Newsletter

# Sharp View

## December 2022

Assurance | Consulting | GRC | Taxation

Ahmedabad | Bengaluru | Chennai | Coimbatore | Delhi | Goa | Mumbai | Pune | Vadodara

# DECEMBER 2022

**December is a cold month in India and many cities experience a pleasant to cold climate throughout the month. The consumer demand for winter products has started to pick up and will further increase once the average temperatures begin to drop.**

**India celebrates its Farmer's Day (Kissan Diwas) to mark the birthday of her 5th Prime Minister, Shri Chaudhary Charan Singh, who dedicated his life to the development of farmers and rural areas. He introduced various policies to improve the lives of the farmers.**

**Today, agriculture is the largest employer of the workforce in India and is the primary source of livelihood for nearly 58% of the country's population. Allied sectors include dairy, livestock and fishery. The Government of India (GOI) has placed focus on the food processing sector, which is not only a major market of agricultural produce but also substantially employs the surplus workforce engaged in agriculture. Some of the initiatives undertaken very recently by GOI include**

- **Krishi Udaan Scheme 2.0: The scheme assists farmers in the hilly areas in transportation and logistics of agricultural products to improve their value realisation primarily for perishable food products.**

- **One nation one fertiliser scheme: The scheme will supply subsidised fertiliser - urea under a single brand 'Bharat.'**

- **World's biggest direct benefit scheme: Release of the 12th instalment of INR 16,000 crore under the Pradhan Mantri Kisan Samman Nidhi (PM-KISAN) through Direct Benefit Transfer.**

- **Inauguration of 600 Pradan Mantri Kisan Samruddhi Kendras (PMKSK): which are in the form of centres providing agri-inputs and other services to farmers. More than 3.3 lakh retail fertiliser shops will be converted into PMKSK shortly.**

**"On 1 December 2022, India formally assumed the G20 Presidency. G20, or Group of Twenty, is an intergovernmental forum of the world's 20 major developed and developing economies, making it the premier forum for international economic cooperation. India aims to take the G20 closer to the public, by making it a 'People's G20.' Though the initial focus of G20 was by and large the broad macroeconomic issues, its agenda now extends to trade, climate change, sustainable development, health, agriculture, energy, environment, and anti-corruption."**

# CONSULTING

## Getting BRSR Ready!

**Till the year-end 2021-22, Business Responsibility Reporting ('BRR') was mandatory for the top 1,000 listed entities (by market capitalisation). Business responsibility and sustainability reporting ('BRSR') refers to the reporting by businesses in terms of the environmental, social and governance parameters. For the year ended 31 March 2023 and thereafter, the top 1,000 listed entities based on market capitalisation shall submit a BRSR in the format specified by the Securities and Exchange Board of India ('SEBI'). Mr Sarang Ghodke (Pune office) takes you through this new compliance requirement which becomes operational in a couple of months.**

## Evolution of BRSR

Frameworks for reporting on sustainability have evolved over time and the adoption of these frameworks has become more eminent for companies to measure, monitor, and disclose their performance regarding the Environment, Social, and Governance ('ESG') related areas. The first step towards sustainability reporting has been initiated by the Ministry of Corporate Affairs ('MCA') by issuing the National Voluntary Guidelines ('NVGs') in 2009. Since then, various legislations have been introduced that include Business Responsibility Reporting ('BRR'), Corporate Social Responsibility ('CSR'), Integrated Reporting ('IR'), National Guidelines on Responsible Business Conduct ('NGRBC'), and now Business Responsibility and Sustainability Reporting ('BRSR').

## Background

Currently, the top 1,000 listed companies in India are required to furnish BRR to the stock exchanges as a part of their annual reports. The BRR ideally describes the efforts taken by the listed companies from an ESG perspective, in the format specified by the Securities and Exchange Board of India ('SEBI').

A committee that included SEBI was set up by the MCA to revisit disclosures being made by corporates in terms of their ESG. The BRSR framework came up from the recommendations of this committee and global organisations such as SASB (Sustainability Accounting Standards Board) and GRI (Global Reporting Initiative). On 5 May 2021, under Regulation 34(2)(f) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the BRSR framework has been introduced and disclosure requirements came into force.

