

# ***BHUJ BRANCH OF WIRC OF ICAI***

**E-NEWSLETTER FOR THE MONTH OF NOVEMBER-2018**

**(FOR PRIVATE CIRCULATION ONLY)**

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**Chairman**  
8866583411

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**CA. Jitendra Thacker**

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9879379801

**CA. Bhavee Thacker**

**Imm. Past Chairperson**  
9825227449

**CA. Pradeep Agrawal**

**Branch Nominee**  
9898560967

**CA Jagrut Anjaria**

**Newsletter Advisor**  
9426788728

Address:-

311, Balram Complex, 3<sup>rd</sup> Floor  
Near ICICI Bank, Station Road  
Bhuj-Kachchh  
Phone:-258580  
E-mail:-bhujbranch.wirc@gmail.com



## ***CHAIRMAN'S COMMUNICATION***

Respected Colleagues,

Dear Professional colleagues,

As I write this communication, we the members are out of a few of our important deadlines, our families are just out of festivals and students are about to see through their examinations. It will be a new year for all and a fresh start for professionals and students will take some time off, ponder over what they did and begin to think about how to hone up their skills.

One more vitally important event is just round the corner, the elections to Central and Regional Councils of our institute. I intend to devote this communication to that triennial event that not only recognises our existence and importance as members and also makes us conscious of the role that we are expected to play for the overall furtherance of the profession.

We all are highly qualified professionals and achieved those two precious letters CA after tremendous hard work. Despite all the dedicated hard work by our members may it be by members in industry or in practice, Brand image of our own Alma mater ICAI is being attacked by various agencies and authorities. It's high time to think upon, why this is happening. Is it our own fault or we are simply being targeted and made scape goats for others sake.

Without our active participation neither GST nor IDS or even Demonetization would have been possible. We are true partners in Nation Building and Economic well being of the country though there may be few black sheep in the profession which is inevitable.

## ***CHAIRMAN'S COMMUNICATION***

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Friends to see that our Institute continues to be as glorified as it has been for decades we also have some responsibilities towards this.

Though being highly qualified many of us do not even cast their vote in ICAI Elections and then we cry for foul play. Our livelihood, our dignity, our identity and even our family is having direct correlation with the well being of our mother institute. We can't remain unaffected.

My sincere request is kindly take some time out of our busy schedule to evaluate the candidates on various parameters based on your personal experiences and reference checks and after selecting the right candidate in order of preference just exercise your franchise. \*It's our Institute let's care for this by voting and electing the Right person.

Coming back to normal business, with December approaching, we intend to focus on CPE events. We intend to begin with a Nine Hour CPE event during the second half of September and continue to carry the momentum into the month December. With active cooperation of you all, we hope to succeed in this endeavour.

Wishing you all a very happy and healthy new year;

***CA DARSHAN KHANDOL***  
***Chairman, Bhuj Branch of WIRC of ICAI***

## **GST: ANNUAL RETURN AND AUDIT: QUEER QUESTIONS, UNCERTAIN ANSWERS**

**CA Jagrutkumar Avinash Anjaria**

**B.Com., FCA, DISA (ICAI)**

**CA Jeel Dineshbhai Shah**

**B.Com., ACA**

*Audit under GST Law rests on the following pillars;*

1. *Section 35(5) of the Act*
2. *Section 44(2) of the Act*
3. *Rule 80(3) of the Rules*
4. *Form No GSTR 9C*
  - a. *Verification part, and*
  - b. *Certification part*

*These four pillars cover everything that is there in GST with reference to Audit in particular.*

*GST is not the first or the only legislation that talks about or requires AUDIT. There are other legislations also which carry a requirement of getting accounts audited, the prominent legislations that come to mind are the Company Law and the Income Tax Act.*

*The way GST Audit has evolved during last few months, it does give an impression that the procedural modalities of it are mainly derived from or designed in line with the Audit under section 44AB of the Income Tax Act. The way "Certification" part of the Form GSTR 9C is designed is a major pointer leading to this impression.*

