

**FREQUENTLY ASKED QUESTIONS ON CERTAIN REVISED PROVISIONS OF VOLUME-I OF CODE OF ETHICS APPLICABLE FROM 01.10.2022**

**Fees – Relative Size (Paragraphs 410.3 to R410.6)**

**Q 1      Whether the total gross annual professional fees from the Audit client be considered inclusive of statutory taxes & levies for the purpose of determining threshold percentage?**

No. For determining threshold percentages, the total annual gross professional fees (“total fees”) from the client will be considered exclusive of all statutory taxes & levies.

**Q 2      Whether out of pocket expenses/reimbursement from the Audit client be included in the total fees from such Audit client for the purpose of determining threshold percentage?**

No. For determining threshold percentages, out of pocket expenses/reimbursement from the Audit client cannot be included.

**Q 3      Whether the total fees from the Audit client includes fees received for other services also?**

Yes. All fees received from the Audit client and its related entities, including fees for the audit of the financial statements and for services other than audit, are included in the total fees from the Audit client.

**Q 4      Whether the provisions of fee-relative size will be applicable in case of internal audit?**

No. The provision of this section is applicable to Audit engagement which refers to reasonable assurance engagement in which a professional accountant in public practice expresses an opinion whether financial statements are prepared, in all material respects (or give a true and fair view or are presented fairly, in all material respects), in accordance with an applicable financial reporting framework, such as an engagement conducted in accordance with Standards on Auditing. This includes a Statutory Audit, which is an audit required by legislation or other regulation.

**Q 5 Whether audit fees and other ancillary fees received from the subsidiary company of the Audit client will be included in the total fees from the client for determining threshold percentage?**

Yes. The total gross annual professional fees ("total fees") includes the audit fees and fees for other services received from the subsidiary company of the Audit client for determining threshold percentage.

**Q 6 When determining the fees dependence, which period should be reckoned to determine the fees charged to the Audit client?**

The Fees charged during the financial year covered by the audit of financial statements for the said year will be reckoned for the purpose of the calculating the threshold percentage.

**Q 7 How to determine total gross professional fees of the firm for the purpose of calculating percentage of dependence to the Audit client?**

The total fees of the firm including the audit fees and other professional fees from all the clients of the firm as per their books of account in the financial year preceding the financial year for which the re-appointment has been made shall be calculated to determine total gross professional fees of the firm.

e.g. When re-appointment is made as statutory auditor for the financial year 2023-2024; one has to calculate percentage of total fees received from that client and it's related entities for the financial year 2021-2022 and 2022-2023. If such percentage exceeds the threshold percentage, then the provisions of fees-relative size will be applicable.

**Q 8 Is there a particular method a firm should use to determine fee received from an Audit client (e.g., fee quoted, charged, or paid)**

Fees received from the Audit client as appearing in the Books of Account of the Firm for a financial year will be taken into accounts.

**Q 9 Whether the fees received from the exempted entities will be included for calculation of total fees of the firm.**

Yes. The audit fees and fees from other services received (as per the books of accounts) from the audit of government Companies, public undertakings, nationalised banks, public financial institutions or where appointments of auditors are made by the Government or Regulators will be included in determining the total fees of the firm.

- Q 10** **What does it mean by “fees received by the firm for other services rendered through the medium of a different firm....”?**  
The fees received by the firm f for other services performed through firm(s) being part of Network registered with the Institute will also be included in the total fees of the firm.
- Q 11** **Does the provision require the disclosure to the Institute only in the third financial year of the fee dependency?**  
Yes, the disclosure to the Institute is required from third financial year onwards if the fees continue to exceed prescribed threshold percentage after two years. The firm shall each year, made disclosure to the Institute to this effect.
- Q 12** **If threshold percentage continues to exceed for two years, when the disclosure shall be made to the Institute?**  
The firm after receipt of appointment letter for 3<sup>rd</sup> year of audit engagement shall make disclosure to the Institute by the end of the year for which the said appointment has been made i.e. upto 31<sup>st</sup> December of the 3<sup>rd</sup> year.
- Q 13** **Whether the disclosure should be made even if there could be possibility that in third year the threshold may not be breached ?**  
Yes. The disclosure is a self-declaration to ensure audit quality and independence for the third year and thereafter.
- Q 14** **In cases where the auditor appointment was made before 01.10.2022, whether disclosure is required by the firm to the Institute after 01.10.2022 if the firm is required to disclose to the Institute as per the provisions of fees-relative size ?**  
The provision is applicable from for audits of financial statements for periods beginning on or after 1<sup>st</sup> October 2022. The firm is required to disclose the fact to the Institute if the threshold percentage exceeded the prescribed threshold for two consecutive years and the appointment of auditor was made after 1st October 2022. Thus, in such case firm is not required to disclose the fact to the Institute.
- Q 15** **Is there any format to report to the Institute?**  
The firm is advised to use the format issued by the Institute for making disclosure to the Institute.  
(<https://resource.cdn.icai.org/76429esb61712.pdf>)