## Timeline of BRSR

National Voluntary Guidelines on Social Environmental, and Economic Responsibilities of Business

2012
SEBI makes BRR filing mandatory for the top 100 listed entities

2015
SEBI makes BRR filing mandatory for the top 500 listed entities

2019
National Guidelines for responsible business conduct introduced. SEBI makes BRR mandatory for the top 1,000 listed entities

2020
Committee on BRR recommends BRSR framework with two formats for disclosures i.e., BRSR Format & BRSR Format Lite

2021
BRSR mandatory for the top 1,000 listed companies from FY 2022-23 (Voluntary from FY 2021-22)

2022
On 6th May 2022 SEBI constitutes a committee for advising on ESG-related matters including BRSR.

## BRR v/s BRSR

### Key distinctions:

Key distinctions between the existing Business Responsibility Report (BRR) and emerging Business Responsibility and Sustainability Reporting (BRSR):

| SN | BRR | BRSR |
|---|---|---|
| 1. | BRR is based on 9 principles that promote transparency, accountability, contribution to sustainability, human rights, stakeholder management, and environmental protection. | BRSR framework is based on ESG principles: interoperability, essential and leadership indicators, sustainability reporting, and assessment metrics. |
| 2. | BRR majorly focused on qualitative aspects/metrics. | BRSR focuses on both quantitative and qualitative indicators that allow for measurement and comparability across companies and industry sectors. |
| 3. | BRR had a unique template for all the companies. | BRSR consist of two formats:<br>• Comprehensive BRSR<br>• Lite BRSR |
| 4. | BRR disclosures were reported as a part of the annual report. | BRSR disclosures are to be reported in the annual report as well as on the MCA 21 portal through the XBRL form. |
| 5. | Five reporting sections were to be disclosed in BRR. | Reporting sections have been reduced from five to three, retaining general disclosures and principle-wise performance. |
| 6. | Currently, BRR reporting is mandatorily applicable to the top 1,000 listed companies (by market capitalisation). | The committee recommended that the reporting requirement should be extended to unlisted companies above a threshold to be specified by MCA in terms of turnover or paid-up capital. Those companies which will fall below this threshold can apply the reporting requirement voluntarily using the Lite version of BRSR. |

## Need of BRSR

BRSR serves the purpose of ensuring globally standardised disclosures on ESG parameters. The initiative helps investors to access relevant and comparable information to make better investment decisions. It also strives to identify potential risks and opportunities related to sustainability. It could be used to develop a Business Responsibility-Sustainability Index for companies. It expects that this information would also be used by banks, credit rating agencies, and other financial institutions, along with financial information to assess the credibility of a company/business.

BRSR would also help companies to better formulate objectives and goals concerning sustainability issues as sustainability reporting will help to attract more foreign direct investments ('FDI') and long-term investments.

The reports intend to serve as a single comprehensive source of non-financial, sustainability information relevant to all business stakeholders including investors, shareholders, and regulators.

## Reporting requirements

In BRSR disclosure requirements, the listed entities shall disclose their performance against the 9 core principles that are based on the principles of the existing BRR and National Guidelines on Responsible Business Conduct ('NGRBC'). The principles of NGRBC originate from 17 Social Development Goals ('SDGs') issued by the United Nations ('UN').

BRSR disclosure requirements include the following:

a. Section A - General disclosures
b. Section B - Management and process disclosures
c. Section C – Principle-wise performance disclosures
   i. Essential indicators
   ii. Leadership indicators

The 9 core principles are to be disclosed in two types of indicators viz. Essential and Leadership Indicators. Essential indicators shall mandatorily be disclosed whereas Leadership Indicators can be disclosed voluntarily.

## Call to action

- Companies mandatorily required to prepare BRR should take cognisance of the additional reporting requirements proposed by the committee and SEBI.
- These changes may require updating the systems/policies/Standard Operating Procedure for the implementation of BRSR requirements.
- Other large companies in India to start evaluating the new reporting requirements of BRSR and assess their level of readiness.
- Companies may define a robust system for the collection, review, and documentation of related data.
- Diverse cross-functional sets of data to be compiled across various stakeholders.
- Quantification and centralised collection of various data required to be reported need to be initiated.
- Timelines for the reporting need to be understood and adhered t for the reporting across the organisation.
- Adequate training and awareness are to be conducted to ensure that the correct framework and metrics have been selected for accurate reporting by companies.

## The way forward

Non-financial disclosures ensure that businesses explicitly recognise their environmental and social responsibilities. The given framework is standard and consistent which helps to capture performance on globally recognised and locally relevant indicators. BRSR formats emphasise value chain, labour welfare, and women's participation in economic activity along with the inclusion of recognised challenges like sustainable production, waste disposal, and recycling.

For a company's non-financial disclosures, BRSR is an effective compliance and communication tool. It is the next step in mandatory ESG reporting in India which will help in achieving India's goal of net-zero emissions by 2070.

