

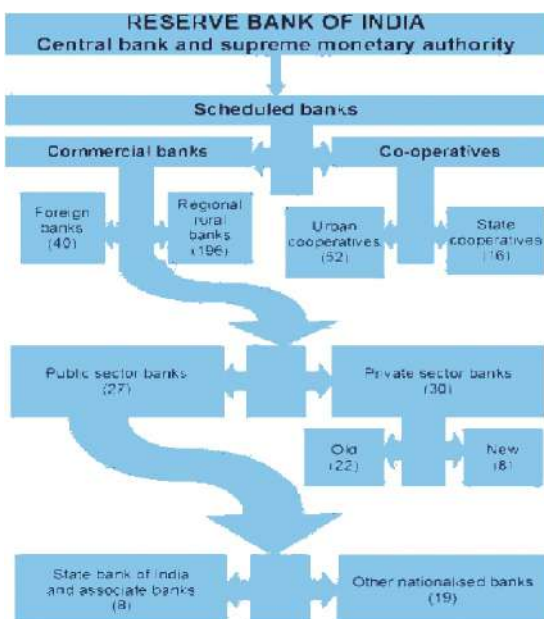


Preamble: When we think of a bank, it is normally interpreted to draw cash through bank branches or ATMs. As many of us might need to interact as a customer or an auditor (Branch Audit, Concurrent Audit, Revenue Audit, Stock Audit, and Central Audit) this article could be useful as it attempts to spell out few spectrums of banking to provide a fair idea. Google search was also helpful in the integration process.

Scheduled Banks in India refer to those banks which have been included in the Second Schedule of Reserve Bank of India Act, 1934. RBI, in turn, includes only those banks in this Schedule which satisfy the criteria laid down vide section 42(6)(a) of the said Act. Banks not under this Schedule are called Non-Scheduled Banks.

Every Scheduled bank enjoys two types of principal facilities: It becomes eligible for debts/loans at the bank rate from the RBI; and, it automatically acquires the membership of clearing house.

The diagrammatic structure of the banking structure in India is provided for reference



Major Difference between the scheduled bank and non-scheduled bank:

Banks accept public deposits and extend credit to those who need it. They are a substantial part of the financial system, which assists in the overall economic development. These are broadly classified as scheduled and non-scheduled banks in India regulated under the Banking Regulation Act, 1949, wherein **scheduled banks** include all the commercial banks like nationalized, foreign, development, cooperative and regional rural banks.

On the other extreme, non-scheduled banks are the banks that do not adhere to the norms prescribed by the Reserve Bank of India (RBI). The non-scheduled banks are mainly local area banks.

The gist of Ratios and Rates:

RBI would be releasing monetary policy changes periodically which would include the different types of ratios and rates. For easy understanding, the same has been clarified as below:

(The current rates mentioned are subject to changes from time to time)

Statutory Liquidity Ratio (SLR): As per RBI Guidelines, Every bank must have a minimum portion of their Net Demand and Time Liabilities (NDTL) in the form of cash, gold or other liquid assets by the day's end. The ratio of these liquid assets to the demand and time liabilities is called the Statutory Liquidity Ratio. The Reserve Bank of India has the authority to increase this ratio by up to 40%. The increase in this ratio constricts the ability of the bank to inject money into the economy.

The maximum SLR that The Reserve Bank of India can set is 40% p.a. However, the current SLR is set at 19.25% p.a.

CRR - Cash Reserve Ratio - Banks in India are required to hold a certain proportion of their deposits in the form of cash. However Banks don't hold these as cash with themselves, they deposit such cash in currency chests with Reserve Bank of India, which is considered as equivalent to holding cash with themselves. This minimum ratio (that is the part of the total deposits to be held as cash) is stipulated by the RBI and is known as the CRR or Cash Reserve Ratio. The current CRR is 4% p.a.

Call Rate - Interbank borrowing rate - Interest Rate paid by the banks for lending and borrowing funds with a maturity period ranging from one day to 14 days. Call money market deals with extremely short term lending between banks themselves. After Lehman Brothers went bankrupt Call Rate skyrocketed to such an insane level that banks stopped lending to other banks. The Call Rate set by the RBI is in the range of 4.80% to 6.25%.

Bank Rate - This is the long term rate (Repo rate is for short term) at which central bank (RBI) lends money to other banks or financial institutions. Bank rate is not used by RBI for monetary management now. Current bank rate is 6.75%

Repo Rate or Repurchase Rate is the rate at which the RBI lends funds to commercial banks and other financial institutions within the country. Simply put, banks borrow funds from The Central Bank of India by selling government securities with a legal agreement to repurchase the securities sold on a given date at a predetermined price. The rate of interest charged by RBI

while they repurchase the securities is called Repo Rate. The current Repo Rate as fixed by the RBI is 6% p.a.