**Q 16      What further action is required in case fees dependence continue for another two years after reporting to the Institute?**

If the fees dependence to Audit client continues for another two years after reporting to the Institute, then the Institute shall after consideration of the facts may recommend suitable measures to be adopted.

**TAX SERVICES TO AUDIT CLIENT (SUBSECTION 604)**

**Q 17      Whether auditor can assist the Audit client in the resolution of tax disputes if the matter pending before Income Tax Appellate Tribunal?**

It may be noted that as per paragraph 604.11 A2, Court" does not include a Tribunal However, reference in this regard may be made for guidance to provision of Paragraph R604.11 which prohibits auditor to provide tax services that involve assisting in the resolution of tax disputes to an Audit client if the services involve acting as an advocate for the Audit client before a court in the resolution of a tax matter; and the amounts involved are material to the financial statements on which the firm will express an opinion.

**Q 18      Can the tax services which involve valuations be provided to the Audit client?**

A firm shall not perform a valuation for tax purposes for an Audit client that is a public interest entity if the valuation service would have a material effect, individually or in the aggregate, on the financial statements on which the firm will express an opinion. Examples of tax services involving valuation includes Merger and acquisition transactions, Group restructurings and corporate reorganizations etc.

It may also be noted that a firm shall not perform a valuation for tax purposes for an Audit client that is a non-public interest entity, if the valuation involves significant degree of subjectivity and have material effect on financial statements.

**Q 19      Whether auditor can file income tax returns and other forms of Audit client?**

Assisting clients with their tax reporting obligations by drafting and compiling information, including the amount of tax due (usually on standardized forms) required to be submitted to the applicable tax authorities does not usually create threat.

Also, members are expected to take note of sub section 602 of Volume-I of Code of Ethics regarding providing 'Administrative Services' to Audit clients.

**Q 20 Whether auditor can provide recommendations to Audit clients on tax calculation of current and deferred tax liabilities?**

Auditor shall not prepare tax calculations of current and deferred tax liabilities of Audit client that are public interest entities. However, auditor can review the same prepared by the clients and advise appropriately.

**RESPONDING TO NON-COMPLIANCE WITH LAWS AND REGULATIONS ("NOCLAR")**

**PROFESSIONAL ACCOUNTANTS IN SERVICE (SECTION 260)**

**Q 21 What is meaning of "listed entities" for the purpose of section 260?**

"Listed Entities" refers to an entity whose shares, stock or debt are quoted or listed on a recognized stock exchange, or are marketed under the regulations of a recognized stock exchange or other equivalent body.

**Q 22 Does Section 260 of Volume-I of the Code of Ethics apply to employees in Chartered Accountants Firms?**

No. The provision of this section is applicable to Senior Professional Accountants of Listed entities only.

**Q 23 Paragraph 260.3 of Volume-I of the Code of Ethics indicates that a Professional Accountant might encounter or be made aware of NOCLAR or suspected NOCLAR in the course of carrying out professional activities. What is the significance of distinguishing between encountering NOCLAR or suspected NOCLAR and being made aware of it?**

The Code recognizes that a Professional Accountant might encounter (i.e., come upon unexpectedly) NOCLAR or suspected NOCLAR while carrying out the Professional Accountant's duties with the employing organization. It also recognizes that another party might bring the matter to the Professional Accountant's attention, for example, another employee of the organization or an external contractor used by the organization. Section 260 covers both circumstances.

**Q 24 A Senior Professional Accountant becomes aware of a breach of a law by an entity with which he has no employment relationship, whether contractual or otherwise. Does he has any responsibility to respond to the matter under Section 260 of the Code?**

No. As the Professional Accountant has no employment relationship with the entity and is otherwise not working under the direction of the entity, Section 260 does not apply.

**Q 25 Does Professional Accountant require to respond to acts of NOCLAR committed by contractors or agents working for the employing organization, or by non-executive directors of the employing organization?**

Yes. Paragraph 260.5A1 defines NOCLAR to include acts committed by individuals working for or under the direction of the employing organization which are contrary to prevailing laws or regulations. Contractors, agents and non-executive directors are examples of parties who work for or under the direction of an employing organization. In the context of responding to NOCLAR under the Code, it is not necessary that there be a formal employment relationship between the party that has committed the act of NOCLAR and the organization, as might be established through an employment contract.

