



Bangalore Branch of SIRC e-Newsletter

Volume 06 | Issue 6 | January, 2018 | Pages : 24

English Monthly

For Private circulation only



SRESTATHA
excellence

49th Regional Conference of SIRC of ICAI



CA Students Conference



Diversity Enabler Study Circle
Companies Amendment Act 2017
05th January 2018

One day Workshop on
**Scrutiny, Survey, Summons, Search and
Seizure under Income Tax Act 1961**
12th January 2018

An Awareness Program on
Union Budget Analysis 2018
2nd February 2018

Clause by Clause Discussion on
Union Budget – 2018 – Indirect Taxes
9th February 2018

Clause by Clause Discussion on
Union Budget – 2018 – Direct Taxes
10th February 2018



Happy New Year
2018



Chairperson's Communique . . .



Dear Professional Friends,

We leave behind a memorable and eventful year 2017 filled with mega events especially pertaining to GST Law, the new Tax regime, the historical economic reform which our great Nation has ever faced.

Our economy is in a phase of transition especially in the backdrop of various regulatory changes in the area of our services.

- Income declaration and demonetization scheme
- The anti-black money drive
- The transition to Financial practices to Ind – As converged with IFRS
- Implementation of the GST Law, the most significant reform
- New Company Law Tribunal (NCLT)
- Insolvency and Bankruptcy Code, etc

At this point of time, I am very happy to state that the Branch conducted innumerable programs on these topics of professional interest, in the year 2017 to educate members of the profession in order to render quality services, keeping in mind that each one of us are partners in Nation Building.

Let me place on record the unstinted support given to the Branch by our expert and experienced Resource persons, Past Chairmen, Present and Past Central & Regional Council Members, Past Presidents from Bangalore in conducting various programs and activities, which was of immense value to our professional fraternity.

Of course, the eventful year 2017 came to an end. Let us embrace the new year 2018 with all zeal, enthusiasm and integrity. I take this opportunity to wish you and your family Members a happy, peaceful and prosperous New Year 2018. Let the year be an empowering and rewarding year for us and let us put in all our efforts to materialize this dream.

Programmes conducted in December 2017:

Apart from regular study circle meets and other activities, CA Students Conference on 9th & 10th December 2017 and "Srestatha" – Excellence 49th Regional Conference of SIRC of ICAI on 22nd & 23rd December 2017 made the month more memorable.

CA Students Conference with a theme "Nurturing Values & Integrity – Attaining Excellence in Professional Pursuits" organized by BoS, ICAI and hosted by Bangalore Branch of SIRC of ICAI and Bangalore Branch of SICASA was a grand success. Around 1600 Students across the Country participated at this conference. The motivational address by our Past President **CA. T N Manoharan** and **CA. Venkat Narayan, CEO of Prestige Group** were value addition to the Student delegates. The insightful talk by **CA. Madhukar N Hiregange, our Central Council Member** and **CA. Vandana D Nagpal, Director – BoS** was informative and was of immense value to our budding CAs. The presentation on topics of professional interest by Student speakers and moderated by our dedicated Resource Persons were commendable.

SRESTATHA – excellence 49th Regional Conference of SIRC of ICAI conducted on 22nd & 23rd December 2017 at Tripura Vasini, Palace Grounds, Bangalore organized by SIRC of ICAI under the able leadership of CA. Cotha S Srinivas, Chairman SIRC of ICAI and team Members and hosted by Bangalore Branch, was a feather in the cap of Bangalore Branch. Around 3600 Members participated in the event and their active involvement and participation strengthened the bond among our professional fraternity, inducing a feeling of togetherness and

belongingness to our Alma Mater - ICAI. Happy to inform you that SIRC Reference Manual 2017-18 was released during the Conference.

We remain grateful to Conference Chairman CA. Cotha S Srinivas and other SIRC Committee Members for having given us an opportunity to host this unique event by our Branch. We appreciate the dedicated service of my colleagues in the Managing Committee, Officers, Staff Members of SIRC, DCO and Branch for the smooth conduct of this mega event.

We remain indebted to all the Speakers who have shared their expertise amongst us, being paper presenters, despite their very busy schedule. **We are thankful to Shri. D H Shankaramurthy, Chairman – Karnataka Legislative Council, GoK for being with us as Chief Guest for the Inaugural Session. We also express our profound gratitude to Dr. H C Mahadevappa, Hon'ble Minister for Public Works Department, Port & Inland Transport, GoK, Chief Guest of Valedictory Session of SRESTATHA and the Power Star of Kannada Film Industry Mr. Puneeth Raj Kumar who was here with us to inaugurate the cultural extravaganza by the renowned artists from Film Industry.**

We are thankful to the event Sponsor – Infosys, Joint Event Sponsor – Zoho Corporation, Co-Sponsors – Prestige Group and Lakshmi Vilas Bank and other Sponsors and advertisers for their patronage extended in conducting this unique event without any hassles. Overall the entire two-day Conference brought SRESTATHA in our profession, in our lives ultimately paving way to enhance SRESTATHA of our Nation.

I Hope you all have complied with CPE requirements which is important for us to keep ourselves updated with latest information. **We have planned many significant programs in January 2018.**

We are delighted to inform you that the first meeting "**Diversity Enabler Study Circle**" of the Branch is being organized by the Committee for Capacity Building of Members in Practice (CCBMP) at Bangalore Branch on 5th Jan 2018. These meetings are expected to have networking of Women CAs with Co-professionals, firms and potential employers to enable full/flexi career options.

