



Bangalore Branch of SIRC Newsletter

English Monthly

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Two Day Residential Refresher Seminar

at Hampi

on 18th & 19th June 2016

- Seminar on
**Issues Relating to
Co-operative Societies**
on 14th May 2016
- One Day Seminar on
Companies Act 2013
on 4th June 2016



Jnana Pragathi

- Seek Knowledge, Gain Progress

Two Day Karnataka State Level CA's Conference

16 & 17 July 2016

Jnana Jyothi Convention Centre
University Campus, Palace Road, Bengaluru

CPE - May 2016
26

Chairman's Communique . . .



Dear professional friends,

Hearty Greetings to each one of you!!!

May month has just begun. Time runs so fast, we are just behind one month to reach half year mark. It is apt to remember the quote "Time and tide wait for no man". Time utilisation is the challenge in maintaining work life balance in our professional work.

Adding to that this summer has seen unprecedented heat, breaking years old records. Bengaluru temperature touched almost 40 degrees Celsius, these drastic climatic changes prevailing throughout the country badly affect all sector across the industry and as a chain reaction it will have a negative impact on Indian Economy. Hence by providing prudent business strategies and with good financial planning, we can play an important role in improving our National economy. Further, it is high time to educate ourselves on Go Green concepts to preserve and present a beautiful world to our successors.

Bank Branch Audits, another significant milestone in our professional practice just finished in April. Hope all those who involved in the Bank Branch Audit have completed Bank Branch Audit within the stipulated time and started new financial year and let us expect new start ups in the months to come.

Recently CBDT has notified Income Tax Return Forms for AY 2016-17 vide its Notification No. 24/2016 dated 30-03-2016. As on date, only a few professionals have already commenced filing of returns. I **hereby request and urge all professionals to complete IT return filings, and comply with Tax Audit formalities, well within the due date to avoid any last minute difficulties and thus uphold the true spirit of professionalism.**

The Ministry of Corporate Affairs has recently notified 7 revised Accounting Standards- AS 2, AS 4, AS 10, AS 13, AS 14, AS 21 and AS 29. The revised Standards are meant to bring entities that are not covered under the present road-map for conversion to Ind AS as close to Ind AS as possible. The Revised Standards are applicable from the current financial year. The Bangalore Branch is planning to have Study Circle sessions on these Standards which will be intimated to members soon.

Upcoming Programmes

May, being a busy month for CAs with commencement of audits, we have lined up few programmes:

- Growing number of Co-operatives and many Members are involved in Co-operative Audit, **one day Seminar on 'Issues relating to Co-operative Societies'** is being organised by the Branch on 14th May 2016. The objective of the seminar is to improve our understanding of uniqueness and distinguishing features of the Co-operative Audit arena. We have invited **Sri Prakash Majgi**, Director of Co-operative Audit to inaugurate the programme and to address the various issues pertaining to Co-operative Audit along with his team members. Hence members are requested to make use of this programme and get benefited.

- On 4th June, **One Day Seminar on New Companies Act 2013** is being organised to gear up and update ourselves, under the aegis of Corporate Laws & Corporate Governance Committee, ICAI. This seminar will enable the delegates to equip and enlighten the members of our profession on the salient features of the new Companies Act 2013. Members are hereby requested to participate in large numbers and derive benefit out of the programme.
- **Residential Refresher Seminar** is being organised by **SIRC of ICAI** hosted by Bangalore Branch in association with Bellary Branch at **Hampi, the most searched for Historical place in Karnataka on 18th & 19th June**. This seminar will give us an opportunity to have networking with members, to exchange our views and ideas for the betterment of our profession and to take a break from our busy work schedule.

Update on Programmes of April-2016

- Besides, the regular Study Circle meet, Tax Clinics and Workshops on International Taxation, the branch gave a start to conduct programmes exclusively for the Members in Industry on 15th April, under the aegis of Committee for Professional Accountants in Business and Industry, ICAI. A big thank you for your participation despite your busy office schedule. These are unique programmes for the industry members, I appeal to the Members in Industry to participate in large numbers for the future programmes.
- As part of Branch's initiatives to empowering members with IT Tools in Audit and services, branch conducted hands on training to make our professional colleagues competent in spread sheets especially MS Excel as an Audit tool. On behalf of Bangalore Branch, I sincerely thank CA. H Shivakumar for his unstinted support to conduct these Hands on training.
- 9th Regional Residential Course conducted at Yercaud, Tamilnadu on 29th & 30th April and 1st May 2016 was very successful. This programme was jointly hosted by Bangalore, Salem, Coimbatore and Pondicherry branches. From Bangalore 45 members participated in the course and more than 125 members participated in the programme.

I am happy to share you that the branch has all set to conduct much awaited **State Level Conference – JNANA PRAGATHI- Seek Knowledge, Gain Progress**, on 16th & 17th July 2016 as part of our continuing professional education and member networking. My humble appeal to all my professional friends to make it a grand success by extending your support and active participation in the event.












As we have to face new Challenges in our profession, I request you to join us in the ensuing programmes to enrich our knowledge together.

"Know the value of time. Snatch, seize, and enjoy every minute of it"

With warm regards












CA. Pampanna B E
Chairman

CALENDAR OF EVENTS - MAY 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
04.05.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Analysis & Impact of Real Estate(Regulation & Development) Bill CA. Sandeep Jhunjunwala 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.: 6</i>	 6 hrs
17.05.2016 Tuesday 6.00pm to 8.00pm	Study Circle Meet Personal Ethics and Balance Sheet of Life His Holiness Bhakti Rasamrita Swami Co-ordinator : CA Rajesh Sharma VENUE: Branch Premises	 2 hrs
18.05.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Rule 6 of CENVAT Credit CA. Naveen Rajpurohit VENUE: Branch Premises	 2 hrs
19.05.2016 Thursday 6.00pm to 8.00pm	Study Circle Meet at South Bangalore Companies Auditors Report order 2016 CA. Ravi Prasad Delegate Fee: Rs. 200/- VENUE: Vasavi Vidyaniethan Trust(VVN), No: 3, Vani Vilas Road, VV Puram, Basavanagudi, Bangalore-560 004	 2 hrs
21.05.2016 Saturday 6.00pm to 8.00pm	Intensive Workshop on International Taxation Article 21 & 22 : Other Income & Capital CA.Srividya S & CA.Priya Narayanan Co-ordinator: CA. Cotha S Srinivas VENUE: Branch Premises	  2 hrs



CALENDAR OF EVENTS - MAY & JUNE 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
25.05.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Drafting of and representation before CITA & ITAT CA. Naginchand Khincha VENUE: Branch Premises	 2 hrs
27.05.2016 Friday 6.00pm to 8.00pm	Tax Clinic - Indirect Taxes Recent circulars in Indirect Taxes CA. Jatin A Christopher VENUE: Branch Premises	 2 hrs
01.06.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Practical Aspects of Filing form 15CA & CB CA. Cotha S Srinivas VENUE: Branch Premises	 2 hrs
04.06.2016 Saturday 9.30am to 5.30pm	One Day Seminar on Companies Act 2013 Co-ordinator: CA. K Gururaj Acharya Delegate Fee: Rs. 750/- VENUE: Branch Premises <i>Details in page No: 7</i>	 6 hrs
04.06.2016 Saturday 6.00pm to 8.00pm	Intensive Workshop on International Taxation Article 23: Methods for the elimination of double Taxation and Section 91 CA. Ishita Bhaumik & CA. Ramya S Nayak VENUE: Branch Premises	  2 hrs
08.06.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Issues and Concerns under the Commercial Tax Laws CA. Annapurna D Kabra VENUE: Branch Premises	 2 hrs
10.06.2016 Friday 6.00pm to 8.00pm	Tax Clinic - Direct Taxes Latest Case Laws CA. K K Chythanya VENUE: Branch Premises	 2 hrs
14.06.2016 Tuesday 5.30pm to 8.30pm	Hands on Training MS Excel as Statutory Audit Tool of Small Companies CA. H. Shivakumar Delegate Fee: Rs. 500/- (Computers will be provided by the Branch) VENUE: ICAI Bhawan, No. 29/1, Race Course Road, Next to SBI, Bangalore	 3 hrs
15.06.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet FEMA & Latest Changes in FDI Policy CA. Vishnu Moorthi. H VENUE: Branch Premises	 2 hrs
18.06.2016 & 19.06.2016	Two Day Residential Refresher Seminar at Hampi <i>Details in Back Cover</i>	12 hrs
16.07.2016 & 17.07.2016	Jnana Pragathi - Seek Knowledge, Gain Progress Two Day Karnataka State Level CA's Conference VENUE: Jnana Jyothi Convention Centre, Palace Road, Bengaluru <i>Details in page No: 8</i>	12 hrs

Kind Attention: Members

Members are requested to pass on the information to their clients

COURSE ON FINANCE FOR NON-FINANCE EXECUTIVES

**Sub: XIX Batch of the Course on Finance for Non-Finance Executives
– A Management Development Programme**

The course is **open for Non-Finance Executives** such as Engineers, Architects, Doctors, Human Resource Personnel, Department Heads / Administrators / Entrepreneurs and various other professionals, those who are not having adequate knowledge of Accounts / Finance.

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

Duration: **June 2016 to October 2016**

Timings: **02.00pm to 07.00pm (Only on Saturdays)**

Course Fee: **Rs.15,000/- per participant.**

Mode of payment: DD / Cheque in favour of

Bangalore Branch of SIRC of ICAI

Contact Tel: **080 - 30563500 /512**

E-mail: **blrprogrammes@icai.org**

website: **www.bangaloreicai.org**

Course Contents:

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

Study Circle Meetings for CA Students

organized by SICASA of Bangalore Branch at Bangalore Branch Premises

Date	Topic	Speakers	Timings
21-05-2016 Saturday	Depreciation under Companies Act, 2013	CA. Venkateshbabu T R	6.00 pm to 8.00 pm
28-05-2016 Saturday	Filing of New Income Tax Return Forms	CA. Sujatha Raghuraman	6.00 pm to 8.00 pm
24th, 25th & 26th June 2016	Sports Activities for Students	Details will be furnishing in due course	

Note: No fee for the study circle meetings. **High Tea** at 5.30PM

For registration send E-mail to **blrsicasa@icai.org**

CA Raveendra S Kore

SICASA, Chairman

Advertisement Tariff for the Branch Newsletter	COLOUR FULL PAGE		INSIDE BLACK & WHITE		EDITOR : CA. PAMPANNA B.E. SUB EDITOR : CA. SHRAVAN GUDUTHUR
	Outside back	₹ 40,000/-	Full page	₹ 20,000/-	
	Inside front	₹ 35,000/-	Half page	₹ 10,000/-	
	Inside back	₹ 30,000/-	Quarter page	₹ 5,000/-	
	Advt. material should reach us before 22nd of previous month.				

