

Accounts of Companies and other topics

WIRC of ICAI

Seminar on Companies Act, 2013

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excludes 7 rules notified under Companies (cost records and audit) Rules, 2014

Chapter IX: Accounts of Companies



Chapter IX: Accounts of Companies

So – What's New?

- Uniform financial year
- Definition of Financial statements
- Consolidated financial statements
- Depreciation
- Board's Report
- Revision in financial statements
- Corporate Social Responsibility (CSR)
- NFRA
- Internal audit

Applicability

- All companies
- To follow a uniform FYE 31 Mar
- To align with new requirement within two years from the commencement of New Act
- Incorporated on/after 1 Jan 2012 to close books on 31 Mar in following year

Exceptions

- Company/body corporate that is holding/subsidiary of a foreign company incorporated outside India. However, application to National Company Law Tribunal necessary (no exception for a company which is an Associate/JV of a company incorporated outside India)
- If required to follow different FY for consolidation of accounts outside India

Implication

- Companies in India following different FYE, especially those in seasonal businesses will have to change the FY
- Above companies will not require separate Tax financial statements



Applicability

“Financial statement” in relation to a company, includes—

- (i) a **balance sheet** as at the end of the financial year;
- (ii) a **profit and loss account**, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) **cash flow statement** for the financial year;
- (iv) a **statement of changes in equity**, if applicable; and
- (v) any **explanatory note** annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv)

Requirement

- Cash flow statement will be required for all companies with the exception of One Person Company, small company and dormant company
- Schedule III which lays down the format for preparation and presentation of financial statements of most classes of companies does not prescribe formats of cash flow statement – which should therefore be prepared as per AS 3

Requirement

- To comply with accounting standards notified in section 133



Consolidated Financial Statements (CFS) required for all companies – section 129 (3)

Companies Act 2013

Applicability

Mandate for all companies to prepare CFS in respect of the following entities:

- Subsidiary; or
- Associate; or
- Joint Venture company



Requirement

- a. CFS will have to be prepared in addition to standalone financial statements
- b. Some additional mandatory disclosures also required per Schedule III (eg minority interests, net assets/share in profit or loss)
- c. Mandatory if immediate parent overseas
- d. Company is required to attach to its separate financial statements a statement containing the prescribed salient features of the financial statements of its subsidiaries /JVs /associates

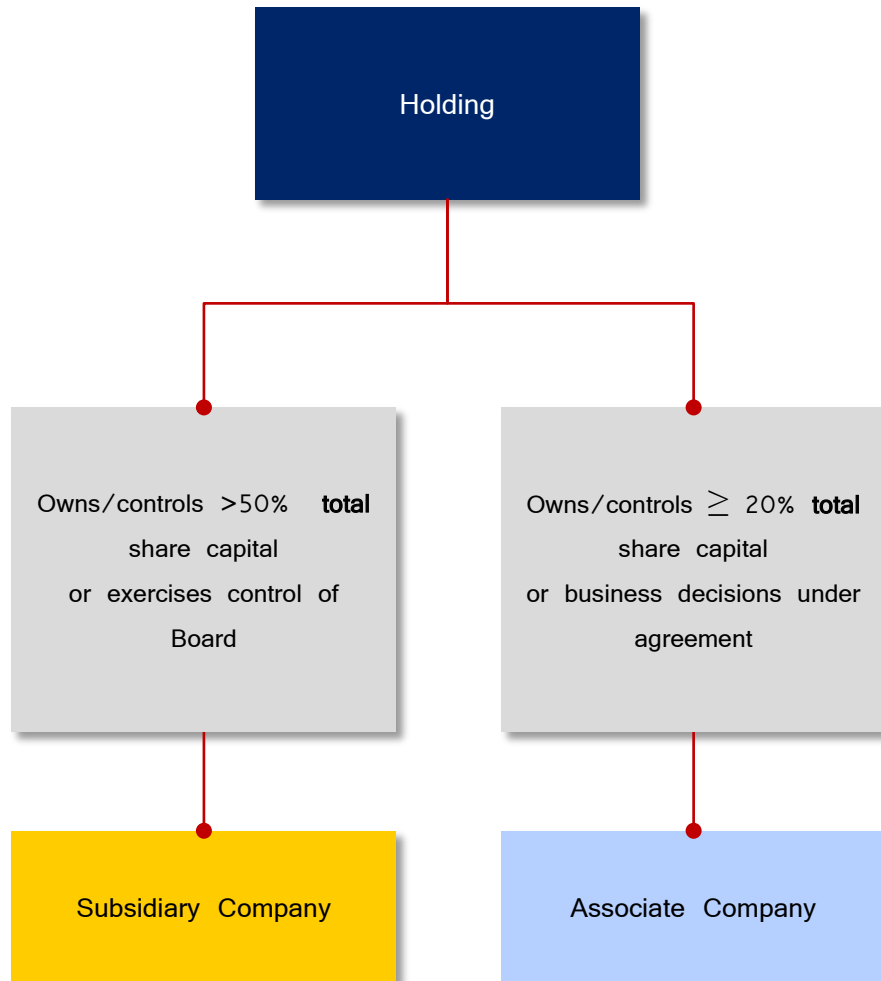
Exceptions (14 October 2014)