One-day Workshop on "**Scrutiny, Survey, Summons, Search & Seizure under Income Tax Act 1961**" will be conducted on 12th January 2018 and the Senior Stalwarts in the profession specialised in Direct Taxes will be the Speakers at this Workshop. The study circle program especially on "Structuring of Transactions in Immovable Property" is also in the pipeline.

We at B'lore Branch of SIRC of ICAI are celebrating **Republic Day celebration on 26th Jan 2018**. we would earnestly invite all our esteemed members to be part of this program and rejoice the auspicious occasion.

A training program for Statutory Auditors of NBFCs will be conducted by the Resource persons from top Management of RBI on 31st Jan 2018 at the Branch. The details of the programmes are hosted in B'lore Branch website www.bangaloreicai.org.

Individuals and Organisations will succeed who have mastered the art of continuous learning and comprehending the rapid changes in the most professional way. Hence, we request our professional friends to participate in all the future programs and derive maximum benefit out of the same.

On behalf of my colleagues in the Managing Committee, once again I wish all my professional friends an empowering and rewarding year 2018 and happy Makara Sankranti festival.

With warm regards,

CA. Geetha A B
Chairperson
Bangalore Branch of SIRC of ICAI

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RAMESH M HEAD - LOAN AGAINST PROPERTY (KARNATAKA & GOA)	Phone : 080 4118 3135 Email : mramesh@hdfc.com Mobile : +91 9845569511



CA Students Conference on 9th and 10th Dec 2017



Chief Guest
Shri Dinesh Gundu Rao,
Working President - KPCC,
National Spokesperson - AICC
inaugurating the Conference

CA. Madhukar N Hiregange,
Conference Director &
Chairman, Indirect Tax
Committee, ICAI

CA Cotha S Srinivas,
Chairman, SIRC of ICAI

Releasing the Souvenir



Felicitation - Shri Dinesh Gundu Rao



Felicitation - Padma Shree CA. T. N. Manoharan



CA. Vinayak Pai V



CA. Anand P Jangid



CA. Gururaj Acharya K



Padma Shree
CA. T. N. Manoharan,
Past President, ICAI



CA. K. K. Chythanya



CA. Vandana D Nagpal,
Director,
Board of Studies, ICAI



CA. Venkat K Narayan,
Chief Executive Officer,
Prestige



CA. Rishab Singvi



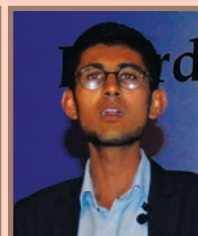
Ms. Deepali R Nayak



Mr. Gururaja Shetty



Ms. Sneha Chandy



Mr. Jaiveer Singh Shekhawat



Ms. Meena Shanbhag



Ms. Veena S Reddy



Mr. Mayur B



Mr. Shreya S



Mr. Manish Jain



Ms. Sahana G Pai



Ms. Nagashree Bhat



Ms. Abhilasha Balakrishnan



Mr. Vinaya Karthik



SRESTATHA - 49th Regional Conference of SIRC of ICAI



Entrance



Registration

Felicitation - Sri. D. H. Shankaramurthy



Sri. D. H. Shankaramurthy,
Chairman,
Karnataka Legislative Council,
Government of Karnataka



CA. Madhukar N Hiregange,
Conference Director &
Chairman, Indirect Tax
Committee, ICAI



Dr. Rajiv Kumar,
Vice Chairman,
NITI Aayog



CA. K. R. Pradeep



CA. S. Santhanakrishnan



CA. Girish Ahuja



CA. T. P. Ostwal



CA. Abizer Diwanji



Inauguration



Power Star Puneet Rajkumar



Felicitation - Puneet Rajkumar



Cultural Programme



Cultural Programme



Lunch Hall

SRESTATHA - 49th Regional Conference of SIRC of ICAI



Inauguration



Handing over of CABF Cheque - Rs. 1,33,80,475/-



Felicitation - President, ICAI



CA. Niles S Vikamsey,
President, ICAI



CA. K. Raghu,
Past President, ICAI



CA. Dinesh R., MD,
TVS Logistic Services, Chennai



CA. Ninad Karpe, MD & CEO,
Aptech Ltd., Mumbai



Sri. Narayan K. P., Director
Strategic Alliances,
Zoho Corporation



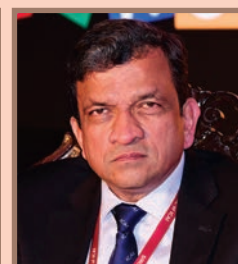
CA. Dolphy Dsouza



CA. Deepak Bhalla



CA. Viswanath,
Past Chairman, SIRC of ICAI



CA. Sunil Bhumralkar



CA. Babu Jayendran



CA. Vinay G Rao



Panel Discussion



CA. S. S. Gupta



Chief Guest Dr. H. C. Mahadevappa,
Hon'ble Minister of PWD, Port & Inland
Transport, Govt. of Karnataka