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Seminar on Issues Relating to Co-operative Societies

On **Saturday, 14th May 2016**

Venue: **S.Nararayanan 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

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**

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

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

One Day Seminar on Companies Act 2013

Organised by **Corporate Laws and Corporate Governance Committee, ICAI**

Hosted by **Bangalore Branch of SIRC of ICAI**

On **Saturday, 04-06-2016**

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

Time: **09.45am to 5.30pm**

6 hrs
CPE

Timings	Topics	Speakers
09.00am	Registration	
09.45am	INAUGURAL SESSION	
10.00am	Companies Act – The journey 2013 to 2016 <ul style="list-style-type: none"> - Small Company vs. Class of companies based on thresholds like Capital, Borrowings etc. and special provisions applicable. - Important Forms & Returns. - Board Report - Meetings – Board Meeting, EGM & AGM - Challenges & Common mistakes committed by companies. 	CS. J Sundharesan, <i>Bangalore</i>
11.00am	Tea Break	
11.15am	CARO 2016 - Understanding & Implementation <ul style="list-style-type: none"> - Key aspects of ICAI Guidance Note - Deposits (S.73 to 76) - Loans to directors (S.185), Loans & investment by Cos. (S.186) - Related Party Transactions (S.188). - Role of Auditor in Statutory non-compliances 	CA K. Gururaj Acharya, <i>Bangalore</i>
01.15pm	Lunch Break	
02.15pm	Key changes impacting Audit <ul style="list-style-type: none"> - Appointment, Qualifications, Tenure & Disqualifications of Auditors. - Restricted services & management services. - Audit Report, Engagement letter & representation letters - Internal Financial Controls over Financial reporting 	CA. Sripriya K, <i>Chennai</i>
03.45pm	Tea Break	
04.00pm to 05.30pm	Key changes impacting Accounts <ul style="list-style-type: none"> - Consolidated Financial Statements with specific reference to associates and JVs. - Depreciation including component accounting. - Key Changes in Companies (Accounting Standards) Amendment Rules 2016 notified on 30th March 2016. 	CA. Asha M, <i>Bangalore</i>

CA. Pampanna B. E
Chairman

CA K. Gururaj Acharya
Co-ordinator

CA. Shravan Guduthur
Secretary

DELEGATE FEES FOR MEMBERS: ₹ 750/-

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

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The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)



Inana Pragathi

- Seek Knowledge, Gain Progress

Two Day Karnataka State Level CA's Conference

16 & 17 July 2016

Inana Jyothi Convention Centre, University Campus, Palace Road, Bengaluru

Hosted by **Bangalore Branch of SIRC of ICAI**

Jointly organized by **Belgaum, Bellary, Hubli, Kalaburagi, Mangalore, Mysore & Udupi Branches of SIRC of ICAI**

**12 hrs
CPE**

Sat, 16th July 2016

08:30 AM	Registration
10:00 AM	INAUGURAL SESSION
	CHIEF GUEST: CA. M. Devaraja Reddy* <i>President, ICAI</i>
	GUEST OF HONOUR: CA. Nilesh Shivji Vikamsey* <i>Vice-President, ICAI</i>
	SPECIAL ADDRESS: CA. T.N. Manoharan <i>Past President, ICAI</i>
11:15 AM	Tea Break
11:30 AM	I TECHNICAL SESSION
	Winds of Change in Accounting Standards CA. M.P. Vijay Kumar , Chennai <i>Central Council Member, ICAI</i>
01:00 PM	Lunch
02:00 PM	II TECHNICAL SESSION
	Recent Case Laws on Joint Development Agreements in favour of Assessee CA. A. Shankar , Advocate, Bengaluru
03:30 PM	Tea Break
03:45 PM	III TECHNICAL SESSION
	Challenges to practicing CA's Under the ever changing Companies Act & other statutes CA. K. Gururaj Acharya , Bengaluru
05:15 PM	Entertainment Programme <i>Followed by Theme Dinner with family</i>

*confirmation awaited

Sun, 17th July 2016

08:30 AM	Breakfast
09:15 AM	SPIRITUAL SESSION
	by a renowned Spiritual Guru
10:15 AM	IV TECHNICAL SESSION
	Taxation of Charitable Trust - Recent Amendments CA. H. Padamchand Kincha , Bengaluru
11:45 AM	Tea Break
12:00 PM	V TECHNICAL SESSION
	Recent Trends from the Judiciary (Service Tax Perspective) CA. Sunil Ghabawalla , Mumbai
01:30 PM	Lunch Break
02:30 PM	VI TECHNICAL SESSION
	Post-carbon Economy and Rise of Social Commons Mr. Sharad Sharma , Bengaluru <i>Co-founder & Governing Council Member iSPIRT Foundation</i>
04:00 PM	Tea Break
04:15 PM	VII TECHNICAL SESSION - PANEL DISCUSSION
	Works Contract - Taxation Aspects Moderator : CA. Sanjay Dhariwal , Bengaluru Panelists : CA. Madhukar N Hiregange <i>Central Council Member, ICAI</i> CA. Ashok Raghavan , Bengaluru CA. S. Vishnumurthy , Bengaluru Mr. K. Suresh <i>Chief Financial Officer & Executive Director, Brigade Enterprises Ltd, Bengaluru</i>

CA. Pampanna B E
Chairman

CA. Shravan Guduthur
Secretary

Delegate Fee: For Members – Rs.2200/- Early Bird Registrations – Rs.2000/- (on or before 15th June 2016)

Non Members – Rs.5000/- + Service Tax

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

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ACCOUNTING STANDARDS UPDATES

CA Mohan R Lavi

Over the last few months, there has been no shortage of action on Accounting Standards. Some existing Ind AS's have been amended, clarification bulletins on Ind AS have commenced, an Ind AS compliant Schedule III has been announced and some existing AS's have been revised to bring them in sync with Ind AS to the extent possible.

1. Ind AS Transition Facilitation Group (ITFG) Clarification Bulletin 1

The Accounting Standards Board (ASB) of the ICAI has constituted 'Ind AS Transition Facilitation Group' (ITFG)1 for providing clarifications on urgent basis on various issues related to the applicability and /or implementation of Ind AS under the Companies (Indian Accounting Standards) Rules, 2015, raised by preparers, users and other stakeholders.

Issue: Company X, on standalone basis, had a net worth of above Rs 250 crore but below Rs. 500 crore in financial year 2013-14 as well as financial year 2014-15 and is expected to exceed Rs. 500 crore in financial year 2015-16. Whether the Company X be required to comply with Ind AS from financial year 2017-18 i.e. under Phase II, given that the net worth as on 31st March 2014 was below Rs. 500 Crore and the Company X was a company existing as on 31st March 2014 and was already falling

under the threshold as on 31st March 2014 itself irrespective of the fact that the net-worth as on 31st March 2016 might be above Rs. 500 crore.

Resolution: Therefore, in the given case, company X which had net worth of above Rs. 250 crore but below Rs. 500 crore in financial year 2013-14 as well as financial year 2014-15 and is expected to exceed Rs. 500 crore in financial year 2015-16, will have to prepare financial statements on the basis of Indian Accounting Standards (Ind AS), from the financial year beginning on April 1, 2016.

Issue Company A is a listed company and has three Subsidiaries Company X, Company Y and Company Z. As on 31st March 2014, the net worth of Company A is Rs 600 Crores, net worth of Company X is Rs 100 Crores, Company Y is Rs 400 Crores and Company Z is Rs 210 Crores. All the three subsidiaries are non-listed public companies.

Case A During the financial year 2014-15, Company A has sold off its entire investment in Company X on 31st December 2014. Therefore, Company X is no longer a subsidiary of Company A for the purposes of preparation of financial statements as on 31 March 2015.

Should Company X prepare its financial statements as per the Companies (Accounting Standards) Rules, 2006

or the Companies (Indian Accounting Standards) Rules, 2015?

Case B During the financial year 2015-16, Company A has sold off its investment in Company Y on 31st December, 2015. Therefore, Company Y is no longer a subsidiary of Company A for the purposes of preparation of financial statements as on 31 March 2016.

Should Company Y prepare its financial statements as per the Companies (Accounting Standards) Rules, 2006 or the Companies (Indian Accounting Standards) Rules, 2015?

Case C During the financial year 2016-17, Company A has sold off its investment in Company Z on 31st December 2016, therefore company Z is no longer a subsidiary of Company A for the purposes of preparation of financial statements as on 31 March 2017. Should Company Z prepare its financial statements as per the Companies (Accounting Standards) Rules, 2006 or the Companies (Indian Accounting Standards) Rules, 2015?

Resolution:

In the abovementioned case, Company A has net worth of more than Rs.500 crore in the financial year ending 31 March 2014. Therefore, ordinarily Company A along with its subsidiaries will have to apply Indian Accounting Standards (Ind ASs) for preparing



financial statements for the accounting periods commencing 1st April, 2016, except in situations covered by Case A and Case B as discussed below.

Case A

Company A has sold off its entire investment in Company X on 31st December, 2014; Company X is no longer a subsidiary of Company A as at the beginning of 1st April, 2016. Therefore, in this case, Company X would continue to prepare financial statements for the accounting periods commencing 1st April, 2016, as per the Companies (Accounting Standards) Rules, 2006.

Case B

Company A has sold its investment in subsidiary Company Y on 31st December, 2015, in consequence of which Company Y is no longer subsidiary of Company A as at the beginning of 1st April, 2016. Therefore, the Companies (Indian Accounting Standards) Rules, 2015 will not be applicable to Company Y. Therefore, Company Y would continue to prepare financial statements for accounting periods commencing April 1, 2016 under the Companies (Accounting Standards) Rules, 2006.

Case C

In the given case, Company A has sold its investment in subsidiary Company Z on 31st December, 2016; therefore, Company Z was a subsidiary of Company A as at the beginning of 1st April, 2016. Company Z being subsidiary of Company A as at the beginning of 1st April, 2016, would have to prepare financial statements for the accounting periods commencing 1st April, 2016 as per the Companies (Indian Accounting Standards) Rules, 2015.

Issue. Company XYZ Ltd. having net worth of Rs. 600 crores as on March 31, 2014 has taken a loan having term of 5 years for importing fixed assets as on July 1, 2014, February 1, 2016 and May 3, 2016. The Company has followed the policy of recognising the exchange differences arising from long term foreign currency monetary items in the cost of fixed assets where such monetary item has arisen for purchase of fixed assets pursuant to paragraph 46/46 A of AS 11, The Effects of Changes in Foreign Exchange Rates, notified under the Companies (Accounting Standards) Rules, 2006. Considering the requirements of paragraph

D13AA of Ind AS 101, First-time adoption of Indian Accounting Standards, whether the company can continue to recognise the exchange differences arising from the above said loans in the cost of Property, Plant and Equipment, when adopting Ind AS for the first time?

