



SBS *Interns'* Digest

An attempt to share knowledge

By

**Interns of
SBS and Company LLP**

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AUDIT

STANDARDS ON QUALITY CONTROLS (SQC'S)

Contributed by Adithya. G & Vetted by CA Bhyrav |

Introduction :

The Article aims to explain the Significance of Standards on Quality Controls (SQC's) for establishing standards and providing guidance for its system of quality control for audits and reviews of historical financial information, and for other assurance and related service engagements.

What is System of Quality Control?

- A system of quality control consists of policies designed to provide reasonable assurance that the firm and its personnel comply with professional standards and regulatory and legal requirements, and that reports issued by the firm or engagement partner(s) are appropriate in the circumstances and the procedures necessary to implement and monitor compliance with those policies.

Purpose of introduction:

- The purpose of this Standard on Quality Control (SQC) is to establish standards and provide guidance regarding a firm's responsibilities for its system of quality control for audits and reviews of historical financial information, and for other assurance and related services engagements.

Objective:

- The objective of this study is to outline the importance of SQC's and how the firms should establish a system of quality control designed to provide it with reasonable assurance that the firm and its personnel comply with professional standards and regulatory and legal requirements, and that reports issued by the firm or engagement partner(s) are appropriate in the circumstances.

Elements in Quality Control:

The firm's system of quality control should include policies and procedures addressing each of the following elements:

(a) Leadership responsibilities for quality within the firm:

With the emphasized idea of promoting the internal culture which is based on the recognition that the quality is essential and paramount in executing any engagement. For ensuring such kind of culture, the firm's CEO or equivalent for assuming the eventual responsibility and, among others, provide

1. Informal discussions
2. Internal memos
3. Newsletters
4. Education and training
5. Monitoring
6. Processes to deal with any non-compliance

(b) Ethical requirements:

Firm and the employees adhere to the related ethical requirements as provided in the code of Ethics, together with

1. Objectivity
2. Integrity,
3. Confidentiality,
4. Professional competence,
5. Due diligence,
6. Professional behaviour

(c) Acceptance and continuance of client relationships and specific engagements:

With the emphasized idea of a rational assurance for continuing with relationship and engagement if and where the firm

1. Has measured and considered the integrity of its client by
 - Identifying the business reputation of the owner, KMP (Key Management personnel) and others associated with the governance of such business.
 - Nature of the business operations, along with the business practices
 - Attitude towards the issues such as good governance, internal control
 - environment and accounting standards
 - Reasons for such proposed appointment of firm and non-reappointment of the
 - firm been engaged previously
 - Whether the owner/KMP (Key Management Personnel) are specifically concerned with keeping firm's fee to the lowest as possible
 - Whether the firm is competent for performing such engagement and has the time, capabilities, and resources in doing so
 - a. The firm has sufficient competent personnel
 - b. Personnel are equipped with the required knowledge of relevant subject matter and industries.
 - c. Have ability and experience for gaining experience with related reporting and regulatory requirement.
 - d. Accessibility of subject matter experts, if required
 - e. Ability of completing such engagement within the respective deadline
2. Comply with related ethical requirements
 - Conflict of interest –perceived or actual

(d) Human resources:

The SQC requires a firm to have policies and procedures in place for enabling it to guarantee the firm has adequate personnel with

- i. Competence
- ii. Capabilities
- iii. Commitment to ethical principles for enabling the firm to deliver the engagements

The policies employed by the firm should address the following issues:

- i. Recruitment
- ii. Capabilities, competence
- iii. Performance evaluation
- iv. Career development, compensation, promotion
- v. Estimate of personnel requirements

(e) Engagement performance:

1. Assigning the responsibility to the engagement partner(s) with definite roles and responsibilities, authority and time frame to complete the assignment
2. Processes to comply with relevant engagement standards
3. Process for resolution of any differences in opinion among the team or otherwise
4. The process of evaluating work performed, noteworthy judgments made and form of the report that is being issued

(f) Monitoring:

The firm must have policies and procedures in place for providing reasonable assurance that policies and procedures with respect to the system of quality control are adequate, relevant, compiled within the practice and is operating effectively. The policies and procedures must include a continuing consideration and evaluation of quality control system, including a recurring examination of the selection of completed engagements.

