



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

Thrissur Branch of SIRC of ICAI

Issue : 12 pages 1-10 E-news letter JANUARY 2021



BUDGET 21-22

Chairman's Message



Dear professional colleagues,

I complete my term of one year as Chairman of this 800+ member branch, one of the most vibrant branches of SIRC. I was elected as Chairman on account of my seniority in the Management committee rather than my merit. It was one of the most challenging years in my professional career of last 23 years.

On account of pandemic Corona, I had to postpone/cancel most of my dream wish list. However I could explore some possibilities of online activities.

During my tenure I could organise **32 Programs** carrying 86 hours of CPE credit. I could engage as many as 19 faculties from Thrissur. CA Rajmohan, CA MP Tony, CA CL Sony, CA NV Mahadevan, CA MJ Jijilkumar, CA TT Shajan, CA CK Manikandan, CA TR Anantharaman, CA Jai Ganesh, CA Varun, CA KK Vipin, CA Antony S Ukkar, CA Peter Richard, CA Derrick Raphael, CA Srilakshmi G, CA Preetha Shenoy, CA Pooja MP, CA Anjana Thomas, CA Valentina Joe with a vast variety of subjects. All these faculties did the job very well. My special gratitude to all these members for supporting me and I appreciate your efforts to enrich the knowledge of fellow members. Still there are more members in our branch who have knowledge and are capable of effectively communicating. I couldn't utilise their expertise. I hope my successors would make use of their expertise in future.

We could also organise **Jwala**, two day seminar in association with Womens club Thrissur. We also organised **NAVARATNA**, with all 9 Kerala branches joining together for 9 consecutive days. Apart from that we organised regular webinars with experts in the field

CA Day was celebrated online with famous playback singer P Jayachandran as chief guest. Prominent personalities like Satyan Anthikkad, VP Nandakumar CEO of manappuram group, K Paul Thomas CEO of ESAF group offered felicitation on the occasion. The members of the Management Committee visited all the past chairmen of the branch and greeted them on the occasion.

We could also launch new website and member's directory during the period. We could publish all 12 monthly newsletters in time. The accounts of the branch are up to date and Returns and financial to HO/SIRC are submitted well in time. I am really happy to inform that during the last two years, the present committee could create an additional fund surplus of around Rs 50Lakhs to the branch, mainly on account of classes for students.

In the student activity we resumed all classes in online mode immediately after lockdown. We successfully completed 3 batches for foundation and 2 batches for intermediate and one batch for final course. As all of you know Thrissur is only one of the very few branches having regular classes for all levels. The credit of success goes to our faculties. I am happy that I could add more faculties during the year to our fold. Also the branch conducted a total of 22 programs of Orientation/ITT/GMCS/Advanced ITT during the year.

The conduct of exams complying with COVID norms was a tough job. The November exam was completed successfully in 7 centres at Thrissur and the follow up exam in January was also very smooth.

Bhagavad Gita (Chapter 10, para 5), the holy book to which I am attached to, says "He who acts offering all actions to God, and shaking off attachment remains untouched by sin, as the lotus leaf by water". It further prescribes that the Karma has to be performed only with senses, mind, intellect and body but without any attachment. I sincerely believe that, I could act without fear and favour and bias to all members, students and staff of the branch. Many of the members/students contacted me for various issues. I have tried my level best to resolve the problems and if some of the issue are still not sorted out, I am sorry for that.

I take this opportunity to thank all the Committee members for your support throughout the year. I bow before my senior members for their guidance and advice. I thank all the members for your support. My sincere thanks to all the staff members of Thrissur branch for working a whole year together as a unit.

Jai ICAI Jai Hind

CA ANOOP G

CHAIRMAN

Office Bearers

Chairman

CA Anoop G

Vice chairman

CA Aryan K K

Secretary

CA Ajith Kaimal R

Treasurer

CA. Satheesh T G

SICASA Chairman

CA. Anoop Francis

In charge of newsletter

CA Jeen Paul

**Past chairperson &
Academic coordinator**

CA Silpa Ramdas



Dear members,

I thank almighty for all the blessing he showed upon us during this period of pandemic...

I am extremely glad to thank chairman and all the managing committee members for assigning me with the responsibility of E-newsletter in charge. I thank all the members who contributed with their knowledge and expertise in the form of quality articles, the essence of E-newsletter.