GRC

# Heading towards sustainability – Sovereign Green Bonds in India

**Indian Government has recently released the Sovereign Green Bonds Framework. Sovereign Green Bonds will be issued by the Government of India for mobilising resources for green infrastructure. The proceeds will be deployed in public sector projects which help in reducing the carbon intensity of the economy. Ms Aarti Joshi (Vadodara office) summarises the key aspects of the framework.**

# GRC | Heading towards sustainability – Sovereign Green Bonds in India

## Background

India's pledge to the preservation of the environment is enshrined in Article 48-A of her constitution. Over the years, India has taken steps at the national and regional levels to balance environmental sustainability with economic growth. Climate change is one such global challenge and countries across the globe are trying to cope with ways to mitigate it. India adopted an ambitious Nationally Determined Contribution ('NDC') under the Paris Agreement on a 'best effort basis' keeping its developmental priorities in mind. Indian Prime Minister enhanced the ambition of addressing climate change through the following five elements – called the Panchamrit:

- Reach 500GW non-fossil energy capacity by 2030
- 50% of its energy requirements from renewable energy by 2030
- Reduction of total projected carbon emissions by 1 billion tonnes from 2021 to 2030
- Reduction of the carbon intensity of the economy by 45% by 2030, over 2005 levels
- Achieving the target of net zero emissions by 2070

## What are Sovereign Green Bonds ('SGrB')?

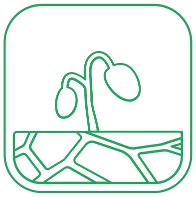
- The Government of India (GOI) announced in the Union Budget 2022-23 that it will issue SGrB for mobilising resources for green infrastructure. The proceeds will be deployed in public sector projects which help in reducing the carbon intensity of the economy.

- Green bonds are financial instruments which are used to fund projects that have positive environmental / climate effects.

- The issuance of SGrB will help GOI in tapping the requisite finance from potential investors for deployment in public sector projects aimed at reducing the carbon intensity of the economy.

- The GOI recently announced the SGrB framework to regulate the issuance, repayment and management of the SGrB. The framework is based on the 4 principles formulated by the International Capital Market Association (ICMA) Green Bonds Principles, 2021 which are:
    - Use of proceeds
    - Project evaluation and selection
    - Management of proceeds
    - Reporting

- The Green Bond Framework (framework) defines the obligations of GOI as the green bond issuer. The investors of the bonds are adequately protected, i.e. the payment of principal and interest is not conditional on the performance of the eligible projects, neither the investors bear the risk of non-performance of the projects.



## Core components of the framework

1. GOI will use the proceeds raised from SGrB to finance and/or refinance expenditure (in parts or whole) for eligible green projects defined therein.

2. The environmental objectives are: climate change mitigations, net zero emissions, biodiversity and natural resource conservation.

3. All eligible 'green expenditures' will include public expenditure undertaken by GOI in the form of investment, subsidies, grant-in-aids, or tax foregone (or a combination of all or some of these) or select operational expenditures, R&D expenditures in public sector projects that help in reducing the carbon intensity of the economy and enable country to meet its sustainable development goals ('SDGs').

4. The eligible expenditures are only those government expenditures which are incurred maximum 12 months before the issue of SGrBs. All the eligible projects must get funded within 24 months of the date of allotment. Already funded projects will be excluded to avoid double-counting.

5. The ministry of finance (MoF) has constituted a Green Finance Working Committee ('GFWC'), which consists of the relevant line ministers from the concerned ministries and chaired by the Economic Advisor of India. The GFWC will be entrusted with the following functions:
   i. Selection of the eligible green projects
   ii. Review and approval of the projects for green funding
   iii. Review of the allocated funding in terms of the time-limit, i.e. 24 months
   iv. Replacement of another green project in the event of cancellation of an already approved green project
   v. Preparing the annual report of the funds allocated, status of the project implementation and that of unallocated funds, etc.
   vi. Assessing the impact of the projects (in terms of achievement of green objectives)
   vii. Periodic selection of new projects

6. Role of MoF
   i. MoF will be the nodal point to closely administer the working of the GFWC and will keep the Reserve Bank of India (RBI) informed about the utilisation of funds.
   ii. MoF will set up a dedicated information system with a view to maintain a complete 'green register' including the details of the green bond issuance, proceeds generated, allocations made to eligible projects including other information like summary of the project details, allocation of proceeds to each project, expected climate impact and the extent of unallocated proceeds.

