KPMG

Voices on Reporting

6 October 2022

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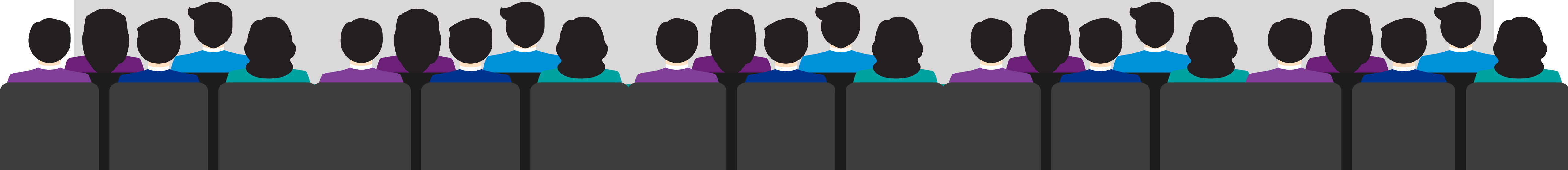


Agenda

01 BEPS 2.0 – tax impact

02 Amendment to rules relating to electronic records

03 Updates relating to social stock exchange

04 CSR amendments

01

BEPS 2.0- tax impact

Overview of BEPS 2.0

Why is it needed?

- To delink taxing rights from physical presence
- To disincentivise tax-driven cross-border structures
- To address harmful tax competition.

How is it different?

- Financial Statements driven
- Largely formula based
- Global regime.

What is it made of?

- **Pillar One**
- **Pillar Two**
    - Global Anti-Base Erosion Rule (GloBE)
    - Subject to Tax Rule (STTR).

Mechanics

Pillar 1

Amount A: New nexus rule without a physical presence

- Threshold- Consolidated group turnover exceeding **EUR20 billion** and profitability above **10 per cent**
- **25 per cent of residual profits (i.e. profits in excess of 10 per cent)** allocated to market jurisdictions based on revenue
- Exclusions for extractives and regulated financial services.

Amount B

- Fixed return for certain routine marketing and distribution activities in the market/user jurisdiction
- Removal of Digital Services Taxes (DSTs) and similar levies.

Pillar 2

GloBE

- Threshold- Consolidated group turnover of **EUR750 million**
- Country of the ultimate parent entity can collect top-up tax if overseas group companies have an **Effective Tax Rate (ETR) below 15 per cent.** The right shifts to other countries in some cases.
- Complex calculations to derive ETR – based on financial statements, but with numerous adjustments.

STTR

- Specified cross-border intra-group payments made to related parties subject to **new withholding tax if the recipient is taxed below 9 per cent.**

Timelines and takeaways

Timelines – decoupling of Pillars 1 and 2?

Pillar 1

- Rules yet to be finalised
- Implementation likely to be pushed to 2024
- Extended applicability of equalisation levy?

Pillar 2

- GloBE Rules ready – pending enactment at national level
- STTR Rules pending finalisation – expected by the end of 2022
- Intended to come into effect in 2023, but is 2024 more likely?

Takeaways

- Monitor developments and assess their financial and administrative impact
- Prepare for significant data collection and compliance challenges
- Collaboration between tax and accounting teams critical for a successful implementation:
  - Accounting expertise essential in BEPS 2.0 tax calculations
  - Tax expertise essential in reflecting BEPS 2.0 impact in financial statements
- Consider the appropriate level of disclosures in FY 2022-23 interim and annual financial statements.

Key accounting considerations under Ind AS 12, *Income Taxes*

Tax and accounting – Business as usual

Tax calculation based on tax rules → **Financial statements** current and deferred tax

Tax and accounting – GLoBE rules

Financial statements as **input** for GloBE calculation → **GloBE calculation** for top-up tax → GloBE tax impacts in the **financial statements**

Key considerations

- Scope
- Deferred tax
- Uncertain tax treatments
- Disclosures prior to enactment
- Attribution

02

Amendment to rules relating to electronic records

Amendment to rules relating to electronic records

On 5 August 2022, MCA issued certain amendments to the provisions of Rule 3 of the Companies (Accounts) Rules, 2014 relating to the manner in which books of accounts are to be kept in an electronic form.

Availability of books of accounts (Rule 3(1))

- Books of account and other relevant books and papers maintained in an electronic mode should be accessible in India, **at all times.**

Maintaining of backups (Rule 3(5))

- Back-ups in electronic mode should be maintained on servers physically located in India on a daily basis (earlier periodic basis) even in cases where such backups are maintained at a place outside India.