*When audit regime as a whole, under the GST regime, is compared with the provisions that are contained in other statutes, mainly The Company law and the Income Tax Act, there are a few questions that present themselves which are difficult to understand and answer. The questions are of "mere technical" relevance, still they may interest someone interested in reading and interpreting nuances of law. In this article a few of such 'QURRE QUESTIONS' are sought to be discussed.*

*Before we proceed further, let us reproduce the text of the sections and rule that govern the Audit mechanism in the GST regime;*

### **SECTION 35(5)**

*"every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation*

*statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed”.*

### SECTION 44(2)

“every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed”.

### RULE 80(3)

“every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of the audited annual accounts and a reconciliation statement, duly certified, in GSTR 9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner”.

### *Question 1:- WHERE DOES THE AUDIT REPORT FORM COME FROM?*

*If we examine the provisions of other laws that mandate audit of the accounts, all of them do refer to report in one way or the other and go on to either elaborate about the contents of such report or explicitly provide that such contents will be notified in due course.*

*If we refer to Section 143 of the Company Act, 2013, at sub section (2) it states that “the auditor shall make a report to the members . . .” That subsection go on to talk about the contents of such a report and at the end also makes a reference to “. . . and such other matters as may be prescribed.”*

*If we visit section 44AB of the Income Tax Act, that section says, ‘Every person . . . get his accounts . . . audited by an accountant . . . and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.’*

*Continuing with the Income Tax Act, there are a cluster of sections that give certain relief or deduction or concession. We take Section 80-IA as a representative of all such sections. If we read sub section (7) of that section, it states that “The deduction under sun section (1) . . . unless the accounts of the undertaking . . . have been audited by an accountant . . . and the assessee furnishes . . . the report of such audit in the prescribed form duly signed and verified by such accountant.”*

*It can be seen that all the three sections operate in the following sequence;*

- 1. They require audit to be conducted*

2. They talk about report to be made up of the audit carried out
3. They talk about what that report should contain
4. They keep the window open to ask for something more as a report of audit by using the words to the effect “as may be prescribed” or like
5. They talk about signing and verifying the report.

Now if we read section 35(5) of the GST, it simply casts an obligation to get accounts audited. It does talk about “audited annual accounts,” but is silent about “report of audit or contents of such audit report.” The section does not even empower the rules to ask for anything via audit by way of prescribing any additional format; as there are no such words which can suggest the intention to empower the rules to devise a form that should be a part of the audit envisaged by section 35(5).

In the absence of such an express provision in the section or express empowerment of rules to prescribe a format, one can reasonably wonder as to from where the CERTIFICATION portion of GSTR 9C came from! Can it be argued that the Rule that prescribed GSTR 9C has exceeded its authority with reference to section 35(5) in devising CERTIFICATION part of the GSTR 9C? If not, from where did it derive the authority to prescribe this certification requirement? Which expression of which section permitted it to prescribe this CERTIFICATION? Difficult to answer, isn't it?

#### Question 2:- GSTR 9C AND AUDITOR

Section 35(5) requires every registered person to do two things;

1. Get his accounts audited
2. Submit three things
  - a. Copy of audited annual accounts
  - b. Reconciliation statement under 44(2)
  - c. Such other documents in form and manner as may be prescribed.

Remember, the duty here is on registered person.

Now, section 44(2) applies to those registered persons who are required to get their accounts audited under section 35(5). This subsection requires such registered persons to furnish four things;

1. Annual return
2. Copy of audited annual accounts
3. Reconciliation statement
4. Such other particulars as may be prescribed.

Here also, it is worth noting that every thing revolves around “registered person,” the “auditor” is not in the picture at all.