Resolution:

In the above case, the beginning of the first Ind AS reporting period for company XYZ is April 1, 2016. Therefore, the option given in paragraph D13AA of Ind AS 101 will be available for loans taken as on July 1, 2014 and February 1, 2016 and will not be available for the loan taken after March 31, 2016.

Issue; Company ZED Ltd., having net worth of Rs. 600 crores as on March 31, 2014, has assessed that its functional currency as per the requirements of Ind AS 21, The Effects of Changes in Foreign Exchange Rates, is USD. The Company has taken loans in USD as well as in INR for importing fixed assets before 1st March 2014. The Company follows

the policy of recognising the exchange differences arising from long-term foreign currency monetary items in the cost of fixed assets where such monetary item has arisen for purchase of fixed assets. Considering the requirements of paragraph D13AA of Ind AS 101, First-time Adoption of Indian Accounting Standards, whether the company can continue to recognize the exchange differences arising from the above said loans in the cost of Property, Plant and Equipment, when adopting Ind AS for the first time?

Resolution:

Paragraph D13AA of Ind AS 101 provides an option to continue the policy of recognizing the exchange differences on long term foreign currency monetary items as per paragraph 46/46A of AS 11, The Effects of Changes in Foreign Exchange Rates, only for those long term foreign currency monetary items which were recognised in the financial statements before the beginning of first Ind AS reporting period. Therefore, the option given in paragraph D13AA of Ind AS 101, will be available in case of those long term foreign currency monetary items which were recognised in the financial statements ending on or before 31st March, 2016 and are regarded as foreign currency monetary items under Ind AS

In the given case, the functional currency of Company ZED has changed from INR to USD. Therefore, the USD loans will no longer be regarded as foreign currency monetary items under Ind AS. Hence, such a company cannot continue the policy of recognising the exchange differences, arising from USD loans, in the cost of fixed assets.

Issue: ABC Ltd. having net worth of Rs. 500 crores as on March 31, 2014 wants to assess its functional currency. From which date should company ABC Ltd. assess its functional currency i.e. whether from date of transition or retrospectively as per paragraph 10 of Ind AS 101, First-time Adoption of Indian Accounting Standards?

Resolution: Paragraphs 13-19 of Ind AS 101 First-time Adoption of Indian Accounting Standards provide 'Exceptions to the retrospective application of other Ind ASs' and Appendices B-C of Ind AS 101 First-time Adoption of Indian Accounting Standards, provide certain 'Exceptions to retrospective application of other Ind ASs' and 'Exemptions for Business Combination' respectively. Paragraphs 13-19 and Appendices B-C are silent on the assessment of functional currency by an entity, i.e., from date of transition or retrospectively. Since neither any exception nor any exemption has been specified for assessment of functional currency, an entity will have to assess its functional currency retrospectively as per paragraph 10 of Ind AS 101.

2. Amended Ind AS's

Vide Notification No G.S.R (E) dated 30th March 2016, the MCA has amended the following Ind AS. These amendments have largely been necessitated due to the postponement of the introduction of Ind AS 115- Revenue from Contracts with Customers and the reintroduction of Ind AS 11- Construction Contracts and Ind AS 18- Revenue (both Ind AS 11 and 18 have been notified in the above Notification)

Ind AS 101- First time adoption of Ind AS

Ind AS 103- Business Combinations

Ind AS 104- Insurance Contracts

Ind AS 105- Non-current assets held for Sale

Ind AS 107- Financial Instruments- Disclosure

Ind AS 109- Financial Instruments

Ind AS 110- Consolidated Financial Statements

Ind AS 112- Disclosure of Interests in other entities

Ind AS 1- Presentation of Financial Statements

Ind AS 2- Inventories

3. Ind AS Compliant Schedule III

Through Notification No G.S.R 404(E) dated 6th April 2016, the MCA has released an Ind AS Compliant Schedule III. The formats for the Balance Sheet and the Statement of Profit and Loss incorporate the requirements of Ind AS Standards (for example- Investment Property and Other Comprehensive Income). General Instructions to prepare these statements are a part of the Schedule. A lot of focus has been given to the Statement of Changes in Equity and the format for this Statement is also very detailed.

4. Amendments to existing AS's

Vide Notification No G.S.R 364(E) dated 30th March 2016, the Ministry of Corporate Affairs has amended the Companies (Accounting Standards) Rules by inserting the following revised standards:

AS 2- Inventories

AS 4- Contingencies and Events after the Balance Sheet Date

AS 10- Property, Plant and Equipment

AS 13- Accounting for Investments

AS 14- Accounting for Amalgamations

AS 21- Consolidated Financial Statements

AS 29- Provisions, Contingent Liabilities and Contingent Assets.

The Revised Standards attempt to bring our Accounting Standards(AS) in sync with Indian Accounting Standards (Ind AS) save for a few relaxations. These Standards are applicable from the date of their Notification in the Official Gazette (the date given above) and would be applicable to all entities that are not covered in the road map on Ind AS issued by the MCA. It appears to be only a matter of time before the other AS's are synced with Ind AS's.

If this Notification is interpreted strictly, the revised AS's would be applicable from 30th March 2016- i.e. for the financial year 2015-16. This may not have been the intention of the legislature. The MCA has issued a General Circular No 04/2016 on 27th April 2016 that the above accounting standards would be applicable for accounting periods commencing on or after their notification in the Official Gazette.

Conclusion: Professionals would need to keep themselves abreast of the developments in the bouquet of Accounting Standards that are out there now- IFRS, Ind-AS, AS and ICDS. If the Government announces Government Accounting Standards (IGAS and IGRS), there would be 5 versions of Accounting Standards!



UNION BUDGET 2016 – 17: CHANGES IN CENTRAL EXCISE

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



Changes in Central Excise Rates

- The Basic Excise Duty rate remains unchanged at 12.5%.
- Clean Energy Cess on coal, lignite and peat has been renamed to Clean Environment Cess and has been increased from the scheduled rate of Rs.300 per tonne to Rs.400 per tonne.
- An Infrastructure Cess will be levied at 1% on small petrol, LPG, CNG (gas based) cars, 2.5% on Diesel Cars of certain capacity and 4% on other higher engine capacity vehicles like sedans, SUVs and Sports Utility Vehicles.
- The following are the changes in Excise Tariff:

Increase in Excise Duty Rate (Selected items only)

Sl. No.	Description	Excise Tariff Code	Existing Rate	Proposed Rate
1	Waters, including mineral waters and aerated waters, containing added sugar	Chap 22	18%	21%
2	Sacks and bags of polymers of any plastics	Chap 39	12.5%	15%
3	Branded ready garments, made up of articles of textiles & having retail sale price of Rs. 1000 or more	Chap 61, 62 & 63	Nil or 6%	2% (without cenvat credit) or 12.5% (with cenvat credit)
4	Articles of Jewellery (excluding silver jewellery)	Chap 71	Nil	1% (without cenvat credit) or 12.5% (with cenvat credit)
5	Charger/Adapter, battery and wired headsets/speakers for use in manufacture of mobile handsets	Chap 85	Nil	2% (without cenvat credit) or 12.5%(with cenvat credit)
6	Cigars, Cheroots and Cigarillos	Head 2402 10 10 & 2402 10 20	Higher of 12.5% or Rs.3375 per thousand, whichever is higher	Higher of 12.5% or Rs.3755 per thousand, whichever is higher
7	Unmanufactured Tobacco	Chap 24	55%	64%

Goods Notified under section 4A for valuation on MRP Basis

Sl. No.	Description	Excise Tariff Code	Abatement on MRP
1	Soaps, organic surface-active products etc.	Chap 34	30%
2	Aluminium foil of thickness not exceeding 0.2mm	Chap 76	25%
3	Wrist wearable devices (commonly known as smart watches)	Chap 85	35%
4	Accessories of certain vehicles under Chapter 87	Chap 87	30%

Decrease in Excise Duty Rate (Selected items only)

Sl. No.	Description	Excise Tariff Code	Existing Rate	Proposed Rate
1	Ready mix concrete manufactured at construction site	Chap 38	6%	Nil
2	Rubber sheets & resin rubber for soles and heels	Chap 40	12.5%	6%
3	Specified parts for manufacture of centrifugal pump	Chap 84 and 85	12.5%	6%
4	Inputs, parts, components, subparts used for manufacture of charger/adapter, battery and wired headset/ speakers of mobile phones	Chap 85	12.5%	Nil
5	Parts, components and accessories used for manufacture of Routers, broadband modems, Set-top boxes for internet access, Set-top boxes for TV	Chap 85	12.5%	Nil
6	Parts, components and accessories used for manufacture of Digital video recorder, network video recorder, CCTV, Lithium ion battery (other than for mobile handsets)	Chap 85	12.5%	Nil
7	Refrigerated containers	Chap 86	12.5%	6%
8	Parts of railway or tramway locomotives, their track fixtures and fittings	Chap 86	12.5%	6%

Changes in the Central Excise Act, 1944

- **Section 5A** has been amended to discontinue the requirement for publishing and offering for sale any notification issued under this section by the Directorate of Publicity and Public Relations, Customs and Central Excise, New Delhi.
- **Section 11A** has been amended to increase the period of limitation for issue of show-cause notice in non-suppression cases from one year to two years.
- **Section 37B** has been amended to empower the Central Board of Excise and Customs to issue orders, instructions and directions to Central Excise Officers for implementation of other provisions of the Act.
- The Third Schedule to the Central Excise Act has been amended to include all goods falling under the Tariff Headings 3401 and 3402, aluminium foils of thickness

not exceeding 0.2 mm, Wrist Wearable devices (smart watches) and accessories of motor vehicle. Consequently, any process involving the packing or repacking of these goods in a unit container or labelling or re-labelling of containers in relation to the above goods including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer will now be covered under the definition of "manufacture".

Central Excise Rules, 2002 [Applicable from the 1st day of March, 2016 unless otherwise specified]

- Rule 7(4) has been amended to provide that upon finalisation of provisional assessment, interest will be payable from the first day after the due date till the actual date of payment.
- Rule 8 and also Notification No. 8/2003 - C.E. dated 01.03.2003 has been amended to levy duty

on articles of jewellery (other than articles of silver jewellery) with a higher threshold exemption upto rupees six crores in a year provided the aggregate domestic clearances in the preceding financial year does not exceed rupees twelve crores. (please refer Note - 1)

- Rule 11 is being amended by way of which the requirement for a manufacturer issuing digitally signed invoices to self-attest the duplicate copy of the invoice for the transporter has been done away with.
- Rule 12 (2) has been substituted to enable the assessee to file an annual return by 30th day of November of the succeeding year.
- Rule 12 (8) (a) has been inserted to enable assessee to revise ER - 1 (monthly return by large units), ER - 2 (return by Export Oriented Unit) and ER - 3 (quarterly return by SSI) if the original returns are filed within their respective due dates. Such revision



can be done within the calendar month in which the original return is filed. Further, where a revised return is submitted, the relevant date for recovery of duty, if any, will be the date of submission of revised return.

