

Connection

*Doing small things correctly and consistently will
help us reach our true potential
~ Gaur Gopal Das*

**C P C A D V I S O R Y O N A P P L I C A B I L I T Y O F
T A X A U D I T T O B U S I N E S S A N D
P R O F E S S I O N**

**JUST TO
REMIN
YOU**

- Oct 15 - Payment of PF, ESIC for September
- Oct 20 - GSTR 3B
- Oct 31 - GSTR 1
- Oct 31 - Tax Audit Report & ITR of Companies & person whose accounts are required to be audited.

As per the **section 44AB** of Income Tax Act, the books of accounts for the relevant previous year are required to be audited by a Chartered Accountant and the audit report has to be electronically filed prior to or along with the return of income before the due date. In order to assist you in complying with these requirements and procedure, your attention is drawn to the following.

1. Taxpayer whose total sales, turnover or gross receipts from business exceeds Rs 1 cr or where Professional receipts exceed Rs 50 Lakh:

It is mandatory to fill the Part A of Schedule Profit & Loss A/c and part A of Balance Sheet and also to file the Audit report u/s 44AB of Income Tax Act where the Total Sales, Turnover or Gross Receipts of the business exceeds Rs.1 cr or where Professional receipts exceed Rs 50 Lakh for the Financial Year 2017-18.

The **Audit Report u/s 44AB** has to be electronically filed prior to or along with the return of income before the due date.

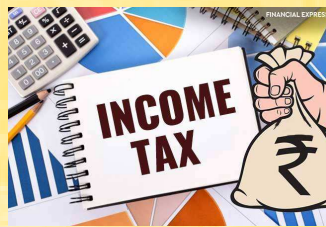
The **taxpayer has to approve** the **Audit Report u/s 44AB** after it is e-filed by the Chartered Accountant. Without taxpayer approval, the submission of the **Audit Report u/s 44AB** is **NOT COMPLETE**.

For the purpose of all the pro-

visions of Income Tax Act, 1961, **the date of approval by the taxpayer will be considered as the date of filing of the Audit Report u/s 44AB.**

2. Taxpayer reporting Presumptive income under section 44AD:

As per the provisions of Income Tax Act, the benefit of Section 44AD shall not be applicable where the gross receipts from business ex-



ceeds Rs.2 cr in the financial year 2017-18.

Hence, where the gross receipts/total turnover from the business exceeds Rs.2 cr, it is mandatory to fill the Part A of profit and Loss A/c and Part A of Balance Sheet and also file the Audit Report u/s 44AB of Income Tax Act.

Taxpayer is advised to follow process as per Sl. No. 1 above strictly in such cases. The benefit of Section 44AD is not available in such cases.

3. Taxpayer whose gross receipts in profession exceed Rs 50 Lakhs:

It is mandatory to fill the Part A of Schedule Profit & Loss A/c

and part A of Balance Sheet and also file the Audit report u/s 44AB of Income Tax Act where the gross receipts in profession exceeds Rs 50 Lakhs for the Financial Year 2017-18.

The audit report has to be electronically filed along with the return of income before the due date.

The taxpayer is also required to approve/reject the audit report once the same is e-filed by the Chartered Accountant.

For the purpose of all the provisions of Income Tax Act, 1961, **the date of approval by the taxpayer will be considered as the date of filing of the Audit Report.**

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270 DAYS TIME LIMIT TO COMPLETE INSOLVENCY RESOLUTION PROCESS MANDATORY: SC

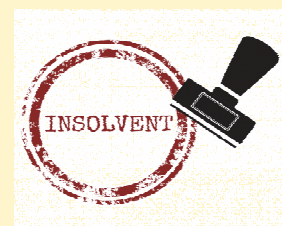
Any person who wishes to submit a resolution plan, if he or it does so acting jointly, or in concert with other persons, which person or other persons happen to either manage or control or be promoters of a corporate debtor, who is classified as a non-performing asset and whose debts have not been paid off for a period of at least one year before commencement of the corporate insolvency resolution process, becomes ineligible to submit a resolution plan. This provision therefore ensures that if a person wishes to submit a resolution plan, and if such person or any person acting jointly or any person in concert with such person, happens to either manage, control, or be promoter of a corporate debtor declared as a non-performing asset one year before the corporate insolvency resolution process begins, is ineligible to submit a resolution plan. The first proviso to sub-clause (c) makes it clear that the ineligibility can only be removed if the person submitting a resolution plan makes payment of all overdue amounts with interest thereon and charges relating to the non-performing asset in question before submission of a resolution plan. The position in law is thus clear. Any person who wishes to submit a resolution plan acting jointly or in concert with other persons, any of whom may either man-

