



Bangalore Branch of SIRC Newsletter

English Monthly

Volume 04 | Issue 09 | April, 2016 | Pages : 36

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*Wish you all
happy & prosperous Ugadi*

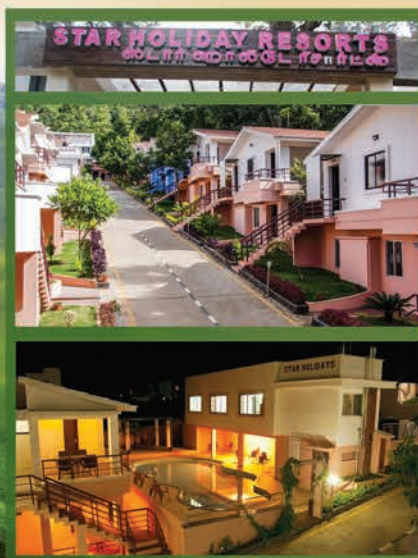
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*Wish you all
happy Financial Year 2016-17*

9th Regional Residential Course

on 29th, 30th April & 1st May 2016

at TGI Star Holidays, Yercaud



- **One Day**
Workshop for
Members in Industry
on **15th April 2016**
at Branch Premises



Chairman's Communique . . .

My dear professional friends,

I wish you all

happy and prosperous Ugadi

This new financial year is the start of another layer in the professional life and a new beginning of new hopes, aspirations and dreams. This financial year signifies that finally the time has arrived to bid adieu to the on-going year and by welcoming the coming New Year. Traditionally, the New Year was celebrated on 1st January of every year but for us New Year starting from 1st April is considered to have a more business and religious significance. The new age technology and innovations making our professional life simpler but yet challenging. Hope this coming year will ease these challenges and bring cheerfulness, prosperity and dream fulfilment for all of us.

India celebrate Ugadi, popularly marked as "the beginning of a new year" in this month.

Ugadi marks a change in the lunar orbit as well as the beginning of the new lunar calendar. It also heralds the advent of spring. Mother Nature awakes from her deep slumber to give birth to new plants and cover earth in a blanket of green. The people consider Ugadi to be an auspicious time for commencing new ventures. Hence it also adds new opportunities to the professionals and expect new start-ups unveil during the season.

Programmes for the month of April 2016

As part of our constant endeavour to give quality programs to the fraternity, we have organised special programs for the members apart from regular Study Circle meetings, Indirect, Direct Tax Clinics and Intensive Workshop on International Taxation:

- One Day Workshop on Friday, 15th April 2016, is being organised, which will add value to our Members especially those who are in Industry.
- With the advent of Co-operative movement, internal structures, procedures in areas of audit need to be strengthened. As part of this drive a Seminar on issues



related to Co-operative Societies is being organised at Bangalore Branch on Saturday 14th May 2016 for the benefit of Members who are involved in Co-operative Audit of banks and Societies. Co-operative audit specialist and resource person, CA. B V Raveendranath of Sagar is co-ordinating this Seminar.

- **Residential Refresher Course (RRC)** is being organised by SIRC, hosted by Bangalore, Coimbatore, Pondicherry, Salem branches on April

29, 30 and 1st May at Yercaud. This program intends enhance the productivity and knowledge of the members through serenity of the venue and concentration by staying away from routine professional work. I feel this is the best way to connect with the longstanding professional network.

We are proud and happy to say that Bangalore Branch is blessed with enormous number of Resource Persons with whose support many Programmes on topics of Professional Interest are conducted. Hence request you to make use of the programmes to enrich the knowledge and quality of the profession.

Update on Programmes of March-2016

The analysis of Union Budget-2016 was conducted on 1st March 2016 with the support of the very renowned moderators, CA. T V Mohandas Pai and CA. Padamchand Khincha. Eminent panellists from industry participated in the discussion and presented their views on the budget. This discussion showcased a grand success by active participation of around 700 members apart from the general public.

Clause by Clause Discussion on Union Budget 2016 on Direct & Indirect Taxes on 11th & 12th March also was a resounding success. Bangalore Branch is always indebted to the speakers who are the stalwarts in conducting these mega events for the benefit of Chartered Accountants Fraternity.

CA Women Conference was organised on 19th March 2016, to commemorate the International Women Day

celebration. Conference was organised by WMEC, ICAI and hosted by Bangalore Branch. The keynote address by Prof. Vasanthi Srinivasan, IIMB was amazing and was a source of Inspiration to the delegates. The sessions conducted by the very eminent lady speakers were thought provoking and gave a message that we all should think and act for gender equality which is a part and parcel of Nations Future. Let me place on record the commitment and in depth interest shown by CA. Geetha A B, Vice chairman of the branch to conduct this seminar.

Seminar on Bank Branch Audit on 26th March received an outstanding response from the fraternity participated by nearly 450 members. The seminar inaugurated by our beloved President, Vice president of ICAI. CA. E Phalguna Kumar, SIRC Chairman graced the inauguration with his presence. The speakers with their numerous years' of experience as an auditor of banks in various capacities, has covered the subject in well-conceived manner with simple and lucid illustrations for easy understanding.

Many members should have already commenced or would be in the process of commencing their allotted bank audits for the year ended 31st March 2016. As members may be aware, over the last few quarters, banks have made additional provisions for non-performing assets (NPA'S) driven by the Asset Quality Review (AQR) mandated by the Reserve Bank of India (RBI). In addition to the usual areas of bank audit, members would have to focus on the additional provisioning after the AQR where applicable. At the 1st CII Banking Summit held in Mumbai on February 11, 2016, the Deputy Governor of the RBI, Shri SS Mundhra, highlighted some of the issues that banks discovered after the AQR resulting in additional provisioning- some borrowers manipulate drawing power, abuse the export performance bank guarantee (EPBG) system, fund satellite entities, avail a short term overdraft to repay existing dues and then get fresh loans sanctioned to repay the overdraft, inflate the value of sale of assets to group entities and keep altering between fund based and non fund-based limits. It is apparent that members would need to exercise additional precaution and judgement when auditing banks where AQR assets have been reported to the RBI.

Meet the President & Vice President on 26th March was witnessed by Bangalore branch to mark first time presence of the President and Vice President of ICAI after their elevation to the helm of the Institute. Honourable President of ICAI,

CA. M. Devaraja Reddy and Vice President CA.Nilesh Shivji Vikamsey addressed the gathering and shared their impending plan of action. The special interactive session with them was an opportunity to exchange member's views and ideas for the betterment of our esteemed profession. At the same time we could convince our President and Vice President, the various challenges Bangalore Branch is facing including limited infrastructure facilities for the conduct of varied of programmes for members and students.

Special CPE Programme on Impact of Central Excise Levy on Jewellery & Textiles was organised at Bangalore Branch on 29th March. We express our in depth gratitude to CA. Madhukar N Hiregange for being instrumental in conducting the programme along with CA. T R Rajesh Kumar.

ICAI Campus Interviews – March 2016 – at Bangalore Centre

The Campus Interviews conducted by the Committee for Professional Accountants and Business in Industry of ICAI from 15th March 2016 to 19th March 2016 was a grand success. This time 12 companies and more than 300 candidates participated in the Campus Interviews at Bangalore. The newly qualified CA's were mostly from the southern states like Karnataka, Kerala, Tamil Nadu & Andhra Pradesh and some from Maharashtra, West Bengal, Uttar Pradesh, Rajasthan, Gujarat and Assam as well. The Pay Package offered by the Companies ranged from 5 lakhs to 19 lakhs Per annum.

Apart from the above, the CPE study Circle meets at Hosur, Tumkur and Bangalore South- Vasavi vidyanikethan were also very well received by our members. CPE Programmes will be conducted once in every month in these centres to save time on commutation for the members residing in those areas.

Once again I wish you all happy & prosperous Ugadi, while wishing you a fruitful financial year – 2016-17, request you to participate in the forthcoming programmes and get benefited.

With warm regards



CA. Pampanna B E
Chairman



9th Regional Residential Course

Organised by
SOUTHERN INDIA REGIONAL COUNCIL OF
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
Hosted by
Bangalore, Salem, Coimbatore & Pondicherry Branch
of SIRC of ICAI



| 9 th Regional Residential Seminar | |
|--|--|
| Venue | TGI Star holidays, Yercaud |
| Date | 29 th , 30 th April & 1 st May 2016 |

12 Hrs
CPE

| Timings | Session | Speakers |
|--|---|--------------------------------|
| DAY – 1 (29th April) | | |
| 09.00 AM | Inauguration | |
| 09.30 AM | Technical Session – I TDS updates and critical issues | CA. D.R. Venkatesh, Bengaluru |
| 11.30 AM | Tea break | |
| 11.45 AM | Technical Session – II Service tax amendments and issues | CA. P. Rajendra Kumar, Chennai |
| 01.30 PM | Lunch break | |
| 03.00 PM | Sightseeing and leisure activities | |

| | | |
|--|---|---|
| DAY – 2 (30th April) | | |
| 09.00 AM | Technical Session – III CARO – 2016 and practical issues in Companies Act | CA. M.P. Vijaya Kumar, Chennai |
| 11.30 AM | Tea break | |
| 11.45 AM | Technical Session – IV Penal provisions and amendments in Presumptive income & Tax audit | CA. K.K. Chythanya, Advocate, Bengaluru |
| 01.30 PM | Lunch break | |
| 03.00 PM | Sightseeing and leisure activities | |

| | | |
|-------------------------------------|---|------------------------|
| DAY – 3 (1st May) | | |
| 09.00 AM | Technical Session – V Start-up India | CA. G.K. Raju, Chennai |
| 11.30 AM | Tea break | |
| 11.45 AM | Technical Session – VI Yet to be confirmed | Yet to be confirmed |
| 01.30 PM | Valedictory Session | |
| 01.45 PM | Lunch break | |
| 02.15 PM | Check out | |

Parallel sessions will be conducted for spouse and children separately

| | Delegate fee |
|--------------------------------|---|
| Residential member | Rs. 9,000/- per person (including Travel Cost by Bus/Sleeper Coach) |
| Accompanying spouse | Rs. 8,000/- per person |
| Children above 10 years | Rs. 8,000/- per person |

For more details Contact: CA.Shraavan Guduthur, Secretary, Bangalore Branch, ICAI. Mob: +91-9844546161

Mode of Payment: Cash/Cheque/DD in favour of

“Bangalore Branch of SIRC of ICAI”, payable at Bangalore

For Registration please contact:











Ms. Geetanjali D. Tel: 080-30563500 / 3513

Email: blrregistrations@icai.org | Website: www.bangaloreicai.org

Please Confirm
the registration
before 20th April 2016



CALENDAR OF EVENTS - APRIL 2016

| Date/Day/ Time | Topic / Speaker | CPE Credit |
|---|--|---|
| 02.04.2016 Saturday 5.30pm to 8.30pm | Intensive Workshop on International Taxation Article 15 & 16 :Dependent personal service & Director's fees CA. Tapati Ghose & CA.Saraswathi Kasturirangan Co-ordinator: CA. Cotha S Srinivas VENUE: Branch Premises |   3 hrs |
| 06.04.2016 Wednesday 6.00pm to 8.00pm | Study Circle Meet Valuation of Shares including Discounted Cash Flow Method CA. Amith Raj A.N VENUE: Branch Premises |  2 hrs |
| 08.04.2016 Friday | Holiday on account of Chandramana Ugadi | — |
| 12.04.2016 Tuesday 6.00pm to 8.00pm | CPE Programme Amendments in Karnataka State Budget & Recent Pronouncements CA. Venkataramani. S VENUE: Branch Premises |  2 hrs |
| 13.04.2016 Wednesday 6.00pm to 8.00pm | Study Circle Meet Disclosures in Boards' Report - Companies Act- 2013 CS. J Sundharesan VENUE: Branch Premises |  2 hrs |
| 15.04.2016 Friday 9.45am to 5.30pm | One Day Workshop for Members in Industry Delegate Fee: 500/- VENUE: Branch Premises <i>Details in Page No.: 7</i> | 6 hrs |
| 16.04.2016 Saturday 6.00pm to 8.00pm | Intensive Workshop on International Taxation Article 17: Artistes and Sportspersons CA. Vinay T Co-ordinator: CA. Cotha S Srinivas VENUE: Branch Premises |  2 hrs |
| 19.04.2016 Tuesday 6.00pm to 8.00pm | CPE Programme Financial & Economical Perspectives of Union Budget - 2016 CA. Mohan R Lavi VENUE: Branch Premises |  2 hrs |
| 20.04.2016 Wednesday 6.00pm to 8.00pm | Study Circle Meet Ineligible Input Credits u/s 11 of KVAT CA. Deepak S Kothari VENUE: Branch Premises |  2 hrs |
| 21.04.2016 Thursday 6.00pm to 8.00pm | Study Circle Meet at South Bangalore Tax Deduction at Source u/s 195 CA. B P Sachin Kumar VENUE: Vasavi Vidyanikethan Trust (VVN), No: 3, Vani Vilas Road, VV Puram, Basavanagudi- Bangalore-560 004 <i>Delegate Fee : Rs. 200/-</i> |  2 hrs |
| 22.04.2016 Friday 6.00pm to 8.00pm | Tax Clinic - Indirect Taxes Important Case Laws in Indirect Taxes CA. V Rghuraman VENUE: Branch Premises |  2 hrs |



