



*16<sup>th</sup> September, 2019,*

**Shri Ajay Bhushan Pandey**  
**Revenue Secretary, Government of India**  
North Block, New Delhi - 110001  
Email: [rsecy@nic.in](mailto:rsecy@nic.in)

**Copy to:**

- Chairman, Central Board of Indirect Taxes and Customs (CBIC)
- Members GST, Central Board of Indirect Taxes and Customs (CBIC)
- All Chief Commissioner – CGST
- All Commissioner – SGST & UGST

**Sub: Role of Chartered Accountants and Auditors - Complaint  
against Summoning of Chartered Accountants (Cas) and seeking working papers.**

Dear Sir,

We wish to draw your kind attention to a serious issue which has been brought to our notice recently by some of our members in practice in India and conducting audit of companies and other tax payers.

You are kindly aware that the Chartered Accountants are regulated as a profession by the Institute of Chartered Accountants of India and are subjected to a very tough code of Ethics and Disciplinary requirements, in terms of The Chartered Accountants Act, 1949 (passed by Parliament of India).

**Statutory Audit**

The Chartered Accountants conduct their Audit in terms of mandatory Standards on Auditing (SAs) duly notified on terms of law and the Auditor are required to issue a report in terms of statutory requirement.

**Contact**

**All INDIA CHARTERED ACCOUNTANTS' SOCIETY**  
**4696, Brij Bhawan, 21-A, Ansari Road, Darya Ganj, New Delhi – 110002**



The following extract from their standard report are important to be noted:

### **Managements Responsibility**

*“.....The Company's management and Board of Directors are responsible for the matters stated in Section 134(5) of the Act with respect to the preparation of these financial statements that give a true and fair view of the financial position, financial performance, and cash flows of the Company in accordance with the accounting principles generally accepted in India, including the Accounting Standards specified under Section 133 of the Act. This responsibility also includes maintenance of adequate accounting records in accordance with the provisions of the Act for safeguarding of the assets of the Company and for preventing and detecting frauds and other irregularities; selection and application of appropriate accounting policies; making judgments and estimates that are reasonable and prudent; and design, implementation and maintenance of adequate internal financial controls that were operating effectively for ensuring the accuracy and completeness of the accounting records, relevant to the preparation and presentation of the financial statements that give a true and fair view and are free from material misstatement, whether due to fraud or error.*

*In preparing the financial statements, management and Board of Directors are responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Company or to cease operations, or has no realistic alternative but to do so.*

*Board of Directors is also responsible for overseeing the Company's financial reporting process.....”*

### **Auditor's Responsibilities for the Audit of the Financial Statements**

*“.....We conducted our audit in accordance with the Standards on Auditing (SAs) specified under Section 143(10) of the Act.*

*Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that*

#### **Contact**

**ALL INDIA CHARTERED ACCOUNTANTS' SOCIETY**

**4696, Brij Bhawan, 21-A, Ansari Road, Darya Ganj, New Delhi – 110002**



*an audit conducted in accordance with SAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.....”*

### What is Audit?

*“.....As part of an audit in accordance with SAs, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:*

- ***Identify and assess the risks of material misstatement** of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.*
- *Obtain an understanding of **internal control** relevant to the audit in order to design audit procedures that are appropriate in the circumstances. Under Section 143(3)(i) of the Act, we are also responsible for expressing our opinion on whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls.*
- *Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.*
- *Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditors' report. However, future events or conditions may cause the Company to cease*

### Contact

ALL INDIA CHARTERED ACCOUNTANTS' SOCIETY

4696, Brij Bhawan, 21-A, Ansari Road, Darya Ganj, New Delhi – 110002



*to continue as a going concern.*

- *Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.*

*We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.*

*We also provide those charged with governance with a statement that we have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on our independence, and where applicable, related safeguards.....”*

### **Role of Auditors- A factual brief**

It may be noted from the Auditing Standards (which are mandatory in terms of the Companies Act, 2013 and are based on the International Standards on Auditing) that:

- **Test Check:** The Auditors are not expected to check 100 percent transactions and have to rely on test check based on Standards on Auditing (SA) on sampling.
- **True and Fair:** Auditor's primary focus is on that the financial statements show a true and fair view of the financial position and profitability.
- **Free from Misstatement:** Auditor's emphasis is on ensuring that the financial statements are free from material misstatement due to fraud or error.
- **Internal Control:** Auditors examine in detail the internal financial control.
- Auditors do not guarantee nor warrant that there will be no fraud or error and are expected to bring in their report any material fraud or error which comes to their notice during the course of their Audit.
- **Documents and Facts:** Auditors are not available to witness physical operations and have to primarily rely on documents and facts on record.
- **No Access to Third parties:** Auditors have no physical access to suppliers, customers and other stakeholders records except to the extent available with the entity being subject to Audit.