Valedictory Session - Dr. H.C. Mahadevappa

CALENDAR OF EVENTS - JANUARY & FEBRUARY 2018

DATE AND DAY	TOPIC / SPEAKER	VENUE/TIME	CPE CREDIT
03.01.2018 Wednesday	An Update on TDS CA. D.R. Venkatesh	Branch Premises 6.00 pm to 8.00 pm	2 hrs
05.01.2018 Friday	Diversity Enabler Study Circle Companies Amendment Act 2017 CA. K Sripriya , <i>Central Council Member, ICAI</i> 10.30 am to 12.30 pm Re-Engineering your Skills – A must for Career Growth CA. Subramanyam Chittur 12.30 pm to 1.30 pm	Branch Premises Vasanthnagar	3 hrs
10.01.2018 Wednesday	An Overview of Block Chain Management CA. Narendra Nesarikar	Branch Premises 6.00 pm to 8.00 pm	2 hrs
12.01.2018 Friday	"Jignasa" One day Workshop on Scrutiny, Survey, Summons, Search and Seizure under Income Tax Act 1961 CA. Naveen Khariwal. G <i>Moderator & Co-ordinator</i> <i>Delegate Fee : Rs.600/-</i> <i>Details in Pg. No.: 23</i>	Branch Premises 10.00 a.m to 5.30 p.m	6 hrs
17.01.2018 Wednesday	Recent Updates in FEMA CA. Vivek Mallya	Branch Premises 6.00 pm to 8.00 pm	2 hrs
20.01.2018 Saturday	Workshop on "Representation before NCLT" CA. Ravi Prasad , <i>Co-ordinator</i> <i>Delegate Fee: Rs.150/-</i>	Branch Premises 3.00 p.m to 6.00 p.m	3 hrs
24.01.2018 Wednesday	Structuring of Transactions in Immovable Property CA. Ashok Raghavan	Branch Premises 6.00 pm to 8.00 pm	2 hrs
26.01.2018 Friday	Republic Day Flag Hosting and Celebration	Branch Premises 9.30 am	—
31.01.2018 Wednesday	Training Program for Expectations of RBI from Statutory Auditors of NBFCs Dr. Sathyan David <i>CGM, Dept. of Non Banking Supervision, RBI, Mumbai</i> & other officers of RBI	Branch Premises 11.00 am to 1.00 pm	2 hrs
31.01.2018 Wednesday	HUF – Taxation Aspects CA. Pallavi Dhamecha , <i>Deloitte</i>	Branch Premises 6.00 pm to 8.00 pm	2 hrs



CALENDAR OF EVENTS - FEBRUARY 2018

DATE AND DAY	TOPIC / SPEAKER	VENUE/TIME	CPE CREDIT
02.02.2018 Friday	An Awareness Programme – Analysis of Union Budget 2018 <i>Moderators:</i> CA. T.V. Mohandas Pai & CA. H. Padamchand Khincha	Christ University Auditorium, Hosur Road 5.00 pm to 8.00 pm	3 hrs
07.02.2018 Wednesday	How to effectively communicate with non-financial business owners <i>*Details will be informed</i>	Branch Premises 6.00 pm to 8.00 pm	2 hrs
09.02.2018 Friday	Clause by Clause Discussion on Union Budget – 2018 – Indirect Taxes CA. K.S. Ravishankar CA. V. Raghuraman Mr. K.S. Naveen Kumar, Advocate <i>Delegate Fee : Rs.900/- (Inclusive of GST)</i>	Devaraj Urs Auditorium 10.00 am to 5.00 pm	6 hrs
10.02.2018 Saturday	Clause by Clause Discussion on Union Budget – 2018 – Direct Taxes CA. S. Ramasubramanian CA. H. Padamchand Khincha CA. K.K. Chaythanya <i>Delegate Fee : Rs.900/- (Inclusive of GST)</i>	Devaraj Urs Auditorium 10.00 am to 5.00 pm	6 hrs
14.02.2018 Wednesday	How CAs can leverage Analytics in Forensic Audit CA. Anand P Jangid	Branch Premises 6.00 pm to 8.00 pm	2 hrs
21.02.2018 Wednesday	Ind-AS Implications and Update (Specific considerations for phase II) entities CA. Asha M	Branch Premises 6.00 pm to 8.00 pm	2 hrs
28.02.2018 Wednesday	Corporate Restructuring and Mergers & Acquisitions CA. Amit Raj & CA. Krishna Prasad	Branch Premises 6.00 pm to 8.00 pm	2 hrs

Advertisement Tariff for the Branch e-Newsletter

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Inside front	₹ 35,000/-
Inside back	₹ 30,000/-

INSIDE BLACK & WHITE

Full page	₹ 20,000/-
Half page	₹ 10,000/-
Quarter page	₹ 5,000/-

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

EDITOR :
CA. GEETHA A.B

SUB EDITOR :
CA. BHAT SHIVARAM SHANKAR

Disclaimer: The Bangalore Branch of ICAI is not in anyway responsible for the result of any action taken on the basis of the articles and advertisements published in the e-Newsletter. The views and opinions expressed or implied in the Branch e-Newsletter are those of the authors/guest editors and do not necessarily reflect that of Bangalore Branch of ICAI.

Kind Attn: Members

Programme on “Diversity Enabler Study Circle”

Under the aegis of **The Committee for Capacity Building of Members in Practice (CCBMP)**

Venue : No.16/0, ICAI Bhawan,
Millers Tank Bed Area, Vasanthnagar,
Bangalore-560052

Contact : 080 30563500 / 512 / 515

E-mail: blrprogrammes@icai.org /
blrregistrations@icai.org

We are planning to organise a **programme on “Diversity Enabler Study Circle”** on **3rd Friday of every month** to provide a convenient CPE Window to all members.

Tentative date of Commencement :

Friday, 5th January 2018

Timings : **10.30 am and 1.30 pm.**

The objective of the Programme is three fold :

- Women Members to attend CPE Programmes at convenient timings
- Develop women resource persons for learning initiatives
- Networking with other members during these programs will enable professional and employment opportunities for women members on a flexi or full time basis

The Program Structure would be as under:

- Session 1 – 2 Hours – Technical Session
- Session 2 – 1 Hour – Soft Skill and Net Working

For further details, please visit website: **www.bangaloreicai.org**

BANGALORE DCO ANNOUNCEMENT

Students belonging to State of Karnataka can seek clarifications regarding the status of the applications that they have submitted online on various activities such as Registration to various courses (CPT/Foundation/Intermediate/Final), re-validation, etc., from the Bangalore DCO @ ICAI Bhawan, 16/0, Millers Tank Bed Area, Bengaluru – 560 052.