I also thank professionals from other fields especially doctors community, who enlightened our members with expert knowledge in medical field.

I happy to remember my younger brothers in MC CA. Ajith kaimal & CA. Satheesh T G, former helping to collect articles and later with his experience as past E-newsletter in charge.

In This issue CS. Sreenath P, a company secretary and an advocate discusses about issue of non convertible debentures....

Highlights of union budget is also shared for the benefit of the members

Thank you once again

Stay safe, stay healthy

Wish you all the very best.

CA. Jeen Paul

News letter in charge

Inside

Chairman's message-

CA Anoop G

**ISSUE OF NON CONVERTIBLE
DEBENTURES**

CS . SREENATH P

KEY BUDGET HIGHLIGHTS

Photo Gallery

Debentures



CS. SREENATH P

MCOM,LLB, FCS

Issue of Non-convertible Debentures

Issue of Non-Convertible Debentures

In the Companies Act, 2013 the major provisions that we have to follow while issuing Non-convertible Debentures (“NCDs or “Debenture”) are;

Section 42 of Companies Act, 2013 and Companies Prospectus and Allotment Rules, 2014;

Section 72 of Companies Act, 2013 and Companies share Capital And Debentures Rules, 2014.

According to SEBI, the rules mandated are;

SEBI (Issue and Listing of Debt Securities) Regulations, 2008

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

In the case of the listed entity, SEBI rules and regulations shall have to be complied firstly and if any inconsistency arises with companies Act, the SEBI rules and regulations shall prevail.

The process starts with issue of notice of Board meeting. If the Company is a listed entity, Company should give prior intimation of

Board meeting at least 2 days in advance as per regulation 50(2) of LODR regulation.

Then next step is to call a board meeting for their approval, for both private placement and public issue. approval from the board should be taken as per Section 179(3)(g) as an issue of securities; while taking the approval, board should ensure that the proposed limit is within the permitted limit under section 180(1)(c) of the Companies Act, 2013. If it is within the prescribed limits, the permission of shareholders is not required.

For the private placement, Section 42 is demanding shareholders’ approval, if the proposed issue size is beyond the limit prescribed under Section 180(1)(c). Here we have to concentrate more on the filing of E-Form MGT-14 with ROC regarding resolutions;

For Private Companies, Section 179(3)(g) is not applicable and Private Limited Companies need not file E-Form MGT-14 for the Board Approval under Section 179(3)(g). But as per Rule 14 (8) of Companies (prospectus and Allotment of Securities) Rules, 2014, a

Company shall issue a private placement offer cum application letter only after filing the relevant special resolution or Board resolution in the Registry:

As I have mentioned, Section 42 is demanding shareholders' approval only if the limits prescribed under Section 180(1)(c) is exceeded. But Section 180(1)(c) is also not applicable to private companies.

While going through these relevant sections, it is evident that MGT -14 for both board approval and shareholders' approval are not required to be filed with RoC.

But proviso of Rule 14 (8) of Companies (Prospectus and Allotment of Securities) Rules, 2014, states that Private companies shall file with the Registry, a copy of the Board resolution or special resolution concerning approval under Section 179(3)(C).

So for filing of MGT-14, we can conclude that, even though a Private Company needs not to file MGT-14 as per Section 179(3)(g); Company should file it before issuing an offer letter to the prospective investors as per Section 42 of the Companies Act, 2013.

But if a Company issues convertible debenture, it must take approval from shareholders as special resolution, pursuant to Section 71 and Section 42, in such case, if a private Company has to issue of convertible debenture, it should file MGT-14 for special resolution.

Now the Company obtained permission

from it's board or shareholders as required.

The next step in the private placement is to send an offer letter to prospective investors whose details are already recorded in the form PAS-5 and the offer letter should be in the form PAS-4 serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the name of such person.

If the Company proposes to issue Non-Convertible Debentures, it should appoint a debenture trustee before finalizing the offer letter. Section 71 of the Companies Act demands appointment of a debenture trustee if the proposed issue is either a public issue or the total number of debenture holders exceeds 500 or more.

Once the Company issued an offer letter, then the Company can open the issue. The Act does not directly prescribe any minimum or maximum period for an issue to be live. But as per Section 42 (6), a Company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities. That means a private placement cannot be live, for not more than 60 days.