CALENDAR OF EVENTS - APRIL & MAY 2016

| Date/Day/ Time | Topic / Speaker | CPE Credit |
|--|---|---|
| 27.04.2016 Wednesday 6.00pm to 8.00pm | Study Circle Meet Recent Circulars and notification of CBDT - Direct Taxes CA. Naveen Khariwal G VENUE: Branch Premises |  2 hrs |
| 29th, 30th April & 1st May 2016 Fri, Sat & Sun | 9th Regional Residential Seminar of SIRC <i>Details in Page No.: 4</i> VENUE: TGI Star Holidays, Yercaud | 12 hrs |
| 04.05.2016 Wednesday 6.00pm to 8.00pm | Study Circle Meet Analysis & Impact of Real Estate(Regulation & Development) Bill CA. Sandeep Jhunjhunwala VENUE: Branch Premises |  2 hrs |
| 07.05.2016 Saturday 6.00pm to 8.00pm | Intensive Workshop on International Taxation Article 18,19 & 20: Pension, Govt. Service & Students CA. Akshaya K S & CA. Bhamini G S Co-ordinator: CA. Cotha S Srinivas VENUE: Branch Premises |   2 hrs |
| 11.05.2016 Wednesday 6.00pm to 8.00pm | Study Circle Meet ESOP - Accounting & Disclosures CA. N S Indumati VENUE: Branch Premises |  2 hrs |
| 13.05.2016 Friday 6.00pm to 8.00pm | Tax Clinic- Direct Taxes Power of Income Tax Act Tribunal(ITAT) to grant stay CA. Rishi Harlalka VENUE: Branch Premises |  2 hrs |
| 14.05.2016 Saturday 9.45am to 5.30pm | Seminar on Issues Relating to Co-operative Societies Co-ordinator: CA. B V Raveendranath, Sagar Delegate Fees : Rs. 500/- VENUE: Branch Premises <i>Details in Page No.: 8</i> |  6 hrs |

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Advt. material should reach us before 22nd of previous month.

EDITOR :

CA. PAMPANNA B.E.

SUB EDITOR :

CA. SHRAVAN GUDUTHUR

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ONE DAY SEMINAR FOR MEMBERS IN INDUSTRY

On Friday, 15-04-2016

Venue: **S.Nararayanan Auditorium**, ICAI Bhawan, Bangalore Branch

Time: **09.45am to 5.30pm**

6 hrs
CPE

| Timings | Topics | Speakers |
|--------------------|---|-------------------|
| 9.00am to 9.45am | Registration | |
| 09.45am to 10.00am | Inaugural Session | |
| 10.00am to 11.30am | Corporate Governance | CA. Abdul Majeed |
| 11.30am to 11.45am | Tea Break | |
| 11.45am to 01.15pm | Impact of Companies Act 2013 - As formulated, As revised and As proposed | CA. Vijaya Raja |
| 01.15pm to 02.15pm | Lunch Break | |
| 02.15pm to 03.45pm | Impact of Ind AS on Financial Reporting Ind AS 101 on the Financial Statements | CA. Mohan R. Lavi |
| 03.45pm to 04.00pm | Tea Break | |
| 04.00pm to 05.30pm | Budget 2016 - Corporate Taxation | CA. D S Vivek |

CA. Pampanna B. E
Chairman

CA. Shravan Guduthur
Secretary

DELEGATE FEES FOR MEMBERS: ₹ 500/-

Mode of Payment: Cash or Cheque/DD in favour of "Bangalore Branch of SIRC of ICAI", payable at Bengaluru

On First Come First Served Basis

For Registration, Please contact: **Ms. Geetanjali D.**, Tel: **080 - 3056 3500 / 3513**

Email : **blrregistrations@icai.org** | Website : **www.bangaloreicai.org**

Study Circle Meetings for CA Students

organized by SICASA of Bangalore Branch at Bangalore Branch Premises

| Date | Topic | Speakers | Timings |
|------------------------|---|---|--------------------|
| 16-04-2016 Saturday | How to Face CA Exams | CA. Chandrashekara Shetty CA. Pranay Gupta (Rank holder in Final Nov. 2014 Exams) | 2.30 pm to 4.30 pm |
| 23-04-2016 Saturday | Highlights of Union Budget : - Direct Taxes: - Indirect Taxes: | CA. Nulvi C.R CA. Naveen Rajpurohit | 5.30 pm to 8.00 pm |
| 30-04-2016 Saturday | An Update of Companies Act 2013: - Appointment & Removal of Auditors - Section 185 : Loans to Directors - Practical aspects | CA. Sukesh S Patil CA. Punarvas Jayakumar | 5.30 pm to 8.00 pm |

Note: There is no fee for the said programmes.

CA Raveendra S Kore
SICASA, Chairman



Seminar on Issues Relating to Co-operative Societies

On **Saturday, 14th May 2016**

Venue: **S.Narayanan Auditorium, ICAI Bhawan, Bangalore Branch**

Timings: **9.45am to 5.30pm**

**6 hrs
CPE**

| Timings | Topics | Speakers |
|--------------------|--|---|
| 9.00am to 9.45am | Registration | |
| 9.45am to 10.45am | Inauguration & Interactive Session by: Chief Guest – Shri. Prakash C Majgi , <i>Director of Co-operative Audit and other officials</i> | |
| 10.45am to 11.00am | Tea Break | |
| 11.00am to 12.00pm | Issues relating to Auditing & Reporting under Cooperative Acts | CA. B.V.Raveendranath , <i>Sagar</i> |
| 12.00pm to 01.15pm | Audit & Reporting aspects in respect of audit of Co-operative Banks | CA. Umesh Bolmal , <i>Belgaum</i> |
| 01.15pm to 02.15pm | Lunch Break | |
| 02.15pm to 03.30pm | Accounting and Auditing Standards applicable to Cooperative | CA. Shivakumar H , <i>Bengaluru</i> |
| 03.30pm to 03.45pm | Tea Break | |
| 03.45pm to 05.00pm | Taxation Laws as applicable to Co-op Societies in Karnataka | CA. D.R.Venkatesh , <i>Bengaluru</i> |
| 5.00pm to 5.30pm | Open House & Valedictory | |

CA. Pampanna B. E
Chairman

CA. B.V. Raveendranath, *Sagar*
Co-Ordinator

CA. Shravan Guduthur
Secretary

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Email : **blrregistrations@icai.org** | Website : **www.bangaloreicai.org**

Bangalore Branch of SIRC of ICAI

is looking for immediate outright purchase of commercially converted land measuring between 20,000 to 40,000 sq. feet in Bengaluru- preferably in Basavanagudi, Jayanagar, Banashankari, JP Nagar, BTM Layout, Rajajinagar, Malleshwaram, Vijayanagar, and surrounding areas with proper and good approach road with 40 feet width, preferably a Prime Location having connectivity to Metro / Bus Station with clear title and / or Commercial Building between 40,000 to 60,000 Sq. Ft. built up area, constructed strictly as per BBMP approved plan without any deviation, OC Certificate is a must. Ready to move.

Interested parties can send mail

blrbldgicai@gmail.com, blradmin@icai.org | Ph: 080-30563508

KARNATAKA COMMERCIAL TAX UPDATES 2016

CA Annapurna Kabra



1. KARNATAKA VAT ACT 2003

- I) Vide Notification No FD 34 CSL 2016 dated 31.03.2016 which states that the Government of Karnataka hereby **exempts** with effect from 01.4.2016 upto 31.3.2017 the tax payable on the sale of the following goods namely paddy and Rice, wheat, pulses, Flour and soji of rice and wheat, Maida of wheat and Ragi Rice (Processed Ragi).
- II) Vide Notification No FD 34 CSL 2016 dated 31.03.2016 which states that the Government of Karnataka hereby **exempts** with effect from 01.4.2016 the tax payable on the sale of handmade paper, handmade paper board including and handmade paper products manufactured and sold by a dealer recognized as Khadi and Village Industry by the Khadi and Village industries Commission or the Karnataka Khadi and Village Industries Board, Aluminum house hold utensils other than pressure cooker and cutlery and Jowar Roti and Ragi Roti.
- III) Vide Notification No FD 34 CSL 2016 dated 31.03.2016 which states that the Government of Karnataka **exempts** with effect from 01.4.2016 the tax payable by a dealer under the said Act on sale of crude oil as specified in clause (ii-c) of section 14 of CST Act 1956.
- IV) Vide Notification No FD 34 CSL 2016

dated 31.03.2016 which states that the Government of Karnataka **reduces** with effect from the first day of April 2016, the tax payable by a dealer under the said Act to Five and Half percent on the sale of the following goods namely

- o Chutnipudi prepared from groundnut, nigar seeds, copra, Bengal gram, garlic, flax seeds and fried gram.
 - o office file made of paper and paper board
 - o Adult diapers
 - o hand operated rubber sheet making machine
 - o Set top boxes for viewing television content
 - o Surgical gown, coat, mask, cap and drapes of single use made of non-woven fabrics
 - o Helmets
 - o LED Bulbs
- V) Vide Notification No FD 34 CSL 2016 dated 31.03.2016 the following are considered as **industrial inputs** and are liable to tax at 5.5%
- o Nickel bars, rods, profiles and wire falling under HSN Code 7505
 - o Nickel plates, sheets, strip and foil falling under HSN code 7506
 - o Titanium and articles thereof including waste and scrap
- VI) Vide Notification No FD 34 CSL 2016

dated 31.03.2016 which states that the Government of Karnataka substitutes the words and figures of Notification No FD 229 CSL 2013 as Multimedia speakers with price not exceeding Rs. 1000/- per set as Multimedia speakers. Therefore **Multimedia speakers without any monetary limit will be liable to tax.**

- VII) Vide Notification No FD 34 CSL 2016 dated 31.03.2016, the Government of Karnataka specifies that with effect from 01.4.2016, **input tax paid on purchase of cigarettes** in excess of two percent shall not be deducted in calculating the net tax payable in respect of interstate sale of Cigarettes against C form.

KARNATAKA VAT AMENDMENT BILL 2016 ((L.A. Bill No. 12 of 2016))

This Act may be called the Karnataka Value Added Tax (Amendment) Act, 2016. It shall come into force with effect from the First day of April, 2016.

- I) **Amendment of Section 10.**– In the Karnataka Value Added Tax Act, 2003 (Karnataka Act 32 of 2004) (hereinafter referred to as the principal Act), in section 10–

Prior to Amendment of Act

Section 10(3): Subject to input tax restriction specified in Sections 11, 12, 14, 17, 18, and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of



output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and **relatable to goods purchased during the period immediately preceding five tax periods of such tax period, if input tax of such goods is not claimed in any of such five preceding tax periods** and shall be accounted for in accordance with the provisions of this Act.

After Amendment of Act

Section 10(3) Subject to input tax restriction specified in Sections 11, 12, 14, 17, 18, and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and shall be accounted for in accordance with the provisions of this Act.

“Provided that, a registered dealer while calculating the net tax payable on or after first day of April 2015 may claim input tax relatable to goods purchased during the period immediately preceding five tax periods of such tax period, if input tax of such goods is not claimed in any of such five preceding tax periods.”