age, control or be a promoter of a corporate debtor classified as a non-performing asset in the period above mentioned, must first pay off the debt of the said corporate debtor classified as a non-performing asset in order to become eligible under Section 29A(c).

The plain language of the proviso makes it clear, that ineligibility can only be removed if the necessary payment is made before submission of a resolution plan. It is not possible to accede to the argument that, commercially speaking, no person would ever make a speculative bid, where he would pay off the debt of another related corporate debtor, classified as an NPA, without being certain that his resolution plan would be accepted, as this would narrow the pool of resolution applicants to nil, and therefore stultify the object sought to be achieved by the proviso to **Section 29A(c)**. First, it is clear that there may be persons who may submit resolution plans, either by themselves, or in concert, or jointly with other persons who do not have debts which are declared as NPAs. Also, it is very difficult to say that in no circumstance whatsoever would a person submitting a resolution plan pay off the NPA dues of another person, with whom it is acting in concert or jointly. The dues may be such that it may be worth the while of the person, together with the persons with whom he is acting in concert or jointly, to first pay off the

dues of the concerned corporate debtor whose account has been declared to be an NPA, as such dues may be negligible when compared with the gaining of control of the corporate debtor that is sought to be run as a going concern as per a resolution plan submitted. It is, therefore, impossible to say that the plain, literal, meaning of the language used by the proviso leads to absurdity or hardship. This interpretation is also in line with the object sought to be achieved, namely, that other corporate debtors who are declared as NPAs, whose debts may never be cleared in full, are required to be cleared as a condition precedent to submission of a resolution plan under the Code. In order, therefore, to make the statute "workable", as is suggested by Messrs Salve and Singhvi, we cannot disregard the plain language of the proviso and substitute words which would have the opposite effect.

In fact, even the literal language of Section 12(1) makes it clear that the provision must read as being mandatory. The expression "shall be completed" is used. Further, subsection (3) makes it clear that the duration of 180 days may be extended further "but not exceeding 90 days", making it clear that a maximum of 270 days is laid down statutorily. Also, the proviso to **Section 12** makes it clear that the extension "shall not be granted more than once.



IBBI (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (FOURTH AMENDMENT) REGULATIONS, 2018



No. IBBI/2018-19/GN/REG032.- In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the **Insolvency and Bankruptcy Code, 2016** (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely:-

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the principal regulations), in regulation 2, in sub-regulation (1), clause (f) shall be omitted.

3. In the principal regulations, in regulation 21, for sub-regulation (3), following sub-regulation shall be substituted, namely: -

“(3) The notice of the meeting shall contain the following-

(i) a list of the matters to be discussed at the meeting;

(ii) a list of the issues to be voted upon at the meeting; and

(iii) copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting.”.

4. In the principal regulations, in regulation 25, for sub-regulation (5), the following sub-regulations shall be substituted, namely: -

“(5) The resolution professional shall-

(a) circulate the minutes of the meeting by electronic means to all members of the committee and the authorised representative, if any, within forty-eight hours of the conclusion of the meeting; and

(b) seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes.

(6) The authorised representative shall circulate the minutes of the meeting received under sub-regulation (5) to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.”.

In the principal regulations, in regulation 26, after sub-regulation (1), the following sub-regulation shall be inserted, namely: -

“(1A) The authorised representative shall exercise the votes either by electronic means or through electronic voting system as per the voting instructions received by him from the creditors in the class pursuant to sub-

regulation (6) of regulation 25.”.

6. In the principal regulations, in regulation 38, for sub-regulation (1), the following sub-regulation shall be substituted, namely: -

“(1) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.”.