**Q 26 Do Professional Accountants require to detect acts of NOCLAR within the employing organization?**

No. The Code does not impose any additional responsibility on professional accountants in this regard beyond the responsibility they already have, if they are in a management role, to ensure that the employing organization's business activities are conducted in accordance with laws and regulations. This management responsibility includes identifying and addressing any instances of NOCLAR.

**Q 27 Whether the professional accountants to be able to identify non-compliance with laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the financial statements?**

The professional accountants are expected to have level of understanding of laws and regulations greater than that which is required for the role within the employing organization. Professional accountants who work in a particular field within the employing organization (for example, corporate taxation or finance) need an understanding of laws and regulations relevant to that field sufficient

knowledge to competently carry out their employment duties. In those circumstances, professional accountants are expected to be able to recognize NOCLAR or suspected NOCLAR related to the nature of their particular work if information concerning the matter comes to their attention.

The professional accountant is not expected to recognize NOCLAR or suspected NOCLAR in areas beyond those in which the professional accountant is trained or for which the duties for the employing organization require the application of specialized skills. However, acts of NOCLAR may be concealed. The Code does not require professional accountants to search for NOCLAR.

**Q 28 If a senior professional accountant's becomes aware of NOCLAR or suspected NOCLAR committed by the employing organization in circumstances other than through carrying out the employment duties (for example, by coming across the matter on the internet or hearing about it from someone at a social event), is he is required to take action, such as obtaining an understanding of the matter or discussing it with management or those charged with governance (TCWG)?**

Paragraph 260.12 of the Code requires the senior professional accountant to obtain an understanding of the matter (assuming it is not clearly inconsequential) regardless of the source of the information or how the Professional Accountant became aware of it. This understanding includes an understanding of the nature of the matter and its potential consequences. If based on this understanding, the he suspects an instance of NOCLAR, Section 260 requires the professional accountant to discuss the matter with the immediate superior, if any, in order to determine how to address it. If the immediate superior may be implicated, paragraph 260.13 requires to discuss the matter with a more senior person who is not implicated. This discussion is subject to any internal protocols and procedures regarding how information concerning identified or suspected NOCLAR is to be raised internally.

Section 260 also requires to bring the matter to the attention of TCWG in order to agree an appropriate response and to enable them to fulfill their own responsibilities.

**Q 29 If a senior professional accountant superior and TCWG are unwilling to address the identified or suspected NOCLAR, does this mean that the professional accountant has no further responsibilities with respect to the matter under the Code?**

No. Part of the response framework under Section 260 involves the senior professional accountants assessing the appropriateness of the response of the professional accountants' superiors, if any, and TCWG to the matter. If the superiors and TCWG do not address the matter,

this would be grounds for the professional accountant to conclude that their response is not appropriate. In those circumstances, Paragraph 260.17 requires the professional accountant to determine if further action is needed in the public interest. Paragraph 260.17A1 sets out various factors for the professional accountant to consider in making this determination, including the nature and extent of any such further action.

**Q 30 Professional accountant who is not a senior professional accountant becomes aware of information suggesting that an act of NOCLAR might have been committed by the employing organization. What is the professional accountant required to do under the Code in these circumstances?**

The provisions of responsibilities of professional accountant other than senior professional accountants have not been made applicable as of now. However, if the professional accountant identifies or suspects that the NOCLAR has occurred, he may consider to raise the matter through the organization's internal protocols and procedures addressing NOCLAR or escalate it to the immediate superior.

**PROFESSIONAL ACCOUNTANTS IN PUBLIC PRACTICE (SECTION 360):**

**Q 31 Are the professional accountants in public practice required to comply with the provisions of NOCLAR with regard to all professional assignments?**

The provisions of NOCLAR from the standpoint of professional accountants in public practice are applicable to Audit engagements of entities, the shares of which are listed on recognized stock exchanges(s) in India and have a net worth of INR 250 crores or more. Thus, a professional accountant in public practice has to comply with the provisions of NOCLAR with respect to such Audit assignments.

**Q 32 Are the provisions of NOCLAR applicable in case of tax audit under Income Tax Act, 1961 or any other law?**

No. The provisions of NOCLAR are applicable to Statutory Audit under the Companies Act, 2013 only.