[Applicable from a date to be notified]

- Rule 12 (8) (b) has been inserted to enable the assessee to revise annual return within one month from the date of submission of the original annual return. [Applicable from a

date to be notified]

- Rule 17 (7) has been inserted to extend the benefit of revised return to Export-Oriented Units as well. [Applicable from a date to be notified]

Attention: IPCC, FINAL & CPT Students

ANNOUNCEMENT

Coaching Classes: CPT, IPCC & FINAL for November 2016 Examinations at Bangalore Branch of SIRC of ICAI

Admissions open for Subjectwise Coaching

In pursuance of our objective to provide fruitful and quality teaching to our students, we are pleased to inform you that IPCC and FINAL coaching classes will be commencing at the Bangalore Branch of SIRC of ICAI from 23rd May 2016. The classes will be concluded by 31st August 2016. Tentative date for the commencement of CPT Coaching for Dec 2016 exams in on 4th July 2016.

Salient features:

- Experienced, Expert and Dedicated faculty members
- Methodology – Conceptual teaching
- Affordable Coaching Fee
- The journey of CA with Bangalore Branch is that of progress with innumerable activities of knowledge supported and guided by our senior renowned faculty members- resource persons.
- During the course, amazing, inspiring and motivational sessions and Orientation Classes will be conducted. Hence be proud to be a part of the Branch by enrolling as a student to become a prestigious member of this glorious profession

Course	Fees	Duration	Timings
CPT	₹ 8000/- for all subjects	4 th July 2016 to 15 th Nov 2016	05.30pm to 07.30pm & 07.30am to 12.00pm (Sunday)
IPCC & FINAL	₹ 13,000/- for Both Groups ₹ 9,000/- for Single Group ₹ 3,500/- for Single Subject	23 rd May 2016 to 31 st Aug 2016 (Tentative)	06.30am to 09.30am & 06.00pm to 09.00pm & (Monday to Saturday) 08.00am to 05.30pm (Sunday)

Schedule for all the subjects will be announced in due course of time.

Mode of payment: DD should be drawn in favour of "Bangalore Branch of SIRC of ICAI" payable at Bangalore.

For further details please contact

Student registration section: Tel: **080 - 3056 3500 / 510 / 511 / 512**

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

A BRIEF ON THE REPORT OF THE COMMITTEE ON TAXATION OF E-COMMERCE

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



Part – A

Introduction

The digital wave of doing business has usurped traditional industries and is continuously causing disruption across industries. The international tax administration authorities have been grappling with innovative digital business models such as multi-sided markets with archaic taxation laws which date back to the post World War – II era of league of nations. The overhauling of the international tax laws in view of the rapid changes caused by digital disruption has long been due. The Organization for Economic Corporation and Development (OECD) along with the G-20 Nations has undertaken the Base Erosion and Profit Shifting Project (BEPS Project) to adapt international tax laws to current business models and digital business has been a major focus area of the BEPS Project.

India has been an active contributor to the BEPS Project at the same time in February 2016, the Report of the Committee on Taxation of E-Commerce (the Report) has been published. The committee had been appointed by the Central Board of Direct Taxes (CBDT) whose term of reference included detailing the business models for e-commerce, the direct tax issues in regard to e-commerce transactions and suggested approach to deal with these issues under different business models.

The committee in its report has heavily relied upon the BEPS Project Report on Action – 1, wherein the new business models of digital economy as well as the tax challenges arising from it in respect of nexus, characterization, valuation of data and user contribution have been examined in detail.

Part – B

Gist of the Report of the Committee on Taxation of E-Commerce

The Report is the first detailed analysis of the challenges faced by the Indian tax authorities due to the emergence of e-commerce. It is significant as it gives us professionals an insight into the course ahead by the Indian revenue authorities for dealing with international taxation of e-commerce. The Report is mainly divided into the following structure:

- Current Status of the Digital Economy and Future Growth
- Tax Challenges from Digital Economy
- Issues related to Value of Data & User Activity in Multidimensional Business Models
- Options to address broader tax challenges of Digital Economy in the Indian Context
- Recommendations

Current Status of the Digital Economy and Future Growth

As we are all aware that in the recent past the digital economy has been the

greatest wealth creator with many start-ups gaining the coveted status of a tech unicorn, the Report takes this stellar growth story on record by recognizing this fact. The Report further discusses the future growth prospects of the digital economy in India by highlighting that India will have 500 Million Internet users by the end of 2016 and how the advent of Internet of Things (IoT) technology will be the driver of the next growth phase in the digital arena.

Tax Challenges from the Digital Economy

The Report focuses on the International Tax issues, which arise from the e-commerce business models. It recognizes that most of the international tax laws are based on the physical way of doing business. The Permanent Establishment (PE) concept which acts as a threshold for allocating taxing rights to a nation is no longer relevant in case of digital business, as digital businesses can be geographically separate and yet have a significant participation in the economy of a country unlike traditional business which will have to be physically present in a country to participate significantly in the economy of that country.

The Report discusses the Permanent Establishment concept from an historical perspective where the conceptualization of the Permanent Establishment is



based on physical presence keeping in view certain industries of that time and the business models employed then and goes on to discuss the evolution of the Permanent Establishment with introduction of Agency PE and Service PE.

The Report recognizes that the physical presence based threshold, raises broader tax policy challenges for policy makers in the case of digital economy relating in particular to nexus, data and characterization for direct tax purposes. The report further discusses how these challenges trigger more systemic questions about the ability of the current international tax framework to deal with the changes brought about by the digital economy and the business models that it makes possible and hence to ensure that profits are taxed in the jurisdiction where economic activities occur and where value is generated. These challenges also raise questions regarding the paradigm used to determine where economic activities are carried out and value is generated for tax purposes, which is based on an analysis of the functions, assets and risks of the enterprise involved. At the same time, these challenges create opportunities for achieving double non-taxation, for example due to lack of nexus in the market country under current physical presence rules, coupled with lack of taxation in the jurisdiction of the income recipient leading to BEPS.

Issues related to Value of data & User Activity in Multidimensional Business Models

The Report recognizes that reliance on data, including in particular the use of big data is one of the significant characteristics of the digital economy.

The distinguishing factor of the digital economy from the traditional forms of businesses being its ability to gather large amounts of data and to process and exploit this data for furthering the ends of business and generating more value, particularly by tailoring product offerings based on this data. There are various methods employed by digital platforms for collection of remote data, ranging from direct online surveys seeking specific responses from users to indirect methods like analysis of user locations (Google Maps – Traffic Pattern) and online behavior. Increasingly, most of this data is **generated by the users themselves** (YouTube), and used by enterprises in a manner that significantly contributes to the profits arising in their business models.

The committee in its Report after analyzing the role and contribution made by the users by way of data, content creation and the networking benefits, has considered that users are a significant indicator of both nexus and creation of value in the jurisdiction of source. In the view of the committee as per the Report, the presence of users of a digital or telecommunication network in a multi-dimensional business model signifies value creation and economic participation in that tax jurisdiction, and should give rise to the threshold nexus for taxing that enterprise in that jurisdiction, particularly, when such user contribution is relied upon for earning income from that jurisdiction.

Options to address broader tax challenges of Digital Economy in the Indian Context

The committee in its Report in consonance with BEPS Project Report Action – 1 has considered the following

three options to address broader tax challenges of Digital Economy:

1. New Nexus based on Significant Economic Presence
2. Withholding tax on digital transactions
3. Equalization Levy

Option – 1: New Nexus based on Significant Economic Presence

As the broader tax challenges in digital economy arise primarily from the difficulties in application of existing physical presence based nexus threshold that constitutes the definition of permanent establishment, the first option to address the tax challenges in digital economy proposes that “*significant economic presence*” should be considered adequate fulfillment of nexus between the taxable enterprise and the taxing jurisdiction. The option would require appropriate modifications of nexus rules in the tax treaties (‘permanent establishment’) as well as domestic laws (‘business connection’).

In Section – 8 of the Report, the work of reputed authors Peter Hongler and Pasquale Pistone (*Blueprints for a New PE Nexus to Tax Business Income in the Era of the Digital Economy – Peter Hongler & Pasquale Pistone*) has been discussed. The authors have proposed the following amendment to the definition of the PE to base it on Significant Economic Presence:

If an enterprise in one Contracting State provides access to (or offers) an electronic, database, online market place or storage room or offers advertising services on a website or in an electronic application used by more than 1000 individual users per month domiciled in the

other Contracting State, such enterprise shall be deemed to have a permanent establishment in the other Contracting State if the total amount of revenue of the enterprise due to the aforementioned services in the other Contracting State exceeds XXX per annum.

Option – 2: Withholding tax on Digital transactions

The second option considered in the report is application of a withholding tax on payments arising from within a tax jurisdiction, on digital transactions. In essence, this option is substantially similar to the withholding tax that already exists in respect of payments made as interest, dividend, royalty and fee for technical services in tax treaties. Such tax can be levied at a concessional rate, on the gross amount of the payment, and offers a relatively easier solution of addressing the tax challenges of digital economy, when applied as a standalone final tax. Alternatively, it can also be combined with the new nexus based on significant economic presence, as an effective means for collecting tax, particularly in the context of B2B transactions.

Option – 3: Equalization Levy

The third option considered in the report is the 'Equalization Levy'. The word 'Equalization' represents the objective of ensuring tax neutrality between different businesses conducted through differing business models or residing within or outside the taxing jurisdiction. The approach of equalization levy has already been used by some countries in order to ensure equal treatment of foreign and domestic suppliers. For example, in the area of insurance, some

countries have adopted equalization levies in the form of excise taxes based on the amount of gross premiums paid to offshore suppliers. Such taxes are intended to address a disparity in tax treatment between domestic corporations engaged in insurance activities and wholly taxable on the related profits, and foreign corporations that are able to sell insurance without being subject to income tax on those profits, neither in the State from where the premiums are collected nor in the State of Residence.

Recommendations

As per the Report among the three options considered and which can be implemented by various countries under their domestic laws, the only option that appears to be feasible and can be resorted to, without violating the obligations under a Double Taxation Avoidance Agreement, is 'Equalization Levy'.

The objective of Equalization Levy is intended to be a tax imposed in accordance with the conclusions of the BEPS Report on Action 1 that has been endorsed by G-20 and the OECD, on payments made for digital services to foreign beneficial owner, who enjoy an unfair advantage over their Indian competitors providing similar services by digital or more traditional means, with the objective for equalizing their tax burden with other businesses that are subjected to income-tax in India, without disturbing the existing tax treaties. Another objective of Equalization Levy is to provide greater clarity, certainty and predictability in respect of characterization of payments for digital services and consequent tax liabilities, to all stakeholders, so as to minimize costs

of compliance and administration and minimize tax disputes in these matters. The target transactions would be those conducted primarily through digital or telecommunication networks, heavily relying upon latest telecommunication technology, and thereby avoiding the need of a physical presence in India, i.e. transactions which lead to profits that are not appropriately taxed in India because of the limitations of the existing international taxation rules.