The “reconciliation statement” that both the sections refer to has come in the form of GSTR 9C. The wordings of both the sections give an impression that reconciliation statement, that is GSTR 9C, is concerned with “registered person” only. However,

*the GSTR 9C that has found its place in the Rules does not have any place for “Registered Person.” The GSTR 9C has been thrust upon the “auditor” in its entirety. Now the question is, does the law, through either of the sections, 35(5) or 44(2), ever envisages the “reconciliation statement” to be a duty of the “Auditor?” If yes, through which words? If not, can rules usurp the power to prescribe something that the law does not even envisage? It is also pertinent to note that section 44(2) does spare a good number of words to describe what it intends the reconciliation statement to do. If the idea was that this reconciliation statement is to be “verified by an auditor,” then nothing would have prevented the legislature to add a few more words in that subsection to declare its intention to get the reconciliation statement verified by auditor. The fact that it did not do may lead to an undeniable conclusion that it did not envisage that reconciliation statement to be verified by the auditor.*

*In fact, once again it is Rule 80(3) that suddenly introduces the word “duly certified” while talking about “Reconciliation Statement.” Strangely, it stops simply at using the words “duly certified” and forgets to clarify as to “who it intend to certify that statement, registered person or auditor!” This becomes clear only when we reach the notified form GSTR 9C, which requires the signature of the Auditor under “Verification.”*

*It is also interesting to note that both the sections talk of “reconciliation statement” and “other matters as may be prescribed.” As the “reconciliation statement (GSTR 9C)” is specifically referred to in both the sections, adding any additional requirement to that form should not be possible by taking recourse to the words giving residual power to prescribe other matters. It may be argued that had the “Certification” and other “Verification” requirements been brought outside of the reconciliation statement, the words conferring residual empowerment may come to help them attain the required legitimacy. Thus, the question is, considering the way the sections stand, do the rule and the prescribed form carry any authority from the act to shift the onus of reconciliation on to the auditor? The question is QUEER and the answer, definitely, UNCERTAIN.*

### **Question 3:- AUDIT UNDER OTHER LAWS AS COMPLIANCE TO 35(5)**

*As we move to PART-B-CERTIFICATION under GSTR 9C, we come across two formats of certification. First format takes care of the situation where the same person (auditor) carries out two tasks, conduct of audit of accounts and draws up reconciliation statement. Under this format, at para 3(b) the auditor goes on to report on the books of accounts, balance sheet and profit and loss account. The second format is for a situation where books of account are audited in pursuance of any other law (may be not by the auditor preparing reconciliation). In this format there is no reference to traditional audit expressions about books of accounts, balance sheet and profit and loss account. This format simply refers to the audit conducted under*



*other applicable law. This scheme of things, the way it is designed and presented, go on to convey that if accounts are audited in pursuance of any other law, such audit shall be a sufficient compliance of the requirement of section 35(5) of the GST Act.*

*The entire scheme of things sound so familiar to what we are used to under section 44AB of the Income Tax Act. Under that act we do not express opinion on balance sheet and profit and loss account when accounts are audited under any other law. We use form 3CA in such cases which does not have those audit specific statements. We use Form 3CB when books of accounts are not audited under any other law. In Form 3CB, there are all the customary lines related to expression of opinion on books of accounts, balance sheet and profit and loss account.*

*Thus, if accounts are audited under any other law that audit is accepted as compliance of section 44AB and no opinion is required to be expressed on books of accounts, balance sheet and profit and loss accounts. If audit of PQR Ltd is carried out under the Company law by ABC and Co. and XYZ and Co is carrying out 44AB audit, XYZ and Co. need not express any opinion on books, BS and PL and will simply furnish what is required by Form 3CD.*

*So, is this a rule that audit under one law will carry itself to another law? Well, section 44AB may prompt us to conclude that it is. But wait, let us move a step further. Suppose that PQR Ltd is entitled to deduction under Section 80-IA. To avail that deduction it has to get a report in Form 10CCB from its auditor XYZ and Co. Now when XYZ and Co prepares report in 10CCB, that format will require it to express an opinion on Accounts, BS and PL, like any other audit operation. In other words, Form 10CCB (Section 80-IA(7)) will not allow XYZ and Co to rely on report of Audit conducted under the Company Law by ABC and Co (which section 44AB allowed).*