7. Second party opinion. What is it?

Various countries across the globe are framing clean, green and sustainable policies and allocating funds for the green projects. Like India, governments, corporates, municipal authorities (local governments) of many countries are in the process of framing similar policies to support the green projects. Center for International Climate Research ('CICERO') is one such internationally recognised climate research institute (based in Norway). Its subsidiary known as 'CICERO Shades of Green' independently provides 'second opinion' and 'guidance for assessing/selecting eligible projects' for green bonds issuance.

India is rated as 'Good' with a medium green shade by CICERO and it has approved the GOI's alignment of the sovereign green bonds with the ICMA green bonds principles, 2021.

8. Post issuance external verification: Once the SGrB are issued, GOI will engage an independent external third party reviewer to provide a timely and transparent information about the management of allocated funds for the stated objectives. The framework, second party opinion and the external verification report will be available on the websites of the Ministry of Finance (www.finmin.nic.in) and Department of Economic Affairs. (www.dea.gov.in)

## Key takeaway

Climate change is a global concern and India is dedicated to the purpose of addressing it. India now stands committed to reduce emissions intensity of its GDP by 45% by 2030, from 2005 level and achieve 50% cumulative electric power installed capacity from non-fossil fuel-based energy resources by 2030. Various programmes are being developed to support the green technology and infrastructure and for achieving the sustainability goals. Many developed countries have issued green bonds. India is positive about its commitment of achieving its sustainability goals. The issuance of green bonds will bring in fresh opportunities to India in terms of greener initiatives, supportive infrastructure, the related business investments and attracting the right talent.

The SGrB initiative is a historic moment for India as it brings together eight ministries, the Ministry of Finance as an overseeing authority, working in close coordination with the Department of Economic affairs and the Reserve Bank of India. The combined and synergytic effect of these ministries will definitely drive the nation towards its sustainability goals in the nearest future.

# TAXATION

## Indirect taxes: DRC-03 is no more valid for accepting pre-deposits towards appeals

**A recent Bombay High Court verdict has clarified that chalan DRC-03 is no more valid for depositing the pre-deposits while filing an appeal. Mr Shouvik Roy (Mumbai office) discusses the case law and its implications in detail.**

## Taxation | Indirect taxes: DRC-03 is no more valid for accepting pre-deposits towards appeals

### Background

"Pre-deposits" are required to be made under all indirect tax laws, for filing an appeal and getting the appeal admitted. Unless the pre deposit is made, an appeal is not admitted. In the erstwhile indirect tax laws, (Excise and Service Tax) pre-deposit for appeals were mandated vide section 85 of the Finance Act, 1994, read with section 35 of the Central Excise Act, 1944.

### Issue in Detail

Taxpayers were resorting to various approaches including payment through Form GST DRC-03, or through a credit reversal entry in Form GSTR-3B (even for pre deposit under erstwhile taxes). DRC-03 is a form under the GST law that is required to be filed for voluntary tax payments towards demand or tax shortfall/arrears noticed later on after the time limit to file returns of a financial year expires.

Instruction No 240137/14/2022, dated 28 October 2022 ('instructions') issued by the Excise and Service Tax Wing of the CBIC issued fresh directions on mode of making pre-deposits and provided that payments made through Form DRC-03 are not a valid mode for complying with the pre-deposit requirement for filing an appeal under the erstwhile Central Excise and Service Tax laws.

The instructions mention that pre-deposit is a mandatory requirement for exercising the right to appeal. Also, they state that section 142 of the Central Goods and Services Tax (CGST) Act (on transitional provisions) inter alia mentions only 'tax', 'credit', 'interest', 'penalty' recoverable under the erstwhile tax laws, can be treated as 'arrears of tax' recoverable under the CGST Act. Hence, the pre-deposit amount could neither be treated as a 'duty' nor as 'arrears of tax' under the erstwhile indirect taxes regime and so, it cannot be inferred that the entitlement of payment through DRC-03 chalan was covered under transitional provisions of the GST law). It may again be noted that DRC-03 challan is for payment of 'arrears of tax') as per CGST. Hence, the appellants must refer to the dedicated portal: https://cbic-gst.gov.in wherein a detailed circular (1070/3/2019-CX dated 24 June 2019) gives the necessary guidance about the chalan to be used for the pre-deposits.

### Judicial background

The above instruction by CBIC is triggered due to the recent judgement of the Division Bench of Bombay High Court (HC) in the case of Sodexo India Pvt. Ltd. vs UOI. In this writ petition, the issue involved was whether pre-deposit for appeals under section 85 of the Finance Act,1994, read with section 35 of the Central Excise Act, 1944 (earlier regime), can be paid using GST DRC-03.