Service provider (Rule 3(6))

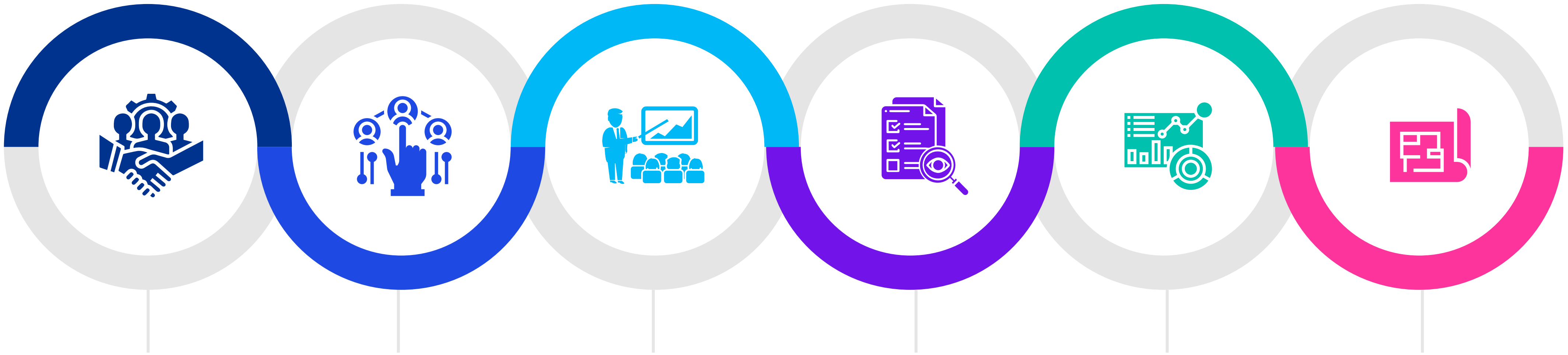
- Additional disclosure to the Registrar of Companies (ROC) relating to the name and address of the person in control of the books of account and other books and papers in India, where the service provider is located outside India.

03

Updates relating to social stock exchange

Formation of Social Stock Exchange (SSE)

Social Stock Exchange (SSE) means a separate segment of a recognised stock exchange having nationwide trading terminals.



FY2019-20 budget proposed for the creation of an SSE

Constitution of Working Group (WG) and Technical Group (TG) in September in 2019 and 2020 respectively

Recommendations of TG and WG discussed and approved in SEBI Board Meeting and action matrix was released in February 2022

July 2022 SEBI amended ICDR Regulations, Listing Regulations and AIF Regulations

August 2022 ICAI released an exposure draft on Social Audit Standards (SAS)

September 2022 issued a circular on the framework on SSE

Overview of Social Enterprise (SE)

Social Enterprise (SE)

- An SE (eligible to participate in an SSE) would be an entity (Non-Profit Organisation (NPO) and for-profit social enterprise having a social intent.
- Engage in at least one of the social activity out of the of 16 eligible social activities.

NPO*

Method of raising funds

- Zero Coupon Zero Principal (ZCZP) Bonds.
- Donations through mutual fund schemes.
- Other means as specified by SEBI.

Disclosure requirements

- Fund raising document (both draft and final) should contain minimum disclosure specified through SEBI circular*.
- Annual disclosures* to be submitted to the SSE(s) within 60 days from the end of the financial year.
- Matters to be covered
  - General aspects
  - Governance aspects
  - Financial aspects.

For profit social enterprise

Method of raising funds

- Issue of equity shares on main board, SME platform, or innovators growth platform,
- Issue of equity shares to AIF including a social impact fund
- Issue of debt securities
- Other means as specified by SEBI.

Disclosure requirements

- Follow disclosure requirements as specified in Chapter IX-A - Obligations of Social Enterprises of the LODR Regulations.

*SEBI through its circular dated 19 September 2022 specified minimum requirements to be met by an NPO for registration with an SSE in terms of ICDR Regulations and annual disclosures in terms of LODR Regulations..

Intimations and disclosures by an SE

Materiality Assessment

Details of KMPs

Annual Impact Report (AIR)

Statement of utilisation of funds*

General requirements for NPOs*

- To be submitted within 90 days from the end of a financial year.
- Audited by a social audit firm employing social auditor(s).
- Provide qualitative and quantitative aspects of the social impact generated or solution for which funds are raised.
- Specific requirement for a social impact fund to disclose details of all investee/guarantee organisations.

Specific disclosure requirements for NPO to cover the following aspects:

- Strategic intent and planning
- Approach
- Impact score card.

To be submitted by a listed NPO within 45 days from the end of each quarter in the following manner:

a. Category-wise amount of monies raised,

b. Category-wise amount of monies utilised, and

c. Balance amount remaining unutilised.