1. Adhering professional standards and legal and regulatory requirements
2. Whether the quality control policies and procedures of the firm is implemented effectively and applied appropriately
3. Communicating appropriate stakeholders in the firm about the flaws identified in such system
4. Determining required corrective action to improve the system, including feedback
5. Corrective as well as disciplinary actions against those do not comply with the quality control system, particularly those failing frequently

Documentation:

The firm should establish policies and procedures requiring appropriate documentation to provide evidence of the operation of each element of its system of quality control.

Scope of Quality Review as per Quality Review Board :

- The scope of the quality review carried out by the Technical Reviewer includes examining whether the Audit firm has implemented a system of quality control as envisaged in line with the SQC 1.
- QRB has developed Quality Review Program General Questionnaire for use by Technical Reviewer's the Questionnaire work as an aid for the Technical Reviewer's and contain questions relevant for determining compliance with the requirements of SQC 1 and the Standards on Auditing (SAs) and Accounting Standards. The Technical Reviewers are required to document their responses for the questions applicable based upon the review undertaken by them.
- The Audit Firm Under Review should have documented policies and procedures to ensure compliance with the requirements of SQC 1. Any departure/nonexistence will cause non-compliance with SQC 1. However, there may be situations where the AFUR has not documented all the policies. In such cases, Technical Reviewers are expected to use their professional judgement in determining whether non-existence of documented policies would constitute a deficiency in the quality control policies.
- Technical Reviewers is also required to submit a duly filled in detailed questionnaire given by QRB on SQC 1, Standards on Auditing and accounting standards. The format of the questionnaire has been prescribed by QRB and contains columns for responses from Audit Firm Under Review, Technical Reviewers comments and paragraph reference in final report.

Conclusion :

The Standards on quality controls are Mandatory and will guide the Firms in establishing and maintaining system of quality control to provide with reasonable assurance that the firm and its personnel comply with professional standards and regulatory and legal requirements.

Sources:**1) The Institute of Chartered Accountants of India**

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DIRECT TAX

SECTION 112A OF INCOME TAX ACT, 1961

Contributed by Varun. P & Vetted by CA Madhusudan & CA Ramprasad |

Introduction:

- Section 112A of Income Tax Act, 1961("the Act") is introduced in the Finance Bill 2018 w.e.f from Assessment year 2019-20 which introduces tax on capital gains arising from the transfer of a long-term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust and
- Section 10(38) is withdrawn from the Act which exempts capital gain on sale of Long-term capital asset being an equity share in a company or a unit of an¹ equity-oriented fund or a unit of a business trust.

Extract of Budget 2018-19 speech by Arun Jaitley:

"With the reforms introduced by the Government and incentives given so far, the equity market has become buoyant. The total amount of exempted capital gains from listed shares and units is around ₹ 3,67,000 crores as per returns filed for A.Y.17-18. Major part of this gain has accrued to corporates and LLPs. This has also created abias against manufacturing, leading to more business surpluses being

invested in financial assets. The return on investment in equity is already quite attractive even without tax exemption. There is therefore a strong case for bringing long term capital gains from listed equities in the tax net. However, recognising the fact that vibrant equity market is essential for economic growth, I propose only a modest change in the present regime. I propose to tax such long-term capital gains exceeding ₹ 1 lakh at the rate of 10% without allowing the benefit of any indexation."

Section 112A:

Capital gains arise from the **transfer** of a **long-term capital asset** being an

- **equity share** in a company or
- **a unit of an equity-oriented fund** or
- **a unit of a business trust**



shall be taxed at the rate of 10% on capital gain exceeding Rs. 1,00,000

Note:

1. Securities transaction tax (STT) need to be paid on transfer of such equity share, unit of equity-oriented fund or unit of business trust
2. STT need to be paid on acquisition such shares if acquired after 01.10.2004
3. STT need not be required if transfer undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transfer is received or receivable in foreign currency.

¹**Securities transaction Tax** need to be paid on acquisition and transfer in case of such equity shares and only on transfer in case of such unit of equity oriented fund or business trust.

