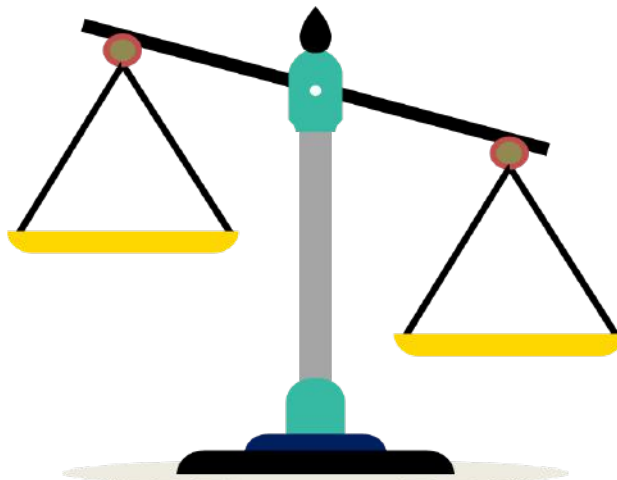
The Way Forward

Auditor’s role in post-pandemic audits

Striking a right balance between

**Conventional audit procedures**

Higher dependency where in-person verification is necessary and where risk of material misstatement cannot be reduced to acceptable level through hybrid audit procedures.



**Digital audit procedures**

Higher dependency and adoption of technology and risk assessment tools, thereby automating repetitive tasks and increasing efficiency and quality of audit.

As we enter 2022, we are getting closer to our next audit season. The Darwinism theory of ‘adapt or cease to exist’ holds good in the audit profession. Technological advancements shall be used for efficient future audits, also incorporating the best practices of both remote and physical working environments. A combination of digital verification procedures that corroborate with the audit evidence would be an ideal approach, based on the auditor’s professional judgment and learnings from past experience. Data analytics and robotic process automation tools can be used to automate routine time-consuming tasks and utilising the time so saved in other priority/risky audit areas for better audit quality.





# GRC

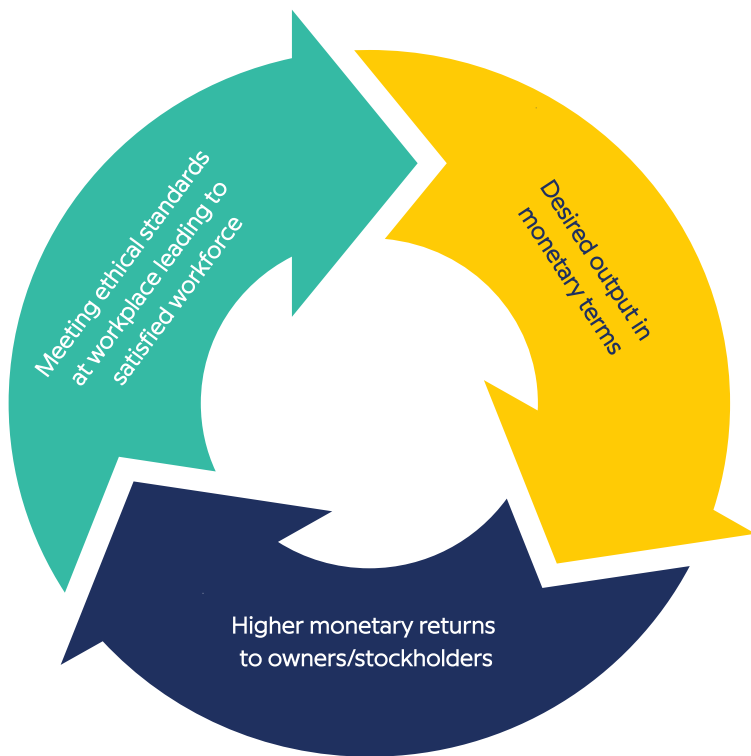
## **Internal audit aspects of succession planning processes & employee retention strategies**

Succession planning for a business is creating a parallel team of leaders/managers who can eventually take over the retiring management. A thorough succession planning strategy ensures smooth functioning of the business when the key personnel leave/retire from the company. Mr. Arnob Choudhuri takes you through the internal audit aspects of succession planning processes & employee retention strategies.

