The Malad Chamber of Tax Consultants

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42 Years **MCTC Bulletin**

"Every Passing Minute is Another Chance to Turn it Around"

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President's Communiqué

Dear Friends

New year 2022 began on a very positive note with all of us anticipating freedom from the pandemic and full functioning of all activities in near future. All these hopes got dented in the first fortnight of the year itself with the onset of the new variant of the virus, forcing the government to enforce new restrictions. Science has however given hope that based on the experience, this third wave will not only be short lived but will also not be too fatal and hopefully this wave will bring an end to the pandemic, converting it into an endemic, a seasonal curable disease. Such is the way life functions, every problem has a solution, a silver lining – we just need to put in our best efforts, keep patience, pray and hope for the best.

The last date of filing tax audit reports and the corresponding returns have been extended by one month each giving everyone more time to complete their works while aligning with the pandemic conditions. Hopefully remaining glitches in the income tax website will also be taken care of at the earliest. I will urge all of you to not loosen guard but to finish the audits at the earliest as not only the financial year is coming to an end, the due date of GST audit is also looming large. Its going to be quite busy three months for all of us.

I take this opportunity to welcome Adv. Jaideep Sonpal, also a managing committee member of the chamber, to the writers' panel of the bulletin, as he has contributed an article for this month's bulletin. This is his first effort in writing and he has done a wonderful job at it. I hope he continues writing and his effort encourages other members also to contribute to the bulletin.

We have planned virtual public meeting on Union Budget 2022 on 4th February, 2022. Details of the programme is printed on page no 2 of this Bulletin. All the members of the Chamber are requested to participate in the said programme in large numbers to make it successful. Budget Publication will be printed as usual and you are requested to contact the secretaries of the chamber for pre order. Request all the members to participate & get maximum advertisements for the budget publication.

I request you to kindly take advantage of the opportunity of joining the three study circles formed by the chamber – one each on direct tax, indirect tax and capital market.

I also request you to kindly participate in the 'Gift a Membership' drive of the chamber and help spread the benefits of the chamber to as many tax professionals as possible.

Also, humble request to please donate eyes and inspire people to donate eyes.

Light Up A Life, Donate Your Eyes

Take utmost care of yourself, your family and near and dear ones, follow covid protocols thoroughly, we are at the verge of winning the battle, let's not delay the win by loosening our grip.

Happy New Year 2022!

Regards

CA Jignesh Savla
President

Do you know? **Eye donation does not interfere with or delay final rites, as the corneal excision procedure takes less than 20 minutes**

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Please send message on 7039006655 or email to maladchamber@gmail.com

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Forthcoming Events

Virtual Budget 2022 Public Meeting Jointly with Goregaon Sports Club on 4th Feb 2022 from 5.00 p.m. to 8.00 p.m.	
Direct Tax	By Sr. Advocate, Saurabh Soparkar, From Ahmedabad
Capital Market	By CA Manish Chokshi
Indirect Tax	By Advocate, Bharat Raichandani

DIRECT TAXES - Law Update

Haresh P. Kenia

1. CLARIFICATION REGARDING SECTION 36(1)(xvii) OF THE INCOME-TAX ACT, 1961 INSERTED VIDE FINANCE ACT, 2015

CIRCULAR NO. 18/2021 [F. NO. 173/146/2021/ITA-I], DATED 25-10-2021

The Finance Act, 2015 inserted the following clause (xvii) in sub-section (1) of section 36 of the Income-tax Act, 1961 (the Act) to provide for deduction on account of the amount of expenditure incurred by a co-operative society engaged in the business of manufacture of sugar—

"*(xvii)* the amount of expenditure incurred by a co-operative society engaged in the business of manufacture of sugar for purchase of sugarcane at a price which is equal to or less than the price fixed or approved by the Government;"

This clause took effect from 1-4-2016 and accordingly applied to assessment year 2016-17 and subsequent assessment years.

The issue of treatment of additional payment for sugarcane price by Co-operative sugar mills as an income distribution to farmer members and the resuitant tax liabilities has been brought to the notice of the Central Board of Direct Taxes (the Board).

The matter has been examined by the Board and in this regard, it is clarified that the phrase 'price fixed or approved by the Government' in clause (xvii) in sub-section (1) of section 36 of the Act includes price fixation by State Governments through State-level Acts/Orders or other legal instruments that regulate the purchase price for sugarcane, including State Advised Price, which may be higher than the Statutory Minimum Price/Fair and Remunerative Price fixed by the Central Government.

2. SECTION 285BB OF THE INCOME-TAX ACT, 1961 - ANNUAL INFORMATION STATEMENT - ROLL OUT OF NEW ANNUAL INFORMATION STATEMENT (AIS)

PRESS RELEASE, DATED 1-11-2021

Income Tax Department has rolled out the new Annual Information Statement (AIS) on the Compliance Portal which provides a comprehensive view of information to a taxpayer with a facility to capture online feedback. The new AIS can be accessed by clicking on the link "Annual Information Statement (AIS)" under the "Services" tab on the new Income tax e-filing portal (https://www.incometax.gov.in) The display of Form 26AS on TRACES portal will also continue in parallel till the new AIS is validated and completely operational.