**Q 33 Does the term "During the course of audit engagement" refers to the period of the audit engagement or period covered by the audit of financial statement?**

"During the course of audit engagement" refers to the both engagement period and the period covered by the audit of financial

statements when a professional accountant encounters or be made aware of non-compliance or suspected non-compliance.

**Q 34 Does the Code require Professional Accountants to detect acts of NOCLAR or investigate at their clients?**

No. The Code does not require Professional Accountants to perform procedure to identify acts of NOCLAR at their clients when providing professional services to the clients. It requires a response from Professional Accountants in accordance with provision of NOCLAR provisions when they become aware of NOCLAR or suspected NOCLAR at their clients.

**Q 35 Which laws and regulations, a Professional Accountant needs to consider determining and assess the implication of the matter?**

As per Section 360, Professional Accountant in assessing the implication of the matter when responding to non-compliance or suspected non-compliance with: -

- i. Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the client's financial statements; and
- ii. Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the client's financial statements, but compliance with which might be fundamental to the operating aspects of the client's business, to its ability to continue its business, or to avoid material penalties.

Therefore, a Professional Accountant when encountering or becoming aware of NOCLAR is required to assess the laws and regulations that generally have financial impact as well as laws and regulations that are related to operations of the Audit client.

**Q 36 If there is a change of auditor but the predecessor auditor is aware of an act or suspected act of NOCLAR that has not yet been addressed, does the predecessor auditor have to communicate information concerning the NOCLAR to a proposed auditor?**

Yes, predecessor auditor on request by the proposed accountant pursuant to paragraph R320.8, shall provide all relevant facts and other information concerning the identified or suspected non-compliance to the proposed accountant.

**Q 37 Is the group engagement partner required to take action to address any identified or suspected NOCLAR communicated by those performing work at components for purposes of the**

**audit of the consolidated financial statements, including in circumstances where the components are based in another jurisdiction?**

Section 360 requires a response from the group engagement partner. This response includes, at a minimum, obtaining an understanding of the matter.

However, if the matter is clearly confined to, and is being addressed at, a particular component or components and it has no other implications for the group and its stakeholders, the group engagement partner need not take any further action.

If the component is based in another jurisdiction, then group engagement partner need not take any steps. The provision is applicable to the component listed in India.

**Q 38 During the audit of an entity's financial statements, an auditor becomes aware of suspected NOCLAR committed by the entity. Management, however, disagrees with the auditor regarding the evidence concerning the matter. Does this mean that the auditor need not pursue the matter further under the Code?**

No. The fact that management disagrees with the auditor regarding the evidence concerning the matter is not sufficient ground for the auditor to automatically stop pursuing the matter. The auditor needs to be satisfied that management's explanations adequately dispel the auditor's suspicion. If they do not, the auditor may consider other courses of action, which will depend on the complexity of the matter and extent of judgment involved. These courses of action include, for example, consulting with others within the firm, obtaining advice from the auditor's legal counsel, consulting on a confidential basis with the Institute.

**Q 39 An auditor becomes aware of an instance of NOCLAR shortly before the signing the auditor's report on the entity's financial statements. How does the timing of finalization of the auditor's report affect the auditor's responsibilities under Section 360?**

The auditor's responsibilities under Section 360 are separate and distinct from the auditor's responsibilities under applicable auditing standards as these relate to the performance of an audit. The timing of finalization of the auditor's report therefore does not affect the auditor's responsibilities under Section 360. The auditor must still respond to the NOCLAR in accordance with the provisions of Section 360. This includes complying with applicable auditing standards,

which may stipulate specific audit procedures with respect to finalization of the auditor's report in these circumstances. Applicable auditing standards may, in particular, require the auditor to consider any implications for the financial statements or the auditor's report.

**Q 40 If management and TCWG (those charged with governance) are unwilling to address the identified NOCLAR or suspected NOCLAR, does this mean that the Professional Accountant has no further responsibilities with respect to the matter?**

No. Part of the response framework under Section 360 involves assessing the appropriateness of the response of management and, where applicable, TCWG to the matter. If management and TCWG do not address the matter, this would be grounds for the auditor to conclude that their response is not appropriate. In these circumstances, paragraph R360.20 requires the auditor to determine if further action is needed in the public interest. Paragraph 360.20 A1 sets out various factors for the auditor to consider in making this determination, including the nature and extent of any such further action.

**Q 41 Does the Code impose any responsibilities on the auditor to rectify, remediate or mitigate the adverse consequences of identified or suspected NOCLAR or to deter the commission of NOCLAR?**

No. Rectifying, remediating, or mitigating the adverse consequences of identified or suspected NOCLAR or deterring the commission of NOCLAR are the sole responsibility of management, with oversight from TCWG (those charged with governance). Paragraph R360.13 of the Code only requires the auditor to advise them to take appropriate and timely actions in that regard if they have not already done so.