As per the Report if the Equalization Levy is to be imposed under the domestic laws of India, if it is not to be imposed on income, and if it is not to be covered by treaty obligations imposed by the tax treaties, then it will need to be separated from the laws determining the tax imposed on income in India. As the Equalization Levy on a transaction is, in any case, inherently different from a tax on income, it need not be included within the laws governing tax on income. Accordingly, the Report recommends to imposing the Equalization Levy through statutory provisions outside the Income-tax Act, 1961. Instead, the provisions for Equalization Levy can be included in the Finance Act. Past precedents exist for imposition of similar taxes on transactions, like the Security Transaction Tax (STT) and the Service Tax.

Part – C

Conclusion

The international taxation landscape has been rapidly changing with the phased implementation by States, of the recommendations of the Action Plans contained in the BEPS Project Report. The Report of the Committee on Taxation of E-Commerce (the Report) has heavily relied on the BEPS Action Plan – 1 and provides a viewpoint



from the perspective of the Indian tax authorities as to the course for dealing with the vexed issue of international taxation of e-commerce. The Report while recommending Option – 3 (Equalization Levy) out of the options considered makes a mention of the superiority of Option – 1 (New Nexus based on Significant Economic Presence) over Option – 3, but however proceeds with Option – 3, owing to the feasibility of Option – 1 arising out of treaty obligations. The Report has currently recommended 13 transactions as

leviable to Equalization Levy in Section – 10 of the Report.

If the BEPS Action Plan – 15 (Developing a Multi-Lateral Instrument to Modify Bi-Lateral Tax Treaties), is speedily implemented, & the Permanent Establishment definition is modified to include 'Significant Economic Presence' criteria. Then, the Equalization Levy will have to be scrapped as the Report recommends it only as a stop-gap arrangement owing to the current lacunae in the international tax laws which is being exploited by Multi-

National Enterprises to achieve Base Erosion and Profit Shifting in case of digital business models. Through this Article the author has made a humble attempt to bring to fore the highlights of the Report of the Committee on Taxation of E-Commerce and would recommend it as essential reading to gain detailed perspective on the course ahead for international taxation of e-commerce from the Indian perspective and to gain an in-depth understanding of Equalization Levy in itself.

Invitation for empanelment as Examiners for Chartered Accountants Examinations - (19-08-2015)

Applications are invited from eligible members of the Institute having a flair for academic activities including valuation of answer books and willing to undertake confidential assignments as a dedicated examiner, for empanelment as examiner in respect of various papers (IPC and FINAL) of the Chartered Accountants Examinations.

The eligibility criteria for empanelment as examiner are as follows:

- Chartered Accountants with a minimum of four years standing in practice or in service are eligible to apply.
- University Lecturers/Professors with a minimum of five years teaching experience are eligible to apply.
- Lawyers, IT Professionals, MBA (Finance) and other professionals with at least five years experience, either in academic position or in practice or in employment are eligible to apply. Those with work experience having direct relevance to the aforesaid subjects(s) of examination(s) will be preferred.
- Persons above 65 years of age are not eligible for empanelment as examiner.
- Persons who are visually impaired or suffer from such other physical disability that might necessitate taking the assistance of any other person for evaluation of answer books are not eligible to apply.
- Persons who are undergoing any course of the Institute are not eligible to seek empanelment as examiners.
- Those whose applications were rejected earlier or rested/removed from the panel are not eligible to apply again.

Those who are already empanelled with ICAI as examiners and who have not been rested/removed, need not apply once again or for each exam afresh. Their candidature will be considered in the normal course, at the relevant time

Scale of honorarium for evaluation of answer books

Examination	Paper	Rate
Intermediate(IPC)	1-6	Rs 85/- per paper
Intermediate(IPC)	7A/7B Sectional papers carrying 50 marks each	Rs 55/- per paper
Final examination	1-8	Rs 110/- per paper

Format of the application for empanelment can be downloaded from www.icai.org.

Duly filled in application forms with all required enclosures may be sent by speed post or registered post to the following address:

The Deputy Secretary (Exams), ICAI Bhawan, Indraprastha Marg, New Delhi 110 002



COMPANY LAW - UPDATES - APRIL 2016

CA K. Gururaj Acharya

1. MCA Updates

**1.1 Sch. III of Co's Act 2013
Revised – Separate format
of BS & P&L for Ind-AS
compliant FS notified**
(Notification GSR 404(E) dated
06.04.2016)

Format of BS & Statement of P&L
(along with the General Instructions for
its preparation) segregated into –

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

There is **no change** in the format
of Balance Sheet and Statement
of Profit & Loss for Companies
following Accounting Standards
specified under **Co's (Accounting
Standard) Rules 2006**. The existing
Sch. III is now classified as Division I.

Schedule III is amended to **introduce
Division II** which lays down the format
of Financial Statements to be complied
with by Companies required to follow
Ind-AS. The format given under
Division II considers the presentation
requirements as required by various
Ind-AS, particularly Ind-AS 1 (i.e.,
Presentation of Financial Statements).

**In short, the New Format of BS
& P&L provided under Division**

**II of Schedule III is applicable to
Companies which are required to
follow Ind-AS, i.e:**

WEF FY 2016-17

- a. Companies (Listed & Unlisted) with
Networth > 500 Crores
- b. Holding / Subsidiary / Associate /
Joint Venture of 'a' above

WEF FY 2017-18

- c. All listed Co's / process of being
listed in / outside India with
Networth < 500 Crores
- d. Unlisted Companies with Networth
of Rs. 250 Crores – Rs. 500 Crores
- e. Holding / Subsidiary / Associate /
Joint Venture of 'c' & 'd' above

**1.2 Clarification on applicability
of Revised Accounting
Standards [Co's (AS)
Amendment Rules, 2016] –
Applicable to Accounting
periods commencing on or
after 30th March 2016 [GC
04/2016 dtd 27.04.2016]**

Companies (AS) Amendment Rules
2016, was notified on 30th March 2016
by which **AS 2, AS 4, AS 10, AS 14, AS
21 & AS 29 got substituted and AS 6
got omitted**.

The amendment mentioned that it
would come into force as on the date it
is published in the official gazette (OG).
Since the AS amendment notification

was published in the OG on 30.03.2016,
it was feared that the amended AS which
was notified on the penultimate day of
the financial year would come into force
for the FY 2015-16 itself, when most
of the companies had already prepared
their accounts under the earlier AS.

The present clarification states that the
amended AS would be applicable only
for FY commencing after 30th march
2016, i.e for FY 2016-17 onwards.
This clarification provided on 27th April
2016 from MCA provided much relief to
the corporate although belatedly and
after ICAI already provided a similar
guidance to its members a day earlier
on 26th April 2016, which is reproduced
in 2.1 below.

**Some of the important game
changers in the amended AS are
explained below:**

- a. **AS-2 Valuation of Inventories**
– Additional "Classification of
inventories" to be disclosed in the
Financial Statements to fall in line
with the Schedule III requirement.
- b. **AS-4 (Contingencies and Events
Occurring after the BS date)**
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 IND AS).



- c. **AS – 6** (Depreciation Accounting) omitted & subsumed under new AS – 10 (Property, Plant & Equipment)
- d. **AS – 10** (Accounting for Fixed Assets) renamed as **“Property, Plant and Equipment”**(PPE). PPE defined as a tangible item held for use in production or supply of goods or services, for rental to others, or for administrative purposes; **and are expected to be used during more than a period of 12 months.**

The amended AS-10 provides, detailed guidelines with respect to –

- Recognition
- Initial Costs and Subsequent Costs
- Cost of PPE is its **cash price equivalent** at recognition date. *If deferred beyond normal credit terms, the difference between the cash price equivalent and the total payment is recognized as interest over the period of credit unless such interest is capitalized in accordance with AS 16.*
- Measurement after Recognition *(Cost model or Revaluation model to be chosen and if Revaluation model is chosen, Revaluation must be done with sufficient regularity)*
- Depreciation
- Changes in Existing Decommissioning, Restoration and other liabilities
- Cost of Replacement, Major inspection / repairs & spares - Recognized in the carrying amount of PPE if the recognition criteria are met.
- Transitional provisions *(inter alia states that Revaluation model*

should be applied prospectively; In case, the company does not adopt the revaluation model, but the carrying amount of PPE reflects any previous revaluation, it should adjust the amount of outstanding in the revaluation reserve against the carrying amount of that item.)

- e. **AS-13** (Investments) Investment property should be accounted as per “Cost model as prescribed in AS-10” instead of accounting it like “Long term investment”.
- f. **AS-21** (Consolidated Financial Statements- CFS) - Where a company does not have a subsidiary but has an associate and / or a JV, such a company should also prepare CFS in accordance with AS-23 and AS-27.
- g. **AS-29** (Provisions, Contingent liabilities and Contingent Assets) Provisions not to be discounted **Except for** “Decommissioning, restoration and similar liability recognized as cost of PPE”. Periodic unwinding of discounts should be recognized in the statement of P&L. This aspect of exceptional discounting must be done prospectively only.

1.3 Relaxation of Additional Fees and extension of last date of filing of various e-forms
(General Circular No. 03/2016 dated 12.04.2016)

In view of the issues faced by the stakeholders pursuant to the launch of revamped MCA portal V2R2 on 28th March 2016, MCA has provided a **one time waiver of additional fees payable on e-forms which are due for filing by companies between**

25.03.2016 to 30.04.2016 if filed on or before **10.05.2016**. (No relaxation for filings after 10.05.2016).

Authors’ view: The above relaxation in the fee was provided because the MCA website managed by Infosys had lot of hiccups in the e-filing portal. This problem still persists and MCA must solve it at the earliest and must extend the relaxation until such time.

1.4 Other Updates

- a. **Jurisdiction of Regional Director over “States of Karnataka & Andhra Pradesh” replaced with “States of Karnataka, Andhra Pradesh & Telangana” WREF 03.11.2015** (notification dtd 26.04.2016)
- b. **Banking, Insurance, Power Sector, NBFC & Housing Finance Co’s exempted from XBRL filing** [Co’s (Filing of Documents & Forms in Extensible Business Reporting Language) Amendment Rules 2016 dtd 04.04.2016]

2. ICAI Updates

2.1 Clarification reg. Applicability of Revised Accounting Standards issued on **30th March 2016** –

“With a view to have consistent approach by Co’s on the applicability of the Accounting Standards as amended by the Companies (Accounting Standards) Amendment Rules, amended Accounting Standards **should be followed** for Accounting Periods commencing on or after the date of publication of the notification in the Official Gazette”.