7. In the principal regulations, in regulation 39, -

(a) in sub-regulation (1), clause (b) shall be omitted;

(b) sub-regulation (3A) shall be omitted;

8. In the principal regulations, after regulation 39, the following regulation shall be inserted, namely: -

“39A. Preservation of records.-The interim resolution professional or the resolution professional, as the case may be, shall preserve a physical as well as an electronic copy of the records relating to corporate insolvency resolution process of the corporate debtor as per the record retention schedule as may be communicated by the Board in consultation with Insolvency Professional Agencies.”.



ELECTRONIC TRADING PLATFORMS (RESERVE BANK) DIRECTIONS, 2018

The Reserve Bank of India (herein after called 'the Reserve Bank') having considered it necessary in public interest and to regulate the financial system of the country to its advantage, in exercise of the powers conferred by section 45W of the **Reserve Bank of India Act, 1934**, (herein after called 'the Act') read with section 45U of the Act and of all the powers enabling it in this behalf, hereby issues the following Directions to the entities operating Electronic Trading Platforms (ETPs) to transact trade in eligible instruments.

1. Short title and commencement of the directions

These directions shall be called 'The Electronic Trading Platforms (Reserve Bank) Directions, 2018'.

These Directions are issued to the entities operating Electronic Trading Platforms (ETPs) to transact trade in eligible instruments under the Directions.

They shall come into force with effect from October 05, 2018.

2. Definitions

(1) For the purpose of these directions, unless the context otherwise requires,

'Algorithmic trading' or 'Algo trading' shall mean any trade originated by a software programme using automated execution logic.

'Approved' shall mean approved by the Reserve Bank, either in the authorisation document at the time of authorisation or at any later point of time when conditions of authorisation are altered.

Electronic Trading Platform (ETP) shall mean any electronic system, other than a recognised stock exchange, on which transactions in eligible instruments as defined in paragraph 2(iv) below are contracted.

'Eligible Instruments' shall mean securities, money market instruments, foreign exchange instruments, derivatives, or other instruments of like nature, as may be specified by the Reserve Bank from time to time under section 45 W of Chapter III-D of the Reserve Bank of India Act, 1934.

In these Directions, unless the subject or the context otherwise requires, 'Entity' shall mean and include an agency formed as a 'company' and incorporated under the provisions of the Companies Act, 2013 or under any of the previous enactments in India."

'ETP Operator' shall mean an entity authorised by the Reserve Bank to operate an ETP under these Directions.

'Foreign exchange' shall have the meaning assigned in section 2(n) of the Foreign Exchange Management Act, 1999.

'Recognised stock exchange' shall have the meaning assigned in section 2(f) of the Securities Contracts (Regulations) Act, 1956.

3. (1) No entity shall operate an ETP without obtaining prior authorisation of the Reserve Bank under these directions.

(2) ETPs existing and operating on or before the commencement of these directions shall make an application for authorisation within a period of six months from the date of issue of these directions. Notwithstanding anything contained in Para 3 (1) herein above, an existing ETP Operator may continue to carry on the operations till disposal of its application by the Reserve Bank granting or rejecting the letter of authorisation.

(3) ETPs authorised by the Reserve Bank shall host transactions only in instruments approved by the Reserve Bank.

4. Electronic trading platforms operated by banks for their customers (acting as users) on a bilateral basis are exempt from the provisions of these Directions provided that such platforms do not extend direct or indirect access to market makers in any market for eligible instruments, which would include, for the purpose of foreign exchange transactions, authorized dealers.



5. Eligibility Criteria for authorization of ETPs

(1) An entity seeking authorisation as



an ETP operator to commence or carry on ETP operation shall fulfil the following criteria:

a. General Criteria

The entity shall be a company incorporated in India.

The existing entities operating ETPs, without being incorporated in India, shall conform with the requirement of incorporation in India within a period of one year from the date of issue of authorisation of the ETP by the Reserve Bank under these directions.

Shareholding by non-residents, if any, in the entity seeking authorisation as an ETP operator shall conform to all applicable laws and regulations, including the Foreign Exchange Management Act, 1999.