### **Contact**

**All INDIA CHARTERED ACCOUNTANTS' SOCIETY**

**4696, Brij Bhawan, 21-A, Ansari Road, Darya Ganj, New Delhi – 110002**



- **Physical Operations:** Auditors cannot physically verify the actual level of physical operations, movements of goods and services except to the extent those are recorded. The transactions or operations or facts which are not brought on record may not even come to the notice of Auditors except when he is able to have access to third party records and banking and other transactions undertaken by third parties.
- Auditors are not expected to question the judgment or management style or various business and operational decisions of those charged with Governance or Board of Directors.
- While Audit ensures substantial improvement in financial and fiscal discipline, Auditors can only report on efficacy of internal financial controls, even operations and operational controls are outside their ambit. The Auditors can review standard operating procedures and delegation of financial powers; however, the Audit presently can only suggest improvements and point out weaknesses in such control aspects.
- Auditor has to rely on agreements, invoices, entries in stock records, transactions as recorded for consumption and production, dispatch and different vouchers, supporting documents, explanations and books of accounts and records unless he has reason to believe otherwise. “Auditor is a watch dog and not a blood hound” and is required to rely on the submissions as made, with professional skepticism.
- The Audit is different as compared to investigation or Forensic undertaken by investigative agencies that work in the environment of suspicion and have to challenge each and every document or basis.
- Auditor has no access to how the goods or services or funds given or received from third parties are dealt with by the third parties in their books of accounts or businesses and the apparent agreement and purpose as on record of the client is actually final as far as Auditors are concerned. Auditor is actually required to undertake only a cold review and not a hot review by interacting with third parties or with their bankers and other stake holders.
- The Auditors do ensure that books of accounts are reconciled with the returns filed with tax departments.
- The Events occurring after the balance sheet date including the developments and facts arising later are not in the knowledge of the auditors at the time of audit.

#### Contact

**All INDIA CHARTERED ACCOUNTANTS' SOCIETY**

**4696, Brij Bhawan, 21-A, Ansari Road, Darya Ganj, New Delhi – 110002**



**Confidentiality**

The Auditors have a fiduciary relationship with the client company and is legally bound to keep their affairs confidential. In this regard following clause forming part of the Chartered Accountants Act, 1949 is very relevant:

“.....**PART I OF SECOND SCHEDULE**

*Professional misconduct in relation to chartered accountants in practice:*

*A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –*

*Clause (1): discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force;.....”*

**Audit Notes and Working Papers are Classified Privileged and Confidential information**

The Parliament of India has recognized a very important fact in terms of The Chartered Accountants Act that the Auditor’s information has to be kept strictly Confidential unless otherwise required by law specifically in terms of direct powers to examine or review Auditor’s records and working papers, the working papers and Audit files are privileged and Confidential information.

**Code of Ethics**

The code of Ethics issued by The Institute of Chartered accountants of India in terms of their statutory powers delegated specifically by Parliament to the Institute, is mandatory for Chartered Accountants. This Code of Ethics and Code of Conduct is based on internationally approved Code of ethics as approved by more than 135 countries and International Federation of Accountants.

The Code of Ethics prescribe as follows:

*“.....However, the auditor may, at his discretion, in cases considered appropriate by him, make portions of or extracts from his working papers available to the client.*

**Contact**

**All INDIA CHARTERED ACCOUNTANTS' SOCIETY**  
**4696, Brij Bhawan, 21-A, Ansari Road, Darya Ganj, New Delhi – 110002**



*There is a difference between sharing of working papers and sharing of information. So far as the information is concerned, he can provide the same to the client or to a Regulatory body after obtaining the consent of the client.*

*If under any legal compulsion and if it is not legally permissible to claim privilege under the Evidence Act, 1872 (S.126), the disclosure made by a member of such information may not be considered as misconduct. However, such matters involve niceties of law and expert legal advice may be sought prior to such disclosure.....”*

### **CAs prohibited to share information**

You may kindly note that the Chartered Accountants are prohibited to share information and data and in respect of their clients being privileged information unless so required specifically by any law in force or by a specific direction issued by a court of law or specific information. A specific provision of law is required mandating that the working papers are to be disclosed to a specified person or authority.

This power cannot be even assumed in Rule making or under delegated legislation or generic powers of government or tax officials, as per the specific provisions of The Chartered accountants Act.

### **Working Papers:**

The Working papers are defined in SA 230 – Audit Documentation as

*“The record of audit procedures performed, relevant audit evidence obtained, and conclusions the Auditors reached.”*

The law do not contemplate or specifically empower, any person to seek copies of working papers or business processes or confidential trade information or business secrets of clients forming part of the working papers. Also the Audit methodology, documentation, software and Audit process is an intellectual property right of an Auditor as this enable the Auditor to identify potential areas of concern and action needed in the interest of entity and all stake holders. Any such disclosure may be misused by competitors or by those who need not know business processes and business secrets. **The Auditors are in any case duty bound to report any fraud coming to their notice to Ministry of Corporate Affairs in terms of The Companies Act, 2013 and with RBI in case of banking sector.**

### **Contact**

**All INDIA CHARTERED ACCOUNTANTS' SOCIETY**  
**4696, Brij Bhawan, 21-A, Ansari Road, Darya Ganj, New Delhi – 110002**



**Working papers access is completely prohibited**

The Chartered Accountants are completely prohibited to share their working papers, which are completely proprietary in nature and highly privileged information, data and intellectual property rights of CA in the interest of trade and industry.