Contact : 080 3056 3541, 3056 3542, 3056 3545, 3056 3516

Email : dcobangalore@icai.org website : www.bangaloreicai.org

LIST OF HOLIDAYS FOR THE YEAR - 2018

SL. No	PARTICULARS	DATE & MONTH	DAY
1	MAKARA SANKRANTI	JANUARY, 15	MONDAY
2	REPUBLIC DAY	JANUARY, 26	FRIDAY
3	MAHA SHIVARATHRI	FEBRUARY, 13	TUESDAY
4	CHANDRAMANA UGADI	MARCH, 18	SUNDAY
5	GOOD FRIDAY	MARCH, 30	FRIDAY
6	AMBEDKAR JAYANTI	APRIL, 14	SATURDAY
7	MAY DAY	MAY, 1	TUESDAY
8	INDEPENDENCE DAY	AUGUST, 15	WEDNESDAY
9	GANESHA CHATHURTHI	SEPTEMBER, 13	THURSDAY

SL. No	PARTICULARS	DATE & MONTH	DAY
10	GANDHI JAYANTI	OCTOBER, 02	TUESDAY
11	MAHALAYA AMAVASYA	OCTOBER, 08	MONDAY
12	AYUDADHA POOJA	OCTOBER, 18	THURSDAY
13	VIJAYA DASHAMI	OCTOBER, 19	FRIDAY
14	KANNADA RAJYOTSAVA	NOVEMBER, 01	THURSDAY
15	NARAKA CHATURDASHI	NOVEMBER, 06	TUESDAY
16	DEEPAVALI / BALIPADYAMI	NOVEMBER, 08	THURSDAY
17	CHRISTMAS	DECEMBER, 25	TUESDAY



Southern India Regional Council
The Institute of Chartered Accountants of India
Jointly with Bangalore and Hyderabad Branches of SIRC of ICAI
organises

International Tour to Singapore and Genting Dream Cruise
February 1st 2018 – 5 Nights and 6 Days



Day 01 – Friday 02 February 2018: Arrival Singapore as per flight schedule from your city. Transfer and check-in to **Boss Hotel** or similar with breakfast for freshen-up till 1200Hrs at hotel. Check out from Hotel. Lunch at Indian Restaurant. Proceed to Half Day **Singapore City Tour with Flyer**. Transfer to Cruise Terminal, Genting Dream Cruise Check in starts at 1700Hrs (Departs at 2100 Hrs). Dinner and Overnight On-board Cruise. **Meal Plan: Breakfast | Lunch | Dinner on Board Cruise**

Day 02 – Saturday 03 February 2018: On-board Cruise. **Meal Plan: Breakfast | Lunch | Dinner on Board Cruise**

Day 03 – Sunday 04 February 2018: Breakfast on Board Cruise. 10:00 Hours Cruise arrives at Singapore Cruise Terminal (Estimated Arrival Time). Checkout of cruise. Lunch at Indian Restaurant. Check in to Hotel (Standard Check in time is 1500Hrs). Evening proceed to **Night Safari** (Admission + Show + Tram Ride). Dinner at Indian Restaurant. Overnight stay at Hotel. **Meal Plan: Breakfast | Lunch | Dinner**

Day 04 – Monday 05 February 2018: Breakfast at Hotel. **Jurong Bird Park** (Admission + Tram Ride + Show). Lunch at Indian Restaurant. Proceed to **Sentosa tour** (1 Way Cable Car, 1 Way Luge & Sky Ride, S.E.A Aquarium, Wings of Time). Dinner at Indian Restaurant. Overnight stay at Hotel. **Meal Plan: Breakfast | Lunch | Dinner**

Day 05 – Tuesday 06 February 2018: Breakfast at Hotel. **Universal Studio with Meal Coupon** (All Rides Except rock climbing) Dinner at Indian Restaurant. Overnight stay at Hotel. **Meal Plan: Breakfast | Lunch | Dinner**

Day 06 – Wednesday 07 February 2018: Breakfast at Hotel. Check-out from Hotel. Lunch at Indian restaurant. Proceed to **Marina Bay Sands – Sky Park Observation deck. Gardens by The Bay (Cloud Forest & Flower Dome)**. Transfer to Changi Airport, Singapore for Departure your city as per flight schedules. **Meal Plan: Breakfast | Lunch**

DELEGATE FEE

Category	Cruise Balcony Room
Per Adult on Twin / Triple sharing basis	INR 95,000
Child (2-12 years) sharing room with 2 adults with extra bed	INR 77,000
Child (2-12 years) sharing room with 2 adults No extra bed	INR 68,000

Terms and Conditions:

- Registration on first come first serve basis. Number of seats for Bangalore – 35 | Chennai – 35 | Hyderabad – 30. Bookings above this are subject to availability of services and prices.
- Register for the tour not later than 15th December 2017 by paying INR 50,000 to SIRC office along with a valid passport (having validity upto 31st August, 2018).
- Regular cancellation policy applies for people who book and cancel the tour. Changes of any nature are not possible in the itinerary and services mentioned.