Reverse Repo Rate: is the short term borrowing rate at which RBI borrows money from banks. The Reserve bank uses this tool when it feels there is too much money floating in the banking system. An increase in the reverse repo rate means that the banks will get a higher rate of interest from RBI. As a result, banks prefer to lend their money to RBI which is always safe instead of lending it to others (people, companies, etc) which carries risk. The reverse repo rate has also decreased to 5.75% from 6%.

Repo Rate signifies the rate at which liquidity is injected in the banking system by RBI, whereas the Reverse Repo rate signifies the rate at which the central bank absorbs liquidity from the banks.

Marginal Cost of Funds based Lending Rate (MCLR):

RBI made changes to the existing Base Rate system this year. They have introduced Marginal Cost of Funds based Lending Rate or MCLR which is a new methodology to set the lending rates for commercial banks. Previously, banks used to lend as per the Base Rate fixed by Reserve Bank of India but with the introduction of MCLR, banks will have to lend using rates linked to their funding costs. Simply put, the bank raises its funds through deposits, bonds, and other investments. For the banks to function smoothly, there are costs involved like salaries, rents, and other bills. Considering that banks also need to make profits every year, RBI has included the expenses of the bank and has come up with a formula that can be used by banks to determine their lending rate. With the reduction of repo rate, some banks have reduced MCLR up to 90 basis points. The current MCLR (overnight) fixed by the RBI stands in the range of 8.05% to 8.55%.

Banking activities:

The initial definition was "Bank accepts for the purpose of lending". In the process of evolution and developments, the multiple activities are the banks, currently in vogue, are listed below:

1) Accepting different types of Deposits:

(a) Savings Accounts: The savings deposits are opened for individuals/groups of individuals for banking operations and/or with an intention for saving. The savings accounts are not opened for companies. It will carry an interest rate of 3.5% at present. There is an average minimum balance to be maintained and there would be charges if the minimum balance is not maintained. The customers will be provided with ATM/Debit cards to operate the account. Some banks provide a Cheque book facility as well.

(b) Current Account: Current Accounts are opened for mainly business purposes. There is no interest payment for current accounts. There is an average minimum balance to be maintained and there would be charges if the minimum balance is not maintained. The customers will be provided

with ATM/Debit cards and checkbook facilities for operating the account.

(c) Fixed Deposit Accounts: The deposit period could vary from 1 month, 3 months, 6 months, 1 year and up to 5 years generally. Rate fixation for specific days, viz: 366 days, 182 days, etc. also would be offered with differential rates. Depending upon the term and the funds' requirements of the banks, the interest rates will vary. There would be penal interest charges for foreclosure of deposits.

(d) Recurring Deposits: A fixed sum every month would be deposited with a maturity tenor of one to 5 years to get a bulk amount at the end of the period. The interest rate would match the fixed deposit rates based upon the days.

(ii) Lending Loans: The Banks have Retail and Corporate Segments to handle Loan portfolio

Retail Loans: Housing loan, Loan for consumer goods, personal loans, Educational loans, auto loans, Loan against pension receivables, gold loans, loan for setting up of small business, credit cards will fall under the category.

Corporate Loans: Project Finance – Financing Projects like the construction of Road, Bridges, Irrigation Projects, etc. which will have long term yields with a socio-economic objective. The repayment period might extend for a long term up to 10 to 20 years also.

Corporate Term Loans: Term Loans for purchase of land, construction of factory buildings and purchase of plant and machinery with a repayment period of 5 to 7 years. The capital asset would be the primary security for the advance.

Working Capital Loans: Loans in the nature of Cash credit/Overdraft/ demand loans against Stock, book debts and other current assets.

Working Capital Term Loans: In the case of stressed/sick accounts, a portion of the overdue in the working capital loan will be added and provided as a term facility with a repayment scheduled based upon the company's expected future funds flow.

Acquisition Finance: Funding the company for proposed buyouts based on viability, capacity and trend records.

Bills discounting \ Bills Negotiations:

The bank will also extend bills discounting

\negotiation (against LCs) to the Corporate Customers.

(iii) Non-fund based facilities: The letter of credit (LC) with Sight/usance basis, letter of undertaking (LOU) and Guarantees will be included. The Banks will get a commission for extending the Non-fund based facilities, with a risk factor until the claim period is completed.

(iv) Fee-based Income:

Apart from the lending activities, the banks increase the revenue base by acting as agents to Mutual funds, Insurance products and sale of gold coins.

(v) Treasury activities:

The banks involved in derivate markets to achieve the following purposes.

(a) To hedge the foreign currency (eg: USD, GBP, JPY) against the import/export commitments made on behalf of the customers.

(b) To trade in the FX market to earn profits

The income from the Treasury Department will be a key factor to decide on the profitability.