*Why this disparity? The answer lies at the last proviso to Section 44AB. It reads; "Provided also that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if that person gets the accounts . . . audited under such law . . ." Thus, section 44AB specifically recognizes the audit under any other law as sufficient compliance of its requirement. Section 80-IA does not have similar words in its text. Hence, 80-IA will not recognize audit under Company law as sufficient compliance of its requirement and hence another audit needs to be carried out and report or opinion on Accounts, BS and PL needs to be expressed.*

*This comparative study of two sections may lead us to conclude that when a section of any statute require accounts to be audited, audit under another statute can be taken as compliance only if the section of the statute that requires the audit accepts the audit under that other law as sufficient compliance of its requirement. Section 44AB does this while Section 80-IA does not. The question is, where does Section*

35(5) stand? Does section 35(5) contains any words or expressions that suggest that it intends to consider audit under any other law as sufficient compliance of its mandates? Apparently, the text of the section does not reveal any such intention. It is only through the design of the CERTIFICATION FORMAT at PART B of GSTR 9C that a hint is given that such an audit under other law may be taken as compliance of the provision of section 35(5). The question is, how valid can this “indirect confirmation” be? Is it the case here that Forms are overstepping the mandate passed on by Rules and Rules are overstepping the mandate passed on by the Law? Isn't it that when a section of any law casts an obligation, it also prescribes the ways in which it can be discharged and that the discharge of that obligation has to strictly confirm to the manner prescribed by that section, nothing can be implied in such cases of compliance. In the absence of any clear recognition in 35(5) of audit under any other law as discharge of obligation cast on registered person by 35(5), how safe will it be to conclude that audit under any other law is a valid compliance of requirement of section 35(5)? Isn't the question QUEER and answer UNCERTAIN!

Question 4:- “. . . AND NOTHING HAS BEEN CONCEALED THERE FROM.”

These words occur at the “verification” part of form GSTR 9C and are causing significant amount of discomfort and apprehension. The whole text is;

“I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from.”

Here the question to be asked is, what do the word “there from” qualify with reference to “concealment” or “non concealment.” In other words, what does the word “there from” refer to in this sentence? The words that occur immediately prior to “concealment” and “there from” are “best of my knowledge and belief.” So, it will be quite logical to conclude that “there from” refers to “best of my (auditor's) knowledge and belief.” Thus, what is expected of the auditor here is that he should not hold back anything which has come to his knowledge or which he has come to believe, while carrying out the task entrusted by the law. These words can not be taken as referring to any “possible or probable concealment on the part of the registered person.” Such an interpretation will be inconsistent with the grammatical convention as well as the principle of enforceability of legal responsibility.

At least for this point, the question remains QUEER, may be, the answer can reasonably be taken as CLEAR.

Please think it over and take the discussion forward.



**PROVISIONS RELATED TO INTERNATIONAL  
TRANSACTIONS**

**(Section 92, 92A, 92B)**

**CA Nilam Nenshibhai Katarmal**

**B.Com, ACA**

Chapter X of Income Tax Act, 1961 (hereinafter referred as the Act) contains the provisions for Transfer pricing (Special provisions relating to “**AVOIDANCE OF TAX**”) which deals with the international transactions and talks about “Arm’s Length Price” in respect thereof. In this article we are going to discuss the provisions of sections 92, 92A and 92B.

Now what is the **section 92??**

**Section 92(1)** says that any income arising from an **international transaction** shall be **computed** having regard to the Arm’s Length Price.