As per Notification No. 60/2018/F. No.370142/9/2017-TPL on 01-10-2018

Following are the nature of acquisitions in respect of which payment of STT is not mandatory:

Transaction Type	Exemption from payment of STT
Acquisition of existing listed equity share in a company whose equity shares are not frequently traded on a Recognized Stock Exchange (RSE) in India through a preferential issue.	Acquisition of listed equity shares: <ul style="list-style-type: none"> • Approved by the Supreme Court, High Court, National Company Law Tribunal (NCLT), Securities Exchange Board of India (SEBI) or Reserve Bank of India (RBI); • By any non-resident under Foreign Direct Investment (FDI) guidelines issued by the Government of India; • Recognized fund, venture capital fund or Qualified Institutional Buyer (QIB); • Preferential issue to which the provisions of Chapter VII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 do not apply.
Acquisition of existing listed equity share in a company not entered through a RSE of India	Acquisition of listed equity shares: <ul style="list-style-type: none"> • By a company through an issue other than preferential issue (e.g., bonus shares); • By scheduled banks, reconstruction or securitization companies or public financial institutions during their ordinary course of business; • Approved by the Supreme Court, High Court, NCLT, SEBI or RBI; • Under employee stock option scheme or employee stock purchase scheme framed under SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999; • By any non-resident under FDI guidelines issued by the Government of India; • Under SEBI (Substantial Acquisition of Shares and Takeovers), Regulations, 2011; • From the government; • By a recognized investment/venture capital fund or QIB; • By modes considered non-taxable transfer under the Act (like an eligible gift, transactions between subsidiary and holding companies, amalgamation, merger, demerger, slump sale, etc.) provided the original owner did not acquire the shares in the modes prohibited in (1) and (2) above

Transfer:

Transfer in respect to

- **equity share** in a company or
- **a unit of an equity-oriented fund** or
- **a unit of a business trust**

will happen on the day when such security is sold in recognised stock exchange by paying securities transaction tax.

Long term capital asset:

A equity share in a company ora unit of an equity oriented fund which are listed is said to be long term capital asset if such security is in ownership of assessee for a period more than 12 months.

Equity oriented fund:

A fund is said to be Equity oriented fund if following conditions satisfy:

- In a case where the fund invests in the units of another fund which is traded on a recognised stock exchange:
 - a minimum of 90% of the total proceeds of such fund is invested in the units of such other fund and
 - such other fund also invests a minimum of 90% of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange.
- In any other case 65% of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange.

Note: Percentage of equity shareholding or unit for this purpose should be calculated as annual average of the monthly averages of the opening and closing figures.

Explanation:

1. First calculate shareholding by average of [% on opening date of month and % on closing date of month]for each month in financial year.
2. Then arrive at Annual average by averaging monthly shareholding as calculated in point 1.

Calculation of capital gain:

Particulars	Amount in Rupees
A. Sale consideration on sale of securities in stock exchange	XXX
B. Cost of Acquisition u/s 55(2)(ac)	XXX
C. Capital gain (A-B)	XXX

Cost of Acquisition u/s 55(2)(ac):

The cost of acquisition of a such security acquired by the assessee before February 1, 2018, shall be deemed to be the higher of following:

- a) The actual cost of acquisition of such asset; or
- b) Lower of following:
 - Fair market value of such shares as on January 31, 2018; or
 - Actual sales consideration accruing on its transfer

Fair market value:

The Fair market value of listed equity share shall mean its highest price quoted on the stock exchange as on January 31, 2018. However, if there is no trading in such shares on January 31, 2018, the highest price of such share on a date immediately preceding January 31, 2018 on which trading happens in that share shall be deemed as its fair market value.

In case of units which are not listed on recognized stock exchange, the net asset value of such units as on January 31, 2018 shall be deemed to be its FMV.

In a case where the capital asset is an equity share in a company which is not listed on a recognised stock exchange as on 31-1-2018 but listed on the date of transfer, the cost of unlisted shares as increased by cost inflation index for the financial year 2017-18 shall be deemed to be its FMV.