**SEBI through its circular dated 19 September 2022 provided specific requirements to be met by an NPO.*

Social Audit Standards (SAS) - an exposure draft

SAS will apply to an independent social audit of a social enterprise.

Five elements of a social audit engagement are:

- A three-party relationship involving a social auditor, a responsible party (generally SE), and the intended user
- Project/programme/intervention to be covered
- Project monitoring framework
- Evidence
- A written report.

To whom does the SAS framework apply

- NPOs seeking to only get registered with an SSE
- NPOs seeking to get registered and raise funds through an SSE, and
- For profit social enterprises seeking to be identified as an SE as per the ICDR Regulations.

List of SAS (exposure drafts)

Standard No	Standard Name
SAS 100	Eradicating hunger, poverty, malnutrition and inequality
SAS 200	Promoting health care including mental healthcare, sanitation and making available safe drinking water
SAS 300	Promoting education, employability and livelihoods
SAS 400	Promoting gender equality, empowerment of women and LGBTQIA+ communities
SAS 500	Ensuring environmental sustainability, addressing climate change including mitigation and adaptation, forest and wildlife conservation
SAS 600	Protection of national heritage, art and culture
SAS 700	Training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports
SAS 800	Supporting incubators of Social Enterprises
SAS 900	Supporting other platforms that strengthen the non-profit ecosystem in fundraising and capacity building
SAS 1000	Promoting livelihoods for rural and urban poor including enhancing income of small and marginal farmers and workers in the non-farm sector
SAS 1100	Slum area development, affordable housing and other interventions to build sustainable and resilient cities
SAS 1200	Disaster management, including relief, rehabilitation and reconstruction activities
SAS 1300	Promotion of financial inclusion
SAS 1400	Facilitating access to land and property assets for disadvantaged communities
SAS 1500	Bridging the digital divide in internet and mobile phone access, addressing issues of misinformation and data protection
SAS 1600	Promoting welfare of migrants and displaced persons

04

CSR amendments

Corporate Social Responsibility (CSR) amendments

On 20 September 2022, MCA issued certain amendments to the provisions of the Companies (CSR Policy) Rules, 2014. Key amendments relate to:

Constitution of a CSR committee

New proviso added under Rule 3(1)

- If there is an unspent CSR amount as per Section 135(6) in a company, then it will continue to constitute a CSR Committee and comply with the provisions of Section 135(2) to 135(6) relating to CSR.

CSR rules now apply (Rule 3(2))

- Even if a company ceases to be covered under Section 135(1) of the 2013 Act, i.e. a company whose net worth, turnover, or net profit falls below the specified threshold, then it would continue to constitute a CSR Committee and comply with the provisions of Section 135(2) to 135(6) relating to CSR.

CSR impact assessment – change in limits

Criteria under Rule 8(3)

- Every company having average CSR obligation of INR10 crore or more, computed in accordance with Section 135(5), in three immediately preceding financial years, should undertake an impact assessment through an independent agency of CSR projects having outlays of INR1 crore or more.
- Such a company may book the expenditure incurred towards the impact assessment towards CSR for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or INR50 lakh, whichever is less.

New limits

The expenditure incurred should not exceed:

- Two per cent of the total CSR expenditure for that financial year or
- INR50 lakh,

whichever is higher.

Q&A

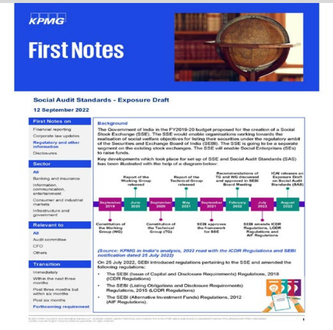
Sources

1. The Organisation for Economic Co-operation and Development's(OECD) draft legislative framework issued in December 2021 and detailed guidance issued in March 2022.
2. MCA notification G.S.R. 624(E). Companies (Accounts) Fourth Amendment Rules, 2022 dated 5 August 2022.
3. SEBI notification SEBI/LAD-NRO/GN/2022/90 dated 26 July 2022 relating to incorporation of new Chapter X-A, Social Stock Exchange in ICDR Regulations.
4. SEBI notification SEBI/LAD-NRO/GN/2022/88 26 July 2022 relating to incorporation of new Chapter IX-A, obligations of Social Enterprises in LODR Regulations
5. SEBI circular SEBI/HO/CFD/PoD-1/P/CIR/2022/120 dated 19 September 2022.
6. MCA notification G.S.R. 715(E). Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022 dated 20 September 2022.

Our publications

Accounting and Auditing Update

First Notes



Voices on Reporting – Quarterly updates publication

Coming up next

New issue of:

- Accounting and Auditing Update
- First Notes
- Voices on Reporting - publication

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Thank you!

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