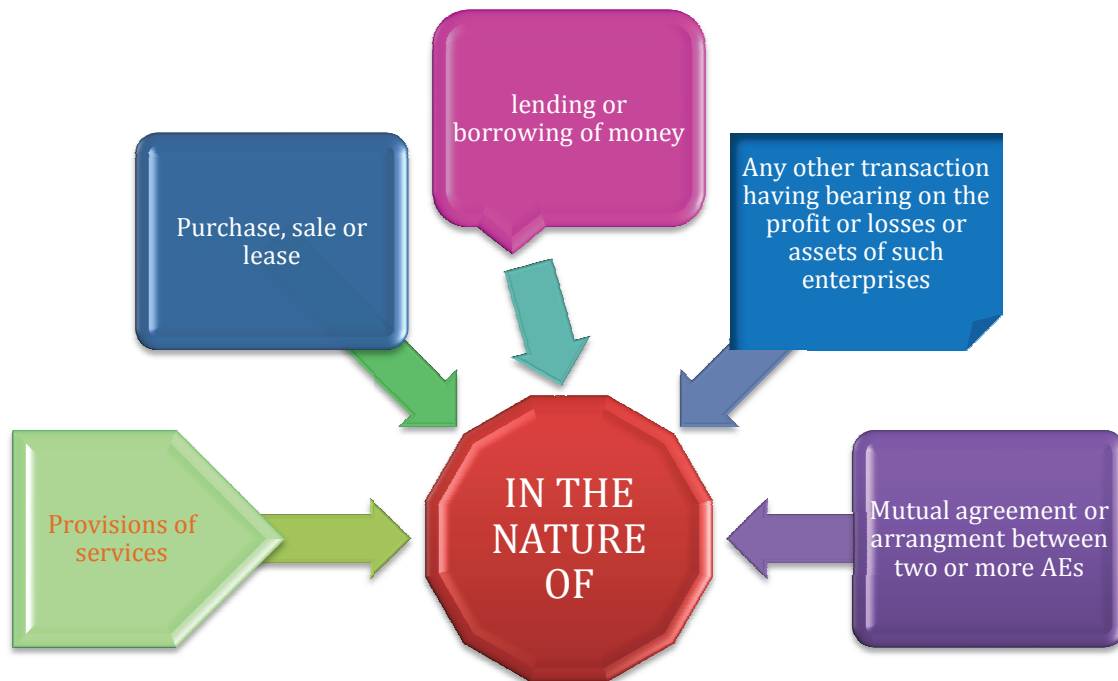
An explanation is added to this subsection for the clarification of the confusion. As subsection contains the word “*income*” the explanation makes it clear that Arm’s Length Price shall be used while determining allowable expenses or allowable interest that arises from an international transaction.

On combined reading of the subsection and the explanation, it may be clear that **arm’ length price shall be considered in three situations:**

- i. Computation of income arising from an international transaction.
- ii. Allowing any expense arising out of an international transaction
- iii. Allowing interest arising out of an international transaction

Now To know the provisions of Chapter X of the Act related to International Transaction it is necessary to understand the crux of the definition of International Transaction.

**International Transactions:** As per **section 92B (1)** of the Act, **international transaction means** a transaction between two or more associated enterprises:



Now come to the **section 92(2)** which talk about when cost or expenses incurred or to be incurred shall be determined having regard to the arm's length price. There has to be an agreement or arrangement between two or more associated enterprises with reference to an international transaction. This arrangement or agreement is for the allocation or apportionment of or ant contribution to, any cost or expense incurred or to be incurred. The cost has to be in connection with a benefit, service or facility that is provided to one or more companies or that may be provided in future to one or more companies. The subsection says that in such a situation the cost that is allocated to an enterprise, or apportioned to an enterprise or contributed by an enterprise, shall be determined after taking the arm's length price of such service, benefit or facility into an account.

### When Transfer pricing is not applicable???

So the answer is according to the **section 92(3)** of the Income Tax Act where, **Arm's Length Price has the effect** of **reducing** the **income** chargeable to tax or **increasing the loss** as the case may be.