Inclusions

- Air Ticket and airport tax in Economy Class in Tiger Airways or similar
- Singapore Visa Charges
- On Arrival Day, Freshen up in Hotel Boss or similar on Twin/Double sharing basis
- 03 Nights Hotel accommodation with breakfast at Singapore on Twin/Triple sharing basis
- 02 nights on board Genting Dream Cruise on Balcony Stateroom
- Cruise Gratuity
- Insurance
- American Breakfast and Indian Veg. / Non-Veg. Lunch and Dinner as indicated
- All sightseeing as mentioned in the itinerary with all the entry fees on private basis
- All tours will be on private basis with separate Tour Guide
- Tips to Tour Guide and Driver

Exclusions

- Expenses that are personal in nature
- Beverages during meals
- Travel Bags and snacks
- Early check in and late check out
- Any other service not specified above
- Deviation charges if any for passengers who opt for breaking away from the group.

Members desirous of joining the tour may contact the following Programme Co-ordinators:

CA. Dungar Chand U Jain, Secretary SIRC
 Mobile: 98945 05007, Email: dcjain@icai.org

CA. A. B. Geetha, Chairman, Bangalore Branch of SIRC
 Mobile: 98455 26327, Email: geethaab@yahoo.co.in

Mr. Vijayarangan, Assistant Secretary
 SIRC of ICAI – Chennai Office
 Mobile: 044 30210320, e-mail: vijay@icai.in

Payment mode : Online
Bank Name : Indian Bank
Branch : Uthamar Gandhi Salai

A/c. No. : 764903128
A/c. Name : SIRC of ICAI
IFS Code : IDIB000N061



RESPITE FOR NON-RESIDENT TAXPAYERS

CA. Veena Ramachandran

Introduction

India has significantly moved up in World Bank's report on 'Doing Business 2018: reforming to create jobs' in India. In fact, we have moved up 30 notches and awarded an overall ranking of 100. One of the significant contributors in achieving this overall ranking is moving up on the scale of paying taxes. From a ranking of 172 in the past year, India has achieved a rank of 119 in the current year.

It is interesting to note that in the last year, we have seen some favourable rulings from various tax forums as well, particularly, in the case of non-resident taxpayers. Non-resident taxpayers often worry about prolonged tax litigation in India especially that which relates to operations carried out by an Indian subsidiary and whether such operations can trigger a permanent establishment.

In simple words, if an Indian entity carries out any business in India with regard to the overseas entity, then a permanent establishment risk could arise. The trigger of PE is followed by attribution of profits of the non-resident in India – which is subject to tax along with consequential interest.

Recently, there are a couple of rulings which have discussed aspects of permanent establishment and given respite to the taxpayer. We have discussed these rulings and provided our thoughts.

Supreme Court in the case of E-Funds IT Solutions Inc¹

- E-Funds Corporation USA and E-Funds IT Solutions Group Inc, USA are tax residents of USA (addressed as 'E-Funds USA') and are engaged in rendering services like ATM Management Services, Electronic Payment Management etc. outside India
- E-Funds International India Pvt. Ltd ('E-Funds India') is a company incorporated in India and a tax resident of India and renders back office support services in respect of the above business carried on by E-Funds USA
- The tax authorities (including the second appellate authorities) held that E-Funds USA has a fixed place PE and service PE in India as per India and US tax treaty. It was held that E-Funds USA has a fixed place PE in India as they had a permanent place where they carried on their own business in Delhi. Further, on the footing that E-Funds USA has most of its employees in India and they have set-up their call centres and software development centres only in India, service PE trigger was also brought out by the tax authorities.
- The Supreme Court ruled in favour of the taxpayer and held that the overseas entities do not have a PE in India.

¹ Civil Appeal No.6082 of 2015 & others

- With regard to fixed place of business, drawing reference to the ruling of Formula One World Championship Ltd. v/s. CIT (2017) 80 taxmann.com 347, the Apex Court held that there must exist a fixed place of business in India, which is at disposal of the foreign entity, through which it carries on its own business. Hence, the tax authorities must have a specific finding that there is a fixed place at the disposal of the overseas entities in India. Mere contracting with a 100% subsidiary and outsourcing business to such subsidiary in India would not give rise to a fixed place PE in India.
- In so far as service PE is concerned, the requirement of the India-US tax treaty is that an enterprise must furnish services within India through employees or other personnel. In the case of E-Funds, none of the customers of the E-Funds USA are located in India or have received any services in India. Only auxiliary operations to facilitate such services are carried out in India. Hence, there is no Service PE trigger through E-Funds USA employees or employees of E-Funds India
- One interesting observation made by the Court is that an



admission made under the Mutual Agreement Procedure ('MAP') for earlier years, by E-Funds USA for income attributable to Indian PE cannot be considered as a precedent for the subsequent year. The Apex Court relied on Article 3.6 of the OECD Manual on MAP Procedure which reads as follows:

"Competent authority agreements or resolutions are often case and time specific. They are not considered precedents for either the taxpayer or the tax administrations in regard to adjustments or issues relating to subsequent years or for competent authority discussions on the same issues for other taxpayers"