The petitioner had preferred an appeal before the Commissioner (Appeals) and made a pre-deposit in cash through DRC-03. Commissioner (Appeals) dismissed the appeal on the ground that the pre deposit made was improper. Hence, the petitioner filed a writ petition before the HC.

Revenue department argued before the HC that the law and the circulars issued do not permit pre-deposit in the mode made by the petitioner. Further, it was argued that the proceedings under the earlier regime and the CGST Act are distinct, as they are two distinct laws. Hence, payment methods under CGST law can be used only for GST payments.

HC noted that the taxpayers followed divergent practices in making the pre-deposit, i.e., through service tax challans in a few cases and DRC-03 in other cases. HC further observed that the earlier regime lacked a proper legal provision for accepting pre-deposits through DRC-03, causing confusion. Accordingly, HC, while quashing the orders passed by the Commissioner (Appeals), directed CBIC to resolve the confusion through suitable clarifications or instructions.

### Implications of the instruction no. 240137/14/2022

- Though the issuance of these instructions would help in resolving ambiguity (going forward) practically in many past cases, appellate authorities have accepted pre-deposits made through DRC-03 without any dispute.

- Refusal to accept pre-deposit through DRC-03 results in preventing a taxpayer from utilising the input tax credit (ITC) for such payment. (As payments through DRC-03 are eligible for ITC, but not other methods like deposits through other normal challans / service tax challans).

- It is pertinent to note that there are divergent tribunal rulings on the issue whether GST ITC can be used for payment of pre-deposit under earlier regime. Accordingly, CBIC, while issuing future instructions, may also consider clarifying whether GST credits (ITC) can be used for such pre-deposits, taking into account recent Bombay High Court (Oasis Realty vs UOI-Order dated 16 September 2022) and Allahabad High Court (Tulsi Ram & Co. vs GST Commissioner-Order dated 23 September 2022) judgements, which state that ITC credit can be used for making pre-deposits for GST appeals.

- Though Revenue contended before the Bombay HC in the Sodexho case that, GST forms can be used only for payment under GST laws, Circular No 58/32/2018 - GST dated 4 September 2018, had allowed payment of pre-deposits through DRC-03 challan.

- Further, the current subject instruction also mentions that pre-deposit for filing GST appeals can be done through Form GST APL-1. It may be noteworthy that Form APL-1 allows GST pre-deposit to be paid by utilising ITC, while the instruction does not prescribe any mode that allows utilisation of ITC credit ledger to pay pre-deposit for appeals under the erstwhile taxes. This is a dichotomy created by this instruction.

- *Hence, the possibility of a fresh round of litigation and a writ petition by any aggrieved and affected taxpayer, challenging this subject instruction itself and its content, cannot be precluded.*

## Ahmedabad

A1/01, Safal Profitaire,
Corporate Road, Prahalad Nagar,
Ahmedabad 380015.
Phone: (91) (079) 2970 2082.

## Mumbai - 1

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

## Bengaluru

103 & 203, Midford House, 1, Midford
Gardens, M.G. road, Bengaluru 560 001.
Phone: (91) (80) 2555 0987.

## Mumbai - 2

87, Nariman Bhavan, 227 Nariman Point
Mumbai 400 021.
Phone: (91) (22) 6153 7500 / 2202 2224 / 8857.

## Chennai

Parsn Manere, A Wing Third Floor,
602, Anna Salai, Chennai 600 006.
Phone: (91) (44) 2827 4368, 2822 9534.

## New Delhi

205-207 Ansal Tower 38,
Nehru Place, New Delhi 110 019.
Phone: (91) (11) 4103 2506, 4103 3506.

## Coimbatore

09, Verivada Street, Redfields, Race
Course, Coimbatore 641 045 .
Phone: (91) (422 ) 427 4500.

## Pune

802 Lloyds Chambers , Dr. Ambedkar Road
Opp. Ambedkar Bhavan, Pune 411 011.
Phone: (91) (20) 2605 0802.

## Goa

Shop no: SF9, GHB Commercial-cum-
residential complex, Journalist colony road,
Alto Betim, Porvorim Berdez, Goa - 403251.
Phone: (91) 9820284854.

## Vadodara

Aurum Complex, 8th Floor, West Wing,
Behind Vasna HP Petrol Pump, Makrand
Desai Road, Vadodara - 390.007.
Phone: (91) 97268 95000 / 97278 95000.


Learn more at: www.sharpandtannan.com

Social Media

SHARP & TANNAN