Rule 2 of the Companies (AS) Amendment Rules states that the **"Amended Rules shall come into force on the date of their publication in the Official Gazette i.e 30th March 2016"**. However, Para (2) of Rule 3 (which is not a part of the amendments made on 30.03.2016) of CASR 2006 states that The Accounting Standards shall come into effect in respect of accounting periods commencing on or after the publication of these Accounting Standards.

This clarification by ICAI on 26.04.2016, (later followed by MCA on 27.04.2016!!) gave a huge respite to the auditors.

2.2 Guidance note by ICAI on CARO 2016 issued on 23.04.2016

HIGHLIGHTS OF GUIDANCE NOTE ON CARO 2016

- a. Report only on applicable clauses – rest can be omitted.
- b. **Small Companies exempt** irrespective of applicability of any condition being satisfied.
- c. Non Fund Based Loan not included to check applicability of CARO unless converted to Fund Based Loan.
- d. **Title deeds of Immovable Properties - [3(i)(c)]** -Immovable property not treated as Fixed Asset not to be reported.
- e. **Verification of Inventories - [3(ii)]**
 - All material items to be verified once in a year or more often in appropriate cases
 - Company can bifurcate inventories into A,B,C groups to determine frequency of verification of inventories based on groups.
- f. **Loans granted u/s 189 - [3(iii)(b)&(c)]**
 - Auditor to report stipulation on schedule of repayment of principal & payment of interest only if there is schedule of repayment of principal & payment of interest.
- g. **Compliance of S. 185** - Auditor to report nature of non compliance / max. amount outstanding at any point of time during the year and as at the balance sheet date for the Directors and persons in whom directors are interested separately.
- h. **Statutory Dues - [3(vii)(a)]**
 - Examples of "statutory dues" includes municipal taxes, TDS, Fees payable to the licensing authority (where business is carried on license granted by an authority, say a cinema hall), interest & rent required to be incurred u/s 61 of Customs Act, 1962
 - Auditor to state the fact if the Company has been irregular during the year in depositing the statutory dues.
 - Arrears not due for payment to appropriate authority and have been recognized as outstanding dues at BS date not to be reported.
 - Auditor to consider a matter as "disputed" where there is a positive evidence or action on part of Co. to show that it has not accepted the demand for payment of tax or duty, e.g., where it has gone into appeal.
- i. **Disputed Statutory Dues - [3(vii)(b)]**
 - Show cause notice (SCN) not to be construed as demand payable.
 - If SCN & demand is combined in one document, demand would not be construed to have arisen till the time assessee has disposed off the requirements of the SCN.
 - Demands stayed - regarded as disputed dues.
- j. **Repayment of Loans and Borrowings - [3(viii)]**
 - Report period & amount of all defaults existing at BS date irrespective of when those defaults have occurred.
 - "Borrowings" means principal amount and "dues" would mean principal & interest.
 - In case of disputes between Co., & lender on issues relating to repayments, Auditor to consider prevailing T&C only & may give brief of dispute as remarks to the same.
- k. **Utilization of Funds - [3(ix)]**
 - Schedule III requires only unutilized amount of any IPO / FPO (incl. debt instruments) made by Co. to be disclosed in the FS of a Co.,. In absence of legal requirement the companies should disclose the end use of money raised by the IPO / FPO in FS by way of notes & Auditor to verify the same.
 - Term loans obtained from entities / persons other than



banks / FI, would also have to be examined by Auditor for reporting purpose.

- l. **Example for Reporting under Fraud - [3(x)]** - "We have been informed that the accountant of Co. had misappropriated funds amounting to Rs. 10L during the PY & CY. Investigations are in progress & accountant has been dismissed & arrested. The company has withheld his terminal benefits & it is estimated that the amount misappropriated may not exceed the terminal benefits due to accountant. The company is also adequately covered by fidelity insurance cover."

m. **Managerial Remuneration - [3(xi)]**

- S. 197 is NA to Private Companies & reporting under this clause is not required.
- The default may be reported incorporating following details:-

Payment made to Director/ WTD / MD / Manager.	Amt paid/ provided in excess of limits of limits prescribed	Amount due for recovery as at BS date	Steps taken to secure recovery of amt.	Remarks, if any

n. **Related Party Transactions - [3(xiii)]**

- Auditor may test transaction of arm's length basis based on transfer pricing mechanism in use for purposes of IT Act, 1961
- In cases where transactions are entered with sole suppliers, Auditor to examine prices paid with reference to list prices of supplier concerned, other trade terms of supplier, etc. It may be noted that Co. while determining whether transactions entered into by it in its ordinary course of business with its RP are on an arm's length basis must have documentary proof of same while entering into transaction
- Based on procedures performed by Auditor, if he comes across any non-compliance / has any difference in opinion then it should be duly reported

o. **Private Placement u/s 42 - [3(xiv)]**

- In case requirements of S. 42 are not complied with, Auditor to report incorporating following details:

Nature of securities viz. ES / PS / Con. Debn.	Amount Involved	Nature of non-compliance

- This clause requires auditor to examine whether amt raised from Pvt placement / preferential allotment of shares or fully or partly convertible debentures were applied for purpose for which these securities were issued & fund raised.
- If amount raised from private placement or preferential allotment shares or fully or partly convertible debentures were not applied for the purpose for which they were issued, the auditor to report incorporating following details:

Nature of Securities viz. ES/ PS/Con. Debn.	Purpose for which funds raised	Total Amt Raised / unutilized balance	Amt utilized for other purpose	Un-utilized bal. as at BS date	Remarks, if any

p. **Every adverse comment under the Order would not necessarily result in a qualification in the report u/s 143 (2) & (3).**

- Adverse comment may be regarding a matter which has no relevance to a true & fair view presented by FS.
- While the non-compliance may be material enough to warrant an adverse comment under the Order, it may not be material enough to affect the true and fair view presented by the financial statements.
- Finally, the non-compliance may be in an area which calls for remedial action on the part of the management, and may be important for that reason but may not be sufficiently important in the context of the report u/s 143 (2) and (3).
- In deciding whether a qualification in the report u/s 143 (2) & (3) is necessary, auditor to use professional judgment in facts & circumstances for each case.

DIGEST ON RECENT DECISIONS UNDER COMMERCIAL TAX LAWS

CA Annapurna D Kabra



Case 1: M.Madhava Gowda v. Under Secretary To Government, Finance Department, Bengaluru. 2016(84) Kar. L.J. 193(HC)

- The appellant deals in the sale of liquor. The terms of the license conditions issued to a dealer in Form CL-2 states that the liquor sold across the counter to consumers at the sale price not exceeding the MRP indicated on the label of the container on the bottle vide Rule 3(2).
- No such restriction is imposed on Bars and Restaurants, Boarding houses and lodges etc. covered under the notification. The State Legislature in its economic wisdom of taxation, has chosen to provide a levy of tax on liquor sold by certain dealers, namely Bars and Restaurants operating in Urban areas, i.e. license issued in Form CL-9 and at the same time, exemption has been provided to similar license holders i.e. Bars and Restaurants operating in the rural areas considering the fact of low value addition between the price at which liquor is purchased and sold to customers in rural areas.
- However, a Hotel, Boarding House, and lodges holding license CL-7 though located in rural areas, would also serve liquor only to the residents of the Hotel and their guests who are elite customers, and can afford

to pay more for the same purchase of liquor. Thus, the condition of license itself enables the dealer to sell the liquor at a price irrespective of the MRP.

- Hence, the legislature has brought this class of dealer under the purview of taxation. This amendment has been brought into effect via notification dated 28-02-2014. The Bars and Restaurants located in the rural areas do not have the advantage of catering to the class of customers of economic superiority which are therefore, exempted. Thus, the impugned notification exempts liquor sold by dealers holding license CL-9 operating in rural areas in comparison with the liquor sold by a person holding a CL-7 license which would form a separate class of dealers.
- The classification of dealers based on value addition criteria for the purpose of tax levy and exempting the dealers based on area criteria cannot be held discriminatory. On these grounds, the appeal has been dismissed.

Case 2: Ever shine Wire Products v. State Of Karnataka 2016(84) Kar. L.J. 255 (Tri.) (DB)

- The appellant is engaged in the trading in wire mesh, weld mesh, wire net etc. The appellant purchases goods from outside the state and

also received stock transfers from other branches. The branch at Mysore was subject to inspection and the Inspection Authority (IA) found some loose slips apart from the regular books of accounts, through which the Inspection Authority has concluded a sales suppression.

- Neither was any transaction found out of the books nor was there any significant difference in the stock evaluation. On the basis of the report issued by the IA, the appellate authority rejected the returns filed by the appellant and has also estimated the sales suppression to be three times the sales suppression reported by the IA.
- The appellant contends that the estimation of turnover on the basis of loose slips is not logical and scientific and hence, falls outside the ambit of law. The AA has made an estimation without looking into the practical facts laid before the IA, and has therefore, made an appeal before the tribunal. The AA has completely relied on the facts stated by the IA without using his wisdom to ascertain facts.
- The learned counsel for the appellant has argued that neither the IA nor the AA have looked into the seized exhibits before making conclusions. It was also argued that when loose slips are maintained in



the absence of regular tax invoices, but indicating the corresponding tax invoice numbers, then the question of sales suppression does not arise. The AA failed to examine the invoices and the pattern of sales suppression. The impugned orders of First Appellate Authority and Assessing Authority are set aside.

Case 3: Sri Anjaneya Agro Tech Private Limited, Ganganagar, Hanganawadi, Harihara, Davangere District vs. The Deputy Commissioner of Commercial Taxes (Audit). – 2016(84) Kar. L.J. 385 (HC).

- The appellant is a manufacturer of a single product i.e. oil which is liable to tax. He also produces some by products which on sale, is exempted to tax. In filing of returns, the assessee has claimed only partial input rebate under Section 17 of the KVAT Act in respect of rice bran, cotton seeds, sunflower cake and soya seeds, used for the purpose of extracting oil.
- Subsequently, a Division bench judgment (MK Agro Tech case) was declared wherein it was said that such production and manufacture of oil does not attract section 17 of the KVAT act and accordingly, full amount of input can be claimed as rebate.
- On understanding of this judgment, the petitioner filed for an application under Section 69(1) for the rectification of the re-assessment orders passed, wherein it claimed for full input tax rebate, in order to avail the benefit of the judgment, after the assessment orders were passed.
- The claim of the assessee was rejected on the ground that the claim for full rebate should have

been made in the first instance itself and within a period of six months and not beyond that. Therefore, based on the MK Agro Tech case, the appellant can claim full tax rebate and the learned authority should pass a rectification order and grant full tax rebate.

Case 4 : Shri Kalabhairav Cement, Hukkeri Taluk, Belgaum District vs. Government of Karnatak and Others. 2016(84) Kar. L.J. 587 Tri (DB).