After Amendment

Section 10(6): Notwithstanding anything contained in this Act, input tax deducted by a registered dealer to calculate net tax payable is provisional to a dealer who fails to furnish or furnishes incorrect and incomplete particulars for preparation of the return in the prescribed form electronically through internet in the manner specified in the notification issued by the Commissioner

under first proviso to section 35 and the jurisdictional Local VAT Officer or VAT sub-officer shall assess such dealer for such tax period by disallowing input tax claimed by him and issue demand notice:

Provided that, where an assessment has been made under this sub-section and the dealer subsequently furnishes particulars for preparation of the return in the prescribed form or furnishes correct and complete particulars for preparation of the return electronically through internet in the manner specified in the notification for the tax period to which assessment relates, the jurisdictional Local VAT Officer or VAT sub-officer shall withdraw the assessment but the dealer shall be liable to penalty as applicable under sub-section (3-A) of section 72”.

II) Section 31: Accounts.

After Amendment

The following proviso shall be inserted, namely:- “Provided further that the dealers so required to submit a copy of the **audited statement of accounts** and prescribed documents in the prescribed manner shall submit them **electronically** through the website notified by the Commissioner.”

III) Section 35: Returns- In section 35 of the principal Act, in the first proviso to sub-section (1), for the words “or” the words “and” shall be deemed to have been substituted with effect from the first day of April 2010.

Prior to Amendment

Provided that the specified class of dealers as may be notified by the Commissioner shall furnish particulars for preparation of the return in the

prescribed form **or** submit the return in the prescribed form electronically through internet in the manner specified in the said Notification.

After Amendment

Provided that the specified class of dealers as may be notified by the Commissioner shall furnish particulars for preparation of the return in the prescribed form **and** submit the return in the prescribed form electronically through internet in the manner specified in the said Notification.

IV) Section 38: Assessment of tax

Prior to Amendment

Section 38(2): Where a registered dealer fails to furnish his monthly or final return on or before the date provided in this Act or the rules made **thereunder**, the prescribed Authority shall issue an assessment to the registered dealer to the best of its judgement and the tax assessed shall be paid within ten days from the date of service if such assessment on the dealer.

After Amendment

Section 38(2): Where a registered dealer fails to furnish his monthly or final return on or before the date provided in this Act or **the return furnished is incorrect or incomplete**, the prescribed Authority shall issue an assessment to the registered dealer to the best of its judgement and the tax assessed shall be paid within ten days from the date of service if such assessment on the dealer.

V) Section 72: Penalties relating to returns and assessment

After Amendment

Section 72(2-A): A dealer who for any prescribed tax period furnishes a revised return which understates his liability

to tax or overstates his entitlement to a tax credit by more than five per cent of his actual liability to tax, or his actual tax credit, as the case may be shall after being given the opportunity of showing cause in writing against the imposition of a penalty, be liable to a penalty equal to ten per cent of the amount of such tax under or overstated.

Explanation: Notwithstanding anything contained in this Act, for the purpose of this section, revised return means a return filed under clause (a) and clause (b) of sub-section (4) of section 35."

After Amendment

Section 72 (3-B). A dealer who fails to submit the copy of the audited statement of accounts and prescribed documents as prescribed in the proviso to sub-section (4) of section 31 as informed in the notice issued to him shall be liable to a penalty of fifty rupees for each day of default.

VI) Amendment of Fourth Schedule

New Entry 7 of the Fourth Schedule is inserted as "the Aerated and carbonated non-alcoholic beverages whether or not containing sugar or other sweetening matter or flavor or any other additive including soft drinks and soft drink concentrates (whether in sealed container or otherwise)" liable to tax at 20%

VII) Amendment of Sixth schedule

Before Amendment in Serial Number 4 of the Sixth Schedule at 5.5%

Description of works contract: Fabrication and erection of structural works including Fabrication, supply and erection of iron trusses, purlines, etc

After Amendment in Serial Number 4 of the Sixth Schedule at 5.5%

Description of works contract:

"Fabrication and erection of structural works of iron and steel including fabrication, supply and erection of iron trusses, purlines and the like."

2. CENTRAL SALES TAX ACT 1956

I) Vide Notification No FD 34 CSL 2016 dated 31.03.2016 which states that the Government of Karnataka reduces with effect from the first day of April 2016, the tax payable by the dealer under the said Act to **two percent in respect of Cotton** as specified in Clause (ii) of section 14 of CST Act 1956. ("Section 14 (ii) - cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste")

II) Vide Notification No FD 34 CSL 2016 dated 31.03.2016, the Government of Karnataka **rescinds the following Notifications** which were issued prior to introduction of VAT which provided for tax at 1% on interstate sales (FD 177 CSL 2003(2), dated 08.7.2003, FD 55 CSL 2004(22) dated 31.7.2004 and FD 91 CSL 2005(2) dated 31.3.2005)

3. KARNATAKA SALES TAX ACT 1957

I) Vide Notification No FD 34 CSL 2016, the Government of Karnataka **increases** the tax payable under section 5 of the Act and with effect from 01.4.2016 as Aviation Fuel will be liable to tax at Twenty Eight Percent (28%)

Motor Spirits specified in item (ii) of serial Number 12 of Part M of Second Schedule liable to tax at Nineteen Percent (19%).

KARNATAKA TAXATION

AMENDMENT BILL 2016

(L.A. Bill No. 12 of 2016)

This Act may be called the Karnataka Taxation Laws (Amendment) Act, 2016. It shall come into force with effect from First day of April 2016.

4. Karnataka Entertainment Tax Act 1958

Before Amendment

4-G. Tax on Multi System Operator and Direct to Home service provider.-

Notwithstanding anything contained in Sections 4-C and 4-D, there shall be levied and collected a tax at the rate of **six per cent** on the amounts received or receivable by a Multi System Operator towards distributing satellite television signals, communication network, including production and transmission of programmes and packages and by a Direct to Home service provider towards providing television signals under the Direct to Home Scheme

After Amendment

4-G. Tax on Multi System Operator and Direct to Home service provider.-

Notwithstanding anything contained in Sections 4-C and 4-D, there shall be levied and collected a tax at the rate of **ten** per cent on the amounts received or receivable by a Multi System Operator towards distributing satellite television signals, communication network, including production and transmission of programmes and packages and by a Direct to Home service provider towards providing television signals under the Direct to Home Scheme:

5. Karnataka Tax on Professions, Trades, Callings and Employments At, 1976:



Registration and Enrolment. -

Before Amendment

(3) Every employer or person required to obtain a certificate of registration or enrolment shall, within ninety days from the date of commencement of this Act or, if he was not engaged in any profession, trade, calling or employment on that date, within thirty days from the date of commencement of his profession, trade calling or employment, or in respect of a person referred to in sub-section(2) within thirty days of his becoming liable to pay tax at a rate higher or lower than the one mentioned in his certificate of enrolment, apply for a certificate of registration or enrolment, or revised certificate of enrolment, as the case may be, to the assessing authority in the prescribed form and the assessing authority shall, after such inquiry as it may deem fit **within thirty days** of the receipt of the application (which period in the first year from the commencement of this Act shall be extended to ninety days), if the application is in order, grant him such certificate

After Amendment

(3) Every employer or person required to obtain a certificate of registration or enrolment shall, within ninety days from the date of commencement of this Act or, if he was not engaged in any profession, trade, calling or employment on that date, within thirty days from the date of commencement of his profession, trade calling or employment, or in respect of a person referred to in sub-section(2) within thirty days of his becoming liable to pay tax

at a rate higher or lower than the one mentioned in his certificate of enrolment, apply for a certificate of registration or enrolment, or revised certificate of enrolment, as the case may be, to the assessing authority in the prescribed form and the assessing authority shall, after such inquiry as it may deem fit **within three days** of the receipt of the application (which period in the first year from the commencement of this Act shall be extended to ninety days), if the application is in order, grant him such certificate

6. Karnataka Tax on Luxuries Act, 1979 (Karnataka Act 22 of 1979).-

Before Amendment

3-E. Levy and collection of tax on luxury provided in a hospital.-(1)

There shall be levied and collected a tax at the rate of eight percent on the charges collected for luxuries provided in a hospital in a room such as accommodation, air conditioning, telephone, telephone calls, television, radio, music, extra beds and the **like where** such charges are more than one thousand rupees per day per room.

After Amendment

3-E. Levy and collection of tax on luxury provided in a hospital.-(1)

There shall be levied and collected a tax at the rate of eight percent on the charges collected for luxuries provided in a hospital in a room such as accommodation, air conditioning, telephone, telephone calls, television, radio, music, extra beds and the **like other than facilities provide in a Intensive Care Unit(ICU)"** where such charges are more than one thousand rupees per day per room.

Before Amendment

7-A. Assessment of escaped tax. –

(1) Where for any reason the whole or any part of the charges for lodging, charges for luxuries provided in a hotel for residents or others, charges for luxuries provided in a **marriage hall has escaped assessment** to tax or has been assessed at a lower rate than the rate at which it is assessable, the Luxury Tax Officer may, at any time within a period of five years from the expiry of the year to which the tax relates, proceed to assess to the best of his judgment the tax payable on such charges after issuing a notice to the proprietor and after making such enquiry as he considers necessary.

After Amendment

7-A. Assessment of escaped tax. –

(1) Where for any reason the whole or any part of the charges for lodging, charges for luxuries provided in a hotel for residents or others, charges for luxuries provided in a **marriage hall or charges for luxuries provided in a hospital or charges for luxuries provided in a club has escaped assessment** to tax or has been assessed at a lower rate than the rate at which it is assessable, the Luxury Tax Officer may, at any time within a period of five years from the expiry of the year to which the tax relates, proceed to assess to the best of his judgment the tax payable on such charges after issuing a notice to the proprietor and after making such enquiry as he considers necessary.

7. Karnataka Tax on Entry of Goods Act, 1979 (Karnataka Act 27 of 1979).-

Section 13. Appeals

Before Amendment

Section 13(3)(a) No appeal against an

order of assessment shall be entertained by the appellate authority unless it is accompanied by satisfactory proof of the payment of the **tax and penalty** not disputed in the appeal.

After Amendment

Section 13(3)(a) No appeal against an order of assessment shall be entertained by the appellate authority unless it is accompanied by satisfactory proof of the payment of the **tax and other amount** not disputed in the appeal.

Before Amendment

(b) Notwithstanding that an appeal has been preferred under sub-section (1), the tax or other amount shall be paid in accordance with the order against which the appeal has been preferred:

Provided that the appellate authority may, in its discretion, **stay payment of one half of tax**, if the appellant makes payment of the other half of the tax along with the prescribed form of appeal:

After Amendment

(b) Notwithstanding that an appeal has been preferred under sub-section (1), the tax or other amount shall be paid in accordance with the order against which the appeal has been preferred:

Provided that the appellate authority may, in its discretion, **stay payment of seventy percent of tax and other amount**, if the appellant **makes payment of the balance thirty percent of the tax and other amount** along with the prescribed form of appeal:

Before Amendment

Provided further that where any application made by an applicant for

staying proceedings of recovery of any tax or other amount has not been disposed of by the Appellate Authority within a period of thirty days from the date of such application, it shall be deemed that the Appellate Authority has made an order staying proceedings for recovery of such tax or other amount subject to payment of one half of the tax disputed and furnishing of sufficient security to the satisfaction of the assessing authority in regard to the other half of such tax or amount within a further period of fifteen days:

After Amendment

Provided further that where any application made by an applicant for staying proceedings of recovery of any tax or other amount has not been disposed of by the Appellate Authority within a period of thirty days from the date of such application, it shall be deemed that the Appellate Authority has made an order staying proceedings for recovery of such tax and other amount subject to payment of seventy percent of tax and other amount and furnishing of sufficient security to the satisfaction of the assessing authority in regard to the seventy percent of such tax and amount within a further period of fifteen days:

Before Amendment

(4) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

After Amendment

(4) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

“Provided that the Commissioner may notify the website in which appeal shall be filed electronically.”

Section 14: Appeal to Appellate Tribunal

Before Amendment

(3) The appeal or the memorandum of cross objections shall be in the prescribed form, shall be verified in the prescribed manner, and in the case of an appeal preferred by any person other than an officer empowered by the State Government under sub-section (1) shall be accompanied by proof of payment of **one half of tax or other amount disputed** and also a fee equal to two per cent of the amount of assessment objected to, provided that the sum payable in no case be less than two hundred rupees or more than one thousand rupees.