**Q 42 When a Professional Accountant has determined that further action is needed in the particular circumstances, to whom NOCLAR must be reported?**

If Professional Accountant believes that management is involved in NOCLAR or suspected NOCLAR, Professional Accountant shall discuss the matter with TCWG (as per Section R360.12). In case TCWG is involved, the reporting authority is the relevant regular regulating the subject matter of NOCLAR provided such disclosure is required by law.

**Q 43      What are responsibilities of Professional Accountant in audit of financial statements in public practice?**

When a Professional Accountant in public practice becomes aware of an non-compliance or suspected non-compliance, the following steps are to be taken:

- When professional accountants might encounter or to be made aware of non-compliance or suspected non-compliance during the course of Audit Engagements (see it, but do not seek it)
- He shall Obtain an understanding of the matter of legal or regulatory provisions governing such non-compliance or suspected non-compliance (nature of the act and the circumstance) and discuss with management, may seek legal counsel.
- Addressing the matter- he shall advise the management to TCWG to take timely action (rectify, remediate, mitigate, deter, disclose)
- Communication with respect to groups (for financial statement audit)- Where a professional accountant becomes aware of non-compliance or suspected non-compliance in relation to a component of a group, he shall communicate the matter to the group engagement partner unless prohibited from doing so by law or regulation.
- Determine whether further action is needed- He shall assess the appropriateness of the response of management and, where applicable, those charged with governance (timely response, appropriate steps taken by entity etc consider withdrawing from engagement)
- Determine whether to disclose the matter to appropriate authority if there is legal requirement for the same.
- Documentation – the matter, result of discussion with management or those charged with governance action taken.

**Q 44      What is the purpose of the documentation requirements on Section 360?**

Documentation provides a number of general benefits, including facilitating review of engagement team members' work, enhancing the quality of the professional judgement made through documentation of the thought process, and retaining a record of matters of continuing significance to future engagements. Importantly, the requirement to document the matters helps the Professional Accountant to demonstrate compliance with Section 360, including retaining a record of the professional judgement made and action taken given the information available to the Professional Accountant at the time. Since the non-compliance with the provisions have repercussion under the Chartered Accountants act, 1949, the

proper documentation with the provisions provides the necessary evidence of compliance.

**Q 45 Is there an expectation for an auditor to disclose any identified or suspected NOCLAR to an appropriate authority if management and TCWG have not appropriately addressed the matter?**

The provisions that address disclosure to an appropriate authority (paragraph 360.25 A1 – R360.26) apply to instances of NOCLAR or suspected NOCLAR where there is credible evidence of actual or potential substantial harm to the entity or its stakeholders, including the general public (paragraph 360.20 A1). In other words, such disclosure only becomes a consideration in cases that the auditor determines, based on the particular facts and circumstances at the time and applying appropriate professional judgement, are “serious”. **Disclosure of the matter to an appropriate authority should be taken recourse if there is legal requirement for the same.**

**Q 46 Does the Code require Professional Accountant to respond to acts of NOCLAR committed by contractors or agents working for the clients, or by non-executive directors of the clients?**

Yes, paragraph 360.5 A1 defines NOCLAR to include acts committed by individuals working for or under the direction of a client which are contrary to prevailing laws or regulations. Contractors, agents and non-executive directors are example of the parties who work for or under the directions of a client. In the context of responding to NOCLAR under the Code, it is not necessary that there be a formal employment relationship between the party that has committed the act of NOCLAR and the client, as might be established through an employment contract.

**Q 47 Paragraph 360.3 indicates that a Professional Accountant might encounter or be made aware of NOCLAR or suspected NOCLAR in the course of providing a professional service to a client. What is the significance of distinguishing between encountering NOCLAR or suspected NOCLAR and being made aware of it?**

Professional Accountant might encounter (i.e., come upon unexpectedly) NOCLAR or suspected NOCLAR while performing an audit engagement or providing a professional service. It also recognizes that another party might bring the matter to the Professional Accountant’s attention, for example, another Professional Accountant or an employee of the client. Section 360 covers both circumstances.

**Q 48 Is a Professional Accountant expected under the Code to have specialized legal knowledge and skills unrelated to the engagement?**

No. Professional Accountant is only expected under the Code to have a level of knowledge of laws and regulations necessary for the professional service for which he was engaged.

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