



ACCOUNTING AND COMPANY LAW

N. A. SHAH BULLETIN

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EXECUTIVE SUMMARY:

- **Accounting and Auditing**

- **Expert Advisory Opinion**

The expert advisory committee of the ICAI is of the opinion that impairment loss of long term equity investments can be disclosed as an "Exceptional Item" on the face of the statement of profit and loss if the amounts are material in nature and does not occur regularly. Further, mandatory disclosures [Ind AS 36, 'Impairment of Assets'] in regard to impairment of each class of assets are required to be made in the financial statement.

- **Amendments to Indian Accounting Standard**

There are two amendment in regard to Ind AS 12, 'Accounting for Government Grants and Disclosure of Government Assistance'

- Option given for recording non-monetary government grants at nominal amount instead of recognition at fair value.
- Government grants related to asset can be deducted from the carrying amount of the asset instead of deferred income.
- These amendments are applicable from annual periods beginning on or after 1st April 2018.

- **ITFG Bulletin 16**

Ind AS Technical Facilitation Group (ITFG) of Ind AS Implementation Group has issued clarifications through issue of Bulletin 16.

- **Internal auditor not allowed to conduct GST Audit**

ICAI has clarified that internal auditor of the entity cannot undertake Goods and Service Tax (GST) Audit of the same entity.

- **Company Law**

- **Sections of the Companies (Amendment) Act, 2017 notified**

Sections 66 to Section 70 and Section 37 of the Companies (Amendment) Act, 2017 have been notified w.e.f. 12th September, 2018 and 19th September, 2018 respectively. Corresponding changes have been made to the rules to bring it in line with notified sections. The changes are mainly in respect to managerial remuneration and corporate social responsibility.

- **Due dates for filing Significant Beneficial Ownership (SBO) declaration form and related returns - revised/ extended**

Due dates for filing declaration in form BEN-1 would be revised along with the form. Further, time limit for filing BEN-2 would be 30 days from the date of deployment of BEN-2 on the MCA portal and the same can be filed without additional fees.

- **Mandatory dematerialization of shares of unlisted public company**

The Companies (Prospectus and Allotment of Securities) Rules, 2014 are amendment to specify the mandatory requirement of demat of shares of unlisted public company.

- **Amendment to Companies (Registered Valuers and Valuation) Rules, 2017**

Relaxation is given in timeline for registering as registered valuer under the Companies Act, 2013. Due date is extended from 30th September 2018 to 31st January 2019.

- **Amendments to Schedule V of the Companies Act, 2013**

As per Schedule V of the Companies Act, 2013, no person shall be appointed as a managing or whole-time director or manger of a company subject to certain conditions / disqualification criteria. As per the amendment, three new Acts have been added to the list Act under which there is conviction of an offence.

1 Accounting and Auditing

1.1 Expert Advisory Opinion

Disclosure of Impairment Loss on Long Term Equity Investments as 'Exceptional Item'

a) Fact of the case

A Company ('the Company') engaged in procuring, transmission, processing and marketing of natural gas has prepared its accounts as per Indian Accounting Standards (Ind AS) w.e.f. 1st April, 2016. During the year ended 31st March 2017, the Company has made impairment provision in books for its investments in joint venture and associate company as give below:

(Rs. in crore)

Relation	Carrying amount of investment before impairment	Impairment provision made in books during year 2016-2017	Impairment amount as % of carrying amount of investment
Joint venture	974.31	783.00	80.36 %
Associate	8.10	5.04	62.22 %
Total	982.41	788.04	80.21 %

The Company considered the transaction as exceptional in nature since the transaction is neither an ordinary business activity and nor temporary in nature and hence disclosed it as an "Exceptional Item" on the face of statement of profit and loss.

The Comptroller & Auditor General of India ('C&AG') was of the opinion that the impairment loss should be treated as an ordinary item and should not be considered as an exceptional item since the Accounting Standards categorically state that only the actual losses which are permanent in nature and relate to the ordinary activities can be classified as exceptional item. Further, the provision for impairment losses can be reversed in future as and when the financial condition of the entity is improved.

b) Query

Whether the disclosure of impairment loss of long term equity investments as an "Exceptional Item" on the face of the statement of profit and loss by the company is correct as per Ind AS 1 and if not, what should be the form and manner of disclosure for impairment loss of such nature and materiality in the financial statements?

c) Point considered by Committee

The term "Exceptional Item" is neither defined in Schedule III (Ind AS) nor defined or used in Ind AS. The Committee noted that Schedule III (Ind AS) requires presentation of "Exceptional Items" as a separate line item on the face of statement of profit and loss. Further, additional information is required to be disclosed for exceptional items in the notes to accounts.

The Committee noted that all material items are not exceptional items and exceptional items are those items which meet the test of 'materiality' and 'incidence'. The Committee is of the view that 'incidence' refers to frequency of occurrence.

The Committee also noted that the items mentioned in paragraph 98 of Ind AS 1, 'Presentation of Financial Statements' (e.g. impairment of inventories, property plant and equipment and their reversals, etc.) are merely examples and impairment of long term investments should also be disclosed if it is material in nature as per the aforesaid paragraph. It also noted the company's argument of impairment being both material in nature and not frequent.