Provided that a single appeal may be preferred against orders of assessment or reassessment or any other orders or proceedings, in respect of more than one tax periods of any year

Provided that the Appellate Tribunal may, in its discretion, stay payment of **one half of tax or other amount disputed**, if the appellant makes payment of the **other half of the tax or other amount disputed along with the prescribed form of appeal**:

Provided further that the Appellate Tribunal shall dispose of such appeal within a period of one hundred eighty days from the date of the order staying proceedings of recovery of one half of tax or other amount and, if such appeal is not so disposed of within the period specified, the order of stay shall stand vacated after the said period and the Appellate Tribunal shall not make any further order staying proceedings of recovery of the said tax or other amount.



After Amendment

(3) The appeal or the memorandum of cross objections shall be in the prescribed form, shall be verified in the prescribed manner, and in the case of an appeal preferred by any person other than an officer empowered by the State Government under sub-section (1) shall be accompanied by proof of payment of **thirty per cent of the tax and other amount** disputed and also a fee equal to two per cent of the amount of assessment objected to, provided that the sum payable in no case be less than two hundred rupees or more than one thousand rupees.

Provided that a single appeal may be preferred against orders of assessment

or reassessment or any other orders or proceedings, in respect of more than one tax periods of any year

Provided that the Appellate Tribunal may, in its discretion, **stay payment of seventy percent of tax and other amount** disputed, if the appellant makes payment of the **thirty per cent of the tax and other amount** disputed along with the prescribed form of appeal:

Provided further that the Appellate Tribunal shall dispose of such appeal within a period of one hundred eighty days from the date of the order staying proceedings of recovery of seventy percent of tax and other amount and, if such appeal is not so disposed of within the period specified, the order of stay shall stand vacated after the

said period and the Appellate Tribunal shall not make any further order staying proceedings of recovery of the said tax and other amount. ■

Congratulations



CA. T. R. Anjanappa

Past President, KSCAA

has been nominated as member on
Zonal Railway Users Consultative
Committee (ZRUCC)
of South Western Railway,
Ministry of Railways, Govt of India.

Kind Attention: Members

Members are requested to pass on the information to their clients

COURSE ON FINANCE FOR NON-FINANCE EXECUTIVES

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The course does not call for any prior knowledge in Accountancy, Finance and Tax Laws. The course coverage will be basic in all subjects.

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- Direct Taxes
- Financial Analysis
- Project Reports
- Indirect taxes
- Corporate Finance
- Cost Accounts

THE IMPORTANCE OF INTERNAL CONTROL OVER FINANCIAL REPORTING

CA Mohan R Lavi



Background

In 2002, the Sarbanes Oxley Act (SOX) was enacted in the United States of America as a reaction to the Enron episode. The most important Section of SOX was Section 404, which focused on internal control over financial reporting and mandated all entities to do a “walkthrough” over their internal control processes. It was generally felt that internal control processes would be strengthened after the enactment of SOX. Fourteen years after SOX, a mini-version of Enron has reappeared.

Valeant

Valeant Pharmaceuticals (Valeant) is a pharmaceutical company based in Canada and listed on the United States and Canadian stock exchanges. Established in 1960, Valeant has grown through mostly through the inorganic route (acquisitions) and reports regular quarterly income and profits of around 2.73 billion \$ and 341.5 million \$ respectively. In the past, Valeant has been criticized for acquiring companies and their products and then increasing their prices. This ensured that patients shifted to purchasing products manufactured and sold by Valeant.

Revenue Recognition

On December 15, 2014, a subsidiary of Valeant entered into a purchase option agreement with Philidor, an online pharmacy that mainly sold

Valeant products. Valeant exercised an exclusive option to acquire 100% of the equity interest in Philidor due to which Philidor was consolidated with Valeant for accounting purposes as a variable interest entity for which Valeant was the primary beneficiary. US GAAP accounting standards have always indicated that physical delivery to a customer is the best indicator of transfer of risks and rewards to recognize revenue. Prior to consolidation, revenue on sales to Philidor was recognized by Valeant on a sell-in basis (i.e., recorded when Valeant delivered product to Philidor). Valeant has determined that certain sales transactions for deliveries to Philidor in 2014 leading up to the option agreement were not executed in the normal course of business and included actions taken by Valeant in contemplation of the option agreement. In essence, what this means is that Valeant recognized some revenue only because they were aware that the financial statements of Philidor would be consolidated with Valeant in the near future. Revenue for these transactions should have been recognized on a sell-through basis (i.e., record revenue when Philidor dispensed the products to patients) prior to entry into the option agreement rather than incorrectly recognized on the sell-in basis utilized by Valeant. Additionally, related to these and certain earlier transactions,

Valeant also has concluded that collectability was not reasonably assured at the time the revenue was originally recognized, and thus these transactions should have been recognized on a sell-through basis instead of a sell-in basis. Following the consolidation of Philidor at the option agreement date, Valeant began recognizing revenue as Philidor dispensed product to patients.

Under the sell-in method previously utilized by Valeant prior to the consolidation of Philidor in December 2014, revenue was recognized upon delivery of the products to Philidor. At the date of consolidation, certain of that previously sold inventory was still held by Philidor. Subsequent to the consolidation, Philidor recognized revenue on that inventory when it dispensed products to patients, and that revenue was consolidated into Valeant's results. As long as those pre-consolidation sales transactions were in the normal course of business and not entered into in contemplation of the option agreement, Valeant's historical accounting for this revenue was in accordance with generally accepted accounting principles and consistent with its independent auditors' published guidance on this topic. Valeant had to reverse the revenue it had recognized on purpose in contemplation of its acquiring Philidor.

Valeant has identified misstatements that would reduce previously



reported fiscal year 2014 revenue by approximately \$58 million, net income attributable to Valeant by approximately \$33 million, and basic and diluted earnings per share by \$.09 . Valeant has identified misstatements in the first quarter of 2015, consisting primarily of the reversing effect on earnings of the 2014 misstatements, which would reduce revenue by approximately \$21 million (timing of recognition of managed care rebates), increase net income attributable to Valeant by approximately \$24 million and increase basic and diluted earnings per share by \$.07.

Internal Controls

Valeant filed a Form 8-K (a form that is used to notify investors of specified events in a company) with the Securities and Exchange Commission (SEC) on

March 21, 2016 in which it made the following statement:-

“As a result of the restatement, management is continuing to assess Valeant’s disclosure controls and procedures and internal control over financial reporting. Nevertheless, management, in consultation with the Committee, has concluded that one or more material weaknesses exist in Valeant’s internal control over financial reporting and that, as a result, internal control over financial reporting and disclosure controls and procedures were not effective as of December 31, 2014 and disclosure controls and procedures were not effective as of March 31, 2015 and subsequent interim periods in 2015 and that internal control over financial reporting and disclosure controls and procedures will not

be effective at December 31, 2015”.

Conclusion

The Valeant episode reaffirms the need for every entity to have a robust and foolproof system of internal control over financial reporting. In 2002, India did not have any specific requirements on internal financial controls. Eleven years after Enron, the Companies Act, 2013 laid out specific requirements through an Explanation to Section 134(5)(e) (directors to lay down internal financial controls) and Section 143(3)(i) (auditor to report on the internal financial controls). Against the backdrop of the Valeant incident, these Sections become very critical due to the fact that in some companies, the more the internal control processes change, the weaknesses in those processes remain the same. ■

Advt.

Advt.

BUDGET AMENDMENTS UNDER CUSTOM LAWS

CA. N.R. Badrinath, B.Com, Grad CWA, FCA & CA. Madhur Harlalka, B.Com, FCA, LL.B



1. Customs duty exempt on media with recorded Information Technology Software:

Sale of IT software on media which requires affixation of MRP under the provisions of Legal Metrology Act will be liable for payment of Customs duty (CVD), as applicable with effect from 01.03.2016.

However, sale of any IT software on media not requiring affixation of MRP will be liable to Service tax and consequently will be exempt from payment of Customs duties. Nevertheless, in such cases, the value of media including the freight thereon will be liable to Customs duties, as the case may be. The manufacturer would also be required to submit a declaration in the prescribed format to the jurisdictional Principal Commissioner / Commissioner of Customs by declaring the value of said media along with details of Service Tax discharged on the same.

2. Goods for power generation plant exempt from Customs:

All machinery and equipment required for initial setting up of a project for the generation of power based on municipal and urban waste is exempt from payment of customs duty with effect from 01.03.2016.

This would be subject to the

condition that the importer has to establish that the agreement entered with the concerned local body for the processing of municipal solid waste is for not less than 10 years.

3. Change in warehousing provisions under Customs:

The Central Government has proposed to re-define the warehousing provisions starting from authority to approach to benefits / restriction applicable under warehousing. The changes are as follows:

a. **Approval:** The Principal Commissioner of Customs or Commissioner of Customs subject to certain conditions specified may grant license to a private warehouse wherein dutiable goods imported by importer directly or on behalf of him may be deposited. Hitherto, power to approve licensing of private warehouse was with Assistant Commissioner of Customs or Deputy Commissioner of Customs.

b. **Special warehouse:** The Principal Commissioner of Customs or Commissioner of Customs is empowered to grant a license to set a special warehouse on case to case basis, wherein dutiable goods may be deposited by the importer. Such special warehouse shall be caused to be locked by the proper

officer and not allow any person to enter the warehouse or remove any goods therefrom without prior permission of the proper officer.

c. **Cancellation of license:** Where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions of the licence, the Principal Commissioner of Customs or Commissioner of Customs may cancel the licence granted after giving a reasonable opportunity of being heard. After cancellation of license, the goods lying under the said licensee, within 7 days from such order or within extended period from the proper officer may be allowed to be removed to another warehouse or may be cleared for home consumption or for export.

d. **Suspension of license:** The Principal Commissioner of Customs or Commissioner of Customs is empowered to suspend operation of any warehouse during pendency of enquiry initiated against license as per the Act. Further, during the suspension of warehouse, no goods would be allowed to be deposited / removed.

e. **Warehousing bond:** The importer of any goods in respect of which a bill of entry for warehousing has



been presented and assessed to duty as per prescribed Rules, shall execute a bond in a sum equal to thrice the amount of the duty assessed on such goods. Hitherto, execution of bond for the value equal to twice the amount of the duty assessed on such goods. Further, in addition to the execution of the above bond, license may have to submit the security as may be prescribed or notified.

- f. **Period for which goods may remain warehoused:** Capital Goods intended for use in any EOU/ EHTP/STP/warehouse and which are permitted to be used for processing / manufacture / any other operation may be stored or may remain in such premises till their clearance (without any limit on the period). Hitherto, the time limit for such goods to remain in the warehouse was capped at 5 years.

In case of goods, other than capital goods intended to use in the any EOU/EHTP/STP/warehouse where permitted to a process of manufacture or other operation may be stored in such premises till its consumption or clearance from such premises, whichever is earlier. Hitherto, the time limit to store the said goods was till the expiry of 3 years.

The above changes in warehousing provisions will be effective from the date of enactment of Finance Bill, 2016.

4. **Show Cause Notices can now be issued for a period upto 2 years under Customs:** The limitation period for verification of records and recovery of customs duty, if any

by the tax office is increased from 1 year to 2 years.

However, in cases involving fraud, collusion, suppression, mis-representation etc., the period of 5 years remains unaltered.

This change will be effective from the date of enactment of Finance Bill, 2016.

5. **Interest on delayed payment of duty reduced under Customs:**

The rate of interest for delay in payment of customs duty is reduced to 15% p.a from 18% with effect from 01.04.2016.

6. **Deferred payment of customs duties enabled in select cases:**

The Finance Bill, 2016 provides for

permitting certain class of importers to make a deferred payment of duty and any charges, viz., duty need not be paid at the time of or before the clearance of goods. The conditions and documentation in this regard is yet to be prescribed. Further, it is provided that for the period of delay, interest will be payable as applicable. The proposed amendment in relation to deferred payment shall be effective from the date of enactment of Finance Bill, 2016.