The entity seeking authorisation as an ETP operator or its key managerial personnel shall have experience of at least three years in operating trading infrastructure in financial markets. Explanation: 'Key managerial personnel' shall have the same meaning as assigned to it in the **Companies Act, 2013**.

b. Financial Criteria

An entity seeking authorisation as an ETP operator under these Directions shall maintain a minimum net-worth of Rs.5 crore (Rupees five crore only) and shall continue to maintain the minimum net-worth prescribed herein

at all times. The existing entities operating ETPs with a net-worth lower than the prescribed net-worth requirement shall achieve the minimum net-worth of Rs.5 crores (Rupees five crore only) within one year from the date of authorisation by the Reserve Bank.

Banks seeking authorisation to operate ETP shall earmark a minimum capital of Rs.5 crore (Rupees five crore only) for the purpose.

c. Technological Criteria

The entity seeking authorisation as an ETP operator shall, at the minimum, fulfil the following technological requirements:

Obtain and maintain robust technology infrastructure with a high degree of reliability, availability, scalability and security in respect of its systems, data and network, appropriate to support its operations and manage the associated risks.

Ensure capability to disseminate trade information on a real-time basis or near real-time basis.

(2) The eligibility criteria, prescribed in paragraph 5(1) (a) herein above, shall not apply to ETPs operated by Scheduled Commercial Banks.

6. Grant of Authorisation to operate ETP and cancellation of Authorisation

(1) Entities satisfying the eligibility criteria prescribed under these Directions may submit an application in the prescribed format given in Annex to the Chief General Manager, Financial Markets Regulation Department, Reserve Bank of India, 1st Floor, Main Building, Shaheed Bhagat Singh Marg, Mumbai - 400001, for grant of authorisation to operate an ETP.

(2) The Reserve Bank may call for any additional information or seek any clarification from the applicant which in the opinion of the Reserve Bank is relevant and the applicant shall fur-

nish such additional information and clarification.

(3) The Reserve Bank may also obtain any additional information from other regulators or Government departments/agencies or any other authority, which in the opinion of the Reserve Bank is relevant for disposal of the application.

(4) The Reserve Bank may, after being satisfied that the applicant fulfils the eligibility criteria, grant authorisation to operate an ETP subject to the terms and conditions stipulated therein.

(5) The authorisation granted to an entity to operate an ETP is not transferrable and the Reserve Bank may impose additional conditions if the ETP operator is found to violate the provisions of these Directions or any other rules or regulations or conditions of authorisation.

(6) The Reserve Bank may cancel an authorisation issued to an entity to operate an ETP, after affording a reasonable opportunity to represent its version, if it is satisfied that:

the ETP Operator has violated a statutory provision or any rule or regulation or direction or order or instruction issued by the Reserve Bank; or



the ETP Operator has violated any of the terms or conditions stipulated by the Reserve Bank while granting authorisation; or

the continuance of authorisation is prejudicial to public interest or financial system of the country.

(7) The decision of the Reserve Bank,

to grant or reject the letter of authorisation to operate ETP or to cancel the letter of authorisation to commence or carry on ETP operations, would be final.

(8) In case of rejection of the application received from the existing operators or cancellation of letter of authorisation by the Reserve Bank, the concerned ETP Operator shall stop the ETP operations with immediate effect unless the Reserve Bank has indicated any other specific date in the written communication to stop the ETP operations.

(9) In case of cancellation of authorisation of an ETP Operator, the letter of authorisation in original shall be surrendered to the Reserve Bank.

7. Operating Framework

(1) An ETP operator shall adhere to the following requirements.

a. Access and participation: An ETP operator shall:

Have objective, fair and transparent membership criteria;

Undertake due diligence at the time of on-boarding of all members and maintain all relevant information about the member;

Identify its members uniquely using Legal Entity Identifier (LEI) and/or Permanent Account Number (PAN);

Have well documented rules and regulations regarding, but not limited to, on-boarding, suspension and cessation of membership,

roles and responsibilities of members and operator, liability framework for ETP and users in case of breach of rules and regulations, restrictions or other requirements that may apply for using the ETP, processing and execution of orders, risk management and control;

Make available pre-trade information such as bid/offer prices, related quantities, depth of trading interest, or such other information, to its members in a fair and non-discriminatory basis consistent with the rules governing transactions;

Make available post-trade information such as the price, volume and time of transactions or such other information, to its members, in a fair and non-discriminatory basis consistent with the rules governing transactions;

Ensure that all documents, rules or regulations referred to in paragraph 7(1) a (iv) herein above are freely available to the members.