- Intermediate wholly owned subsidiary, where the ultimate parent is based in India
- For FY 15, companies with Associate or Joint Venture company, but no subsidiary, need not prepare CFS

Exceptions (16 January 2015)

- For FY 15, companies having a subsidiary or subsidiaries incorporated outside India, need not prepare CFS

Subsidiary / Associate : section 2(6) and 2(87)



Requirement

- AS 21/23 conditions now in contradiction with the Act. Holding > 50% /20% of 'nominal equity share capital' now replaced with 'total share capital'
- Associate: No rebuttable presumptions. Includes joint venture



■ *Subsidiary* has been defined in the Act as follows:

“a “subsidiary company” or “subsidiary” in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i)

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies. [Section 2(87)]

The criterion relating to share capital as per the Act is broader than the corresponding criterion under AS 21 which refers only to ownership of more than one-half of the voting power (rather than total share capital). Thus, entities qualifying as subsidiaries under the Act may differ from those so qualifying under AS 21

■ The definition of the term **‘Associate company’** as per the Act (reproduced below) differs from the definition under AS 23, Accounting for Investments in Associates in Consolidated Financial Statements:

“Associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company [Section 2(6)]

Explanation – For the purposes of this clause, “significant influence” means control of at least twenty per cent, of total share capital, or of business decisions under an agreement;

This definition refers to ‘control’ of business decisions; the term ‘control’ is different from the term ‘significant influence’.

Holding and subsidiary relationship: Voting power Vs.
total share capital

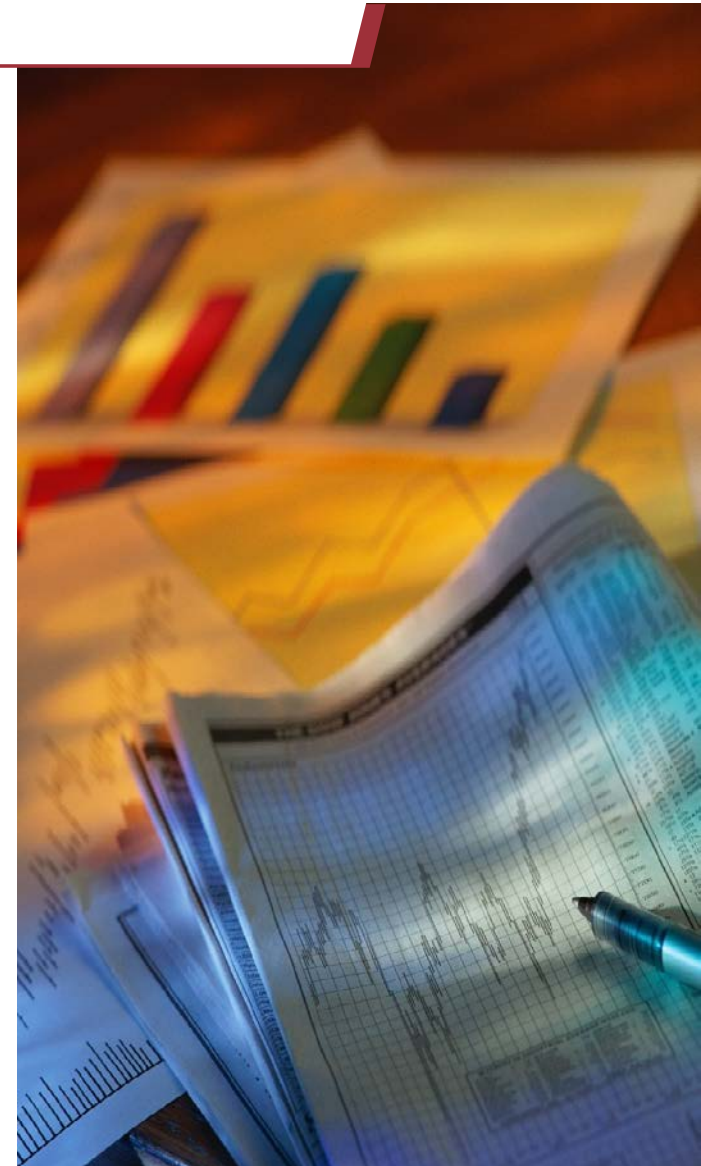
X Ltd. has investment in equity and preference shares of A Ltd. but does not control its board composition