Delhi Income-tax Appellate Tribunal in Net App B.V.²

- In the said ruling I Co. (an Indian Company) provided certain marketing and sales support services to N Co., a non-resident company, situated in Netherlands (who is a fellow subsidiary for I Co. - and is engaged in providing storage system equipments, products including embedded software & other services). I Co. is compensated by N Co. for the above services at cost plus agreed mark-up.
- The question that came up is whether the activities of I Co trigger a PE for N Co in India.
- With respect to fixed place of business, the ITAT observed that a group subsidiary can be PE only if it satisfies the requirement of Article 5 of the tax treaty. Merely because it is a group subsidiary in India, it does not become a PE of N Co. in India
- According to the agreement entered into for rendering the above services, I Co. shall inform N Co. of all the orders placed by customers immediately upon receipt and such order – which shall be accepted or rejected at the sole discretion of N Co. Further, the products maintained by I Co., being a commission agent are only for demonstration purpose, and hence cannot trigger Agency PE for holding stock.
- As regards the role played by the common directors of the N Co. and I Co., the ITAT observed that they are not engaged in the day-to-day activities of N Co. – like renegotiation of any contracts or performing any marketing functions in India on behalf of N Co., I Co. cannot be held to have authority to conclude contracts.
- ✓ The services that has been rendered by I Co. to its potential customers, disclosed

in web-site, to reach out to discuss product features information and respond are part of marketing support function only and cannot be a reason for trigger of PE

- It was further held that transfer-pricing dispute in the assessment proceedings of I Co. does not have any bearing on determination of PE of N Co. in India. Indeed, it is a matter of dispute between Indian revenue authorities and I Co. only.

Conclusion

The aforesaid decisions have relied on earlier pronouncements (including Apex Court rulings) and analysed facts of the case and decided the issue on trigger of PE and profits attribution in favour of the taxpayers.

The above rulings give respite to taxpayers in terms of relief from PE for MNCs. One case is in the case of carrying on back office operations and the other is with respect to marketing services. The tax authorities have concluded that common business practices within group companies or holding and subsidiary companies may not trigger PE for foreign companies based on the principles of the above rulings. The Supreme Court ruling could have a bearing on a large number of open disputes with the tax office. Considering that the above is an Apex Court ruling, it will be binding on all tax authorities in India. ■

² 78 taxmann.com 97

OBITUARY



We deeply regret to inform sad demise of **CA. Sreenivasulu Naidu. M** on 8.12.2017
Membership No.: 021351
Senior Partner, M N S & CO
Chartered Accountants



We deeply regret to inform sad demise of **CA. S.R. Rama Krishna Sharma** on 14.12.2017
Membership No.: 18088
Revered Partner, S R R K Sharma Associates
Chartered Accountants

May their soul rest in peace.

RESTAURANT TAXATION & PRACTICAL ISSUES

CA B D Chandrashekar & CA B L Subramanya



Restaurant caters a major portion of food requirement in day to day life of India. It is one industry that would touch the lives of people from the lowest strata to highest strata. This would make the subject essential to be understood and assimilated.

Some of the questions that may revolve around the restaurant taxability are

- What is the rate of tax?
 - When can the credit be claimed?
 - When credit is not allowed?
 - Is the tariff of the room connected with the rate of tax for restaurant?
- And so on...

The article is intended to give an overview on restaurant business in India, its taxability before & after GST, tax rates, conditions associated with tax rates and issues in the taxing mechanism.

Before GST:

Restaurant businesses before 01-07-2017 were subject to levy of VAT and Service Tax. Under Karnataka VAT, restaurants had two options to pay tax,

- Composition Scheme – Tax to be paid at a fixed rate of 4% with condition of no Input Tax credit & no option to collect tax from customers.
- Regular Scheme – Tax to be collected and paid on food supplied at rate of 14.5% with Input Tax Credit.

As most of the Inputs required for restaurants like groceries, vegetables etc. were tax free, Composition option was attractive.

Under Service Tax, Non A/c restaurants were exempted from taxability and the A/c restaurants were to collect and pay tax on 40% of the bill value and the rate of tax was 15%, making the effective tax rate as 6% to A/c restaurants.

One major concern was a possibility of taxing 140% of bill value to tax. If a person running A/c restaurant had chosen regular scheme in VAT, taxable portion was 100% in VAT and 40% in Service Tax. As there was no judicial clarity on whether the restaurant business was a supply of goods or supply of Services, there was a possibility that the tax was paid on 140% of bill value. With a state and centre both concerned about their share of revenues, there was a dual taxation on the same portion of value, making it costlier to the end consumer.

GST Regime:

GST is a levy on supply of goods or services for a consideration. Though there is a differentiation between goods and services and its tax rates, it is clarified in Schedule II to CGST Act that the restaurant is deemed to be a Supply of Service. This ended the long pending debate whether it was a supply of Goods or Service.

Restaurant taxation structure initially introduced in GST underwent a change recently considering the lobbying of associations on difficulty in initial rate structure for restaurant business. Chart below gives a comparison on taxability –

Particulars	Tax rate before 15-11-2017	Tax Rate after 15-11-2017
A/c Restaurant	18% with Input Tax Credit	18% with credit / 5% with no Input Tax Credit
Non-A/c Restaurant	12% with Input Tax Credit	18% with credit / 5% with no Input Tax Credit
Restaurant in the premises of hotel having tariff of Rs 7500 or more of any unit	12% for Non A/c and 18% for A/c restaurant with Input Tax Credit	18% with Input Tax Credit
Composition Scheme to Restaurants	5% without ITC	5% without ITC

As most of the Inputs used for restaurants were exempted or were taxable at low rate, reduction of tax from 18% / 12% to 5% was a big relief for most of the businesses in the Industry and general public.

It is important to note that, the new option of 5% GST comes with a condition that no input tax credit is allowed on goods and services used in supplying the service.



For supplies made after 15-11-2017, if a person had to opt for 5% option, there is a requirement to reverse the credits claimed on opening stock lying on 15-11-2017. This is due to the condition that credit is not allowed for a person who is supplying goods under 5% rate option.