The new AIS includes additional information relating to interest, dividend, securities transactions, mutual fund transactions, foreign remittance information etc. The reported information has been processed to remove duplicate information. Taxpayer will be able to download AIS information in PDF, JSON, CSV formats.

If the taxpayer feels that the information is incorrect, relates to other person/year, duplicate etc., a facility has been provided to submit online feedback. Feedback can also be furnished by submitting multiple information in bulk. An AIS Utility has also been provided for taxpayers to view AIS and upload feedback in offline manner. The reported value and value after feedback will be shown separately in the AIS. In case the information is modified/denied, the information source may be contacted for confirmation.

A simplified Taxpayer Information Summary (TIS) has also been generated for each taxpayer which shows aggregated value for the taxpayer for ease of filing return. TIS shows the processed value (i.e., the value generated after de-duplication of information based on pre-defined rules) and derived value (i.e., the value derived after considering the taxpayer feedback and processed value). If the taxpayer submits feedback on AIS, the derived information in TIS will be automatically updated in real time. The derived information in TIS will be used for pre-filling of Return (pre-filling will be enabled in a phased manner).

Taxpayers should remember that Annual Information Statement (AIS) includes information presently available with the Income Tax Department. There may be other transactions relating to the taxpayer which are not presently displayed in Annual Information Statement (AIS). Taxpayers should check all related information and report complete and accurate information in the Income Tax Return.

The taxpayers are requested to view the information shown in Annual Information Statement (AIS) and provide feedback if the information needs modification. The value shown in Taxpayer Information Summary (TIS) may be considered while filing the ITR. In case the ITR has already been filed and some information has not been included in the ITR, the return may be revised to reflect the correct information.

In case there is a variation between the TDS/TCS information or the details of tax paid as displayed in Form26AS on TRACES portal and the TDS/TCS information or the information relating to tax payment as displayed in AIS on Compliance Portal, the taxpayer may rely on the information displayed on TRACES portal for the purpose of filing of ITR and for other tax compliance purposes.

Taxpayers may refer to the AIS documents (AIS Handbook, Presentation, User Guide and FAQs) provided in "Resources" section or connect with the helpdesk for any queries through "Help" section on the AIS Homepage.

3 E-SETTLEMENT SCHEME, 2021

NOTIFICATION S.O. 4584(E) [NO. 129/2021/F.NO. 370142/52/2021-TPL (PART IV)], DT. 1-11-2021

The Central Government has framed the E-Settlement Scheme 2021 as per above notification. It shall come into force on the date of its publication in the Official Gazette.

4. SECTION 90 OF THE INCOME-TAX ACT, 1961 - DOUBLE TAXATION RELIEF - PROTOCOL AMENDING AGREEMENT BETWEEN GOVERNMENT OF REPUBLIC OF INDIA AND GOVERNMENT OF KYRGYZ REPUBLIC FOR AVOIDANCE OF DOUBLE TAXATION AND FOR PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

NOTIFICATION S.O. 5094(E) [NO. 135/2021/F. NO. 503/07/95-FTD-II], DATED 8-12-2021

Whereas, the Protocol, amending the Agreement between the Government of the Republic of India and the Government of the Kyrgyz Republic for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income which was signed at New Delhi on 13th April, 1999, has been signed at Bishkek, Kyrgyz Republic on 14th June, 2019, as set out in the Annexure appended to this notification (hereinafter referred to as the said amending Protocol);

And whereas, the date of entry into force of the said amending Protocol is the 22nd October, 2020, being the date of the later notification of the completion of the procedures required by the respective laws for the entry into force of the said amending Protocol, in accordance with Article 3 of the said amending Protocol;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said amending Protocol, as annexed to this above notification shall have effect in the Union of India.

5. E-VERIFICATION SCHEME, 2021

NOTIFICATION S.O. 5187(E) [NO. 137 /2021/ F.NO. 370142/57/2021-TPL(PART-I)], DATED 13-12-2021

In exercise of the powers conferred by sub-sections (1) and (2) of section 135A of the Income-tax Act, 1961 (43 of 1961), the Central Government has hereby notified the E-Verification Scheme 2021. It deals with mismatch of taxpayers information reported by reporting entities. The scope of the scheme shall be in respect to collecting information under sections 133, 133B, 133C, the exercise of power to inspect registers of companies under section 134, and exercise of the power of AO under section 135. The Scheme shall be applicable to verify the mismatch of the information uploaded to the taxpayer's registered account.

As per the Scheme, where the mismatch between the amount accepted by the assessee and the amount reported by the reporting entity persists, the information after initial e-verification shall be run through a risk management strategy laid down by the Board. The information found to be no/low risk on such risk criteria or where no further action is required shall be processed for closure.

■■■

DIRECT TAX CASE LAWS

Compiled by CA Rupal Shah
(Partner at RHDB & Co LLP)

Man Mohan Kohli vs. ACIT

Citation: WP(C) 6176/2021 with several others, Delhi HC, 15 December 2021

Constitutional Validity of CBDT Circular extending due date for issuing notice under erstwhile provision of Section 148 (reassessment)

Facts:

Finance Act, 2021 made the existing procedure of reassessment under section 147 of the Income Tax Act ('Act') completely redundant by substituting it with a new reassessment procedure. A new section 148A was introduced setting out a procedure which is required to be followed before issue of notice under section 148.