Particulars	Equity Shares	Preference Shares	Total
	(Voting)	(Non-Voting)	
Total share capital	100	60	160
Shares owned by X Ltd	40	60	100
% ownership of X Ltd	40%	100%	62%
Per 1956 Act (based on equity share capital)			Not a subsidiary
Per 2013 Act (based on total share capital)			Subsidiary
Per AS 21			Not a subsidiary

- Apparent conflict between the Accounting Standards and the Act regarding the definition of subsidiary/ associate. How would such conflicts be resolved for preparing CFS?
- Challenges due to retrospective application of consolidation principles in the absence of transitional provisions (eg. Determination of goodwill on consolidation)
- Section 129(3) requires a company with one or more subsidiaries to prepare CFS. The explanation to the section clarifies that the word ‘subsidiary’ shall include associate company and joint venture. AS 21 notified under section 133 requires CFS to be prepared only in case of subsidiaries. What happens in case a company has only an associate or a JV?
- The consolidated financial statements should be prepared in the same form and manner as the company’s stand-alone financial statements (*seems to create an inconsistency vis-à-vis AS 21 according to which certain disclosures required in stand-alone financial statements may not be made in CFS – eg CIF value/income/expenses in foreign currency etc. However, MCA has clarified on 14 October 2014 that all the Schedule/accounting standards do not envisage all disclosures made in the standalone financial statements to be repeated in the consolidated financial statements*)
- Currently, under the listing agreement, listed companies can prepare consolidated financial statements under IFRS and need not prepare Indian GAAP CFS. Under the 2013 Act, such companies would need to prepare CFS under Indian GAAP

Depreciation

- Increased significance on useful life and residual values (benchmark – max. 5% of original cost) – companies can choose life and residual value that is different from Schedule II
- Justification required in case, ‘useful life’ or residual value is different from ‘Schedule II’
- Depreciation rates rationalized– useful life of Continuous Process Plant raised to 25 years
- No specific provision for items up to INR 5,000
- Depreciate carrying value less residual value over remaining useful life. Option to adjust networth or charge to profit and loss, if useful life is exhausted
- Revenue-based amortisation of intangible assets (toll roads) permissible– MCA notification reinstated as part of Schedule II



! Component accounting to be mandatory wef 1 April 2015

Nature	Companies Act 2013		Companies Act 1956 Single Shift (SLM)	
	Life (Years)	%	Life (Years)	%
Building: factory building	30	3.34	30	3.34
Plant and machinery				
General	15	6.67	21	4.75
Continuous process plant	25	4	19	5.28
Furniture and fitting: general rate	10	10	16	6.33
Motor vehicle	8	12.5	9	11.31
Office equipment	5	20	14	7.07
Computers and data processing units:				
Servers and networks	6	16.21	6	16.21
End user devices such as desktop/laptop etc	3	33.33	6	16.21
Laboratory Equipment: General	10	10	14	7.07

Component accounting – Where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.

An example could be a commercial aircraft which, for depreciation purposes, may be viewed as comprising (i) airframe, (ii) aero engine(s), and (iii) interiors.