Now we have to check the collection of application money; Company has to open a separate bank account in a scheduled bank for the collection of application money and the money so collected shall only be used for

adjusting towards allotment or to refund the same in case the Company is not able to make allotment.

Now comes to the allotment. The board has to allot debt securities to valid applicants who had submitted valid applications and complied with terms and conditions mentioned in the offer letter.

Here we have to keep in mind that public companies can allot securities including debt securities in Demat mode only.

After the allotment Company has to file a return of allotment with RoC within 15 days. After that only Company can use that fund.

Here a private Company needs to issue a debenture certificate to debenture holders or credit the respective number of debentures to the Demat account of debenture holders. But for a public company, it can't issue a debenture certificate as an evidence of allotment to its debenture holders.

Then we are moving to the final stage of the private placement, which is charge creation. We can see this same step in public issues also. The Board should identify the assets of the Company on which the company has to create a charge in favour of debenture trustee on behalf of debenture holders. As you aware the Act describes the format of the debenture trust deed in the form SH-12. The charge is creating either by hypothecation or mortgage. So Board has to execute a Hypothecation or Mortgage deed along with a debenture trust deed.

If the Company creates a charge either in

pari passu or secondary, It should obtain NOC from the existing charge holder before charge creation. After the charge creation, the Company has to file E-form CHG-9 to register the charge, within sixty days of charge creation. Roc may ask for an undertaking from the Company regarding compliance of act and stamp duty acknowledgment while approving the form.

Now we can check the practical aspects of public issues.

Here also we have to check whether the Company has a sufficient borrowing limit as per Section 180(1)(c) and take approval of the board and file MGT-14 with RoC.

Here we have to appoint some intermediaries also, such as Lead Managers or merchant bankers, debenture trustees, legal counsel, Registrar to the issue in short RTA. Company has to obtain rating from a rating agency for the debentures to be issued. A minimum issue size for a public issue is ₹100 Cr. All these parties should be registered with SEBI.

The next step is to identify the stock exchange where the company wishes to list its debt securities. Accordingly, the Company has to file a draft offer prospectus with the Stock Exchange and SEBI for public comments. Simultaneously Company has to publish the draft prospectus on its website and lead managers' websites for 7 days. The copy of the draft prospectus and final prospectus should be approved by the board or any of the Committee to the Board who have the power to do so.

If no comments were reported or the Company gives sufficient response to the public comments, the Stock exchange will issue its in-principal approval. After getting this, the Company can file a prospectus with RoC and Stock exchange, and SEBI. The company should include the matters as prescribed in section 25 of the Companies Act, 2013 and SEBI (issue and listing of debt securities) Regulations, 2008. The company can file a prospectus in form GNL-2 along with material documents and contracts. These material documents include the consent of directors, other KMPs, lead managers, trustees, rating agency, auditor as an expert, etc. copies of MOA and AOA, copy of in-principle approval, Copy of all the resolutions passed by the board or committees or shareholders w.r.t. the issue and copy of due diligence certificate by lead managers submitted to SEBI. The company should ensure it has got all the NOCs from its existing secured creditors who have a charge on the assets of the Company by which the company proposes to create the charge. An undertaking in this regard is also given in the offer document.

Apart from these, Auditors' certificates on the reformatted financial statement for the last five years, tax benefit statements are also attached with E-form GNL-2. Now a day approval of the prospectus is also STP nature.

After getting MCA acknowledgment on the filing of the prospectus, Company needs to submit the same along with a copy of the draft application form abridged prospectus to the stock exchange for issue opening. The

company needs to get a bidding plat for bidding respective application forms of prospective investors. For that Company has to execute an agreement with the stock exchange by paying the relevant fee. Before opening the issue, debenture trustee also file their due diligence certificate to SEBI by mentioning that Company has got all the approvals as required and the Company has the necessary security cover. The Company shall make an advertisement in a national daily with wide circulation, on or before the issue opening date.

Since this is a public issue, Company has to allot debentures in Demat mode only. Therefore, It should submit a master creation form and respective annexures with depositories for getting international security identification numbers in short ISIN. The copies of the ISIN activation letter received from the depositories should be filed with the stock exchange before opening the issue.

From October 01st, 2018 onwards ASBA is mandatory for all the public issues. Therefore applications supported by cheque, draft or RTGS, etc. are not eligible. There are two types of mechanism in this ASBA;

The first one is Syndicate ASBA, which means the broker will collect application and they will submit application to respective banks for lien marking on respective bank accounts of investors.