Such procedure can be summarized as follows:

1. Assessing officer shall conduct any inquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment.
2. Provide an opportunity of being heard to the assessee with the prior approval of specified authority
3. Consider the reply of assessee furnished, if any
4. Decide based on material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority.

The above order is required to accompany the notice issued for opening or initiation of reassessment proceedings.

In pursuance to the power vested under Section 3 of Relaxation Act, 2020, the Central Government issued following Notifications inter-alia extending the time-lines prescribed under Section 149 for issuance of reassessment notices under Section 148 of the Income Tax Act, 1961:

Date of Notification	Original limitation for issuance of notice under Section 148 of the Act	Extended Limitation
31 March, 2020	20 March, 2020 to 29 June, 2020	30 June, 2020
24 June, 2020	20 March, 2020 to 31 December, 2020	31 March, 2021
31 March, 2021	31 March, 2021	30 April, 2021
27 April, 2021	30 April, 2021	30 June, 2021

The Explanations to the Notifications dated 31 March 2021 and 27 April 2021 issued under Section 3 of Relaxation Act, 2020 also stipulated that the provisions, as existed prior to amendment by Finance Act, 2021, shall apply to the reassessment proceedings initiated thereunder.

The present various writ petitions are filed by several asessees, to challenge the constitutional validity of notification of CBDT extending the old provisions of reassessment beyond the timelines prescribed in the legislation itself.

Held:

The intent, purpose and scope of the amendments introduced by the Finance Act, 2021 was to protect the rights and interests of assessees as well as promote public interest - The Finance Act, 2021 introduces a new regime regarding the procedure to be complied with in respect of the re-opening of an Income-tax assessment

and accordingly, the benefit of the new provisions must necessarily be made available even in respect of proceedings relating to past Assessment Years provided, of course, Section 148 notice has been issued on or after 1st April, 2021.

The Memorandum to the Finance Bill, 2021, clarifies that its Sections 2 to 88 which included the substituted Sections 147 to 151 of the Income Tax Act, 1961 will take effect from 1 April 2021 - Had the intention of the Legislature been to keep the erstwhile provisions alive, it would have introduced the new provisions with effect from 1 July 2021, which has not been done.

Accordingly, the notices relating to any assessment year issued u/s. 148 on or after 1 April 2021 must comply with the provisions of Sections 147, 148, 148A, 149 and 151 of the Income Tax Act as specifically substituted by the Finance Act, 2021 with effect from 1 April 2021.

Revenue cannot rely on Covid-19 for contending that the new provisions Sections 147 to 151 of the Income Tax Act should not operate during the period 1st April, 2021 to 30th June, 2021 as Parliament was fully aware of Covid-19 Pandemic when it passed the Finance Act, 2021.

Non-obstante clause has to be construed strictly - Section 3(1) of Relaxation Act is expressly confined to and only supersedes the time limits. It does not exclude the applicability of provisions substituted by Finance Act, 2021.

Explanations A(a)(ii)/A(b) to the Notifications dated 31st March, 2021 and 27th April, 2021 are declared to be ultra vires the Relaxation Act, 2020 and are therefore bad in law and null and void.

Thus, the impugned reassessment notices issued u/s. 148 of the Income Tax Act are quashed. The writ petitions are allowed.

CIT TDS vs. Super Religare Laboratories Ltd.

Citation: [2021] 133 taxmann.com 313, Bombay HC, 21 October 2021

TDS liability to arise only if amounts are paid / credited to the parties.

Facts:

Assessee-company was engaged in providing laboratory and testing services to customers through its own and through third party collection centres - It allowed certain discount to these collection centres. For example, collection centres would charge a patient ₹ 500 for a particular blood test and hand over the sample drawn to respondent and respondent would charge the collection centre ₹ 400.

Assessing Officer held that such discount allowed by assessee to collection centres was in nature of commission and assessee was obligated under section 194H to deduct tax at source on same.

On appeal before CIT(A) and ITAT both, reliance was placed on assessee's own case in earlier assessment year wherein it has held that discount allowed by respondent to the collection centres is not commission and not attracted by the provisions of section 194H for the reason that there is no principal agent relationship between respondent and the collection centre and the relationship between respondent and collection centres is only principal to principal relationship and therefore, provisions of section 194H have no application.

Held:

Under section 194H, the obligations is on any person who is responsible for paying any income by way of commission or brokerage to deduct tax at source at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

In this case, admittedly, respondent has not been paying any money to the collection centres. Respondent was only receiving payment from the collection centres.

As the section is applicable only to a person who is responsible for paying to deduct tax at the time of credit to the account of the payee or at the time of payment and as respondent does not perform any act of paying, there is no obligation on the company to deduct tax at source.

WHETHER SECTION 16(2)(aa) OF THE CGST ACT, 2017 CAST OBLIGATION ON RECIPIENT TO ENSURE THAT SUPPLIER HAS FILED FORM GSTR-1/IFF AND GETS REFLECTED IN GSTR-2B

Compiled by CA Bhavin Mehta

The eligibility and condition for taking input tax credit is stipulated in section 16 of the CGST Act, 2017. Section 16(1) entitles every registered person to take credit of input tax charged on any supply of goods or services or both to him used or intended to be used in the course or furtherance of his business subject to such conditions and restrictions specified in ***section 49*** of the Act. Section 49(2) provides the ITC claimed in the return shall be credited to electronic credit ledger of registered person as self-assessed.