In relation to inputs as on 15-11-2017 the person opting to pay at 5% has to correlate the closing stock with the purchase invoices to arrive at the credits attributable to such stock and reverse the same.

In relation to capital goods, similar correlation is to be done with purchase invoices and the input tax credit claimed is to be reversed in terms of Rule 43 of CGST rules.

Apart from the above, tax rate is prescribed at 18% for restaurants located in the premises of hotel with a declared tariff of any unit more than or equal to Rs 7,500/-. It is important to note that it not person specific but location specific i.e. even if restaurant and hotel is run by different person but in the same premises, availability of 5% option to restaurant would depend on tariff of hotel which is run by different taxable person.

In relation to restaurant service, based on Sec 12(4) of IGST act, place of supply is always the location of restaurant. So, the tax to be charged is always CGST & SGST.

A business entity taking services from a restaurant cannot claim the credit on account of Sec 17(5) of CGST Act imposing the Input Tax Credit restriction. Credit can be claimed only if the services are received by a registered taxable person for further supply.

Some of the practical issues connected with restaurant taxation are discussed below –

Tariff is Seasonal – In most of the cases Tariff may differ based on seasons. For some period there could be a Tariff of more than Rs 7,500/- per day and for some period, less than Rs 7,500/- per day. A view could be taken that for some period where the Tariff is less than Rs. 7,500/- per day, 5% Tax rate can be adopted and remaining period where it is more than Rs 7,500/- per day, 18% would apply as there is no clarity in the notification.

Restaurant and Hotel located in same premises but controlled and run by different taxable persons – In this situation, restaurant may not get to know the tariff of the hotel or may not have knowledge of changes in tariff and may be required to have an update on tariff at all times to ensure that they are paying the right tax.

Restaurant “Located in the premises” of Hotel – 18% tax would apply when restaurant is in the premises of Hotel with Tariff of any unit more than or equal to Rs 7,500/- per unit. In today's business models, many at times the restaurant may be located in ground floor and hotel may be located in other floors along with commercial outlets together. In such case, hotel, restaurant and other commercial establishments are also located in the same premises. There could be a possibility of litigation as the entry in the notification has not given sufficient clarity on “*Located in Premises*” phase. One possible view is that only those restaurants which have entry to it through the Hotel's entry could alone be covered here.

Take-aways from restaurant – Takeaways from a restaurant which is not located in premises of a hotel with any unit having tariff less than Rs 7500/- per day can charge GST at 5% even on takeaways. The taxing entry of covers

even a situation where food is supplied for its consumption outside the premises of the restaurant. If the same is located in premises of hotel with any unit having per day tariff more than Rs 7,500/-, then the rate of tax for takeaways would also be 18%.

Sale of MRP based products – There could be some MRP products sold at restaurant. They could either be consumed at restaurant or could be taken away. Rate of tax for the standalone MRP product could be different. In such case, the question would arise if such product served in restaurant, would it attract tax as restaurant service or the rate applicable to such product.

If a person comes and buys MRP product along with food, for Eg food with a bottle of drinking water, GST at 5% should apply on such water bottle as well. The same is served for consumption in restaurant and rate applicable to restaurant would apply.

Another possibility is that there could be a shop along with the restaurant exclusively selling eatables or ready products which have MRP. In such a situation, since the commercial intention of the seller is to sell those products and not serve it along with food, rate applicable to such products would apply instead of the rate applicable for restaurant.

If Complimentary breakfast is provided along with stay in a hotel – It is a general practice that in some places, along with the stay, complimentary breakfast is provided. Complimentary breakfast could be consumed in the restaurant attached to the hotel. In such a situation, the intention of the customer is to stay in the hotel and incidentally the breakfast is served free.

(Contd. on page 16) ►

PROCEDURE & PROCESS FOR INCORPORATION OF COMPANIES AND LLP

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Many Entrepreneurs starting a new business are curious about the procedure and other formalities to be taken care of while incorporating a Company or an LLP.

Both entities offer many similar features required to run a small to large sized business, while also differing starkly on certain aspects. In this article we decode the procedure as well various formalities to be taken care while incorporating a Company and an LLP from the viewpoint of an Entrepreneur starting a new business.

With the growing complexities and regular amendments in law, it is very necessary for an entrepreneur to take all precautionary steps while forming a particular business entity.

A) Formation of Company (Sections 4, 7, 12, 152 and 153 of the Companies Act, 2013 read with rules made thereunder)

I. Procedure

1. Obtain Digital Signatures

Digital Signature may be obtained from authorized DSC issuing authority for at least one director to sign the E-forms related

to incorporate like form INC.1 and other documents.

Documents required for obtaining Digital Signature are:

- For Non NRI
 - One Passport Size Photo
 - Self-Attested copy of PAN Card
 - Self-Attested copy of Address proof (any one- Aadhar Card, Electricity Bill, Telephone Bill, Voter Id, Passport, Driving License; bills being not older than 2 months)
- For NRI
 - One Passport Size Photo
 - Self-Attested copy of PAN Card, if available
 - Self-Attested copy of Identity proof, if PAN Card not available
 - Self-Attested copy of Address proof (any one- Aadhar Card, Electricity Bill, Telephone Bill, Voter Id, Passport, Driving License; bills being not older than 2 months)
 - **All the above documents should be notarized and**

Apostilled by the foreign authority.

2. Incorporation

In the current market scenario incorporation of Companies can be done in two ways. The Ministry of Corporate Affairs has come with new rules for Incorporation of Company under Companies Act, 2013 with simplified procedure (SPICE).