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(i) An ETP operator shall put in place a comprehensive risk management framework covering all aspects of its operations. It shall ensure that risks associated with its operations are identified properly and managed prudently.

(ii) Trading integrity: An ETP operator shall:

Ensure access control for its members and prevent unau-

thorised access to the platform;

Segregate the ETP from other financial services or infrastructure to prevent unfair access to the ETP;

Ensure that all trades on the system, without exception, are dealt within a fair, non-discretionary and orderly manner, and as per established procedure;

Prevent transactions that are not in compliance with the conditions of authorisation or with the prevailing legal or regulatory requirements.

(iii) Algorithmic systems: An ETP operator that provides/facilitates participation by algorithmic trading systems (algo systems) shall:

Put in place a framework for testing and on-boarding of algo systems;

Ensure that such facilities are offered in a transparent and non-discriminatory manner;

Ensure that their systems and controls are adequate and effective for monitoring and managing risks arising from algo systems;

(iv) An ETP operator shall put in place appropriate controls to reduce the likelihood of erroneous transactions such as off-market quotes or trades, fat finger errors, unintended or uncontrolled trading activity by members, etc.

(v) Handling exigencies: An ETP operator shall put in place rules and regulations in transparent manner to deal with exigencies like suspen-



sion/cessation of trading or cancellation of orders/trades, malfunctions in its systems or erroneous use by members, or any other unforeseen situa-



tion. Such exigencies should be dealt with in accordance with clearly laid down rules and regulations.

(vi) **Dispute resolution:** An ETP operator shall put in place an arrangement to address any dispute that may arise or likely to arise between its members.

8. Surveillance: An ETP operator shall implement systems and controls to ensure fair and orderly trading to maintain market integrity and monitor trading activity on a real time and post facto basis.

9. Transparency: (1) An ETP operator shall

Identify and disclose conflict of interest, if any, arising from participation of related parties or group agencies to the Reserve Bank; and

Implement a fair, non-discriminatory and transparent fee structure for its members.

10. Outsourcing of operations: (1) An ETP operator outsourcing its operations/technology/activities, partially or fully, shall ensure that:

It has an effective governance and risk management mechanism for managing all risks inherent in such outsourcing relationships;

Such outsourcing arrangements do not impede or interfere with or hinder such ETP operator from compliance

with these Directions or any other regulations/directions/instructions/guidelines issued by the Reserve Bank from time to time.

The requirements relating to preservation, access, use of data and reporting as given in paragraph 12 and paragraph 13 below are adhered to, even if the agreement/arrangement between the ETP operator and its outsourced entity is rescinded or expired.

11. Technology and Information security (IS)

Business Continuity and Disaster recovery: The ETP operator shall have in place a suitable Business Continuity Plan (BCP) including contingency and disaster recovery arrangements that are appropriate to the nature, scale, and complexity of its business to ensure continuity and availability of its operation.

An ETP operator shall put in place adequate information and data security infrastructure. It should adhere to Information Technology (IT) and Information Security (IS) norms/guidelines, if any, prescribed by the Reserve Bank or any other regulator or public authority from time to time, as applicable to it.

An ETP operator shall carry out IT/IS audit, at least once in a year, by auditors with Certified Information System Auditor (CISA) certificates or auditors empanelled by Indian Computer Emergency Response Team (CERT-In) or such other professional bodies.

Notwithstanding anything contained in Para 11 (iii) herein above, the Reserve Bank may, at its discretion order an IT/IS audit of the ETP by an independent auditor(s), selected by the Reserve Bank.

12. Preservation, access and use of data

All data relating to activities on the

ETP (henceforth, ETP data) shall be maintained in easily retrievable media for at least 10 years. Without prejudice to the minimum requirement for storage of data, the data sought for any investigation by the Reserve Bank or any other authority as required under Indian laws or regulations shall be maintained for three years from the date of completion of the investigation.