Section 16(2) provides conditions for claiming the ITC. The Finance Act, 2021 inserted clause (aa) in section 16(2) of the CGST Act, 2017. The amended section 16(2) is reproduced below:

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

[1][(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

(c) subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39 :

Provided .....

.....

***

(Emphasis Supplied)

In brief, to take ITC, the registered person will be required to meet all the conditions listed below:

1. He is in possession of tax invoice;
2. The details of tax invoice should be reflected in GSTR-1/IFF (invoice furnishing facility) of supplier and communicated through GST portal to him in GSTR-2B;
3. He has received the goods or services or both;
4. He has reflected the ITC in GSTR-3B (return). (Refer section 41. Section 43A is not enacted)
5. He has furnished the GSTR-3B return.

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1 The above mentioned clause (aa) is effective from 01.01.2022 by virtue of Notification No.39/2021-Central Tax dated 21-12-2021.

- The condition mentioned in clause (aa) puts the onus on recipient of supplies. It requires the recipient to ensure, for the purposes of claiming ITC to ensure that the tax invoice on which he wants to take the credit, the supplier has included the said tax invoice in his GSTR-1/IFF filed online and in turn reflects in the GST portal in GSTR-2B. The condition specified in clause (aa) is not within the control of recipient/purchaser. On account of conduct of supplier, who has collected GST from the recipient/ purchaser and has failed to file GSTR-1 or IFF, as the case may be, the recipient/purchaser is made to suffer.
- GST is indirect tax, the incidence of which can be passed on by the supplier to recipient. The objective of GST is to charge tax on value additions and to avoid cascading effect of taxes. The recipient has to take care to verify that the supplier is also registered person and has valid registration under GST Act. Failure on the part of supplier with no fault by the recipient/purchaser should not attract double tax in the hands of recipient/purchaser. Clause (aa) of section 16(2) denies the benefit of ITC only because of the default of the supplier over whom recipient has no control. The recipient has no access to the GSTR-1/IFF filed by the supplier since those particular are meant to be confidential as per section 158 of the CGST Act.
- 'Lex Non Cogit ad impossibilia' is an age old maxim which means that 'the law does not compel a man to do which he cannot possibly perform'. A body of law does not compel or forces someone to do the thing which is impossible. The law does not compel the doing of impossibilities. Where the law creates a duty or charge and the party is disabled to perform it, without any default in him and has no remedy over it, there the law will in general excuse him.
- Section 56 of the Indian Contract Act, 1872 provides for doctrine of impossibility, which is reproduced below:

"An agreement to do an act impossible in itself is void.

A contract to do an act, which, after the contract is made becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Where one person promised to do something which he knew, or, with reasonable diligence, might have known, and which the promise did not know to be impossible or unlawful, such promisor must make compensation to such promise for any loss which such promise sustains through the non-performance of the promise."

The word "impossible" means impracticable, useless or that uproots the foundation. The impossibility may be caused in several ways, such as, indefinitely impossible, destruction of subject matter, unavailability, death or disability, method of performance impossible, statute.

- The doctrine of frustration according to Indian law is really an aspect or part of the law discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done. The doctrine of frustration comes into play when a contract becomes impossible of performance, after it is made, on account of circumstances beyond the control of parties or the change in circumstances makes the performance of the contract impossible. (Refer Supreme Court decision in Satyabrata vs. Mugneeram & Co (1954) S.C.R. 310) The Contract Act allows the contract to be set aside due to impinging impossibility precluding its performance. The law of impossibility of performance does not necessarily require absolute impossibility, but also encompass the concept of severe impracticability.
- The provision under clause (aa) of section 16(2) treats supplier as well as recipient guilty for non-filing GSTR-1/IFF. This in the opinion of author is violative of Article 14 of the Constitution of India. In other words, it is submitted that by treating unequals equally the legislative measure is violative of Article 14 of the Constitution. This measure qua the recipient/purchaser is arbitrary, irrational and unduly harsh and, therefore, violative of Article 14 of the Constitution. There are other statutory avenues available with the department to collect the tax from the defaulting supplier. This includes demand and recovery of tax under section 73, 74, 79, 81, 83, etc.
- The pragmatic view must be taken and practical aspects considered before enforcing compliance. There are other statutory avenues available to the revenue to collect the tax from the defaulting supplier. In the press release issued by Central Board of GST Council on 04.05.2018, it is mentioned that there shall not be any automatic reversal of input tax credit from the buyer on non-payment

of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc. The Madurai Bench of Madras High Court in ***M/s. D. Y. Beathel Enterprises vs. The State Tax Officer, in W.P. (MD) No. 2127 of 2021*** in its order dated 24.02.2021 observed as under:

> "11. It can be seen therefrom that the assessee must have received the goods and the tax charged in respect of its supply, must have been actually paid to the Government either in cash or through utilization of input tax credit, admissible in respect of the said supply.
>
> 12. Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. In the case on hand, the respondent does not appear to have taken any recovery action against the seller / Charles and his wife Shanthi, on the present transactions."