Let us take few **examples**:

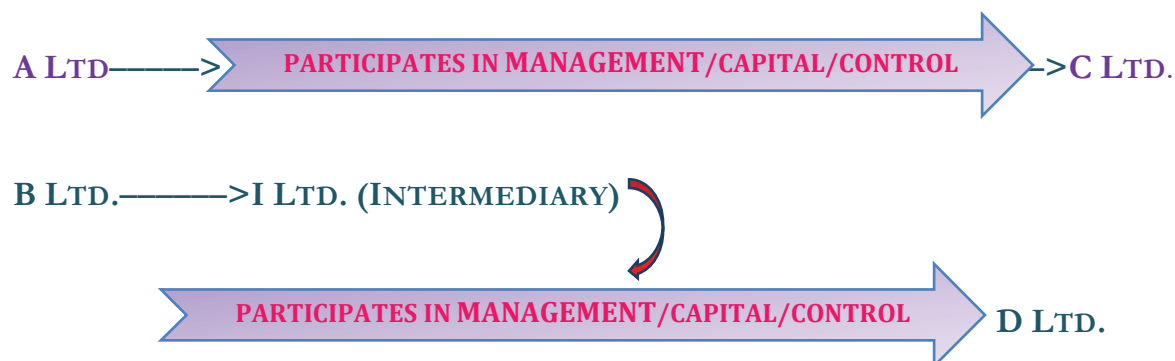
- 1) An enterprise in India sells goods to an Associated Enterprise in USA for Rs. 100,000/- whereas Arm's Length Price is Rs. 300,000/-. Therefore the income of the Indian enterprise shall be determined with reference to ALP of Rs. 300,000/-
- 2) An Indian enterprise takes a loan from an AE in USA @ 24% whereas the market rate of interest is 11% p.a . Then in such a case the allowance of interest to Indian enterprise shall be on the basis of ALP of 11%.

### Section 92A:

Section 92A deal with the **meaning of Associated Enterprise**.

- An enterprise which holds directly or indirectly at least 26% of the voting power or through one or more intermediaries. Intermediaries which are in the management or control or capital of the other enterprise.
- Both the enterprises have the same person who participate directly or indirectly in their management or control or capital. It may be explained that one enterprise is controlled by an individual, the other enterprise is also controlled by such individual.

### Case study to understand Associated Enterprises:



Here A Ltd. and B Ltd. simultaneously participate in the management/capital/control of C Ltd. and D Ltd.

Consequently C Ltd. and D Ltd. are to be treated as an Associated Enterprises.

### Section 92B (2) : Deeming provisions of international transactions

#### What is deemed International Transactions???

Let me explain, the transactions between an enterprise and *a person other than an associated enterprise* (which called third party) shall be deemed to be an international transaction entered into between associated enterprises in as per following situations:

- Existence of a prior agreement in relation to the related transaction between such other person and the associated enterprise,
- OR**
- The terms of that related transactions are determined, in substance, between such other person and the associated enterprise.

Therefore it can be clearly understood that transactions between two resident entities are brought within the definition of international transaction on the fulfillment of two above mentioned situations or criteria.

## **SAP: AN INTRODUCTION-PART 2**

**CA Jigar Thacker**  
**M.Com.,ACA,DISA(ICAI)**

Hello friends, hope you had a wonderful and safe Diwali and the new year has just begun so lots of wishes for the year ahead. So yes, where were we in discussion? We had discussed about the financial control point of view of SAP functionalities. Now let's have a look at how it works when financial transactions recording, analysing and presenting is concerned.

Success of any software depends on the information that it can provide to various stake holders. The challenge while auditing and reporting for a big organisation having different businesses in one company is that there is a lot of data to be analysed and verified.

Having been auditee representing a large organisation, I got a chance to work with three of the BIG4 for statutory and internal audits and I could see that focus has shifted from vouching based audit to segregation of data into various categories and comparing the same with previous data and industry standards for identifying any abnormalities and area of focus.

Management in such organisations also demands various informations which are more than just financial numbers. It wants data supporting the numbers by which it can understand and analyse the present scenario and arrive at some conclusion.

This is strength of SAP, it collects so much of the data from its various users. And how does it do it? Of course by providing so many fields for entering data in each screen. Let's have a look the various fields provided for analysing and presenting with the help of an example.