- The petitioner has challenged the reassessment orders made under Sec 39(1) of the KVAT Act, 2003 for the assessment years 2006-07, 2007-08, and 2008-09 contending that the Assessing authority has passed the orders without considering the Act and the mandatory provisions under the law.
- The respondent contended that the petitioner has got a statutory remedy to appear before the Appellate authority and Tribunal, and without exhausting such remedy, it cannot challenge the reassessment orders passed.
- The Petitions filed by the assessee were disposed off and it was said that the assessee cannot challenge the reassessment orders without exhausting the statutory remedy.

Case 5 : Purushotham Gokuldas Plywood Company (Private) Limited vs. State of Karnataka. 2016(84) Kar. L.J. 499(Tri.) (DB):

- The appellant claims input tax credit on the purchases effected from five separate dealers. On inspection, the inspection authority held that the tax invoices on the basis of which, the input tax was claimed as credit were fictitious and the credit claimed on

such basis is not justifiable. On such basis, an order was passed.

- The burden to prove that the tax invoices were genuine was on the appellant himself. It was contended by the respondent that the contentions stated by the appellant are very general in nature and have no factual base.
- On factual records available, and on detailed analysis, it was declared that the dealers were either non-existent or the tax invoices are not genuine in nature. Hence, transactions with such dealers were treated to be fictitious transactions.
- It was also stated that the appellant failed to discharge the burden of proof that the invoices were genuine enough as contemplated under Section 70(1). The appellant had completely relied on the EFS printouts for the purpose of claiming such credit. The purchase invoices were also not numbered consecutively as a practice, which was generally adopted by the genuine dealers.
- It was also provided thereby, that the TIN numbers quoted did not exist at all under the EFS system and hence, the tax invoices were not issued in the general course of business. In another case, the proof for payment for purchases and mode of transport were also not produced.
- Hence, all the appeals made by the appellant were dismissed and penalty under Section 72(2) for the wrong claim of input tax credit was justified.

Case 6 : Accurate Steels and Engineering Company Bengaluru vs State of Karnataka 2016(84) Kar.L.J. 519 (Tri.) (DB).

- The appellant is a dealer registered under the KVAT Act, 2003. The assessing authority had passed reassessment orders under section 39(1) of the Act, rejecting the claim of input tax credit on mere production of tax invoices and mode of payment, imposing a penalty along with applicable rate of interest.
- Penalty under section 70(2) was also imposed, which was later deleted by the FAA, on the grounds that before such imposition, the assessee must be given an opportunity of being heard.
- The Assessing authority stated that since there was no movement of goods involved and selling dealers were not authorized to sell the goods under their registration. The appellant stated that the original tax invoices along with the proof of payment in their returns, all such proofs were submitted with the DCCT and is considered to be sufficient proof under the law.
- Non-deposit of such tax amount by the selling dealer cannot be fastened to the purchase dealer. On cross appeal, the assessing authority stated that the invoices produced were bogus and fabricated, on the basis of which such input tax credit was disallowed. Though payments made to the selling dealers by cheques, 90% so paid were withdrawn by self-cheques.
- Only the remaining amount were transferred among the selling dealers. Vehicles claimed to have transported goods for 5 to 40 tons of stainless steel and sheets. Physical existence of registered dealers in the given address was not found. There

was only mere regular filing in the VAT 100 returns.

- Appellant had dialed to discharge the burden of proving correctness of the amount claimed as credit. Hence, the order was passed under section 39(1) and 72(2) of the act, along with penalty under section 70(2) is correct in law.

Case 7 : Ajay Apparels, Bengaluru vs. State of Karnataka.-2016(84) Kar. L.J. 568 (Tri.) (DB).

- The appellant is engaged in the business of embroidery work. He purchases the embroidery thread and other consumables and utilizes the same in work of embroidery on cloth of the customers. The appellant has filed returns and claimed exemption on the entire turnover of consideration received.
- An order has been passed against the appellant, against which he appellant has filed for an appeal before the Tribunal. On assessment, the officer has held that it is a case of a works contract wherein, the transfer of property in goods in that of embroidery thread and the same is taxable @ 13.5%. Hence, there is also a levy of penalty under section 72(2), along with applicable interest.
- The assessee has contended that the consideration received is for pure labor charges without involvement of transfer of property in goods. Hence, the entire consideration has been claimed under exemption on account of pure labor charges.
- The appellant has also contended that there is a general wastage of thread while executing the works contract, and to that extent there

is no transfer of property in goods, and therefore, no tax is leviable on such wastage. On the other hand, the assessing authority states that in any such contract, there is bound to be some kind of wastage. The consideration includes the quantum of wastage as well as the quantum of goods transferred in the execution of works contract.

- The appellant is required to pay tax on the wastage and the business carried out by the appellant is that of a works contract. The appellant is also liable to pay interest under section 36 and penalty under section 72(2) of the KVAT Act.

Case 8: Shrathi Printers and Publishers Private Limited, Baikampady, Mangaluru vs. State of Karnataka.-2016(84) Kar. L.J. 469(Tri.) (DB).

- A goods vehicle, moving towards the appellant was intercepted and on requirement, failed to upload the details of goods under transport on the Website, thereby violating the requirement under notification No. ADCOM(I&C)/P.A./CR-31/2011-12, DATED 23-12-2011. This was noticed by the check-post officer.
- The appellant contests that the machinery under transport was an inter-state sale and hence, the State of Karnataka has no jurisdiction to levy tax under the Sales tax law. Also, mere non-uploading on the website does not change the character of the movement.
- The assessing officer states that sub-section (2) of section 53 specifies that certain documents should accompany the goods vehicle which is required to be produced at the



time of checking of such vehicle. Amongst them is an E-S

- ugam form containing relevant details under the Notification No. ADCOM(I&C)/P.A./CR-31/2011-12. The appellant was aware of the mandatory requirement of law but has failed to comply with the said requirement.
- Thus, the transporter did not have the documents prescribed under Section 53(2) and other documents which were required to be produced at the time of verification and hence, they do not satisfy the requirements of Section 53(2) of the Act. Hence the appellant is liable for levy of penalty and the appeals

made by the assessee are dismissed.

Case 9: Sonal Apparel Private Limited, Bangalore vs State of Karnataka. 2016(85) Kar. L.J.1(HC).

- The appellant had claimed input tax on invoices which were dated for the period 2010-11 and 2011-12, based on the amendment which came into effect from 01-04-2015, which stated that the claim of input tax credit can be extended to preceding five months from the current tax period. Apart from this change, there is nothing else that is different from the previous provisions. The assessing authority contended that the claim of the petitioners is not merely for retrospective operation

but it is retroactive, thereby making the amended provision inapplicable for claims relating to the years 2010-2011.

- Therefore it is held that the appellant is permitted to deduct the input tax paid on his purchases irrespective of the month on which the purchases were effected. Section 10(3) did not require the dealers to avail credit only in the month in which the purchases were effected. Even if the amendment was to be made retrospective, it could only be for the preceding five months from the date of the amendment coming into effect which is on 01-04-2015. The petitions were accordingly allowed.

IMPORTANT DATES TO REMEMBER DURING THE MONTH OF MAY 2016

Due Date	Statute	Compliance
5th May 2016	Excise	Monthly Payment of Excise duty for the month of April 2016
	Service Tax	Monthly Payment of Service tax for the month for April 2016
6th May 2016	Excise	Monthly E- Payment of Excise duty for the month of April 2016
	Service Tax	Monthly E- Payment of Service Tax for the month of April 2016
7th May 2016	Income Tax	Deposit of Tax deducted / collected during April 2016.
	Excise	Monthly Performance Reports by Units in EOU, STP, SEZ for April 2016.
15th May 2016	VAT	Payment and filing of VAT 120 under KVAT Laws for month ended April 2016 (for Composition Dealers).
		Quarterly Payment and filing of VAT 100 under KVAT Laws for quarter ended April 2016.
	Provident Fund	Payment of EPF Contribution for April 2016 (No grace days).
		Return of Employees Qualifying to EPF during April 2016.
		Consolidated Statement of Dues and Remittances under EPF and EDLI For April 2016.
		Monthly Returns of Employees Joined the Organisation for April 2016.
		Monthly Returns of Employees left the Organisation for April 2016.
	Income Tax	Quarterly E-TDS returns for the quarter Jan – March 2016.
20th May 2016	VAT	Monthly Returns (VAT 100) and Payment of CST and VAT Collected/payable During April 2016.
	Professional Tax	Monthly Returns and Payment of PT Deducted During April 2016.
21st May 2016	ESI	Deposit of ESI Contribution and Collections of April 2016 to the credit of ESI Corporation.
30th May 2016	LLP	E-Filing of Statement of Account & Solvency for the F.Y 2015-16.
	Professional Tax	Annual Returns in Form 5 for the year 2015-16.



SERVICE TAX DECISIONS

PARTS DIGESTED – STR VOLUME 42: PARTS 1 & 2

CA. A. Saiprasad

Amendment to Rules

Point of Taxation Rules, 2011

Rule 7 determining point of taxation under reverse charge has been amended by inserting a third proviso.

As per the third proviso:

1. Where there is a change in the liability or extent of liability of a person required to pay service tax under reverse charge;
2. In case service has been provided and invoice issued before date of such change;
3. But payment has not been made as on such date

POT shall be date of issuance of invoice.

Note: In the opinion of the author, this is a consequential amendment to S.67A (S.148 of Finance Bill, 2016 refers) R.5 of POTR (by way of inserting explanations 1 & 2 by Notification No.10/16 ST refers)

Case Laws

Whether credit can be availed on inputs while providing works contract service though R.2A of ST Valuation Rules specifically denies the same.

The Bombay High Court held that credit on inputs can be availed while providing works contract service even though R.2A of ST Valuation Rules, 06

specifically states that credit on input cannot be availed since service tax was paid on the full value of works contract including the value of materials and since revenue was not put to loss by availment of credit on inputs (because service tax was discharged on gross value of works contract and not after reducing value of materials).

CCE V. S.V. Jiwani, 2016 (42) STR 209 (Bom)

Whether service tax paid on repair and maintenance service of vehicle, rent-a-cab service can be availed as Cenvat Credit?

The High Court held that the aforesaid activities are in relation to business/indirectly involved in manufacturing of final product and hence available as Cenvat Credit.

CCE V. Mangalore Refinery & Petrochemicals Ltd, 2016 (42) STR 6 (Kar).

Note: Service tax paid on rent a cab service and repair and maintenance service has been specifically excluded from the definition of input service wef 1.4.11 except in cases where credit of motor vehicle is available as capital goods.

Whether difference between amount realized on account of sales and purchase price paid to job worker is

liable to service tax under franchisee service?

The assessee was engaged in manufacture of branded alumina fire bricks and refractory material. It was alleged that assessee granted franchise for manufacture of firebricks of specifications, design and quality prescribed by it to other small manufacturing units (job workers). The difference between sale price received by assessee from customers and purchase price paid to job workers was confirmed by adjudicating authority under franchisee service.