**Introduction**

Let's begin with the following assumption: Having the right people at the right place at the right time is the first step towards quality. Top management, middle management, line management, and the human resource department share responsibility for ensuring that this premise is met. Top management must ensure that strategies are in place to properly support the acquisition, retention, and maintenance of a competent workforce capable of achieving the company's objectives and mission. Middle management is responsible for providing organisational support for quality workforce efforts, such as ongoing training and development (remedial, refreshment, and developmental training for the future). Support for the knowledge, expertise, and abilities that the workforce needs to compete successfully in the marketplace and sustain a viable, vibrant, and desirable workplace is also required.

There must be a link between employees' perceptions of working in a great company and their perceptions of competitive pay. Employees respect the organisations, to which they believe they contribute meaningfully, and to which they are rewarded for a job well done. Meeting the ethical standards at the workplace ensures employee satisfaction. Satisfied employees contribute to the output of the organisation leading to its monetary success (measured in terms of shareholders' returns.)



**Talent Management**

Talent management is a new phrase that has made its way into the management literature. Ken Lahti summed up the concept in an essay published in Talent Management, noting, "Employees can do better. With the cumulative wisdom and tool kit of industrial-organisational psychology, the science of people at work, organisations can measure talent—a candidate's potential, readiness, & fit—and match people to roles and organisational assignments where they will be successful."

Although a firm may not require or choose to implement a comprehensive human capital accounting system, one may already have implemented absolutely proven practises such as:

- Analysing the job
- Techniques for fostering a positive working environment
- Competency evaluations
- Job descriptions that are well-documented

Talent management also includes assisting employees with their professional growth. The program's goal should be to discover, choose, and place the appropriate individual in the right job the first time around. It would be beneficial to use a strategy for working with each employee to improve his or her potential capability for a succeeding position/job (succession planning) for future planning considerations.

Keep in mind that hiring the appropriate individual and allocating them to the right job at the right time are just the beginning. The policies, methods, procedures, and practises involved in retaining the employee as a valued asset, as well as enabling pathways for meaningful succession to greater responsibility and accomplishment, must be continually developed, maintained, and enhanced.

### Internal auditing aspects

An organisation can audit/assess employee retention strategies and succession planning by doing the following:

- If there isn't one already in place, assess the need for retention strategies and a succession planning process.
- Examine and assess current retention practises as well as the succession planning process for: Effectiveness, return on investment, cost avoidance, etc.
- To discover the areas for improvement, compare the organisation's retention procedures and succession planning to similar processes in other organisations.

There is currently no standard or rule that covers employee retention and succession planning directly. The auditor's job is to assess the need, evaluate effective implementation, weigh benefits vs. costs, and compare results to those of other businesses in order to improve.

Considerations in reviewing an organisation's staff retention and succession policies

- Is the importance of retaining a competent and contented workforce reflected in the organisation's plans, strategic objectives, and planned actions?
- Is it possible to identify practises and supportive activities that will help people improve their personal competency over time? Is professional development important to the company? Is there a succession planning mechanism in place to guarantee that the best people are preparing to fill a position and complete a task?

- Are vacancies filled by promoting existing staff, to the extent possible?
- Is the company well-known for its progressive personnel policies, such as those that: Ensure ethical hiring and promotion opportunities; Provide compensation and benefits that meet the needs of a diverse workforce; Encourage open communication at all levels; Emphasise recognition & rewards for good work; Provide safe, secure, well-maintained, and enjoyable working conditions.
- Is the organisation well-known and well-respected for adhering to relevant laws, rules, and standards?
- Do the company's products and services deliver on its promises?
- Are the public's perceptions of the organisation's products, services, and practises favourable, and is the organisation one in which a person would be pleased to work?
- Are there specific goals and initiatives in place to improve the organisation's practises and processes on a regular basis?
- Is training and personal development used frequently to maintain and improve employee performance?
- Has the organisation built metrics to track and measure the efficacy of the method used?
- Have appropriate rules, practises, and controls been devised and implemented to provide an ethical and financially sound, largely risk-free, efficient, and stable working environment?