If the above decision of D. Y. Beathel Enterprises (supra) is followed by the revenue, they should not ask the recipient to reverse the ITC before taking the action against the supplier to recover the taxes.

- In the opinion of author, the recipient has to make sure that the supplier is registered dealer and issued the tax invoice in compliance with the provision of GST Act and the Rules made thereunder. He has received the goods or services or both and has reflected the ITC in its GSRT-3B return filed online. Once the recipient/purchaser demonstrates that he has complied with such requirements, he cannot be denied the ITC only because supplier fails to discharge its obligation of showing the tax invoices in its GSTR-1/IFF.
- The Hon'ble Supreme Court in ***Shri Ram Krishna Dalmia vs. Shri Justice S. R. Tendolkar (1959) 1 SCR 279,*** observed as under:

> "A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself."

- In ***K.T. Moopil Nair v. State of Kerala, AIR 1961 SC 552,*** the Supreme Court was faced with a situation where an absence of classification led to a violation of Article 14 of the Constitution. The statute under challenge was the Travancore Cochin Land Tax Act, 1955 (TCLT Act). Section 4 of the TCLT Act laid down that a uniform rate of tax would be levied on all lands in the State "of whatever description and held under whatever tenure", i.e. 2 paisa per cent which worked out to ₹ 2 per acre per annum. This uniform rate of tax was challenged on the ground that all lands in the State did not have same productivity quality; some were waste lands and others were in varying degree of fertility. The tax therefore weighed more heavily on owners of waste lands than the owners of fertile lands. The Supreme Court concluded by a majority of 4:1 that the failure to make a classification between a productive and non-productive land for the purposes levy of such tax rendered the statute unconstitutional.
- Applying the law laid down by the Supreme Court in the above decision, it can be concluded in the present case that legislature has failed to make distinction between recipients and suppliers and punish bonafide recipients. It is trite that a law that is not capable of honest compliance will fail in achieving its objective.

- The Punjab and Haryana High Court in ***Gheru Lal Bal Chand vs. State of Haryana, (2011) 45 VST 195 (P&H)*** where the constitutional validity of section 8 of the Haryana VAT Act, 2003 was being considered. It was held that:

> "In legal jurisprudence, the liability can be fastened on a person who either acts fraudulently or has been a party to the collusion or connivance with the offender. However, law nowhere envisages imposing any penalty either directly or vicariously where a person is not connected with any such event or an act. Law cannot envisage an almost impossible eventuality. The onus upon the assessee gets discharged on production of Form VAT C-4 which is required to be genuine and not thereafter to substantiate its truthfulness by running from pillar to post to collect the material for its authenticity. In the absence of any malafide intention, connivance or wrongful association of the assessee with the selling dealer or any dealer earlier thereto, no liability can be imposed on the principle of vicarious liability. Law cannot put such onerous responsibility on the assessee otherwise, it would be difficult to hold the law to be valid on the touchstone of Articles 14 and 19 of the Constitution of India. The rule of interpretation requires that such meaning should be assigned to the provision which would make the provision of the Act effective and advance the purpose of the Act. This should be done wherever possible without doing any violence to the language of the provision. A statute has to be read in such a manner so as to do justice to the parties. If it is held that the person who does not deposit or is required to deposit the tax would be put in an advantageous position and whereas the person who has paid the tax would be worse, the interpretation would give result to an absurdity. Such a construction has to be avoided. In other words, the genuineness of the certificate and declaration may be examined by the taxing authority, but onus cannot be put on the assessee to establish the correctness or the truthfulness of the statements recorded therein. The authorities can examine whether the Form VAT C-4 was bogus and was procured by the dealer in collusion with the selling dealer. The department is required to allow the claim once proper declaration is furnished and in the event of its falsity, the department can proceed against the defaulter when the genuineness of the declaration is not in question. However, an exception is carved out in. The event where fraud, collusion or connivance is established between the registered purchasing dealers or the immediate preceding selling registered dealer or any of the predecessors selling registered dealer, the benefit contained in Form VAT C-4 would not be available to the registered purchasing dealer. The aforesaid interpretation would result in achieving the purpose of the rule which is to make the object of the provisions of the Act workable, i.e., realization of tax by the revenue by legitimate methods."

- The Hon'ble Delhi Court in ***On Quest Merchandising India Pvt. Ltd. vs. Govt. of NCT of Delhi, 2018 (10) G.S.T.L. 182 (Del.)***, as well as ***Arise India Ltd. vs. Commissioner of Trade & Taxes*** with other writs in batch of same subject matter, concurred with the Gheru Lal Bal Chand (supra) decision and held that:

> "41. The Court respectfully concurs with the above analysis and hold that in the present case, the purchasing dealer is being asked to do impossible, i.e. to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what Section 9 (2) (g) of the DVAT Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed Section 9 (2) (g) of the DVAT Act places an onerous burden on a bonafide purchasing dealer.
>
> 42. All this points to a failure to make a correct classification on a rational basis so that the denial of ITC is not visited upon a bonafide purchasing dealer. This failure to make a reasonable classification, does attract invalidation under Article 14 of the Constitution, as pointed out rightly by learned counsel for the Petitioners. This is also what weighed with the Court in Shanti Kiran India Pvt. Ltd. (supra) where it was observed as under:
>
> > "In the present case, Section 9 (1) grants- input-tax credit to purchasing dealers. Section 9 (2), on the other hand lists out specific situations where the benefit is denied. The negative list, as it were, is restrictive and is in the nature of a proviso. As a result, this Court is of the opinion that the interpretation. placed by the Tribunal-that there is statutory, authority

for granting input-tax credit only to the extent tax is deposited by the selling dealer, is unsound and contrary, to the, statute, It is also iniquitous because an onerous burden is placed on the purchasing dealer - in the absence of clear words to that effect in the statute to keep a vigil over the amounts deposited by the selling dealer. The court, does not see any provision or methodology by which the purchasing dealer can monitor the selling dealers behaviour, 'vis-a-vis the latter's VAT returns. Indeed, Section 28 stipulates confidentiality in such matters. Nor is this Court in agreement with the Tribunal's opinion that insertion of clause (g) to section 9 (2) is clarificatory. As observed earlier, Section 9 (2) is an exception to the general rule granting input-tax credit to dealers who qualify .for the benefit. The conditions for operation of the exception are well defined. The absence of any condition such as the one spelt out in clause (g) and its addition in 2010, rules out legislative intention of its being a mere clarification of the law which always existed."

.....

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54. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act."

- The Special leave petition filed by Revenue with Supreme Court in the above matter was dismissed vide order dated 10.01.2018.

Conclusion: In the opinion of author the burden of the seller to file output supplies details and pay tax on the same cannot be shifted to buyer. The doctrine of impossibility would trigger. The recipients cannot be expected to do the impossible. Non-filing or non-reflecting of GSTR-1 by suppliers should not result into reversal of ITC of recipients. However, this would require judicial intervention to stop revenue from raising unjust demand on recipients.

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IMPORTANT GST UPDATES APPLICABLE FROM 1ST JANUARY 2022

Compiled by Jaideep P. Sonpal, Advocate
Writer is regular contributor to **www.taxconsult.online**

1. NO ITC UNLESS REFLECTED IN 2B

Input Tax Credit shall not be available unless details of invoices uploaded by supplier in Form GSTR-1 or IFF are communicated to the recipient (i.e. reflected in 2B). Difference of 5% will no more be available only credits reflected in 2B will be eligible to claim.

2. DIFFERENCE BETWEEN GSTR -1 & 3B: DIRECT RECOVERY

Section 75(12) is amended to provide that tax declared under GSTR-1 but not included in GSTR- 3B, will be considered as "Self Assessed Tax" and hence, direct recovery of such tax under Section 79 will be possible even without issuing any Show Cause Notice.

3. E-WAY BILL: 200% PENALTY TO RELEASE GOODS

At present, full tax and 100% penalty is required to be paid to release the goods which are seized for violation of E-way Bill related provisions and for non-carrying of other documents under Section 129. Now, it is provided that goods will be released on payment of penalty equal to 200% of tax and tax will be recovered through separate proceedings.

4. E-WAY BILL CO-NOTICEE MAY NOT GET FREE BY PAYMENT OF 200% PENALTY BY MAIN NOTICEE

Where proceedings against main person liable to pay tax have been concluded under Section 74, proceedings against co-noticee are also deemed to be concluded as provided under Explanation 1(ii) to Section 74. However, now such benefit will not be available to co-noticee for proceedings initiated to impose penalties for violation of E-way bill.

5. NOW ASSETS OF BOGUS BILLING BENFICIARIES ALSO LIABLE FOR PROVISIONAL ATTACHMENT

Not only supplier and recipients but assets of the beneficiaries of bogus billing can also be provisionally attached.

6. SCOPE OF PROVISIONAL ATTACHMENT WIDENED

Provisional attachment is made applicable in all cases of proceedings of Assessment, Inspection, Search, Seizure and Arrest or Demands and recovery. Now, provisional attachment of property, like bank accounts, can be done not only in the case of Show Cause Notices and investigation but also for other proceedings like Scrutiny of Returns and tax collected but not paid.

7. 25% PRE-DEPOSIT FOR E-WAY BILL APPEALS

For filing appeals, before first appellate authority against order for violation of E-way bill and other provisions, it will be mandatory to pay pre-deposit of amount equal to 25% of penalty imposed.

8. CHANGES IN GST RATES

- From January 2022, the GST rate on footwears will be taxable @12 percent for all value.
- E-commerce operators (ECOs) in the food delivery business, such as Zomato and Swiggy, would be required to pay GST @5% on supplies from both registered and unregistered eateries.
- Composite supply of works contract to Govt. Entity or Govt. Authority will be taxable @18 percent
- Job Work by way of Dyeing and Printing of Textile and Textile Products will be taxable @12 percent

9. DEPARTMENT CAN NOW CALL FOR THE INFORMATION BY THE GST OFFICER:

Commissioner can issue an order and ask any person to furnish information relating to any matter connected with GST within such time, in form and in manner, as may be specified therein u/s 151.