- Component approach requires more detailed record-keeping – fixed assets register will need to separately record (i) component X and (ii) the rest of the machine. For this purpose, the total cost of the machine will need to be split
- In many cases, an entity acquires an asset for a fixed sum without knowing the cost of the individual components. In such case, the cost of individual components would need to be estimated either with reference to current market prices (if possible), in consultation with the seller or contractor, or using some other reasonable method of approximation (e.g. relative values)
- Identification of components and split of total cost may also require involvement and assistance of technical experts

- No particular method for providing depreciation
 - In case a method other than WDV/ SLM is used, minimum depreciation charge should be as per SLM basis
- Residual value generally not more than 5% of the original cost (except for Ind-AS companies)
 - If asset replacement occurs significantly earlier than the end of economic life – an appropriate higher estimate
- Categories of depreciable assets rationalised
 - Many items of plant and machinery with general rate under Schedule XIV governed by special rate
- Divergence between Schedule II and Income-tax depreciation rates continues
- Depreciation on revalued assets – is adjustment allowed to be routed through revaluation reserve?

Various items prescribed in the Act and the Rules for inclusion in the Board report, which include:

- Manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors (for listed companies and public companies with share capital > Rs 25 crores)
- Company's policy on directors' appointment and remuneration including criteria for determining qualifications, independence etc (for listed and certain other covered companies)
- particulars of loans, guarantees or investments under section 186
- particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form AOC 2
- Significant and material orders passed by the regulators/courts/tribunals impacting the going concern status and company's future operations
- Details of risk management policies and CSR initiatives
- Statement on declaration given by independent directors
- Separate section on the performance and financial position of each subsidiary/JV/associate included in the consolidated financial statements
- material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date report;
- the conservation of energy, technology absorption, foreign exchange earnings and outgo



Directors Responsibility Statement in the Board Report to include:

In listed companies

Assurance on adequacy and effectiveness of internal financial controls

In all companies

- assurance on system adequacy/effectiveness for compliance with applicable laws and regulation
- Statement that accounts have been prepared on a going concern basis
- Applicable accounting standards have been followed with explanation relating to material departures

- statement that proper and sufficient care has been taken for maintenance of adequate accounting records to safeguard assets of company and for preventing and detecting fraud and other irregularities
- Statement that accounting policies are applied consistently and along with estimates and judgments (which are reasonable and prudent) made give a true and fair view of the financial statements

Auditor's responsibility relating to the internal financial controls discussed later



- Section 134(5)(e) requires listed companies to state in the Directors’ Responsibility Statement that the *internal financial controls* are *adequate* and were *operating effectively during the year*.
 - The term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information
- However, the Companies (Accounts) Rules, 2014 under Rules 8(5)(viii) requires the Board to give details in respect of adequacy of *internal financial controls with reference to the financial statements* in the Board’s Report. What is additionally mandated in the Rules?
- As per section 136 proviso, every company having subsidiary(ies), shall place audited accounts for such subsidiaries on its website. In case of foreign subsidiaries, would accounts prepared under local GAAP be adequate for this purpose?

Applicability

- Covers all companies in India meeting any one or more of the following conditions:
 - Sales \geq INR1000CR
 - Networth \geq NR 500CR
 - Net Profit \geq INR 5CR
- CSR contribution
 - 2% of average net profit **before tax** for last three financial years
- Contributions to be made towards causes listed under Schedule VII*

Administration and reporting

- Board to appoint a three-member CSR committee including one Independent Director
- Committee responsibility:
 - Formulate CSR policy;
 - Recommend CSR activities;
 - Monitor CSR expenditure
- Mandatory reporting on CSR under section 135
- In case of failure to spend, reasons to be disclosed. Penalties for non disclosure

Implication

- Schedule VII and the Rules seem to hint at possibility of aligning business goals with social objectives
- No clarity on income-tax stand on allowability of CSR contributions
- Onerous responsibility on the Board to report and comply with a wide set of requirements and reports

* Hunger, Poverty, Education, Gender Equality, Child mortality, HIV/AIDS program, Environment, PM's National Relief and 'such other matters that may be prescribed'

Wide set of compliances to be taken care of:

- CSR Committee to make a responsibility statement: **'Complied with in letter and spirit'**
- Tax treatment to be decided by CBDT only
- Activities cannot be exclusively for benefits of employees/their families
- Only CSR in India is eligible
- Trusts, societies, foundations may carry out CSR activities on behalf of the company
- Activities on a collaboration/pool basis may also be acceptable
- Surplus arising out of CSR activity will not be part of business profits of a company and will have to be recouped in the CSR corpus
- Net Profit shall mean, net profit before tax as per books of accounts and shall not include profits arising from branches outside India
- Mere donation and charity may not be allowed. CSR activity must be properly monitored and end use reported
- Expenditure incurred on CSR to be disclosed as a separate item in the notes to the financial statements (per Schedule III)



- MCA has notified 1 April 2014 as the date on which the provisions of section 135 and Schedule VII of the Act shall come into force. The issue relates to applicability of provision of CSR to a company which has a financial year ending on other than 31 March, e.g. a company which has a financial year ending on 31 December 2014. Whether CSR provisions would be applicable from 1 April 2014 or from the beginning of their next financial year i.e. 1 January 2015
- Is creation of a CSR reserve required?
- How is excess spend on CSR to be treated (can this be carried forward)?
- Can CSR activities be performed at a Group level ?
- Who determines whether the expenditure incurred is permissible to be included/considered as CSR activity – is any audit/certification required?