Employees often choose to stay with a company they appreciate because of the care they receive. Although the degree to which the elements stated in the preceding questions vary from person to person, satisfied employees are more likely to stay with a company, even if the compensation is slightly lower than what they could obtain from a competitor. Employees quit because they are insulted, underpaid, and don't see a way to improve their situation. Of course, there are additional factors to consider, such as a spouse accepting a job elsewhere, unpleasant family circumstances, commuting distance, or a lack of faith in the business, to name a few.

When a company's workforce is diverse (e.g., a wide range of ages, different ethnicities, a male-female split, etc.), a thorough examination of its various demands is essential. Employees should be treated similarly to marketing's push for one-to-one selling to fulfil each customer's needs. The more practically an organisation can meet each individual's demands, the more likely that employee will be retained.

Certain important aspects while considering the implementation of succession planning concepts throughout an organisation:

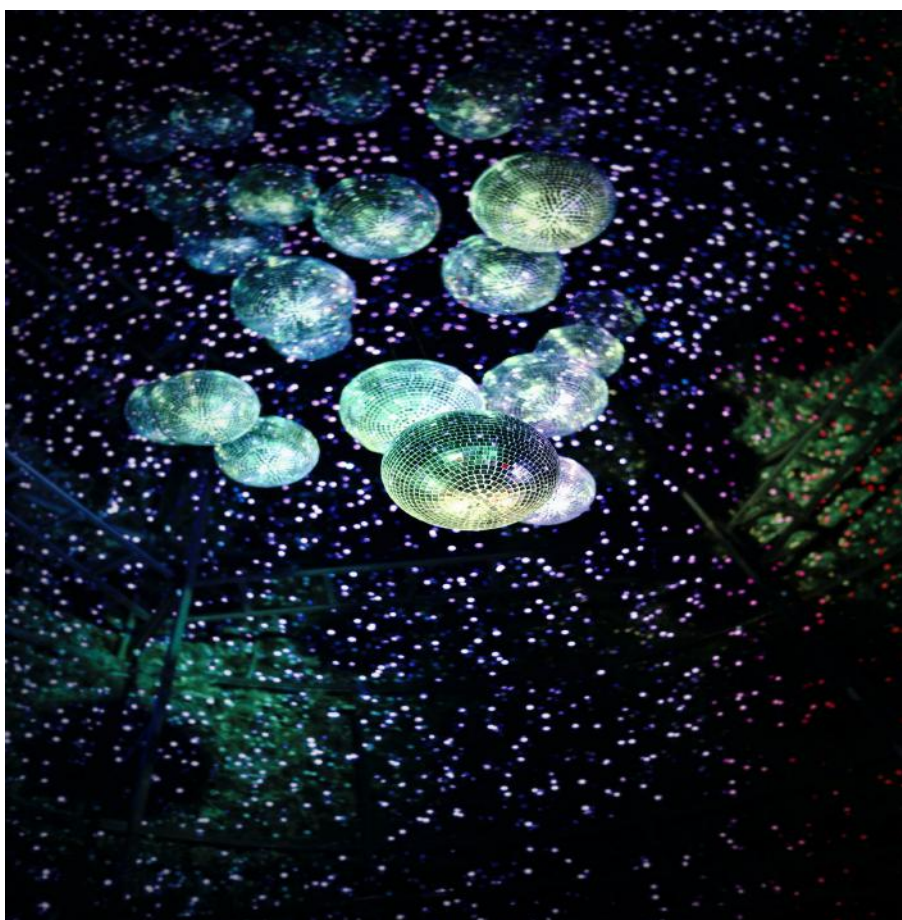
- Ascertain if the organisation has a strategic plan which includes hiring/selection and succession goals.
- Hire people who have the potential to be upgraded over their stay with the company.
- Assist and support employees in developing and upgrading their own professional development programmes on a regular basis.
- Provide wide access to the various types of roles & open positions inside the organisation.
- Develop tracking and measuring procedures to ensure that succession planning is used consistently and effectively throughout the organisation.
- Choose and designate a senior executive to supervise the succession planning process and serve as a single point of contact for all workers.