The Tribunal after perusing the agreement between assessee and job workers noted that the job workers did not pay any amount to the assessee; on the other hand the assessee paid to the job workers. The flow of payment from the assessee would not have been the case had the assessee provided franchisee service to the job workers.

Tribunal held that merely because the word 'franchise' and 'franchisee' have been used in the agreement does not *ipso facto* mean that the service is a franchisee agreement since no part of the agreement gives slightest support that agreement gave representational right to the job workers. Hence not liable to service tax.



ACE Calderys Ltd V. CST, 2016 (42) STR 8 (T)

Whether Settlement Commission must compulsorily share Revenue's Report on the assessee while settling the case?

The Settlement Commission had not given opportunity of being heard to the assessee against revenue's report against it. On a writ petition by the assessee, the High Court held that there was a fatal violation of principles of natural justice; that Settlement Commission had not proceeded in accordance with provisions of Chapter V of Central Excise Act (made applicable to service tax by S.83 of Finance Act, 1994).

The High Court held that Settlement Commission cannot straightaway accept the Revenue's report as incontrovertible or state that matter was too onerous on its time, energy and resources. The High Court held that without balancing and taking into account views and submissions of both sides, no "settlement" can be worked out and Settlement Commission cannot possibly discharge its bounden duty.

Cineyug Worldwide V. UOI, 2016 (42) STR 219 (Bom)

Whether Cenvat Credit can be availed prior to registration; whether such Cenvat Credit is admissible for construction of mall (i.e. immovable property)?

The Tribunal held that:

1. Input Service procured prior to registration may be availed as credit.

2. Mall was constructed and let out on rent. Definition of input service before and after 1.4.11 did not restrict use of input service for construction of building/ civil structure, used for providing output service (renting of immovable property)

3. Credit of input service cannot be denied on the ground that services were used for construction of mall (which was not excisable because of being immovable).

4. Input Service was availed at Pune on invoices addressed to Bombay Office. Tribunal held that credit could not be denied since assessee had taken centralized registration at Pune before availing credit and since assessee had neither availed any credit at Bombay nor transferred credit to Bombay.

Vamona Developers Pvt Ltd V. CCE, 2016 (42) STR 277 (T)

Whether interest is payable on cenvat credit wrongly availed but not utilized?

The Tribunal held that liability to pay interest arises only when duty legally payable was not paid. Since assessee was not liable to pay service tax, liability to pay interest cannot be imposed.

TNT (India) Pvt Ltd V. CCE, 2016 (42) STR 285 (T).

Note: Also see CCE V. Bill Forge Pvt Ltd., 2012 (26) STR 204 (Kar) and CCE V. Gokaldas Images Pvt Ltd., 2012 (28) STR 214 (Kar)

Whether filing of declaration to opt for Cenvat Credit Reversal as per formula method mandatory?

The Tribunal held that condition of filing declaration for reversal of credit as per R.6(3A) of CCR, 04 (formula method) is only directory and not mandatory since most of the requirements as per declaration was already available in revenue's record.

The Tribunal held that Rule 6 (for reversal) cannot be used as tool for oppression to extract amount beyond remedial measure. The Tribunal further held that what cannot be collected directly, cannot be collected indirectly through Rule 6 of CCR, 04.

Tata Technologies Ltd V. CCE, 2016 (42) STR 290 (T).

Note: Also see Mercedes Benz India Pvt Ltd V. CCE, 2015 (40) STR 381 (T)

Whether PLA Balance can be transferred after merger of firms?

Assessee merged with M/s. BPC projects and utilized the same towards their service tax liability. M/s. BPC projects had not surrendered their service tax registration. The Tribunal held that merely because M/s. BPC Projects had not surrendered their registration it could not be said that PLA balance lying unutilized was available with M/s. BPC itself after merger.

The Tribunal held that assessee was the successor and the only legal entity with effect from date of merger and hence legally entitled to utilize the said unutilized PLA balance belonging to M/s. BPC. Tribunal held that non-observance of procedural issue of intimation to department was only technical and hence allowed utilization of transferred credit.

PSP Projects Pvt Limited V. CST, 2016 (42) STR 301 (T)

Whether value of raw materials used in tyre retreading liable to service tax?

Tribunal held that tyre retreading was liable to service tax under management, maintenance and repair service. However value of raw materials used in retreading of tyres is not includable in value of services when state VAT paid on such material.

Highway Tyres Pvt Ltd V. CCE, 2016 (42) STR 318 (T)

Whether Bonus given by service recipient to service provider is includable in value of services?

Assessee was providing site formation, clearance and excavation service to M/s. SCC. SCC were providing specific quantity of explosives and diesel oils to assessee for providing their service. As per the agreement between assessee and SCC, if assessee consumed lesser quantity of explosives and diesels, they would be paid bonus and incentive by SCC. Revenue held that value of such bonus is includable in assessable value of site formation service.

Tribunal held that bonus was dependent on conservative/ efficient use of diesel and explosives; that bonus was not known at the time of performance and was calculated subsequent to completion of service. Tribunal held that Bonus was more in the nature of prize money for good performance of service and hence not includable in value of service.

AMR India Ltd V. CCE, 2016 (42) STR 329 (T)

Whether auction proceeds of abandoned warehoused goods liable to service tax?

The Tribunal held that there was no recipient of service in a transaction of auction of abandoned warehouse goods. The Tribunal confirmed the findings of the Commissioner (Appeals) who held that merely because S.150 of the Customs Act, 62 states that proceeds of the auction should be used for payment of charges to the person having custody of goods, the auction proceeds does not partake the character of consideration for providing 'storage and warehouse service'. The Tribunal further confirmed the findings of the Commissioner (Appeals) that the auction proceeds acquired the status of sale proceeds and hence would be liable to sales tax.

CCE V. Speedy Multimodes Ltd., 2016 (42) STR 337 (T)

Whether advertisement and sponsorship charges incurred for the entire group company can be availed by a single company?

The Tribunal held that when service tax for advertisement and sponsorship charges for entire group was incurred and paid by the single company, then it has to be held that the services have been availed by the single company. Tribunal further held that since the services are in relation to business hence cenvat credit would be available.

CCE V. HCL Technologies Ltd., 2016 (42) STR 48 (T)

Business Auxiliary Service vis-à-vis Manpower Supply Service

The Tribunal held that activity of running retail outlet of HPCL including effecting physical delivery of petroleum products, providing adequate security for retail outlet, maintaining proper and correct account of transactions, handling receipt/ storage/ delivery of stock for sale of products, arranging for effective operation of air/ water, checking dispensing pumps is liable to service tax under BAS.

The Tribunal further held that reimbursement towards shortage of fuel stock of diesel, electricity bill, telephone bill, bank charges are not includable in value of service. However since assessee failed to produce evidence to establish exact amount of reimbursement, the benefit cannot be given to the assessee as per S.67 of FA, 94.

Harinder Goyal V. CCE, 2016 (42) STR 61 (T)

OBITUARY



We deeply regret to
inform sad demise of
CA Shekharayya Hiremath
Membership No: 203581
May his soul rest in peace.



Advts.

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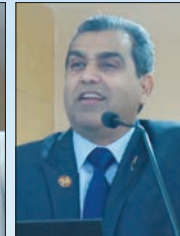
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CA. Amith Raj A.N



CA. Venkataramani. S



CS. J. Sundharesan



CA. Mohan R. Lavi



CA. Deepak S. Kothari

Speakers at Study Circle Meetings

Speakers at Study Circle Meetings



CA. B. P. Sachin Kumar



CA. Raghavendra C.R.



CA. V. Raghuraman



CA. Naveen Khariwal G



CA. Naveen Rajpurohit



CA. Nulvi C.R



CA. Suresh S. Patil & CA. Punarvas Jayakumar

SICASA Study Circle Meeting

9th Regional Residential Course of SIRC in Yercaud



Inauguration



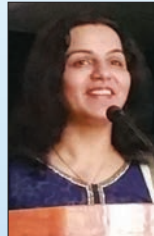
SICASA Career Counseling Programme



CA. Pampanna B.E.



CA. Ravindra S. Kore



CA. Ginita Shah



Cross Section of the Participants
at Bengaluru



Career Counseling at Dandinashivara Turuvekere Taluk



How to face CA Exams



CA. Pranay
Gupta



CA. Chandrashekara
Shetty



Cross Section of the Participants



TWO DAY RESIDENTIAL REFRESHER SEMINAR AT HAMPI

Organised by

Southern India Regional Council of
The Institute of Chartered Accountants of India

Hosted by

Bangalore & Bellary Branch of SIRC of ICAI

Venue: Royal Orchid Central
Kireeti, Station Road Hospet, Hampi.

Day I - 18th June 2016

Topics	Speakers
Inauguration & Ist Technical Session Assessment of Trust	CA. E Phalguna Kumar Chairman, SIRC of ICAI
Tea Break	
II Technical Session: ICDS	CA. K Gururaj Acharya Bangalore
Lunch Break	
III Technical Session: Acceptance and Repayment of Loans/ Deposits – u/s 269SS & 269T	CA. Prashanth G S Bangalore
Tea and thereafter sight seeing	

Day II - 19th June 2016

Topics	Speakers
IV Technical Session: Tax Audit u/s 44AB of Income Tax Act-1961	CA. Naveen Khariwal G Bangalore
Lunch Break	
V Technical Session: Capital Gains	CA. Rajesh Bhagrecha Bellary
Tea followed by sightseeing	
Valedictory & Checkout by 8.30pm	

CA. Pampanna B E **CA. Shravan Guduthur** **CA. Siddarameshwara Gowda**
Chairman Secretary Chairman
Bangalore Branch of SIRC of ICAI Bangalore Branch of SIRC of ICAI Bellary Branch of SIRC of ICAI
99867 52428 98445 46161 94805 69117

Registration Fees:- (Stay on Twin Sharing Basis)

	with Travel + with Residential	w/o Travel + with Residential	w/o Travel + w/o Residential
For Members :	Rs. 8000/-	Rs. 5500/-	Rs. 2500/-
For Spouse:	Rs. 7000/-	Rs. 5000/-	-
For Children : (Above 8Yrs)	Rs. 7000/-	Rs. 5000/-	-



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

For NEFT : A/c Holder Name: Bangalore Branch of SIRC of ICAI
A/c No: 1370101010825
Bank & Branch: Canara Bank, Vasanthnagar, Bangalore 560 052
IFSC Code: CNRB0001370
MICR Code: 560015061

Travel Mode: Train - 2 Tier / Bus - Sleeper

For Early Bird Registration within 30th May 2016

**-> 500 Reduction from Price
(Except w/o Travel + w/o Residential)**

For Registration please contact:

Tel: 080-30563500 / 3513

Email: blrregistrations@icai.org

Website: www.bangaloreicai.org