Applicability

- Listed company
- Public company – paid up share capital more than Rs 50 crore, turnover more than Rs 200 crore; or
- Public company – outstanding loans or borrowings (from banks or public financial institutions) of more than Rs 100 crore or deposits of more than Rs 25 crore; or
- Private company – turnover more than Rs 200 crore ; outstanding loans or borrowings more than Rs 100 crore

Eligibility

- Chartered Accountant (whether engaged in practice or not) or Cost Accountant or other professional, as decided by Board
- Internal auditor may or may not be the company's employee

Scope

- Audit Committee or Board, in consultation with the internal auditor



- In case of some multi-national companies, internal audit is conducted across the group companies by the central internal audit team based at the overseas parent location. Can this arrangement continue for the Indian subsidiary post the mandate under the 2013 Act?

Applicability (limited circumstances)

- Fraudulent financial reporting
- Mismanaged affairs casting doubt on reliability of financial statements
- Non-compliance of financial statements or Board report with sections 129 or 134

Window open only for three financial years for voluntary restatement

Requirement

Court/Tribunal may approve following applications:

- **Regulatory intervention:**
 - Central Government; or
 - Tax Authorities; or
 - SEBI; or
 - any other Regulatory Authority
- **Voluntary application:**
 - Directors

Implications

- Detailed process for revision, including involvement of current and previous auditors (may lead to frivolous litigations)
- May require current auditor to re-audit entire financial statements for one or more periods
- MAT implications to be evaluated if reported profits change on account of restatement

This section has not yet been notified!

Role

- Recommend Accounting and Auditing Standards
- Oversee quality of service of Chartered Accountants and suggest measures required for improvement in quality of service
- Monitor and enforcement of compliance with accounting and auditing standards

Powers

- Investigate suo moto or on reference made by Central government into matters of professional or other misconduct
- No institute/ body to continue proceedings in such matters where NFRA has initiated investigations
- If misconduct proved, impose penalty or Debar member/Firm
- Persons aggrieved, may approach Appellate Authority



This section has not yet been notified!

Conclusion



Companies Act, 2013	Companies Act, 1956
<p>Section 128 Books of account, etc to be kept by the company</p> <ul style="list-style-type: none"> - No significant difference; certain clarifications in respect of books of account in electronic mode 	<p>Section 209</p>
<p>Section 129 Financial statements</p> <ul style="list-style-type: none"> -Preparation of consolidated financial statements - Preparation of cash flow statement 	<p>Section 210 and 211</p>
<p>Section 130 and 131 on Re-opening/ Revision of accounts – not notified</p>	<p>No corresponding section</p>
<p>Section 132 Constitution of National Financial Reporting Authority – not notified</p>	<p>No corresponding section</p>
<p>Section 133 Central Government to prescribe accounting standards</p> <ul style="list-style-type: none"> - No significant difference 	<p>Section 210A</p>
<p>Section 134 Financial statement, Board’s report etc</p> <ul style="list-style-type: none"> - Additional requirements in Board’s report and Directors’ Responsibility Statement 	<p>Section 211(3C)</p>

Companies Act, 2013	Companies Act, 1956
Section 135 Corporate Social Responsibility	No corresponding section
<p>Section 136 Right of member to copies of audited financial statement</p> <p>- No significant difference , except that unlisted companies having subsidiaries are required to place separate audited accounts in respect of each of its subsidiary on its website and provide copies thereof to shareholders who asks for it</p>	Section 219
<p>Section 137 Copy of financial statements to be filed with Registrar</p> <p>- No significant difference</p>	Section 220
Section 138 Internal audit	No corresponding section



Q&A

Thank you

Aniruddha Godbole

T: +91 22 3091 2483

Email: agodbole@bsraffiliates.com