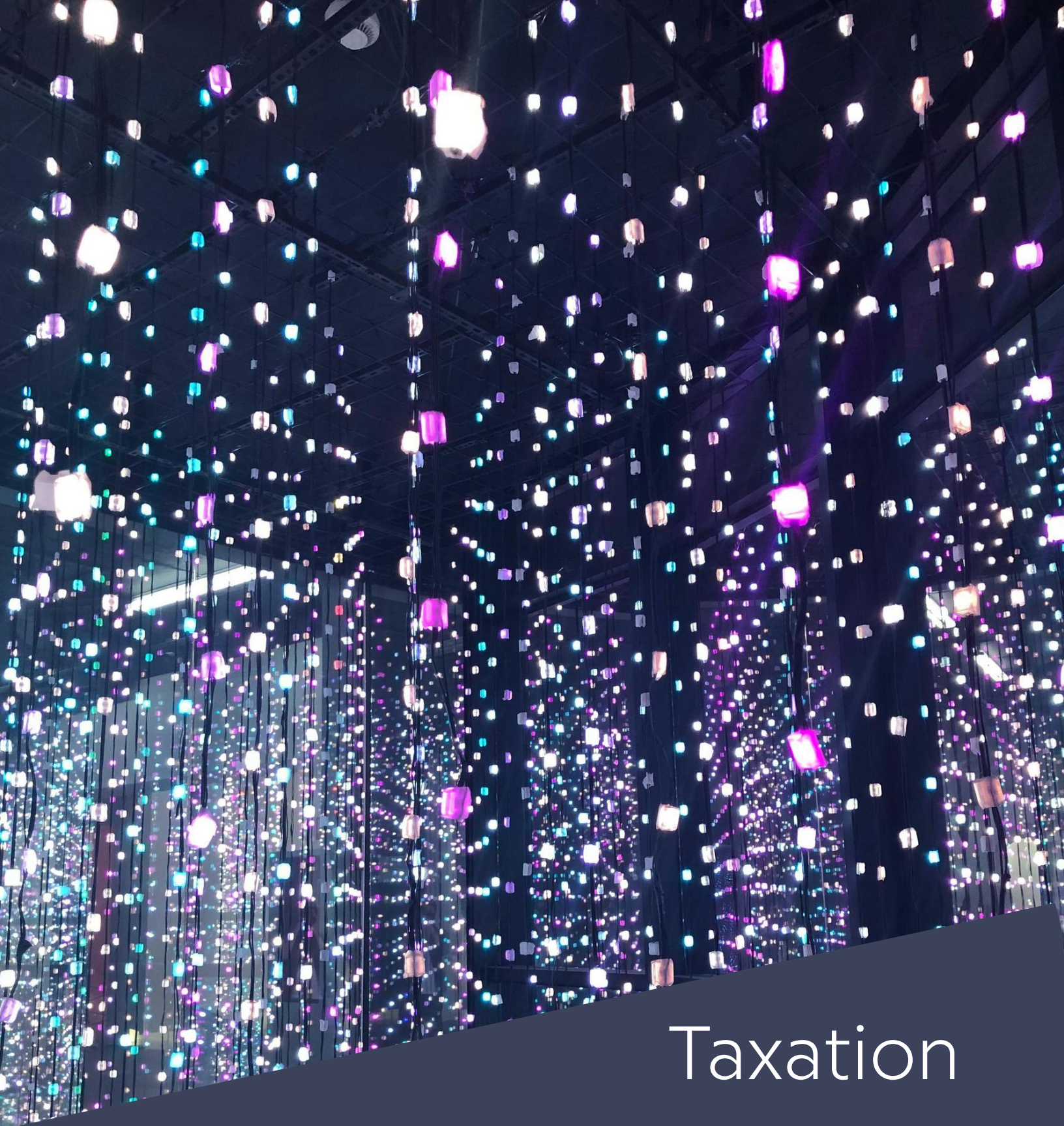
### Sustained succession planning considerations

- It may be ideal to plan to adopt the process from the top down, level by level, testing and refining the process as needed.
- It must be established how much information was collected and made available. Consider the need for confidentiality as a result of external competitive forces.
- Although developmental activities and succession planning should be carried out throughout the business, the succession plan may initially include only those jobs deemed critical to the organisation's future.
- For attracting and maintaining the best of the best applicants, the organisation's succession planning process should be a key selling feature.
- Within the organisation, the succession plan should be made public. All employees should be able to participate in the succession plan to chart out his or her professional development goals.