An ETP operator shall maintain confidentiality and security of all ETP data. Access to such data should be strictly under the control of the ETP operator.

13. Reporting requirements

An ETP shall provide any data and/or information as required by the Reserve Bank in the format and within the timeframe prescribed.

An ETP operator shall report transaction information to any trade repository or reporting platform, in the format and in the manner, as specified by the Reserve Bank.

An ETP shall provide data/information to any other agencies/authorities as may be required under the Indian laws.

An ETP shall keep the Reserve Bank informed of events resulting in disruption of activities or market abuse without undue delay.

14. Termination of operation



An ETP operator, who is holding a letter of authorisation to commence or carry on ETP operations, may terminate its operation with prior approval of the Reserve Bank with regard to timing and date of termination of operations, and shall comply with the terms and conditions stipulated by the Reserve Bank.

In the event of early termination of its operations, the ETP operator shall surrender to the Reserve Bank the letter of Authorisation in original granted to it to commence or

carry on the ETP operations.

15. Exemption from provisions of these directions

The Reserve Bank, on being satisfied that it is necessary to do so, may exempt any ETP Operator or class of ETP Operators either generally or for such period as may be specified, from any or all of the provisions of these Directions, subject to such terms or conditions or limitations or restrictions as it may think fit and proper to impose, in the interest of public or financial system of the country.



REFUND OF DOUBLE PAYMENT BY ELECTRONIC CHALLAN CUM

As we are aware, ECRs (UAN based) are getting submitted in unified Portal and employers are making payment in central account. It is learnt that the Field Offices are receiving request from employer for refund/to modify ECR for the following

1. Incorrect UAN mentioned in ECR
2. Incorrect Month/Year was mentioned in ECR
3. Double Payment made by employer for same month using different TRRN.
4. Double Payment paid by employer against same TRRN and wants to get refund.
5. To refund the amount against amount paid in misc. option.

Incorrect Month/ Year was mentioned in ECR:

IS Division has provided a new functionality "ECR Revi-

sion (Month/Year)" in the EPFO application Version 5.33 to revise ECRs where month and year needs to be changes provided no settlement is made and noPMRPY beneficiary exists.

Incorrect UAN mentioned in ECR / Double TRRN for the same month:

IS Division has provided a new functionality "ECR Rejection (NEW)" in the EPFO Application Version 5.36 to reject ECRs. Field offices may have the option to adjust the amount against the future TRRN using Establishment VDR (functionality to be provided in Unified FO interface in near future) or refund the amount to the employer by selecting 'OTHERS' for payment.

Double Payment paid by employer against same TRRN:

Unified portal has already

taken steps to refund the amount to the employer directly to their bank account and hence no action is required at field office level.

To refund the amount against amount paid in misc. option:

As on date, misc. payments and receipts are being managed by field office manually. Hence field office may refund the amount to the employer after verifying the details fully by the concerned, by preparing a cheque manually. Against this cheque, Misc. payment entry in the application software may be made.

Field office may also option also to adjust the amount against the future TRRN using Establishment VDR (functionality to be provided in Unified FO interface in near future).



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I N T E R N A L A U D I T O R N O T T O U N D E R T A K E G S T A U D I T S I M U L T A N E O U S L Y

We have received enquiries from the members at large and other stakeholders as to whether an internal auditor of an entity can also undertake GST Audit of the same entity as required under the Central Goods and Service Act, 2017. The Council of the Institute, while considering the issue at its 378th Meeting held on 26th and 27th September, 2018, noted its earlier decision taken at its 281st Meeting held from 3 rd to 5th October, 2008, that internal auditor of an assessee,

whether working with the organization or independently practising Chartered Accountant being an individual chartered accountant or a firm of chartered accountants, cannot be appointed as his Tax auditor (under the Income Tax Act, 1961). Upon consideration, the Council has decided that based on the conflict in roles as statutory and internal auditor simultaneously, the bar on internal auditor of an entity to accept tax audit (under Income Tax Act, 1961) will also be applicable to GST Audit

(under the Central Goods and Service Act, 2017). Accordingly, it is clarified that an Internal Auditor of an entity cannot undertake GST Audit of the same entity.



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