For Example: A person purchased 100 shares which are not listed in any recognized stock exchange in March 2003 for Rs. 1,50,000 and same are sold in February 2019 for amount of Rs.8,00,000 which are under listing of NSE. Capital gain calculation for the said shares is as follows:

1. Sale consideration = Rs.8,00,000
2. Indexed cost of Acquisition = $\text{Rs.1,50,000} \times \frac{280}{105} = 4,00,000$
3. Capital gain = $1 - 2 = 8,00,000 - 4,00,000 = 4,00,000$
4. Tax on capital gain = $[4,00,000 - 1,00,000(\text{exemption})] \times 10\% = 30,000$

Exemption available for this Capital gain – Section 54 F:

An assessee need not pay taxes on capital gain arising on sale of said shares or units, if the person satisfies conditions specified under Section 54F.

Section 54F:

In case assessee being an individual or a Hindu undivided family when there is transfer of any long-term capital asset, not being a residential house then assessee can

- purchase a residential house within 1 year before or 2 years after or
- Construct a residential house within 3 years from date of transfer

Then exemption on such capital gain shall be  proportionate amount of sale consideration invested in new residential house.

However,

- Assessee should not possess more than 1 residential house on date of transfer other than new asset purchased.
- Assessee should not purchase within 1 year or construct within 3 year a residential house other than new asset purchased after date of transfer.

Example:

- Mr. Sadguru purchased 100 shares of X Ltd. @ Rs. 500 per share from Bombay Stock Exchange in the month of January, 2014.
- These shares were sold through BSE in April, 2018 @ Rs. 2,600 per share.
- The highest price of X Ltd. share quoted on the stock exchange on January 31, 2018 was Rs. 1,000 per share.

All gains up to 31st January, 2018 will be grandfathered.

Taxable capital gain:

Capital gain = Sale value – Cost of Acquisition

Particulars	Amount in Rs	Amount in Rs
Sale consideration		2,60,000
Less: Cost of acquisition		
(a) Actual cost	50,000	
(b) Lower of FMV or Sale consideration	1,00,000	1,00,000
Capital gain		1,60,000
Tax on Capital gain	(1,60,000-1,00,000)*10%	6,000

In the following cases Mr. Sadguru has option for Capital gain Tax exemption u/s 54F

- If he purchases a house property within 2 years from date of transfer i.e. within March 2020 of value not less than 2,60,000 or
- If he constructs a house property within 3 years from date of transfer i.e. within March 2021 of value not less than 2,60,000.

In the same example if sale consideration is Rs.2,00,000 then calculation of tax on such capital gain is as follows:

Particulars	Amount in Rs	Amount in Rs
Sale consideration		2,00,000
Less: Cost of acquisition		
(a) Actual cost	50,000	
(b) Lower of FMV or Sale consideration	1,00,000	1,00,000
Capital gain		1,00,000
Tax on Capital gain	$(1,00,000 - 1,00,000) * 10\%$	NIL

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FEMA

FEM (GURANTEES) REGULATIONS, 2000

Contributed by Sailaasya. N& Vetted by CA Bharani & CA Murali Krishna |

A Guarantee can be termed as “a tri-party agreement under which a third-party (the guarantor) agrees to be directly or collaterally responsible for the obligation of a first-party (the principal) to a second-party (beneficiary) in case the first-party defaults or fails to fulfil its part of a deal.”

The types of guarantees can be mainly divided into two types: financial guarantee and performance guarantee. Normally, the guarantor would have interest either in the principal obligor or the contract in relation to which the guarantee is given.

Guarantees in relation with cross-border transactions are sought to be regulated/restricted because their invocation would entail outflow of foreign exchange from India. Accordingly, RBI being foreign exchange regulator of India monitors such guarantees in foreign exchange through Foreign Exchange Management (Guarantee) Regulations, 2000, as amended from time to time.

Except as otherwise provided in the Foreign Exchange Management Act, 1999 (**FEMA**) and/or the rules/regulations made under the FEMA, undertaking, sale or drawal of foreign exchange to or from an authorised person for capital account transactions is prohibited in Regulation 4 of the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.