### Closing thoughts

A company's most valuable asset might be a competent, motivated, productive, and innovative workforce. People are at the heart of quality, covering practically everything a company does and believes in. While unthinking allegiance to a company looks to be fading, a new work ethic is taking its place. This is a group of people who believe they can make a difference and seek out a company with similar ideals. To reap the benefits of having such a dedicated workforce, businesses must work hard to create and maintain a working environment that attracts, keeps, develops, promotes, recognises, and values its people.





# Taxation

## **Amendments in CGST Act and Rules effective from 1 January 2022**

Certain GST amendments made by the Finance Act, 2021 are to come into effect from 1 January 2022. Mr. Shouvik Roy presents all the relevant amendments along with their practical implications.

## Taxation | Amendments in CGST Act and Rules effective from 1 January 2022

Certain provisions of the Finance Act, 2021 amending Central Goods and Services Tax Act, 2017 shall come into force from 1 January 2022. [Notification No 39/2021–Central Tax dated 21 December 2021 has notified the effective date of these amendments coming into force as 1 January 2022].

### 1. Amendment to Section 7 of CGST Act: Scope of Supply

New clause (aa) has been inserted in Supply definition with retrospective effect from the 1 July 2017 to include activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment, or other valuable consideration.

(While other amendments discussed in this note are effective from 1 January 2022, this amendment is with retrospective effect from 1 July 2017, i.e. from date of inception of GST Act).

It is also clarified vide the amendment that the person or its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one person to another.

Thus, any service provided by Association of Person to its Member or vice-versa will be considered as supply and will attract GST.

Earlier, Entry 7 to Schedule II of the CGST Act provided that goods supplied by unincorporated associations or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods only (no such equivalent deeming provision for supply of services to its members). Thus, supply of services by an unincorporated association to its member, supply of goods and services by incorporated associations to its member was not taxable.

However, with the insertion of the above amendment, entry 7 shall be omitted & services to members also become taxable.

### Comments / Implications

With the said amendment, supply of good or services or both by an unincorporated (e.g. by a Society or resident welfare association (RWA) or a club to its members) or incorporated associations will be taxable.

This new deeming clause disregards the principle of mutuality and over-rides the Supreme Court judgment in case of Calcutta Club, which is likely to lead to future litigations.





## 2. New Section 16 (2) aa – Further restrictions on claiming ITC

Pre-amendment Position	Post-amendment Position
As on today following are the provisions to be complied with to avail ITC on an invoice as per Section 16 of the CGST Act, 2017: a) Possession of a valid tax invoice. b) Actual receipt of goods/service. c) Vendor has paid taxes to the Government. d) Vendor has filed his GSTR 3B return	This amendment changed the provision for availing ITC on the basis of the following provisions: a) Possession of a valid tax invoice. b) Actual receipt of goods/service. c) Vendor has paid taxes to the Government. d) Vendor has filed his GSTR 3B return <b>e) Vendor has filed his GSTR-1 and ITC is appearing in GSTR 2A of the recipient.</b>

### Comments / Implications

ITC will now be restricted to only invoices appearing in GSTR 2A. The leeway of unmatched credits upto 5% allowed by Rule 36(4) stands removed. A robust system will have to be put in place at the time of booking the invoices to ensure that only those invoices appearing in GSTR 2A will have to be booked.

## 3. Amendment to Section 74 : Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilfull-misstatement or suppression of facts.