In the second one, that is Direct ASBA, here the bank will do both bidding and lien marking on respective applications.

After the issue opens, the Company should obtain a minimum subscription of its base issue. Presently it is 75% of the base issue. Otherwise, the entire application amount shall be unblocked in the relevant ASBA accounts of the applicants within six working days from the issue closing date.

Once the issue closes, Company has to finalize the allotment with the support of the Registrar to the issue, and copies of all the support to the allotment need to file with the stock exchange on or before the allotment date. Once the allotment happened, the Board has to credit the respective number of debentures or securities with the Demat account of respective investors. This procedure is called **credit corporate action**. On the same date of allotment RTA will instruct all the banks to release the lien marked on the applicant's bank account and to remit the amount to Company's bank account named **public issue bank account**. The company cannot use the fund unless the Company got listing approval from the stock exchange and execution of debenture trust deed.

After this corporate action Company has to submit a listing application with the stock exchange for listing, along with supporting such as allotment resolution, uniform listing agreement contain confirmation by the Company that it will comply with applicable provisions of LODR regulating, etc.

If the stock exchange approves the listing application, it will issue the public notice as a listing and trading approval.

After that Company, RTA, and lead managers need to file an issue completion report to SEBI, which contains material information on public issues.

As in the private placement, the Company has to create a charge on the assets to secure the interest of secured debenture holders. After the execution leads managers will issue fund transfer instruction along with a copy of listing permission and copy of DTD to the bank where the Company opened a public issue account for remitting funds to the company's normal current account.

Recent updates;

SEBI vide it's circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020 came out with a framework for creation of a recovery expense fund by an issuer company proposing to list debt securities. The creation of such a fund will enable a debenture trustee to take prompt action for enforcement of security in case of a default.

SEBI vide it's circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020 and circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/254 dated Dec 31, 2020 and came out with a framework for creation of security for listed debt securities and 'due diligence' that needs to be carried out by debenture trustees. The new framework will become effective from April 01, 2021.

Sreenath P.

FCS, LLB, M.Com

Union Budget 2021-22 Key Highlights

Relief to senior citizen:

The budget proposes exemption of income tax for senior citizen having only pension and interest income. Citizens of age 75 years and above who have only Pension and Interest income – Need not file Income Tax Returns.

Reassessment

The budget proposal will amend section 148 of the Income Tax where the time limit for reassessment has been reduced to 3 years from 6 years. The proposal addresses serious tax evasion, where evasion evidence is Rs.50 lakhs or more can be re-opened within 10 years. and only with the approval of P.CCIT.

Faceless Dispute Resolution Committee/Panel

Anyone with total income less than 50 lacs and disputed income less than 10 Lacs can approach this, faceless committee. Reducing Litigation for small tax payers – Constitution of Faceless Dispute Resolution Panel for people with Total Income upto Rs.50 lakh and disputed income of Rs.10 lakh. Faceless ITAT Centre

Income Tax Appellate Tribunal to become Faceless where personal hearings will be conducted through Video Conferences. Only electronic communication will be done.

Dividend Tax

Dividend will be exempt from TDS. Advance tax liability on dividend income will arise only after declaration of dividend.

Tax Audit Limit

Tax Audit Limit to be increased to Rs.10 crores from Rs.5 crores for those having less than 5% cash transactions.

Affordable Housing

Additional Interest deduction (Sec 80EEA) of Rs.1.5 lakhs to be extended for loans taken till 31st March, 2022. Affordable Housing Projects – Tax Holiday extended till 31st March, 2022.

Pre-filled Income Tax Return

It will have pre filled data regarding Dividend, post office interest income, salary etc. Details of Capital Gains, Dividend Income and Interest income will be pre-filled in the returns.

Relief to Trusts

Charitable trusts running Hospitals and Educational Institutions relief increased from Rs.1 crore to Rs.5 crore.