7. **Baggage Rules under Customs amended:**

The summary of the Baggage Rules to be effective from 01.04.2016 is as follows:

| Eligible passenger | Origin Country | Duty free allowance |
|--|-----------------------------------|--|
| Passengers of Indian origin and foreigners residing in India, excluding infants | Other than Nepal, Bhutan, Myanmar | Rs. 50,000/- |
| Tourists of foreign origin, excluding infants | Nepal, Bhutan, Myanmar | Rs. 15,000/- |
| Passengers of Indian origin and foreigners residing in India, excluding infants | Nepal, Bhutan, Myanmar | By air Rs. 15,000/- |
| Tourists of foreign origin, excluding infants | Anywhere | By land - Nil |
| Gold jewellery - Indian passenger who has been residing abroad for over one year | Anywhere | 20 gms with a value cap of Rs. 50,000/- 40 gms with a value cap of Rs. 1,00,000/- |
| Gentleman | Anywhere | Alcohol liquor or wine: 2 litres |
| Lady | Anywhere | Cigarettes: 200 numbers or Cigars upto 50 or Tobacco 250 grams |
| All passengers | Anywhere | One laptop computer (note book computer). |
| All passengers | Anywhere | |
| Passenger of 18 years and above | Anywhere | |



COMPANY LAW - UPDATES

CA K. Gururaj Acharya

I. Important Updates – February & March 2016

1. MCA Updates

1.1 CARO 2016 notified (*Companies (Auditor's Report) Order, 2016 dated 29.03.2016*)

- a. Applicable for FY's commencing on or after 01.04.2015
- b. **Applicable to ALL Co's (incl. Foreign Co's) except –**
 - i. Banking Co's
 - ii. Insurance Co's
 - iii. Sec. 8 Co's
 - iv. OPC & Small Co's
 - v. **Private Co's (not being Subsidiary or Holding of public co.) with –**

| CARO 2015 (Pre) | CARO 2016 (Post) |
|--|---|
| <ul style="list-style-type: none"> PUC + <u>Free Reserve</u> < Rs. 50 Lacs (#1) O/s Loans from Banks / FI < Rs. 25 Lacs (#2) Turnover < Rs. 5 Cr. | <ul style="list-style-type: none"> PUC + <u>Reserves & Surplus</u> < Rs. 1 Cr (#1) O/s Loans from Banks / FI < 1 Cr (#2) Total Revenue (#3) |

(#1) As at the Balance Sheet date

(#2) At any time during the year

(#3) For CARO 2016: Total Revenue as disclosed in Sch III to Co's Act, 2013 (**including revenue from discontinuing operations**)

c. **Not applicable to Auditor's Report on Consolidated Financial Statements (CFS).**

d. CARO 2016 contains 16 Clauses as against 12 clauses in CARO 2015.

Clauses dropped -

- (i) *Comment on Internal Controls*
- (ii) *Comment on accumulated loss > 50% of Cos.'s Networth and Cash loss.*

Clauses added -

- (i) *Details of Immovable properties not held in Co name.*
- (ii) *Details of Non-Compliance of S. 185 [Loan to directors, etc] & 186 [Loan and investment by company, etc]*
- (iii) *Proceeds from Public Issue & Term Loan whether applied for purpose for which they were raised.*
- (iv) *Managerial Remuneration – Is it as per S. 197 r/w Schedule V*
- (v) *Nidhi Cos. Ratio as required whether maintained.*
- (vi) *Related Party Transactions – details of Non-compliance with S. 188 & 177 and disclosure as per AS.*
- (vii) *Preferential allotment / Private Placement – Compliance with S. 42 and end use as per purpose specified*
- (viii) *Non Cash transaction entered by Directors of Co. / Holding Co. / Subsidiary Co. / Associate Co. in compliance with S. 192 (i.e with SH approval thro OR)*
- (ix) *Whether NBFCs requiring registration u/s. 45-IA of RBI Act have been so registered.*

1.2 Co's (Accounting Standards) Amendment Rules, 2016 notified on 30th March 2016

- a. AS – 10 (*Accounting for Fixed Assets*) renamed as **"Property, Plant and Equipment"**
- b. AS – 6 (*Depreciation Accounting*) withdrawn as the substantial aspects of depreciation would be subsumed under new AS – 10 (*Property, Plant and Equipment*).
- c. Dividends declared after Balance Sheet date should **not be recognized as "liability"** at BS date, unless a statute requires otherwise. Such dividends should be disclosed in notes (AS – 4 amended to bring it in line with Schedule III and IND AS)
- d. AS 2, AS 4, AS 10, AS 14, AS 21 & AS 29 amended with minor modifications, mostly to accommodate the above changes.

*The Amendment to the Accounting Standards would come into force as on the date it is published in the Official Gazette. **Since the AS Amendment Notification was published in the OG on 30.03.2016, they would be effective for all the FS issued after that date.** One could also take a view that the Amended AS would be applicable to FS for FY's commencing on or after 30.03.2016. The Author subscribes to the former view.*



1.3 Co's (IND-AS) Amendment Rules, 2016 notified on 30th March 2016

- IND-AS 115** (Revenue from Contracts with Customers) deferred till **01.04.2018** (i.e applicable from FY 2018-19 onwards). Until that date, the following IND-AS shall apply:
 - Ind-AS 11 - Construction Contracts.
 - Ind-AS 18 - Revenue.
- IND-AS 1, 19, 28, 34, 101, 105, 107, 110, 112 also amended.

1.4 Centralized approval for Incorporation of Cos. by Central Registration Centre (CRC) WEF 28.3.16 [vide Notification S.O.(E) & Co's(Incorporation) Second Amendment Rules, 2016 dtd 23.03.2016]

- Incorporation of Co's [u/s. 7 (New Co's), 8 (not for profit) & 366 (conversion of Firms/LLP's, AOI's etc to Co's)] centralized – All Incorporation forms (INC 2, INC 7, INC 29, INC 22, DIR 12 & URC 1) shall be approved by CRC.
- Certificate of Incorporation (Form INC-11) amended to provide for CRC approval.

1.5 Reg. Buy back of Shares Co's (Share Capital & Debentures) Amendment Rules, 2016 (dated 10.03.2016) & 2nd Amendment Rules dated 29.03.2016

- The requirement of obtaining **Audited** Financials not older than 6 months (from the date of offer document) for arriving at calculations with reference to buy back is dispensed with. Calculations can be based on **Unaudited**

Financials (not older than 6 months) subjected to **Limited Review by Statutory Auditors (Rule 17)**

- Offer for buy-back may remain open for a period less than < 15 days if all members agree.

1.6 Draft Schedule III to Co's Act 2013 placed on MCA portal (on 09.02.2016) Last date for sending suggestions / comments 23.03.2016

The format of BS and statement of P&L along with the General Instructions for its preparation is now segregated into –

- o **Division I** – applicable to Co's following Accounting Standards specified in **CASR 2006**
- o **Division II** – applicable to Co's following IND-AS specified in **Co's (Ind-AS) Rules, 2015**

1.7 Draft Co's (Cost Records & Audit) Amendment Rules, 2016 placed on MCA portal (on 23.02.2016) Last date for sending suggestions / comments 8.03.2016

- CETA Headings (wherever applicable) provided / changed [for Table 'A' & 'B' (Regulated & Non-Regulated Sectors)]
- Co. to obtain Written Consent & Eligibility Certificate from Cost Auditor.
- Cost Auditor may be removed before expiry of term only through Board Resolution after recording reasons for such removal in writing.
- Cost statements, etc annexed to Cost Audit Report, to be approved by BOD, signed by directors and submitted to Cost Auditor.

- Form CRA-4 (Form for filling Cost Audit Report with CG) to be filed in XBRL only

1.8 Draft Rules for Conversion of Unlimited Liability Co. into Limited Liability Co. placed on MCA portal (insertion of Rule 37 vide draft Co's (Incorporation) Second Amendment Rules 2016 dated 17.02.2016) Last date for sending suggestions / comments 2.03.2016

- Rule 37 - Conversion of unlimited liability company into limited liability company inserted
- Certificate of Incorporation consequent to conversion to be issued by ROC in Form INC-11A.

1.9 Draft Rules enabling "Conversion of Partnership Firms to Companies" placed on MCA portal (draft Co's (Authorised to Registered) Amendment Rules 2016 dated 17.02.2016) Last date for sending suggestions / comments 2.03.2016

- Co's (Authorised to Registered) Rules 2014 contains provisions for conversion of LLP to Co's leading to ambiguity as to whether "Partnership firms" (other than LLP's) are eligible. Now the ambiguity is resolved with the enabling provisions.
- Form URC-1 (Application by a company for registration U/s. 366) substituted with new form.

1.10 Removal of Difficulties reg. NFRA (1st Order & 2nd Order dated 29.03.2016)

- CARO** may be notified by CG in consultation with Committee (chaired by an officer of the rank

of Joint Secretary or equivalent in MCA) which shall have representatives from ICAI, Industry Chambers and special invitees from NACAS and C&AG until NFRA is constituted [WREF 10.04.2015]

- b. CG may prescribe **Accounting Standards** as recommended by ICAI, in consultation with & after examination of the recommendations made by NACAS until NFRA is constituted [WREF 01.04.2015]

1.11 Miscellaneous MCA updates-

- a. National Spot Exchange Ltd. (NSEL) & Financial Technologies (India) Ltd. (FTIL) (Amalgamation in Public Interest) Order 2016 issued on 12.02.2016 to Amalgamate NSEL & FTIL.
- b. **Report of the Co's Law Committee** containing **Recommendations** Proposing Amendments to the Companies Act 2013 and corresponding Rules was submitted to Union Minister of Finance, Corporate Affairs and I&B on 01.02.2016 and was placed on MCA portal inviting suggestions / comments upto 15.02.2016.

2. ICAI Updates

- 2.1 **Revised GN Fraud Reporting u/s. 143(12)** of Co's Act, 2013 released by AASB (on 12.02.2016)

The amended provisions of S. 143(12) requires reporting by Statutory Auditor to Central Government only for **Individual frauds** of **`1 Cr** or above (as against every fraud) committed against Company by officers / employees

of the Company. The revised edition of the Guidance Note incorporates all the necessary changes due to amendment in the law at the appropriate places in the earlier issued GN.

- 2.2 GN on **Audit of Banks** released by AASB (on 12.02.2016)

- 2.3 GN on **Accounting for Depreciation in Co's** in context of Sch II to Co's Act'13 (with the objective to provide guidance on issues that may arise from practical application of Sch II - issued on 11.02.2016)

- 2.4 Revised **SA 610 - Using the Work of Internal Auditors** (issued on 05-02-2016)

- 2.5 Std. on Assurance Engagement (SAE) 3420 - **"Assurance Engagements to Report on the Compilation of Pro Forma Financial Information Included in a Prospectus"** (issued on 05.02.2016)

- 2.6 **Announcement regarding Manner of Signing of Certificates by CA's** (05.02.2016)

In order to bring uniformity in the manner of Signing of Certificates, ICAI has decided to require its members to include the following on certificates issued by them –

- Name of CA Firm
- Firm Registration Number
- Name of Member
- Designation
- Membership Number

- 2.7 **Chairperson and Members of Quality Review Board (QRB) not to undertake any foreign**

tour without prior approval of Central Govt (CG). Tour Proposal to give full justification, purpose, necessity & expected Outcome for Consideration of CG. (Vide *Chartered Accountants Procedures of Meetings of QRB, and Terms and Conditions of Service and Allowances of the Chairperson of the Board (Amendment Rules) 2016 dated 08.02.2016*)

THE COMPANIES (AMENDMENT) BILL, 2016

[INTRODUCED IN LOK SABHA ON 16.03.16]

Important provisions of the bill are as follows:

- **Reg. Auditors (S. 139 – 147)**
 - No Requirement for "Ratification of Auditors Appointment" in subsequent years.
 - Auditors Penal provisions for Non-filing of Form ADT-3; Contravention of S. 143, 144 & 145 rationalized.
 - Definition of "Relatives" for the purpose of S. 141 – Disqualification of auditors - rationalized.
(The term "relative" only for the purpose of S.141 - means the spouse of a person; and includes a parent, sibling or child of such person or of the spouse, financially dependent on such person, or who consults such person in taking decisions in relation to his investments)
 - S. 143(1) Auditor of Holding Co. shall have right to access records of its Associate Co's also.
 - Auditor shall Report on **adequacy and Operating Effectiveness** of



"Internal Financial Control (IFC) with reference to FS" instead of "IFC System".

ICAI, through the Guidance Note, had already provided guidance that the auditors' report on adequacy & operating effectiveness of "IFC over Financial Reporting". Now the law is amended to that extent with minor change in wordings.