Pre-amendment Position	Post-amendment Position
Earlier, Explanation 1 (ii) to Section 74 provided that "where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded."	Reference to Section 129 and 130 in above explanation has been omitted.

### Comments / Implications

Reference to Section 129 and 130 in above explanation has been omitted. This mean that even if the proceedings towards the main person are concluded, the provisions of confiscation, seizure under section 129 and 130 stall still continue unless actually settled.

## 4. Amendment to Section 75 : Recovery of tax in respect of transactions declared in GSTR 1

Section 75 of the CGST Act provides the general provisions relating to the determination of the tax. Section 75(12) of the CGST Act prescribes for the recovery of self-assessed tax. Where a self-assessed tax or interest thereon remains unpaid according to supplies furnished in Form GSTR-3B the same is recovered as per the provisions of Section 79 of the CGST Act.

The Finance Act 2021 has defined the meaning of the term self-assessed tax. The self assessed tax has been defined to include the tax payable in respect of outward supplies furnished in Form GSTR-1, but not included in Form GSTR-3B.

## Comments / Implications

If a person has furnished details of outward supplies in Form GSTR-1 but has not discharged the tax liability i.e., not furnished the details of outward supplies in the GSTR-3B, then the same would qualify as self-assessed tax and direct recovery proceedings under section 79 of the CGST Act may be initiated by the proper officer, without issuance of any SCN under section 73 or section 74. The proposed amendment ensures that the tax declared in Form GSTR 1 must actually be paid by the supplier. The suppliers have to be very careful about the accuracy of GSTR 1. If extra invoices are declared by error in GSTR 1, they still have to discharge the tax thereon and then claim refund, after reconciliation with GSTR-3B.

## 5. Amended Section 129 & Section 130: E-way bill provisions on vehicle detention

Pre-amendment position on quantum of penalty/tax	Post-amendment position on quantum of penalty/tax
In case vehicle gets detained for non-compliance with E-way bill provisions the consequences as per Section 129 of the CGST Act, 2017 will be as follows:	
<b>a. In case owner of the goods comes forward to pay the tax and penalty:</b>	
<ul style="list-style-type: none"> <li>In case of taxable goods – <b>Tax and penalty to be paid</b> amounting to 100% of the tax payable.</li> <li>In case of exempted goods - 2% of the value of the goods or INR 25,000 whichever is less.</li> </ul>	<ul style="list-style-type: none"> <li>In case of taxable goods – <b>ONLY</b> penalty to be paid amounting to 200% of the tax payable.</li> <li>In case of exempted goods - 2% of the value of the goods or INR 25,000 whichever is less.</li> </ul>
<b>b. In case owner of the goods does not come forward to pay the tax and penalty:</b>	
<ul style="list-style-type: none"> <li>In case of taxable goods – <b>Tax and penalty to be paid</b> equal to 50% of the <u>value of the goods</u> as reduced by the tax paid on the goods.</li> <li>In case of exempted goods - 5% of the <u>value of the goods</u> or INR 25,000 whichever is less.</li> </ul>	<ul style="list-style-type: none"> <li>In case of taxable goods – <b>ONLY</b> penalty to be paid equal to 50% of the <u>value of the goods</u> or 200% of the tax payable whichever is higher.</li> <li>In case of exempted goods - 2% of the <u>value of the goods</u> or INR 25,000 whichever is less.</li> </ul>

## Other Changes in Section 129 & Section 130 on Vehicle Detention & Seizure

- Section 129(2) has been omitted i.e., provisions of sub-section (6) of section 67 shall not apply for detention and seizure of goods and conveyances. In effect, provisional release of goods has been done away with.
- The proper officer detaining or seizing goods or conveyances shall issue a notice within 7 days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of 7 days from the date of service of such notice, for payment of penalty. Earlier, there was no time limit specified under the law for issuance of notice and order under Section 129.
- Delinking Section 129 from Section 130:** Amendment in Section 129(6) of the CGST Act delinks the proceedings under Section 129 of the CGST Act relating to 'detention, seizure and release of goods and conveyances in transit', from the proceedings under Section 130 of the CGST Act relating to 'confiscation of goods or conveyances and levy of penalty'.