**Submission concerning conduct of the CGST department and SGST department**

It is submitted that the Audit Working papers are not a repository of the client data and documents, even if some of them are furnished to the auditor in connection with the completion of the audit. The papers are to be kept confidential and to be used by the auditor to demonstrate that it applied its mind and conducted the audit in accordance with the relevant auditing standards and guidelines when completing the audit if a query is received from its relevant regulator such as the ICAI.

In that background for tax and other such authorities to call upon the auditor to appear before them to produce its working papers for information they are seeking for tax assessments has never been contemplated nor expected. It is an unfair and unreasonable transgression into the privacy and confidentiality of the data that has been provided to the auditor for completely different purposes. It is also an unfair treatment of the professional by calling him and keeping him or her waiting for hours for matters they are not responsible for and for which the management of the company which is being assessed is responsible for. Despite this position, it has been brought to our notice that the GST officials at the level of Superintendent or Assistant/Deputy/Joint Commissioner level are:

1. Issuing summons to Chartered Accountants and Auditors, asking for personal presence in the office of GST Departments..
2. Auditors are being summoned from distant locations, many times even from 1500km away from the GST office.
3. Many such officials are forcing Chartered Accountants to stay in their offices till late night hours and for long hours in office.
4. The entire exercise is initiated in the garb of recording statements and practically neither any relevant questions are posed nor any specific information or data of the client is confronted to Auditors.
5. A number of officers, during the course of recording the statement, pressurise the Auditors to commit that all working papers of the client and Audit documentation must be shared with the officials.

**Contact**

**All INDIA CHARTERED ACCOUNTANTS' SOCIETY**

**4696, Brij Bhawan, 21-A, Ansari Road, Darya Ganj, New Delhi – 110002**





## **Special Request**

You are requested to kindly provide us an opportunity to come and meet you personally to explain the harassment and tax terrorism created in the aforesaid process, against the Auditors with clear misuse of provision of law. You may in the meanwhile, kindly advise all the officers under your kind supervision and control to:

1. Not to physically summon any Chartered Accountants/Auditors.
2. All information, which is required by them, can be listed by them in electronic communication duly disclosing the section, clause and rules or notification in accordance with which the information is being sought. This should not include IPR, Audit technology, methodology used by the auditor as that may be proprietary.
3. Preferably all information and data in respect of a tax payer should be sought from the tax payer only. In case the department is not able to seek any such information or record then , the Auditors as a profession will be fully willing to pass on such documents or factual information of the client to the tax officers, provided the same is sought in a clear unambiguous manner electronically with the requisite approval being taken from a senior officer recording reasons as to why the information is being sought from the auditor rather than from the assessee. As an example, only Chief Commissioner-CGST or Commissioner-SGST be permitted to give approval for seeking such information or seeking a copy of documents, which along with reasons recorded in writing may need to be supplied to Auditors concerned, in terms of a proper legal mandate, so that the provisions of The Chartered accountants Act are respected and followed in letter and spirit, being binding in nature.
4. It may be noted that Auditors are not required nor expected to keep copies of client documents, except to the extent considered important as Audit evidence. Actually most of the information is examined and notes are taken where necessary. The documents and extract of books of accounts of clients are obtained only as an exception. The Entity under Audit may have truck load of papers and documents and information and any attempt to keep entire back up or copies is actually an undesirable practice. The Auditors will only have data or information relating to sample tested by them.

### **Contact**

**All INDIA CHARTERED ACCOUNTANTS' SOCIETY**

**4696, Brij Bhawan, 21-A, Ansari Road, Darya Ganj, New Delhi – 110002**



[www.taxguru.in](http://www.taxguru.in)

**ALL INDIA CHARTERED ACCOUNTANTS' SOCIETY**

503, Chiranjiv Tower, 43, Nehru Place, New Delhi – 110019

M: +91-11-26223712, 6933, 8410 | [aicas.cfo@gmail.com](mailto:aicas.cfo@gmail.com)



We wish to hereby confirm and affirm that the profession of Chartered Accountants is committed to integrity, ethics and total compliance of Indian laws and regulations and we as your partner in collection of right taxes and duties will always support your endeavor.

We look forward for an urgent action on our request and also an appointment to meet your goodself on priority.

Kindly allow us time to make our presentation in National interest.

Thanking You,

Yours Sincerely

For & On behalf of **All India Chartered Accountants Society**

Chhaya Arya

Secretary

**Contact**

**All INDIA CHARTERED ACCOUNTANTS' SOCIETY**

**4696, Brij Bhawan, 21-A, Ansari Road, Darya Ganj, New Delhi – 110002**