- S. 147(3)(5) "In case of Criminal liability of an Audit firm, w.r.t liability other than fine, only the concerned partner(s) shall be liable."

- **Reg. Loans to Directors (S. 185)**

- Loan / guarantee may be given to 'any person in whom any of the director is interested (*)'

- After passing a Special Resolution in GM and

- loans being utilised for Principal Business Activities.

(Provided explanatory statement to notice for relevant GM shall disclose full particulars of loans / guarantee given / security provided & purpose of utilization by recipient & any other relevant fact)

(*) 'any person in whom any of director of company is interested' means—

- any Pvt Co., of which any such director is a director / member;
- any Body Corporate at a GM of which < 25% of total voting power may be exercised / controlled by director(s);
- any Body Corporate, the BOD / Managing Director / Manager, whereof is accustomed to act in accordance with directions of Board, or of any director(s), of lending Co.

- **Reg. Directors (S. 149 - 172)**

- S. 149(3) A Co. to have min. 1 Director who stays in India for 182 days during "**Financial Year**" instead of "Calendar Year".

- *Explanation to S. 165(1)* For reckoning the limit of directorships of 20 Co's, the **directorship in a Dormant Co., shall not be included.**

- **Reg. Financial Statements**

- Consolidated Financial Statements to include **Subsidiary and Associate only.**

- Definition of Associate is amended to include JV –

("joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement)

- **Reg. Related Party Transaction**

- "No member of Co., shall vote on SR, to approve any Contract or Arrangement which may be entered into by Co., if such member is a Related Party"

(shall not apply to a Co., in which > 90% members (in no's) are relatives of promoters / Related Party)

- **Other provisions**

- **DEPOSITS** accepted before commencement of Co's Act to be **repaid within 3 years**

- **Restrictions on investment** through not more than two layers of investment companies u/s. 186 deleted

- The Requirement of having specific objects in the MoA now optional. MoA may contain a statement

that Co. may engage in any lawful activity as may be permitted by law of land for time being in force.

- **KMP** amended to include "such other officer, not more than one level below the directors who is in whole-time employment, designated as KMP by the Board"

- **Managerial remuneration** in excess of prescribed limits of Schedule V requires only approval from the shareholder. Approval from Central Govt. dispensed with. However, for making such payments prior approval of bank or public financial institution or non-convertible debenture holder or secured creditor is also required.

- **Private Placement** - doing away with separate offer letter, reduced number of filings, modify penalty provisions for contravention.

- Abridged form of Annual Return for OPC's and Small Co's

- AGM of unlisted co's can be held any where in India with prior consent of all the members

- EGM of all the companies (*other than WOS of foreign companies*) shall be held in India.

- S. 3A Members personally liable if no. falls below statutory min. of 2 & 7 beyond 6 mths.

- **Registered office** can be filed within 30 days (*instead of 15 days*) of incorporation.

- **Satisfaction of Charges** can be belatedly filed even after 30 but days within 300 days.

- S. 194 & 195 Insider trading & forward dealing provisions (S. 194 & 195) omitted.

SERVICE TAX DECISIONS

PARTS DIGESTED – STR VOLUME 41: PARTS 5 & 6

CA. A. Saiprasad



Case Laws

Whether credit of service tax on commission paid to stockist inadmissible as input service?

The Gujarat High Court held that when there was nothing on record to establish that agents of the appellant were incurring expense or engaging in sales promotion; when the agreement with such agents clearly indicated that they were appointed as stockist for sale of goods on commission basis; when commission depended on sales turnover, then such commission was not in the nature of sales promotion and hence not eligible as input service credit. *Gujarat State Fertilizers & Chemicals Limited V. CCE, 2016 (41) STR 794 (Guj)*

Note: The definition of input service has been amended by inserting an explanation w.e.f 3.2.16, which states that 'sales promotion includes service by way of sale of dutiable goods on commission basis'.

Note: Amendment by way of explanation could be interpreted as having retrospective effect if amendment is treated as curative in nature. However matter has to be tested before court of law.

Whether CBEC Circular 98/1/2008-ST is contrary to definition of input service?

Circular No.98/1/2008 had clarified that construction service, works contract service used to construct immovable property cannot be used as input service to discharge service tax on renting of immovable property service.

The Tribunal held that definition of input service includes service for 'setting up' premises of provider of output service. Hence aforesaid CBEC Circular was absolutely contrary to clear and plain language of definition of input service. Hence aforesaid CBEC Circular was not tenable.

Maharashtra Cricket Association V. CCE, 2016 (41) STR 833 (T)

Note: Definition of Input Service has been amended w.e.f 1.4.11 by omitting the words 'setting up' from the definition of input service.

Whether inputs used in manufacture of final product is ineligible when the assessee uses the said final product to provide works contract service under composition scheme?

The appellant was a manufacturer as well as a service provider. The appellant manufactured MS pipes for which they availed credit on inputs. The assessee had discharged excise duty on MS pipes, cleared from their factory at Gowdavalli. The said MS pipes were used in providing works contract service of laying of pipes for irrigation schemes, drinking water schemes etc. The said service was provided from the Hyderabad Office.

The assessee had availed benefit of composition scheme. One of the conditions of the composition scheme was that credit of inputs used for providing works contract service must not be availed.

The department alleged that credit availed on inputs used in manufacturing

MS Pipes were in the nature of inputs used to provide works contract service. Hence credit availed on inputs used for manufacturing MS Pipes were ineligible. The Tribunal held that assessee was both manufacturer and service provider. The assessee is a manufacturer till the goods are cleared from the factory; thereafter the assessee steps into the shoes of service provider.

Tribunal held that MS pipes and not input used to manufacture MS pipes were the inputs for providing works contract service. Since excise duty paid on final product (MS pipes) was not availed as credit while providing works contract service, hence the appellant had satisfied the condition of composition scheme.

The Tribunal further held that when the department collected excise duty on manufacture of MS Pipes in the factory, then it cannot turn around and contend that the said activity was part of works contract service.

Megha Engg & Infrastructure Ltd V. CCE, 2016 (41) STR 842 (T)

Whether Mark-Up Charge charged on Credit Cards used for foreign exchange payments is liable to service tax?

Mark-Up charges was charged when credit cards were used to make foreign exchange payments. The Tribunal held that the service for which mark-up charges were collected was rendered, received and consumed outside India. Hence such mark-up charges were not liable to service tax.



Though the card issuing appellant and cards holders have normal residence in India, it would be of no consequence since the service was rendered and consumed outside India. Tribunal held that service tax was not liable for want of jurisdiction.

SBI Cards and Payment Services Pvt Ltd V. CST, 2016 (41) STR 846 (T)

Also see: Standard Chartered Bank V. Commissioner, 2015 (40) STR 104 (T-LB)

Note: The decision is rendered for the period prior to 1.7.12. Post 1.7.12, as per Rule 8 of POPS Rules, 12, when the location of service provider and location of service provider is in the taxable territory then the POPS is the location of service receiver and hence liable to service tax.

Whether reimbursement charges which are clearly and distinctly identifiable are includable in value of service and consequently liable to service tax?

The appellant had recovered travelling expenses, hotel accommodation and telephone charges by issuing separate bill over and above amount charged for providing Consultancy Engineering service.

The Tribunal relied on Trade Notice No.53 CE (Service Tax)/ 97 which clarified that any expense reimbursed in connection with consultancy engineering service is to be excluded from gross value of taxable service.

Plantech Consultants Pvt Ltd V. CCE, 2016 (41) STR 850 (T)

Note: Reimbursable expenditure/ cost incurred by service provider has been specifically included in the definition of consideration by FA, 2015, of course subject to conditions of R.5 (2) of Service Tax Valuation Rules, 06.

Whether profit retained by Brand Owners of Alcoholic Beverages is liable to service tax?

The Tribunal held that after selling the manufactured beverages to persons nominated by brand owner, surplus profit returned to brand owner was not liable to service tax. Reliance was placed on CBEC Circular F.No. 332/17/2009-TRU dt.30.10.09.

The Tribunal relied on Delhi High Court decision in Intercontinental Consultants and Technocrats Pvt Ltd and held that reimbursable expenses paid to Bottling Unit was not includable in value of services.

Blossom Industries Ltd V. CCE, 2016 (41) STR 872 (T).

Note: Activity of manufacturing alcoholic liquor has been specifically excluded from negative list by FA, 2015. Be that as it may, duty on manufacture of alcoholic liquor is a 'state subject' as per Entry No. 51 of List II to VII Schedule of Constitution.

Also see: Maa Sharda Wine Traders V. UOI, 2009 (15) STR 3 (MP) wherein it has been held that Bottling is a part of manufacturing process and hence packing and bottling of liquor would not be liable to service tax.

Whether non-registration would come in the way of distributing credit by input service distributor?

The High Court held that there is nothing in the statutory rules to disentitle an unregistered input service distributor from availing cenvat credit. The High Court held that not taking registration was a procedural but curable irregularity. It was held that when the assessee was maintaining full records of credit received and distributed, then credit would not be deniable.

CCE V. Dashion Ltd., 2016 (41) STR 884 (Guj)

Whether auction proceeds from sale of un-cleared cargo liable to service tax?

The Tribunal held that in the entire transaction of auctioning abandoned cargo, there exists no recipient of service. Hence question of providing service does not arise.

It was held that merely because S.150 of Customs Act, 62 provides for distribution of auction proceeds to warehouse keeper, it does not mean that service was provided to person who purchased the auctioned goods.

It was held that in case of auction of un-cleared goods, ownership of goods pass to successful bidder, who had not received any service of storage and warehousing from warehouse keeper. Tribunal held that such sale proceeds is liable to sales tax and not service tax.

Whether running, operating and managing hotel after making investment in the entity for eventual purchase of such entity would amount to provision of service/ management consultancy service?

Appellant i.e. Indian Hotel Co. Ltd (IHCL) agreed to run, operate and manage hotel run by Lokhandwala Hotels Pvt Ltd (LHPL), till completion of formalities of purchase from it. Department alleged such activity as liable to service tax under management consultancy service.

The agreement between IHCL and LHPL indicated that the true and only purpose of agreement was acquisition of hotel by IHCL. IHCL had made a small investment in the hotel and had also given a working loan for the running of the hotel. The hotel was given on license to IHCL by LHPL for running it by IHCL till completion of purchase formalities.

The Tribunal held that by making investment in LHPL, IHPL became part owner and hence was not running the hotel as a service to LHPL. It was held that service tax was payable when

service is provided by one person to another for consideration. In the instant case since IHCL was part owner of LHPL, it had not provided service to another person but to itself.

Indian Hotel Co Ltd V. CCE, 2016 (41) STR 913 (T-LB – 3 members).

Note: The minority order has held that service tax would be payable.

Note: Also see Basti Sugar Mills V. CCE, 2007 (7) STR 431 (T) and Rolls Royce Indus Power India Ltd V. CCE, 2006 (3) STR 292 (T)

In case of JV for construction of flat, what would be the value of service provided to the land owner?

The appellant, a builder had entered into a JV with land lord for construction of 72 flats out of which 24 flats were the land lord's share.

The appellant contended that the value

of construction service provided to land owner was the land cost as per S.67(1) (ii). Department contended that value of service was value of similar service provided by the builder to other persons purchasing the flats as per Rule 3 of Service Tax Valuation Rules, 06.

The Tribunal for the purpose of stay/dispensation of pre-deposit held that assessment on the basis of value of similar flats would *prima facie* be proper, after granting abatement and ordered pre-deposit of service tax accordingly.

Southern Properties V. CCE, 2016 (41) STR 972 (T)

Whether getting goods manufactured from another person, which are delivered directly to end buyer whereas invoice for sale raised on assessee (and not on end buyer) is liable to service tax?

The appellant procured orders from

Associate Cement Company (ACC) and forwarded the order to its subsidiary Well Cast Steel Ltd (WCSL).

WCSL delivered the goods directly to ACC and raised invoice on appellant charging 4% CST, after granting it discount. The department contended that appellant acted as commission agent. Hence the discount was liable to service tax under Business Auxiliary Service.

The Tribunal held that when the appellant issued C Forms and Form E-1 to its subsidiary, which documents were submitted to sales tax authorities, who in-turn accepted the documents, then such transaction was in the nature of purchase and sale of goods. Consequently the discount was not liable to service tax.

AIA Engineering Ltd V. CST, 2016 (41) STR 974 (T)

Advt.

Advt.