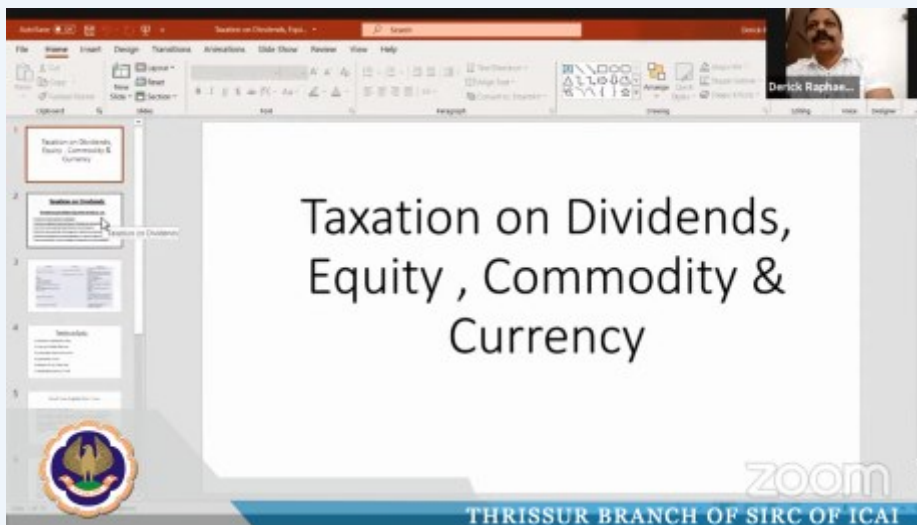
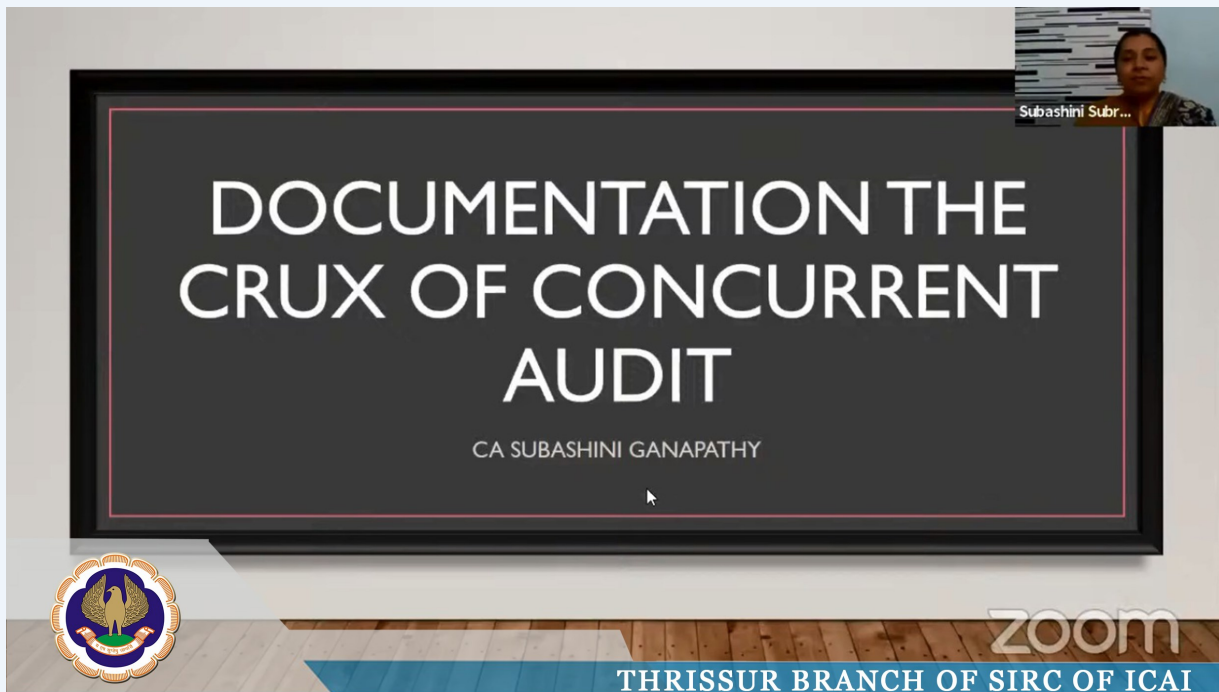
EPF Employee Contribution

Late deposit of employee contribution of PF will not be allowed as deduction.

Start-up Benefits

Tax holiday for Start-Ups extended to 31st March, 2022. Capital Gains exemption on investment in start ups also extended to 31st March, 2022..

PHOTO GALLERY



BY CA DERICK RAPHEL

VIVAD SE VISWAS
SCHEME