Channel Banking:

Till the last decade, branch banking was the focal point in doing the business. But today it is mostly replaced with banking through ATM/Debit cards, Internet Banking, IVR (Interactive Voice Response), Kiosk Banking and Mobile Banking. The charges are also levied for walk-in customers to the bank beyond a limit (Eg. Maximum 5 withdrawals in a month). It is anticipated that most of the banking will be done through Mobile only way forward. Worldwide, banks are reducing many branches and explore the feasibility of using surplus employees in other functional areas.

Conclusion:

There are other areas in banking like Restructure of Loans, Prudential Norms/NPA, etc. Banks play a vital role in the economic growth of any nation and also helpful to move the country to digital transformation.



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CAPITAL GAIN ON JOINT DEVELOPMENT AGREEMENTS



Accordingly, Sec. 45(5A) was introduced vide Finance Act, 2017, effective AY 2018-19, prescribing the taxability of area-sharing arrangement under a DA in the hands of land owner, in the year in which the capital asset i.e. constructed area is received by it against the transfer of land under the DA.

The taxability of capital gains as above posed challenges for land owners who entered into DA with area sharing arrangements i.e. the developer would give certain pre-agreed constructed area to the land owner in consideration for the land owner allowing the construction on its land. In such situations, the land owner was required to pay tax on the capital gains arising on the so-called transfer of land at the time of entering the DA and giving possession of the land to the developer for construction thereon, while it would receive the consideration in form of constructed area in future.

The author accordingly discusses herein, the background of the introduction of Sec. 45(5A) and the jurisprudence that may be applied thereto, based on which it may be possible to argue that the said section should have a retrospective application for DA with area sharing arrangements.

Legislative objective for introduction of Sec. 45(5A)

The Memorandum explaining the provisions of Finance Bill, 2017 states as under with respect to the introduction of Sec. 45(5A):

“With a view to minimise the genuine hardship which the owner of land may face in paying capital gains tax in the year of transfer, it is proposed to insert a new sub-section (5A) in section 45 so as to provide that in case of an assessee being individual or Hindu undivided

family, who enters into a specified agreement for development of a project, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority.”

The amendment thus seeks to minimise the genuine hardships that the land owner may face by taxing the capital gains in its hands for area-sharing arrangements under DA, in the previous year in which the certificate of completion is issued; and not in the year in which the DA is entered into or the possession of the land is given to the developer pursuant thereto.

The Full Value of Consideration shall be the Stamp Duty value of his share being Land and Building or both in the project on the date of certificate as increased by consideration received in cash

Background of introduction of Sec. 2(47)(v)
Clauses (v) and (vi) of Sec. 2(47) were introduced by Finance Act, 1987, effective from AY 1988-89. The Memorandum explaining the objective of said amendment read as under:

“Under the Transfer of Property Act, the transfer of property can be effected only by means of a registered instrument. However, in the recent times other devices are sought to be employed for transferring one’s ownership in property. As a result, there are situations in which the actual owner, say, of an apartment in a multi-storeyed building, or a holder of power of attorney, is not the legal owner of a property. In some cases, pending resolution of disputes, the legal owners as well as the beneficial owners are assessed to tax in respect of the same income.” The following observations of Hon’ble SC in the case of Suraj Lamp Industries Pvt. Ltd. v. State of Haryana

(2012) 1 SCC 656 are very relevant to understand the mischief that was sought to be arrested, inter alia, by introduction of Sec. 2(47)(v):

It is made it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty.

Hence, Sec. 2(47)(v) was introduced to cover all types of transactions where the control of ownership was transferred without a registered instrument i.e. conveyance deed, and capital gains thereon was not offered on the basis that there was no transfer till the time conveyance deed is registered. It accordingly covered all such cases, including sale of immovable property through power of attorney arrangements as well as DA.

However, DA involved both kinds of arrangements i.e. those where the entire

consideration to the land owner is paid/ payable in monetary terms, as well as those where the entire/ part consideration to the land owner is payable by way of constructed area on the concerned land. Accordingly, in respect of DA involving constructed area-sharing, the assessee faced genuine hardships as they did not get any money from which they could pay the taxes. Also, the determination of consideration which could be said to be accruing to the land owner in such cases was posing a challenge.

Representations made to the Government

In the above background, therefore, various representations were made to the Government to the effect that the taxation of DA in the year of entering the agreement, in cases of constructed area sharing arrangements, has been causing genuine hardships to assessee. The Institute of Chartered Accountants of India, in its pre-budget memorandum for 2017, had also raised this aspect of land owners facing genuine hardships with respect to levy of capital gains under DA with area-sharing arrangements, and offered suggestions for amendments.

Opinion: Income Tax legislation has recognised the issues in taxability of Capital Gains on Joint Development Agreements (JDA) and taxed the surplus received on exchanged assets. Assessee is thereafter ceiled on taking capital gain advantage on agreements such as JDA etc.



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BIRTHDAY CELEBRATIONS AT AJM