Since the materiality and incidence tests are met, the Committee is of the view that impairment loss on the long term equity investments can be presented as 'exceptional item' on the face of the statement of profit and loss with the disclosure of such item in the notes to account. The Committee also viewed that the disclosures required by paragraph 126 of Ind AS 36, 'Impairment of Assets' should also be given like disclosure of impairment amount for each class of assets, reversal of impairment provision, etc.

The Committee did not agree with the views that the impairment loss is not related to ordinary activities. The Committee also stated that an exceptional item can be an estimated amount (gain or loss) and it need not be permanent. Mere possibility that provision can be reversed in future does not prevent its classification as an exceptional item.

d) Opinion

On the basis of the above, the Committee is of the opinion that the disclosure of impairment loss of long term equity investments as an "Exceptional Item" on the face of the statement of profit and loss by the company appears to be appropriate if the Company's argument are correct and if the disclosures as required by Ind AS 36, Impairment of Assets are appropriately given.

1.2 Amendments to Indian Accounting Standards

Ind AS 20, 'Accounting for Government Grants and Disclosure of Government Assistance' has been amended to allow the option of recording of non-monetary government grants at nominal value. Further, government grants related to assets can be presented by deducting the same from the carrying amount of the asset. Corresponding changes have been made in the following Ind AS:

- a. Ind AS 12: Income Taxes
- b. Ind AS 16: Property, Plant and Equipment &
- c. Ind AS 38: Intangible Assets

1.3 ITFG Bulletin 16

Summary of clarification given under ITFG Bulletin 16 is as under:

Sr. No.	Clarifications
1.	<p>a. Accounting of financial guarantee given by subsidiary to bank on behalf of parent company without charging any commission</p> <p>In the books of subsidiary, it should debit equity [instead of P&L] and record the liability at fair value of financial guarantee.</p> <p>b. Subsequent measurement of financial guarantee in the books of subsidiary</p> <p>Unearned financial guarantee commission recognised initially will be amortised over the period of guarantee. Further, provision should be made for expected credit loss, if loss allowance is higher than the unamortised amount.</p> <p>c. Accounting of financial guarantee in the books of parent company</p> <p>Impact of credit [to the extent of fair value of the guarantee] which is in the nature of distribution has to be given in P&L and debit to carrying amount of loan. In case the distribution from subsidiary clearly represents recovery of cost of investments, it has to be reduced from the cost of investments.</p>
2.	<p>Accounting of interest and penalties related to income taxes</p> <p>Interest and penalties payable u/ s. 234A/ B/ C of the Income Tax Act will not qualify as Income Tax within the meaning of Ind AS 12, 'Income Taxes' since they are not based on taxable profits. Accordingly such interest has to be presented as 'interest expense' and penalties under 'other expenses' in the financial statement.</p>

Sr. No.	Clarifications
3.	<p>Accounting treatment of modification in the loan arrangement</p> <p>Guidance is given for accounting treatment in the book of borrower wherein there is modification of loan liability i.e. primary liability is released or modified.</p>
4.	<p>Whether investment in money market mutual funds (MMMF's) can be classified as cash equivalents</p> <p>Generally, the amount of cash that will be received from redemption or sale of the units may not be known at the time of the initial investment and the value of such units may be subject to a more than insignificant risk of change during the period of their holding. Accordingly, MMMF's cannot be considered as cash equivalents as per Ind AS 7 Statement of Cash Flows.</p>
5.	<p>Acquisition of business and applicability of Ind AS 103 [Accounting treatment of demerger of business from parent to subsidiary after the transition date to Ind AS]</p> <p>Under Ind AS 103, Business Combinations, acquisition of a business within the companies under Common Control has to be accounted by the acquirer at book value as appearing in the books of the acquiree. Based on the facts of the case, the demerger qualifies as a common control business combination within the meaning of this term under Appendix C of Ind AS 103.</p> <p>Scenario A: Accounting treatment of demerger not prescribed by the Court</p> <p>In case the demerger qualifies as common control business combination, the demerger needs to be accounted as pooling of interest method [i.e. recognition of assets and liabilities of the acquired business at their respective book values as per the books of parent company] and restate the comparatives figures of assets and liabilities.</p> <p>Scenario B: Accounting treatment of de-merger prescribed by the Court</p> <p>The company needs to follow the accounting treatment prescribed by the Court (e.g. recognition of assets and liabilities acquired at their respective fair values as at the date of demerger). Further the company should comply with Ind AS which are not in conflict with the scheme.</p> <p>If the accounting treatment approved by the court/NCLT is not in accordance with Ind AS, the financial statements of acquirer (i.e. the subsidiary in this case) should include appropriate disclosures with respect to such deviation.</p>

Sr. No.	Clarifications
6.	Classification of lease of land as finance or operating lease Guidance is given for classification of lease in the books of lessee where nominal amount is paid towards lease of land and large lump sum money is paid towards common infrastructure facilities.
7.	Accounting treatment of financial guarantee in case of prepayment of underlying loan The parent company will have to reverse the amount of unamortized guarantee obligation since the obligation no longer exists and the unamortised commission will have to be recognised in statement of profit and loss.