Under FEMA, capital account transaction" means a transaction which alters the assets or liabilities, including **contingent liabilities**, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6. Capital account transactions include issuance of guarantees and expressly the issuance of guarantees are specified as a permissible capital account transaction under FEM (CAT) regulations. However, this is subject to the other related provisions/ rules/ regulations issued thereunder.

The restrictions and conditions provided in the guarantee regulations are explained below.

Regulation 3 of Guarantee Regulations provides for a blanket prohibition, with few exceptions specified as below;

“Save as otherwise provided in these regulations, or with the general or special permission of the Reserve Bank, no person resident in India shall give a guarantee/surety/undertake any transaction which has effect of guaranteeing

- *a debt/obligation/other liability*
- *owed by a person resident in India to a person resident outside India or*
- *incurred by a person resident outside India.”*

By analysing the above lines, it can be understood that

- i. Unless expressly permitted by the regulations, no person resident in India can give any guarantee involving foreign exchange.
- ii. These regulations prohibit only a person resident in India from giving guarantee, which also means that it does not expressly prohibit the person resident outside India from giving guarantee (irrespective of the residential status of the principal obligor and beneficiary)
- iii. They do not prohibit the person resident in India from giving guarantee if both the principal obligor and beneficiary are residents in India.
- iv. The prohibitions are laid only when either or both of the parties of the original transaction (principal obligor and beneficiary) are person resident outside India, and when on such transaction, guarantee is given by a person who is resident in India.
- v. That such guarantee is in relation to any debt or obligation or other liability by person resident in India.
- vi. It may also be noted that the Authorised Dealer ("AD") under FEMA is also a person resident in India.

Regulations provide guidelines for guarantees issued by "Authorized Dealers" and "Other than Authorized Dealers" which are as follows:

Guarantee by an AD

a. On behalf of a person resident in India

- i. In cases, where a resident person on account of exports owes to a person resident outside India which can be a debt or other obligation, AD can give guarantee on behalf of such exporter in favour of the person resident outside India. Usually, the type of guarantee or commitment that is given in this case on behalf of an exporter will be performance guarantee.
- ii. An AD can give guarantee on behalf of a resident importer for the debt owed to an overseas supplier/ bank/ financial institution. These imports can be either normal imports or import on deferred payment terms. For normal imports, an AD can also give guarantee in other forms such as LoU or LoC. But in case of imports with deferred payment terms, such guarantee shall be in accordance with approval of RBI.
- iii. A guarantee can be given by AD in respect of obligation in relation with payment of margin money by a person resident in India to the other party who is a person resident outside India in a commodity hedging transaction, which is approved. In simpler terms, commodity hedging is an attempt to protect from/ offset the risk of any adverse price movements of commodities by taking the opposite position in the futures market. Margin money is a deposit or a down payment to be made and to be maintained to enter into the contract so as to ensure that there is enough money in the account to settle the trade if any loss is incurred.

b. On behalf of a person resident outside India

- i. AD can give guarantee on behalf of a person resident outside India even if such person's debt is owed to a person resident in India. However, such guarantee given should be backed up with a counter guarantee given by a non-resident bank of international repute.
- ii. In case of exports, where the overseas buyer mandates guarantee by local banks, then AD can also give a counter guarantee to cover the guarantee issued by his branch outside India on behalf of a person resident in India.
- iii. AD can give guarantee on behalf of a person resident outside India acquiring shares/convertible debentures of Indian company, if such transactions on which guarantee is given in compliance with SEBI regulations and the guarantee is covered by the counter guarantee by a non-resident bank of international repute.

c. In its ordinary course of India : An AD can give guarantee to customers in the ordinary course of business relating to authenticity of signatures, relating to the travellers cheques stocked for sale in India, in favour of IATA/ Foreign airlines on behalf of approved travel agents, etc.**Guarantee by a person other than AD**

- a. An exporting company which is a resident can give guarantee about the performance of a project outside India to obtain funds from an outside bank. It can also give guarantee for bidding contracts and executing them that it will undertake the contract as per the terms (bid bond guarantee).
- b. An Indian party which has a joint venture / wholly owned subsidiary outside India, established in line with FEM (Transfer or issue of any foreign security) Regulations 2004 ("Overseas Direct Investment Regulations - ODI") to or on behalf of
 - i. Such joint venture or subsidiary
 - ii. First generation step-down operating subsidiary
 - iii. Second and subsequent step – down operating subsidiary

In case guarantee is provided to second and subsequent step-down subsidiary, the entity giving guarantee should indirectly hold at least 51% or more stake.