Say, ABC Ltd. is a company having port facilities located at location X and a refinery for processing of soya and palm oil at location Y. At location X, it handles various types of cargoes and each type of cargo handling requires different type of equipment, different activities and manpower having special skill. So, it has prepared various departments as per type of cargo. Such as for dry bulk – Dry Cargo department, for liquid cargo – Liquid department and for container cargo – Container Terminal department. At location Y, there is one refinery where there are two separate units, one for soya oil processing and one for palm oil processing. So it imports crude oil and refines it in the refinery and sells in bulk as well as packed form. Both the product lines being different, separate costing for each product is required for pricing and decision making.



So, what to do in the above case where there is a lot of diversity and different data requirements. Well, of course SAP can be of some use here. Below mentioned are some of the most common and most used data fields of SAP which can help to segregate the information effectively in diversified organisations.

1. GL (General Ledger) – Each income and expense is assigned a GL code. GL codes can be created as per requirement of business. Let's say for each different type of cargo handling a different GL can be created, i.e., one GL for dry cargo handling income, one GL for liquid cargo handling income and so on. But by that, so many GL codes will be created. So it can be done that only one GL can be created for each income, i.e., one GL for handling income and one GL for storage income and to identify department, another separating field can be added.
2. Profit Centre – Each type of cargo handling can be assigned one profit centre. Say one profit centre for dry cargo, one for liquid cargo and so on. Now, say income from storage from dry cargo and liquid cargo will be booked in "Storage Income" GL only. But in each line there will be one additional field for profit centre, i.e., either dry or liquid or other respective profit centre. So every income of the whole company can be viewed department wise with the help of profit centres.
3. Cost Centre – To identify profitability of a department, cost of that department is also required along with income. There will be one GL for each expense. Say for repairs, GL can be "Repairs and Maintenance" so in data for expenses there will be field of cost centre in each line. Say for dry bulk, cost centre will be of "Dry Cargo" and so on. Even for further segregation, more cost centres can be created. E.g., one for "Dry Cargo Cranes" & another for "Dry Cargo Godowns". So, if one wants to see repair cost of dry bulk godowns and dry cranes separately than it can be done just in a click. But by doing so, among many profit centres and cost centres, it will be difficult to match cost centre and profit centre for one department to ascertain profitability. But to resolve this issue, cost centres are compulsory assigned to one profit centre and more than one cost centres can be assigned to one profit centre which means cost centre "Dry Cargo Cranes" and "Dry Cargo Godowns" will be grouped under profit centre "Dry Cargo".
4. BusinessArea – So we talked about Ports and discussed segregation of its income and expenses. But what about refinery business in the same organisation. Well, no need to worry, we can add another segregator of business area, one each for location X and for location Y. So all the above mentioned fields, i.e., GL codes, profit centres and cost centres will each be there in data but one more field will be of business area on the basis of which location X and Y will be segregated.

To sum up all the above details, let's have a bird's eye view on what we discussed. There is a report in SAP to view TB (Trial BALANCE). Any of the above mentioned categories can be applied as filter.

1. Viewing TB with locationX as filter – It will show income, expenses, assets and liabilities of Port Business only on the basis of which everything related to port can be analysed.
2. Viewing TB with profit centre Dry Cargo as filter – It will show income, expenses, assets and liabilities of Dry Cargo department only. Accordingly, profitability of each department can be ascertained.
3. Viewing TB with Cost Centre as filter – It will show expenses and assets related to each cost centres which can be analysed for cost control.

Accordingly each report will have option to apply any of the criteria as filter and extract the required data. Above is just an example, various permutations and combinations can be applied and data can be extracted as per requirement.

But let's not forget one thing that all the systems work on GIGO (Garbage in, Garbage Out) principal, which means that the quality of information depends on the data provided to system. A system designed to provide information by processing certain logics on the data will show incorrect information if the data entered into it is not correct.

So the responsibility lies here on all the stake holders. Be it stores, be it equipment maintenance personnel or be it HR, all the departments have little to work on excel or any other media and more to work on SAP since it provides standard screens and in some cases custom designed screens as per requirement of the users. So, if everyone enters the data fields correctly, SAP will take good care of the reports.