10. CHANGES IN HSN CODES AS PER HS-2022 W.E.F 01-01-2022

The WCO has announced the New (Seventh) edition of HSN – HS-2022 due to which changes were made in the Finance Act, 2021. Around 351 amendments at 6 Digit level but India follow 8 digit classifications. So for aligning HS2021 and HS2022 at 8 -digit level, Customs have provided a correlation document (at 8 digit level).

11. GST ON MEMBERSHIP FEE OF CLUBS

New clause got inserted in definition of, supply include activities or transactions by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred Payment and other valuable consideration, will effect retrospectively from July 1,2017. Hence GST will be charged on membership fee.

12. EXEMPTION REMOVED, HENCEFORTH TAXBLE

These will be taxable-

a. Pure services and composite supply of goods and services where goods constitute not more than 25 percent value, provided to a Govt. Entity or Govt. Authority

b. Non-AC contract Carriage or State Carriage or metered Cabs or Auto/e-rickshaws if supplied through e-commerce operators.

13. NON FILERS OF GSTR-3B NOT ALLOWED TO FILE GSTR-1: RULE-59(6) IMPLEMENTED ON GST PORTAL

Clause (a) of sub-rule (6) of Rule 59 of the CGST Rules, 2017 was amended by Notification No. 35/2021 – Central Tax dated September 24, 2021. With effect from January 1st, 2022, the words “for the preceding

two months" were substituted for the words "for the preceding month." This means that beginning January 1, 2022, if a monthly filer has not filed the GSTR-3B for the preceding month, he or she will be unable to file the GSTR-1 for the following month until the GSTR-3B for the preceding month is filed.

■■■

GST on service supplied by restaurants through e-commerce operators

The GST Council in its 45th meeting held on 17th September, 2021 recommended to notify Restaurant Service under section 9(5) of the CGST Act, 2017. Accordingly, the tax on supplies of restaurant service supplied through e-commerce operators shall be paid by the e-commerce operator. In this regard notification No. 17/2021 dated 18.11.2021 has been issued. Certain representations have been received requesting for clarification regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO). Clarifications are as follows:**Vide Circular No. 167 / 23 /2021 – GST, Dated the 17th December, 2021**

1) **Would ECOs (Electronic Commerce Operators) have to still collect TCS in compliance with section 52 of the CGST Act, 2017?**

Clarification: As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.

2) **Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?**

Clarification: As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.

3) **Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?**

Clarification: Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.

4) **What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?**

Clarification: It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.

5) **Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?**

Clarification: No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).

6) **Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?**

Clarification: ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges

commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. **It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash** (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)

7) **Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?**

Clarification: No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.

8) **Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?**

Clarification: ECO is required to pay GST on services notified under section 9(5), besides the services / other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.

9) **Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?**

Clarification: Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.

10) **Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?**

Clarification: The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

11) **Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return.**

Clarification: A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act,2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being.

Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. **Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table-4A of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.**

The Malad Chamber of Tax Consultants

Regd. Office: B/6, Star Manor Apartment, 1st Floor, Anand Road Extn.,
Malad (West), Mumbai- 400064. E-mail: maladchamber@gmail.com. Mobile: 7039006655.

Admin Office: C/o. Brijesh Cholera : Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (W), Mumbai-400 064

MEMBERSHIP FORM

Date:..... /..... /.....

To,

The Hon. Joint Secretaries,
The Malad Chamber of Tax Consultants, Mumbai.

Dear Sirs,

Being eligible to practice under the Direct and/or Indirect Taxes Laws, I hereby apply for admission as a member of *The Malad Chamber of Tax Consultants with the following particulars:*

1. NAME OF MEMBER MR./MRS./MISS: .....
2. FATHER'S/HUSBAND'S NAME: .....
3. QUALIFICATIONS: .....
4. MEMBERSHIP NO., if any (with name of the association): .....
5. PERSONAL DATA:

   DATE OF BIRTH: ..... / ..... / ..... BLOOD GROUP: .....

   SPOUSE'S NAME: ..... SPOUSE'S DATE OF BIRTH ..... / ..... / .....

   MARRIAGE ANNIVERSARY: ..... / ..... / .....

   PROFESSION: ☐ ADVOCATE ☐ CA ☐ ITP ☐ ICWAI ☐ ICSI ☐ GSTP/STP
6. OFFICE NAME: .....

   OFFICE ADDRESS: .....

   PIN CODE: ..... STATE: ..... TEL. NO: ..... FAX NO: .....

   MOBILE NO: ..... EMAIL ID: .....
7. RESIDENTIAL ADDRESS: .....

   PIN CODE: ..... STATE: .....

   TEL. NO: ..... FAX NO: .....MOBILE NO: .....
8. COMMUNICATION TO BE SENT TO: OFFICE / RESIDENCE

   The amount of ₹ 2,500/- by Cheque/Draft No. ..... dated ..... / ..... / .....

   drawn on .....

   .....
9. Bank Detail for Online Payment
   Beneficiary Name: The Malad Chamber of Tax Consultants.
   Bank Name: HDFC Bank Ltd. Marve Road, Malad West Branch,
   Account No.: 00471000136285; **IFS Code:** HDFC0000047.