BUDGET 2016 HERALDS A CONCESSIONAL TAX REGIME FOR INCOME FROM PATENTS

CA Sachin Kumar B.P and CA Omar Abdullah S.M



Introduction

On 29th February the Finance Minister in the Budget speech said, "Research is the driver of innovation and innovation provides a thrust to economic growth. I propose a special **patent regime** with 10% rate of tax on income from worldwide exploitation of patents developed and registered in India." The cue is clear that FM wants to promote domestic research and development and also make India a lucrative option for the Multi-National Enterprises (MNE's) across the globe to base their R&D in India, which will accelerate employment opportunities, innovation, spur commercial and industrial growth. This will also arouse interest of high tech and life sciences corporates to engage in business in India. This would also help India boost the value of patents that are patented with the domestic patent law. Before we discuss the newly introduced proposal in the Finance Bill, 2016, for royalty income the reader must be informed that the patent regime scheme of taxation has been in existence in various countries for some time now with respect to income from intellectual property (IP). Tax rates for Intellectual Property income under patent regimes vary between 0% (Malta) and 15% (France). A patent box regime, in simple words, provides lower tax rates on income from the exploitation of

patent. Patent systems are competitively implemented by various countries to drive technology and innovations. Innovation plays a pivotal role in transforming a society and an economy as a whole. A number of nations believe that a beneficial regime for patents is essential to encourage R&D across sectors, which will foster and ensure the economic wellness of nations. The concept was first introduced in the year 2000 by the Irish and in 2001 by the French Government as a reduced rate of tax on revenue from IP licensing or the transfer of qualified intellectual property. Malta, Cyprus and Liechtenstein offer the lowest statutory IP Box tax rates.

Patent Regime and BEPS Project

Intellectual Property with its geographically mobile characteristics has been subject to aggressive tax planning by Multi-National Enterprises (MNE's) keen on minimising their tax costs. By locating the intellectual property assets in low tax jurisdictions MNE's have been able to lower their overall tax costs substantially to the disadvantage of nations where value is actually created. The Base Erosion & Profit Shifting (BEPS) project undertaken by OECD to address challenges faced in International tax administration by revenue authorities discusses patent regimes as part of its report in Action Plan – 5 of the BEPS Project Report. The Finance Ministry

has been pragmatic in its approach to the BEPS Project and the BEPS Project recommendations feature prominently in the Finance Bill, 2016, in many places such as introduction of Country – by – Country reporting guidelines for transfer pricing, equalisation levy. The memorandum to the Finance Bill, 2016, while discussing the proposed patent regime makes a reference to Action Plan – 5 of the BEPS Project.

Operation of the proposed Patent Regime

The Patent Regime is proposed to be introduced by insertion of a new Sec. 115BBF in the Income-tax Act, 1961. The new section 115BBF provides that where the total income of the eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of ten per cent.

An eligible assessee would mean a person resident in India, who is the true and first inventor of the invention and whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970 and includes every such person, being the true and the first inventor of the invention, where more than one person is registered as patentee under Patents Act, 1970 in respect of that patent.

Illustration – 1

Assessment Year: 2017-18 XYZ Private Limited

| Particulars | (Amount in INR) |
|--|-----------------|
| Royalty from patents | 100 |
| Expense incurred on patents | (30) |
| Copyright Software Revenue | 100 |
| Expense incurred on Copyright Software revenue | (50) |
| Other Business Revenue | 100 |
| Expense incurred on other business revenue | (50) |

Tax Calculation

| Particulars | Tax Calculation | (Amount in INR) |
|---|-----------------|-----------------|
| Royalty | 100*10% | 10 |
| Copyright Software Income | (100-50)*30% | 15 |
| Other Business Income | (100-50)*30% | 15 |
| Total tax liability before Surcharge & Cess | | 40 |

As seen in the above illustration, the new beneficial rate of 10% under the proposed Sec. 115BBF of the Income-tax Act, 1961 is applied on the gross royalty revenue. Also Intellectual Property income to qualify for such beneficial rate should be from a patent **developed and registered** in India. Developed in India has been defined to mean the expenditure incurred by the assessee for any invention in respect of which patent is granted under the Patents Act, 1970. The registration of the patent will have to be as per the provisions of the Patents Act, 1970 and Patent Rules, 2003.

Proposed Indian Patent Regime vs. Action Plan – 5

As discussed above the OECD BEPS Project as per its mandate has identified the significant challenges faced in International Tax Administration and has come out with recommendations in the form of 15 Action Plans which can be adopted by countries as best practices. Action Plan 5: **Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance**, discusses Patent

Regimes in Chapter – 4, and recognises the importance of Patent Regimes in fostering innovation while at the same time highlighting the fact on how Patent Regimes can lead to Base Erosion and Profit Shifting when abused by MNE's. To counter the harmful effects of Base Erosion and Patent Shifting while at the same time maintaining the beneficial provisions of Patent Regimes, Action Plan – 5 recommends the “nexus approach” which can be incorporated in the tax codes of countries to align Patent Regimes with substance requirement.

Action Plan – 5 covers royalty income from IP assets which are in the nature of (i) patents defined broadly, (ii) copyrighted software, and (iii) other IP assets that are nonobvious, useful, and novel. However, Sec. 115BBF of the Income-tax Act, 1961, refers to only royalty income from patents while royalty income from copyrighted software and IP assets that are nonobvious, useful, and novel are not covered by the provisions of Sec.115BBF. Also Action Plan – 5 for the fulfilment of the substance requirement, has recommended a formula based approach as follows:

Qualifying expenditure incurred to develop IP asset

* overall income receiving from IP tax benefits

Overall expenditure incurred to develop IP Asset

- A qualifying expenditure in the numerator includes all expenditure incurred by the tax payer himself but does not include interest, acquisition costs, building costs or costs that are incurred by a related party or costs that cannot be directly linked with the IP asset .
- Overall expenditure in the denominator includes qualifying expenditure, related party costs and acquisition costs.
- The overall income has been defined as the net income from the IP asset i.e. after deducting IP expenditures allocable to IP income; this is to ensure the fact that the whole of the IP income will not qualify for tax benefits when whole of the expenditure is not incurred by the tax payer.

Action Plan – 5 discusses each of the variables elaborately to give a clear picture of how to use the above formula. Para 48 of Action Plan – 5 while defining Overall IP income eligible for preferential rate of tax includes embedded income from the sale of products and the use of processes directly related to the IP asset. However, *Explanation Clause (h)* to the proposed Sec.115BBF of the Income-tax Act, 1961, clearly excludes such embedded incomes from the ambit of the preferential rate eligible to the scheme under section 115BBF of the Act. The Finance Bill – 2016 explaining



Sec. 115BBF of the Income-tax Act, 1961, makes a reference to the Action Plan – 5 which prescribes the '**nexus approach**' so that income arising from exploitation of intellectual property should be attributed and taxed in the jurisdiction where substantial research and development activities are undertaken rather than jurisdiction of legal ownership only. In comparison the provisions of Sec. 115BBF are narrower in scope as can be observed from above.

Proposed patent regime vs. other provisions of the Income-tax Act, 1961

• 115BBF Income and MAT provisions

The MAT provisions are proposed to be amended to provide that the amount of income, by way of royalty in respect of patent chargeable to tax under sec 115BBF, shall be reduced from the book profit, if such amount is credited to the profit or loss account. Further, the book profit shall be increased by an amount of expenditure relatable to royalty in respect of patent chargeable to tax under sec 115BBF.

• Can an assessee choose to be governed by the normal provisions of the Act instead of adopting the scheme under section 115BBF of the Act

There could be situations where the scheme under section 115-BBF which is applicable on the gross royalty income is less advantageous to the assessee than the normal provisions of the Act. For Example: Income from Royalty is 100; Expenses in relation to the Royalty Revenue incurred amount to 90

Tax as per Sec.115BBF: $100 \times 10\% = 10$

Tax as per Normal Provisions of the Act: $(100-90) \times 30\% = 3$

Now the assessee opts to be governed by normal provisions of the Act.

Sec. 115BBF is proposed to be introduced as part of Chapter – XII of the Act. Chapter – XII unlike Chapter XII – A of the Act (Sec. 115-I of the Income-tax Act, 1961) does not give the assessee an option to choose as to, whether to be governed by the special provisions under the specific chapter or be governed by the normal provisions of the Act. Further, sub sec 2 of Sec. 115BBF of the Act starts with a *non-obstante* clause which provides that no expenditure or allowance in respect of such royalty income shall be allowed under the Act. Therefore, the assessee earning royalty income in respect of patents developed and registered in India will be governed by the provisions of Sec. 115BBF. He has no choice to opt to be governed by the normal provisions of the Act.

• Set-Off of Losses

The Hon'ble Supreme Court in **Dr T.A. Qureshi v. CIT 157 Taxman 514 (SC)**, has distinguished a 'loss' from an 'expenditure'. Proposed clause (2) of Sec. 115BBF of the Income-tax Act, 1961, restricts claiming of expenditure or allowance only. It does not however, restrict **set-off of losses** unlike clause (2) of Sec. 115BBE of the Act where it is proposed to restrict set-off of losses specifically. In the absence of a provision restricting set off of losses in Sec. 115BBF it is inferred that losses are allowed to be set-off against the royalty income.

• Sec. 80RRB of the Income-tax Act, 1961 and Sec. 115BBF of the Income-tax Act, 1961

Sec. 80RRB of the Income-tax Act, 1961, provides deduction upto specified limits in respect of royalty income from patents. Clause (2) of the proposed Sec. 115BBF of the

Income-tax Act, 1961, provides that no deduction in respect of any expenditure or allowance shall be allowed to the eligible assessee under any provision of the Act. Deduction under sec 80RRB of the Act is a deduction in respect of income whereas the sec 115BBF restricts claim of any expenditure or allowance. Unlike other sections in Chapter – XII of the Income-tax Act, 1961, such as section 111A or section 112 where Chapter – VI A deductions are specifically restricted from being availed, such restrictions are not prescribed in section 115BBF. Hence it appears, deduction under sec 80RRB of the Act is available to the assessee.

Conclusion

India from the times of Indus Valley civilisation has been a great contributor to the field of science. Today India is a preferred hub for global R&D, with MNE's increasingly choosing India to establish research centres owing to the abundant supply of premium talent. However, owing to tax considerations MNE's have normally capitalised India developed IP Assets in jurisdictions allowing favourable tax treatment for IP incomes. With the adoption of BEPS recommendations by majority of the nations where intellectual property assets cannot enjoy preferential tax treatment without fulfilling the substance requirement, the patent regime in India could not have been introduced at a better time, as MNE's now can capitalise their IP Assets in India and still enjoy preferential tax treatment of IP income while fulfilling the substance requirement. This should in turn help in achieving our Prime Ministers vision of 'Make in India' and contribute to the growth of the nation.

NEW / REVISED PUBLICATION - INDIRECT TAXES COMMITTEE

The Indirect Taxes Committee of ICAI keeps the members updated with the changes through its updated publications which member may subscribe at their choice. The following publications have been published by the Committee:

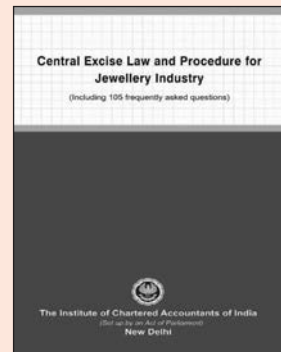
- **Compliances of Service Tax in Banking Sector**

The Chartered Accountants conducting bank audit would find support for smooth compliance with various provisions of service tax laws in banking. This publication provides a detailed Questionnaire for Service Tax compliances of Banks. In addition to the questionnaire, the publication further highlights major incomes & expenditures of banks liable for service tax, CENVAT Credit provisions, procedural checks for banks etc.



- **Central Excise law and procedure for jewellery industry**

We are glad to inform you that Indirect Taxes Committee of ICAI has come out with a new publication on **Central Excise Law and Procedure for Jewellery Industry** with a view to support and acquaint the Jewellery industry with the fine nuances of excise law and procedures and the implications of the amendments. It would also help our members, trade & industry and other stakeholder to understand the intricacies involved in taxation of Jewellery. For ease of understanding the concept of levy, valuation, payment, exemption, registration, invoicing, return etc. have been briefly explained in the form of frequently asked question (FAQ).