## Taxation | Amendments in CGST Act and Rules effective from 1 January 2022

Earlier the provision was: if person does not pay tax and penalty within 14 days of seizure, the conveyance and goods detained were liable for confiscation as per Section 130 *ibid*.

But, after this amendment, the goods or conveyance detained or seized shall become liable to be sold or disposed off in the manner prescribed in case the payment of imposed penalty is not made within 15 days from the date of receipt of copy of the order imposing such penalty.

Further, conveyance used for transportation of the goods may be released on payment of penalty or INR 1 Lakh whichever is less.

Corresponding changes for delinking Section 129 and 130 of the CGST Act are also made in Section 130 of the CGST Act.

### 6. Section 83 : Provisional attachment to protect revenue in certain cases

Provisional attachment of any property including bank account has been made applicable for any person specified in sub-section (1A) of section 122 in addition to the taxable person.

Provisional attachment can be made after initiation of proceedings under Chapter XII (Assessment), XIV (Inspection, Search, Seizure and Arrest), XV (Demands and Recovery).

The requirement of pendency of any proceedings under section 62 / section 63 / section 64 / section 67 / section 73 / section 74 is no more a precondition for provisional attachment.

### 7. Aadhar authentication made mandatory-Rule 10 B

The existing registered persons are required to do Aadhaar Authentication of their registration in the following cases:

- a. Revocation or cancellation of registration;
- b. IGST refund on export of goods under Rule 96 of CGST Rules; or
- c. Refund under rule 89 of CGST Rules, 2017 which covers Export LUT and Inverted rate structure refunds.

### 8. Other Amendments

- a. Jurisdictional commissioner to be empowered to call for information from any person relating to any matter dealt in connection with the Act. (section 151).
- b. **Mandatory requirement for deposit of specified amount for appeal**  
No appeal shall be filed to appellate authority against an order made under sub-section (3) of section 129, unless a sum equal to 25% of penalty has been paid by the appellant.

### Conclusion

The amendments increase the compliance requirements of the tax payer as well as powers of the tax authorities, and require the tax payer to be more careful or face the risks of actions from the tax authorities.

## Ahmedabad

**A2-807, "Palladium", Near Vodafone House,  
Corporate Road, Prahalad Nagar,  
Ahmedabad - 380015.**

**Phone: (91) (079) 2970 2082.**

## Bengaluru

**103, Midford House, 1, Midford Gardens  
Bengaluru 560 001.**

**Phone: (91) (80) 2555 0987.**

## Chennai

**Parsn Manere, A Wing Third Floor,  
602 Anna Salai, Chennai 600 006.**

**Phone: (91) (44) 2827 4368, 2822 9534.**

## Coimbatore

**09, Verivada Street, Redfields,  
Race Course, Coimbatore 641 045 .**

**Phone: (91) (422 ) 427 4500.**

## Goa

**SF-9 , 2nd Floor , Block A Palmer Premises  
Holders Co-op Soc Journalist Colony Road  
Bardez Goa 403 521.**

**Phone: (91) 9820284854.**

## Mumbai - 1

**Ravindra Annexe 194, Churchgate  
Reclamation Dinshaw Vachha Road,  
Mumbai 400 020.**

**Phone: (91) (22) 66338343 to 8347.**

## Mumbai - 2

**87, Nariman Bhavan, 227 Nariman Point  
Mumbai 400 021.**

**Phone: (91) (22) 6153 7500 / 2202 2224 / 8857.**

## New Delhi

**205-207 Ansal Tower 38,  
Nehru Place, New Delhi 110 019.**

**Phone: (91) (11) 4103 2506, 4103 3506.**

## Pune

**802 Lloyds Chambers , Dr. Ambedkar Road  
Opp. Ambedkar Bhavan, Pune 411 011.**

**Phone: (91) (20) 605 0802.**

## Vadodara

**8th Floor, West Wing Aurum,  
Behind Vasna HP Petrol Pump, Makrand  
Desai Road, Vadodara - 390.007.**

**Phone: (91) 97268 95000 / 97278 95000.**

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