1.4 Internal auditor not to conduct GST audit

The bar on internal auditor of an entity to accept Tax Audit under the Income Tax Act, 1961 would also be applicable to GST Audit under the Central Goods and Service Act, 2017 and hence the internal auditor cannot undertake GST audit and Internal Audit simultaneously.

2 Company Law

2.1 Sections of Companies (Amendment) Act, 2017 notified

The following sections have been notified w.e.f. 12th September, 2018 except section 37 which have been notified w.e.f. 19th September, 2018:

Sr. No.	Sections of Companies (Amendment) Act, 2017	Amended Sections of Companies Act, 2013	Key Changes
1.	Section 66	Section 196	Procedural change in appointment of managing director, whole-time director or manager.
2.	Section 67	Section 197	a. Approval of Central Government (CG) is not required for paying remuneration in excess of limits specified. Only member's approval is sufficient through special resolution. b. In case of default in repayment to bank, public financial institution, non-convertible debenture holders and any other secured creditors, their prior approval would be required for excess managerial remuneration. c. Maximum time limit prescribed for refund of

Sr. No.	Sections of Companies (Amendment) Act, 2017	Amended Sections of Companies Act, 2013	Key Changes
			<p>excess managerial remuneration is 2 years.</p> <p>d. Excess managerial remuneration can be waived within 2 years with member's approval. [only if approved by members through special resolution which should be passed within 2 years from the date the sum become refundable]</p> <p>e. Auditor would be required to make a statement as to whether the remuneration paid by the company to its directors is in accordance with the prescribed provisions.</p>
3.	Section 68	Section 198	<p>a. It is clarified that while calculating of profit for managerial remuneration, credit shall not be given for any amount representing as unrealized gains, notional gains or revaluation of assets.</p> <p>b. It is clarified that while calculating of profit for managerial remuneration, amount of representing profits by way of premium on shares or debentures of the company, which are issued or sold by an investment company should not be excluded from the net profits.</p> <p>c. Brought forward losses of years prior to the commencement of the Companies Act, 2013 will be deducted from net profit.</p>
4.	Section 69	Section 200	Approval of CG is not required for fixing managerial remuneration in case of inadequate or no profit.
5.	Section 70	Section 201	Procedural changes related to appointment and remuneration of managerial personnel
6.	Section 37	Section 135	<p>a. For determining the threshold of the specified net worth, turnover, or net profit to constitute a CSR committee, preceding financial year is required to be referred for CSR applicability [earlier it was mentioned as any financial year].</p> <p>b. Composition of the CSR committee for 'companies not required to appoint independent directors' has been changed to 'two or more directors'.</p> <p>c. CSR committee can now prescribe areas or</p>

Sr. No.	Sections of Companies (Amendment) Act, 2017	Amended Sections of Companies Act, 2013	Key Changes
			subject related to activities specified in Schedule VII.

Accordingly amendments have been made in the Companies (Corporate Social Responsibility Policy) Rules, 2014, Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and Schedule V of the Companies Act, 2013.

2.2 Relaxation in due dates for filing SBO related forms

- Due date of 10th September 2018 for filing declaration in form BEN-1 [to be submitted by person having SBO] would be revised and along with revised form BEN-1.
- Time limit for filing BEN-2 would be 30 days from the date of deployment of BEN-2 [return to be submitted by Company to Registrar] on the MCA portal and the same can be filed without additional fees.

2.3 Mandatory dematerialization of shares of unlisted public company

The amended rules inserted new Rule 9A to the Companies (Prospectus and Allotment of Securities) Rules, 2014. The amendments to the Rules are effective from 2nd October 2018.

As per the new rule, every unlisted public company should:

- Issue securities only in dematerialised form and
- Facilitate dematerialisation of all its existing securities in accordance with the provisions of Depositories Act, 1996 and regulations made thereunder.

Additionally, every holder of securities of an unlisted public company:

- Who intends to transfer such securities on or after 2 October 2018, should get such securities dematerialised before the transfer.
- Who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2 October 2018, should ensure that all his/her existing securities are held in dematerialised form before such subscription.

2.4 Amendment to Companies (Registered Valuers and Valuation) Rules, 2017

- Any person who may be rendering valuation services under the Companies Act 2013, on the date of commencement of these rules, may continue to render

valuation services without a certificate of registration under these rules upto 31st January, 2019 [earlier date was 30th September 2018]

- Time limit extended from 1 year to 2 year [from the date of commencement of these Rules] for converting the following valuation organization under Section 8 company
 - Society under the Societies Registration Act, 1860
 - Trust governed by the Indian Trust Act, 1882

2.5 Amendments to Schedule V of the Companies Act, 2013

Three new Acts as given below have been added in the list of the Acts, contravention of which would make a person ineligible for his/ her appointment as a managing director or whole-time director or a manager. The said new Acts added are as under:

- i. The Insolvency and Bankruptcy Code, 2016,
- ii. The Goods and Services Tax Act, 2017 and
- iii. The Fugitive Economic Offenders Act, 2018

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