UNDERTAKING

I, do hereby declare that whatever stated herein above is true to the best of my knowledge and belief. I also undertake to abide by the Rules, Regulation and Constitution of the Association, as amended from time to time.

.....
(Signature)

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FOR OFFICE USE ONLY FOR MEMBERSHIP APPLICATION

Issued Acknowledgement Slip No. ..... Dated ..... / ..... / .....

Accepted by the Managing Committee in the Meeting held on ...../ ...../ .....

Cheque No. ..... Dated ..... / ..... / ..... for ₹ 2,500/- Bank

NOTES

1. Please attach educational qualification certificate for eligibility to practice tax laws.
2. Please write / type in CAPITAL LETTERS.
3. Cheques should be drawn in favour of *"The Malad Chamber of Tax Consultants".*
4. Outstation remittance should be by Demand Draft payable at Mumbai only.
5. Please tick (✓) wherever applicable.
6. The form should be completed in all aspects.
7. The membership application is subject to acceptance by the Managing Council.

For Query and Submission of forms for Membership please contact any of the following office bearers.

Name	Designation	Contact No.	E-mail
CA JIGNESH SAVLA	President	9820260070	cajigneshsavla@gmail.com
CA UJWAL THAKRAR	Vice President	9819946379	ujwalthakrar@gmail.com
CA KHYATI VASANI	Hon. Treasurer	9833288584	khyativasani@yahoo.com
SHRI JITENDRA FULIA	Hon. Secretary	9820997205	jitendradfulia@rediffmail.com
SHRI RAJEN VORA	Hon. Secretary	9819807824	vora.rajen@gmail.com

Please send the completed application form to the following address:

The Malad Chamber of Tax Consultants
C/o. Brijesh Cholera & Co.
Chartered Accountants Shop No. 4,
2nd Floor, The Mall,
Station Road, Malad (West),
Mumbai 400097

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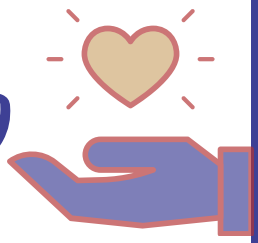

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CA Khyati Vasani	*Hon. Treasurer*	9833288584	khyativasani@yahoo.com
Shri Jitendra Fulia	*Hon. Secretary*	9820997205	jitendradfulia@rediffmail.com
Shri Rajen Vora	*Hon. Secretary*	9819807824	vora.rajen@gmail.com

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Station Road, Malad (West), Mumbai 400097

STUDENTS' CORNER

RPA IN AUDIT

Compiled by Neel Randeria

RPA (Robotic Process Automation) has been widely implemented by business organizations ranging from automatic invoice processing to automatic calculation of credit to a customer's account, albeit the application of RPA to auditing remains largely unexplored. Given the recent interest by audit firms and standard setters about the use of technology in audits it is not surprising that RPA is emerging as an area of interest. From an auditing perspective, manual and repetitive audit tasks such as reconciliations, internal control testing, and detail testing can be automated. As a result of this automation, auditors would be able to allocate more resources to audit areas that are complex in nature (e.g., estimation of fair value investments), or to investigating items that are potential anomalies, eventually leading to higher audit quality.

Automation Tools for Audit

Before the term RPA became mainstream and narrowly defined, the automation of audit tasks was accomplished using a series of tools, which might be used independently, or in conjunction with one another. Table 1 describes a variety of open source and vendor-provided tools that assist with the automation of audit tasks (including RPA). While Excel is indispensable in audit tasks, how Excel would be used for automation requires some consideration. Presently, auditors use Excel to select samples, run tests, and document audit procedures. In these cases, Excel audit templates require manual editing by the user to enter data, perform calculations, and document results. As discussed above, Excel macros are a utility that can automate repetitive audit work functions. With Excel macros, the user has the ability to pre-program functions that execute audit tasks sequentially. Similarly, CaseWare IDEA software for auditing and monitoring has pre-programmed audit capabilities that allow the auditor to import a dataset and select an audit task for execution from the user interface. Python and R are examples of scriptable languages that can enable automation in audits, although using them requires experienced developers and a high degree of customization.1 These tools are free to use and they provide more flexibility than Excel or IDEA to automate audit tasks. In addition to enabling comparable features to Excel macros and IDEA, other auditrelevant capabilities include web scraping and importing and exporting data. Additional possibilities to automate a wide range of audit tasks include:

1. Use Python, for example, to write code that imports audit files from various sources and loads it to IDEA or Excel;
2. Use IDEA or Excel to run pre-programmed audit functions such as reconciliation performance; and
3. Have IDEA or Excel create new documents with the results of audit procedures.

TABLE 1

A Comparison between Automation Tools for Audit Tasks

Tools	Tool Execution	Audit Task
Excel Macro	Rule-Based Functions	Reconciliations
IDEA	Calculations	Analytical Procedures Internal Control Testing Detail Testing (Attribute Match)
Python	Rules-Based Functions	Reconciliations
R	Calculations	Analytical Procedures
	Web Scraping	Internal Control Testing
RPA Vendor Tools, Such as UiPath and Blue Prism	Importing Data	Detail Testing (Attribute Match)
	Exporting Data	Input: Collection of Data Output: Compilation of Audit Test Results

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