The value involved in such guarantees to joint venture / wholly owned subsidiary should be within the overall limit of 400% of net worth of the entity giving such guarantee.

- c. An AD can also issue guarantee in favour of overseas lender on behalf of a resident for securing an External Commercial Borrowing as per applicable FEMA regulations.

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COMPANIES ACT, 2013**RULES, CIRCULARS, NOTIFICATIONS AND ORDERS ISSUED IN THE MONTH OF JUNE-2019****RULES****➤ The Companies (Incorporation) Sixth Amendment Rules, 2019, Dt: 07.06.2019.**

Vide the said rules, the Central Government has made amendments to the Companies (Incorporation) Rules, 2014 (principal rules), in principal rules in rule 19 the words "Form INC-12" is substituted with "Form INC-32 (SPICe)", which provides that for Incorporation of a company with Charitable objectives under Section 8, no separate application needs to be filed in Form INC-12, for grant of Section 8 Licence, and has been integrated in Form INC-32 (SPICe) i.e., incorporation form.

Accordingly, in line with the above change, while making the application for grant of Licence in Form INC-32, the application shall be accompanied by "memorandum" unlike "the draft memorandum", which was to be submitted in INC-12.

The rules shall be effective from 15.08.2019.

http://mca.gov.in/Ministry/pdf/Rules_07062019.pdf

CIRCULARS**➤ General Circular No.7, Dt: 27.06.2019 – Filing of Form DIR-3 KYC:**

Vide the said General Circular, the Ministry has clarified that based on representations received from various stakeholders relating to filing of DIR-3 KYC, the Ministry is proposing to introduce a simple web-based verification service for the persons who have already filed DIR-3 KYC, for ease of verification by the concerned person.

In case the person wishes to update mobile no. or e-mail address, he would be required to file e-form DIR-3 KYC only, in case of updating of any other personal details e-form DIR-6 may be filed.

http://mca.gov.in/Ministry/pdf/GeneralCircular_27062019.pdf

NOTIFICATIONS**➤ Amendment of Schedule VII of the Companies Act, 2013, Dt: 06.06.2019.**

Vide the said notification, the Central Government has amended to the Schedule VII "Activities which may be included by companies in their Corporate Social Responsibility policy", by adding the activity of "Disaster management, including relief, rehabilitation and reconstruction activities".

http://mca.gov.in/Ministry/pdf/Notification_06062019.pdf

ORDERS

// No Orders were issued during the month. //

*These updates are contributed by CS D V K Phanindra of SBS and Company LLP, Chartered Accountants.
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SATURDAY SESSIONS

S.No.	Event	Date	Speaker	Venue
1	Overview on GSTR 9C	06/07/2019	Sukanya. B	SBS - Hyd
2	FEM (Acquisition and Transfer of Immovable Property in India) Regulations, 2018		Sai Laasya. N	SBS - Hyd
3	Basics on Tally	13/07/2019	Ravi Raju D	SBS - Hyd
4	An insight into IL&FS case		Suma. B	SBS - Hyd
5	Refund under GST laws – Part II	20/07/2019	Divya. S	SBS - Hyd
6	Insolvency and Bankruptcy Code, 2016		Arun. T	SBS - Hyd
7	Panel Discussion on Interns Digest article	27/07/2019	-	SBS - Hyd
8	SA 570_Going concern		Monika. A	SBS - Hyd

SESSION TIMINGS: 2:30 to 4:30 PM***Accelerated Assessment - Monika******Concept of reverse charge under GST - Gnaneswar******Insights of Place of Supply- Part I - CA. Sai Ram******FEM (Export of goods and services) Regulations, 2015 - Sauchit******MAT Credit us 115JB of IT Act,1961 - Varun******Residential Status Under IT Act, 1961 - Raviteja******SA 260 Communication with TCWG - Suma******TCS provisions under IT Act, 1961 - Varshitha***



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