Ordering Information

The Publication can be purchased directly from the sales counter at the ICAI's Regional Offices / Branches or at the Head Office. Member may also download these Guides from Indirect Taxes Committee Website: <http://idtc.icai.org/publications.html>. To order by post, requisition may be sent to the Postal Sales Department of the ICAI at postalsales@icai.in or can be order online at <https://icaionlinestore.org/indirect-taxes-committee>

Your Comments / Suggestions are welcome at idtc@icai.in

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Advt.

IMPORTANT DATES TO REMEMBER DURING THE MONTH OF APRIL 2016

| Due Date | Statute | Compliance |
|-----------------|------------------|---|
| 7th April 2016 | Income Tax | Deposit of TCS Collected During March 2016 |
| 10th April 2016 | Excise | Monthly Returns for Production and Removal of Goods and CENVAT Credit for March 2016. |
| | | Monthly Returns of Excisable Goods Manufactured & Receipt of Inputs and Capital Goods by Units in EOU,STP,HTP for March 2016. |
| | | Monthly returns of Information relating to principal inputs for March 2016 by Manufacturer of Specified Goods who paid Duty of Rs.1 Crore or More during financial year 2015-2016 by PLA/CENVAT/Both. |
| | | Quarterly Returns Of Production And Removal Of Goods By SSIs For The Quarter Ending Mar 2016 |
| | | Quarterly Returns Of Assessee's Paying 1% Or 2% Excise And Not Manufacturing Any Other Goods For Quarter Ending Mar 2016 |
| 15th April 2016 | Excise | Quarterly Returns of CENVAT by First Stage and Second Stage Dealers for Quarter ending 31st March 2016. |
| | | Quarterly Performance Reports by Units in EOU,STP,SEZ for March 2016. |
| | VAT | Payment and filing of VAT 120 under KVAT Laws for month ended March 2016 (for Composition Dealers). |
| | | Quarterly Payment and filing of VAT 100 under KVAT Laws for quarter ended March 2016. |
| | Provident Fund | Payment of EPF Contribution for March 2016 (No grace days). |
| | | Return of Employees Qualifying to EPF during March 2016. |
| | | Consolidated Statement of Dues and Remittances under EPF and EDLI For March 2016. |
| | | Monthly Returns of Employees Joined the Organisation for March 2016. |
| 20th April 2016 | Excise | Quarterly Return of Production, Removal and CENVAT by Specified Manufacturers of Yarns and Ready Made Garments for the Quarter Ended March 2016. |
| | VAT | Monthly Returns (VAT 100) and Payment of CST and VAT Collected/payable During March 2016. |
| | Professional Tax | Monthly Returns and Payment of PT Deducted During March 2016. |
| 21st April 2016 | ESI | Deposit of ESI Contribution and Collections of March 2016 to the credit of ESI Corporation. |
| 25th April 2016 | Service Tax | Half yearly return for the period Oct'2015 to March 2016 |
| 30th April 2016 | Income Tax | Payment of TDS for the month of March 2016. |
| | Excise | Annual Statement on Principal Inputs by Assessee's who in Financial year 2014-15 Paid Rs.10 Lakhs or More as PLA/CENVAT/Both. |
| | | Annual Installed Capacity Statement by all assessee's. |
| | PT | Due date for payment of Professional Tax for the financial year 2016-17. |
| | EPF | Annual Returns Showing Month wise Recoveries from Members. |
| | | Consolidated Annual Contribution Statement. |



ICAI CAMPUS INTERVIEWS – MARCH 2016 AT BANGALORE CENTRE

The Campus Interviews conducted by the Committee for Professional Accountants and Business in Industry of ICAI from **15th March 2016 to 19th March 2016** was a grand success. This time **12** companies and **more than 300** candidates participated in the Campus Interviews at Bangalore. The company-wise detail of the list of candidates selected is as under:

| Name of the Company | Selected | Name of the Company | Selected |
|--|----------|---------------------------------------|----------|
| ITC Ltd. | 2 | S R BATLIBOI & CO LLP | 6 |
| Wipro Ltd. | 4 | DELOITTE | 12 |
| Dell International Services India Pvt. Ltd. | 13 | CAPITAL FIRST | 4 |
| MRF Ltd. | 2 | GENPACT AIG | 12 |
| CARGILL BUSINESS SERVICES | 3 | UTI Asset Management Company Pvt.Ltd. | 2 |
| VITEOS CAPITAL MARKET SERVICES LTD. | 5 | | |
| Shortlisted By The Companies For Further Rounds | | | |
| 1. Jaypee Cements | | | |

Highlights of the Campus Interviews:

1. Candidates from all over India opted for Bangalore as their Centre. The newly qualified CA's were mostly from the southern states like Karnataka, Kerala, Tamil Nadu & Andhra Pradesh and some from Maharashtra, West Bengal, Uttar Pradesh, Rajasthan, Gujarat and Assam as well.
2. The Pay Package offered by the Companies ranged from **5 lakhs to 19 lakhs Per annum**.
3. Finally, **65** candidates were selected in the campus interviews at Bangalore and offer letters were given by the companies to the candidates on the same day of the interview.

4. Earlier to the Campus interviews :

- i) **PPT (Pre placement talk)** was held on **10th March 2016**, wherein **8** companies had participated and nearly **150** candidates attended.
- ii) **Written test** conducted by the **M/s. Wipro Ltd.** on **11th March, 2016** and nearly **100** students attended.
- iii) **Orientation Program** was held on **12th March 2016**. Guest of honour **CA. G Sekar**, Chairman – Committee for Professional Accountants in Business & Industry, **CA. Madhukar Hiregange**, Central Council Member, **CA. Pampanna B E**, Chairman, Bangalore Branch & Coordinator, Campus Interviews also addressed the members. **CA. Divya S**, Committee Member, Bangalore Branch Introduced the Chief Guest, the speakers and also proposed vote of thanks.

Apart from Inaugural session, there were seven technical sessions led by experts in Industry on the following topics.

1. How to set up your own CA firm? by **CA. S. R. Ragunatha**.
2. Opportunities for young CAs by **CA. Chetan Venugopal**
3. Communication Skills by **CA. Subramanian Chittur**
4. CA Office Automation & Technology by **CA. Francis P. W, Mysore**
5. Motivational Speech by **CA. Gireesh T.L**
6. How to take up Challenges? by **Dr. CA. Vishnu Bharath.A.S**

Nearly **120** candidates attended the Orientation Program and it was very well received by the candidates. **Mr. C R Kulashekhar**, Section Officer (SU) - Bangalore DCO, coordinated and ultimately the campus placement program was organised smoothly and to the satisfaction of companies.

Date: 30th March, 2016

Place: Bangalore

(K R KULKARNI)

Asstt.Secretary & DCO Head

Public Awareness Programme on Union Budget



Inauguration



CA. Pampanna B. E.,
Chairman, B'lore Br.



Sri Tallam R.
Dwarakanath,
President, FKCCI



CA. N. Nityananda,
Chairman, Central Taxes
Committee, FKCCI



Moderators CA. T.V. Mohandas Pai
& CA. H. Padamchand Khincha



Panelists Mr. Sharad Sharma, CA. K. S Ravi Shankar,
Mr. K R Rammoorthy, Mr. Ravi Uppal



Cross section of the audience

Clause by Clause Discussion on Union Budget 2016 - Direct Taxes



Inauguration



CA. H. Padamchand Khincha



CA. K K Chythanya



CA. S Ramasubramanian

Clause by Clause Discussion on Union Budget 2016 - Indirect Taxes



Inauguration



CA. Madhukar N. Hiregange,
Central Council Member



CA. G Sekar,
Central Council Member



CA. Cotha S. Srinivas,
Vice Chairman, SIRC



CA. Babu K. Thevar,
SICASA Chairman, SIRC



CA. S. Panna Raj
Member, SIRC



CA. V Raghuraman



Mr. K S Naveen Kumar,
Advocate



CA. N R Badrinath

Workshop on Ind As at HAL



Inauguration



CA. Pampanna B. E.
Chairman



CA. K. Gururaj
Acharya



CA. Asha



CA. Vinayak Pai



CA. Mohan Lavi



CA. S. Sundaresan

Students Bank Branch Audit Seminar



Inauguration



CA. Pampanna B. E.,
Chairman, B'lore Br.



Chief Guest CA. B. P. Rao,
Past President, ICAI



CA Raveendra S Kore,
Chairman, SICASA



CA Veera Basanna Gouda CA Venkatesh Padiyar CA Kanthilal Jain Salacha CA Kaleswar Prasad

Cross Section of the Participants

Career Counseling Programme held on KPSS Degree College, Manvi & BRB College of Commerce, Raichur



CA Raveendra S Kore,
Chairman, SICASA



Cross Section of the Participants



Hosur CPE Study Circle Meet



CA. Neelima. J & CA. Heena Kauser



CA. Prashanth G.S

Impact of Central Excise Levy on Jewellery and Textiles



CA. Madhukar N. Hiregange,
Central Council Member



CA. T. R. Rajesh Kumar



CA. K L Prashanth



CA. Tata Krishna



CA. H. Shivakumar

Intensive Workshop on International Taxation

Hands on Training on using Excel Worksheet for Bank Audit

Tumkur Programme



CA. Naveen Khariwal G



CA. T R Rajesh Kumar



Committee Members with the Participants

Meet Our President & Vice President



CA. Pampanna B. E.,
Chairman, B'lore Br.



CA. M. Devaraja Reddy,
President ICAI



CA. Nilesh Shivji Vikamsey,
Vice-President, ICAI



CA. Madhukar N. Hiregange,
Central Council Member



CA. E. Phalguna Kumar,
Chairman, SIRC of ICAI



CA. Cotha S. Srinivas,
Vice Chairman, SIRC



CA. B.P. Rao,
Past President, ICAI



CA. K. Raghu,
Past President, ICAI



CA. K.S. Madhavamurthy



CA. N. Nityananda,
Chairman, Central Taxes
Committee, FKCCI



CA. I.S. Prasad



CA. T.M. Dileep Kumar



Felicitating the CA. M. Devaraja Reddy,
President ICAI



Felicitating the CA. Nilesh Shivji Vikamsey,
Vice-President, ICAI



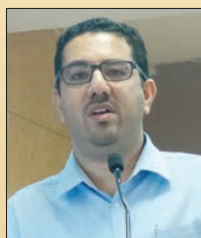
Felicitating the CA. E. Phalguna Kumar,
Chairman, SIRC of ICAI



Cross section of participants



Speakers at Study Circle Meetings



CA. D. Tarun Kumar Jain



CA. Annapurna D Kabra



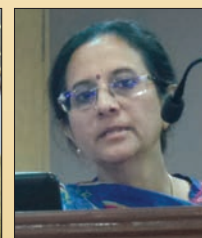
Mr. B N Biradar,
Assistant Commissioner
of Commercial Taxes



CA. Prashanth G.S



Dr. CA. N Suresh



CA. Vidya Sarathy



CA. B D Chandrashekar

Seminar on Bank Branch Audit



Inauguration



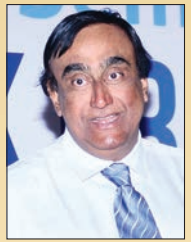
CA. M. Devaraja Reddy
President, ICAI



CA. Nilesh Shivji Vikamsey,
Vice-President, ICAI



CA. E. Phalguna Kumar
Chairman, SIRC of ICAI



CA. Shyam
Ramadhyani



CA. Vittal Raj



CA. S Ananthan



CA. P R Suresh



Cross Section of the Participants



Press meet

CA Women Conference



Inauguration



CA. Geetha A B,
Vice-Chairperson



Prof Vasanthi Srinivasan
IIM, Bangalore



CA. Vidya Raja Rao



CA Shubha Ganesh



CA Geetha Sridhar



Dr. Jayalakshmi H K



Panelists CA. Jayashree Narayanan, CA. Asha M,
Mrs. Veena Sethuraman



Participants

Orientation Programme for Newly Qualified CAs



Inauguration



CA. Pampanna B. E.,
Chairman, B'lore Br.



CA. Madhukar N Hiregange,
Central council member



CA. G. Sekar,
Central council member



CA. Divya S



CA. Venugopal



CA. S. R. Ragunatha



CA. Subramanian Chittur



CA. Gireesh T. L.



CA. Francis P. W



Dr. CA. Vishnu Bharath



Participants