A significant step is taken by Ministry of Corporate Affairs by introducing e-form INC-32 under SPICE scheme vide MCA's notification dated 01/10/2016 notifying Companies (Incorporation) Fourth Amendment Rules, 2016. (SPICE means Simplified Performa for Incorporating Company Electronically.) This form serves as a single window for incorporation of Company. However the option of SPICE form is not open for producer companies having more than 7 subscribers.

Given below is the comparison of incorporation through SPICE Form and normal process:

Particular	Simplified Process of Incorporation of Company	Normal Incorporation Process
Purposes	5-in-1 form	NA
No. of Form Filed	1 (ONE)	5 (FIVE)
Steps of incorporation	Single Step of incorporation	Three Step Incorporation
Form Filing Requirement	Only one Form INC-32.	DIR-3- Application for DIN (3 DIN) INC-1 – Application for Name Approval



Particular	Simplified Process of Incorporation of Company	Normal Incorporation Process
		INC-7 – Incorporation of Company DIR-12 – Appointment of First Directors INC-22 – Situation of Registered Office
MOA & AOA	Electronic e-MOA (INC-33) & e-AOA (INC-34) required filing in this case. The Company needs to give special care while drafting its objects as the same should be in line with the proposed name of the Company	Only scan copy of MOA & AOA can be attach in this form. The Company needs to give special care while drafting its objects as the same should be in line with the proposed name of the Company
Digital Signature	DSC of every subscriber required Mandatory. The subscribers and witness or witnesses shall affix their digital signatures to the e-MOA and e-AOA	DIN of both Subscribers Required.
Din Allotment	Maximum 3 Person can apply DIN through this process.	Separate DIR-3 will be file for each person.
Narrower Name Proposal	Person can give only One Name for Approval or can be file after INC-1	Person has option to give alternate SIX Names.
Name Keeping	While applying name applicant has to undertake necessary diligence regarding the name keeping, considering the guidelines issued by MCA for Name approval and Trademark Search. Drawback: Be sure for the proposed name, only one name can be given.	Person has option to give maximum SIX names. Therefore, comparatively less diligence requires.
Time frame	Approval of DIN, Name and Incorporation will be altogether. Generally it takes 1-2 days.	First DIN form will approve generally it takes 1 day. Second Name will Approve, generally it takes 7-10 days. Third Incorporation will Approve, generally it takes 7- 10 days. Generally Incorporation of Company takes 20-25 days. <ul style="list-style-type: none"> • Apply for DIN in DIR 3: It is a STP form DIN is generated in e-form Challan. • INC 1 takes 7-10 days for approval, maximum re-submission cases are there. • INC 7 takes 10-15 days for approval. • DIR 12 takes 1-2 days to get approved. • INC 22 gets approved in 2-3 days. In total 21-30 days
Attachment of ID Proof	In case of Director/Shareholders have DIN, then no need to attach separate Address Proof/ ID Proof	In case of Director/Shareholders have DIN, then no need to attach separate Address Proof/ ID Proof.
Professional Certification	INC-32 requires Professional Certification. No Need to Attach INC-8 in this Form	No need of professional Certification in e-form INC-7. Need to Attach INC-8 in this Form

Particular	Simplified Process of Incorporation of Company	Normal Incorporation Process
Resubmission	Two resubmission are allowed	Only one resubmission is allowed.
Refund Of Money	In case of rejection of form, company can apply for refund of money by refund form.	No refund allowed.
PAN & TAN	PAN & TAN applications mandatory to file and upload on MCA website.	No facility to obtain PAN & TAN through this form.
Certificate of Incorporation	COI shall mention the PAN of the Company	PAN will not mention on the COI.

Every new change is accompanied with certain drawbacks. Likewise the newly introduced SPICE form also has its disadvantages, yet is adopted on a broad scale for formation of Companies.

Points to be noted (SPICE Form):

- Only one name can be applied for approval in this e-form. Therefore, one is advised to duly check the proposed name and follow name availability guidelines, existing trademarks to avoid rejection.
- MCA21 system will auto generate the pre-filled application forms 49A (PAN) and 49B (TAN) after submission of SPICE, which the stakeholders will be required to download, affix digital signature and then upload both signed forms on MCA21 system as linked forms.
- New version of SPICE incorporation applications will be processed only after Forms 49A & 49B are duly signed, uploaded and payment is confirmed by MCA
- PAN (as allotted by Income Tax Department) will be printed in the Certification of Incorporation, and TAN will be separately communicated to the stakeholders by email

B) Formation of Limited Liability Partnerships (Provisions of LLP

Act 2008 and Limited Liability Partnership Agreement)

Limited Liability Partnership (LLP) has become a preferable form of organization among entrepreneurs as it incorporates the benefits of both partnership firm and company into a single form of organization.

I. Procedure

1. Obtain Digital Signatures

Before initiating the process of registration of an LLP, it is necessary for the Designated Partners to obtain Digital Signature. The process of obtaining Digital Signature is the same as mentioned above.

2. Application for Director Identification Number (DIN)

Application for DIN has to be made for all the designated partners or those intending to become the designated partners of the proposed LLP in Form DIR 3.

Documents required for filing DIR 3 are:

- Self-Attested Passport Size Photo
- Self-Attested copy of PAN Card
- Self-Attested copy of Address proof (any one- Aadhar Card, Electricity Bill, Telephone Bill, Voter Id, Passport, Driving

License; bills being not older than 2 months)

- For Foreign individuals, every document is required to be notarized and apostilled.

3. Reservation of Name

Form 1 is required to be filed for reservation of name of an LLP. But before quoting the name in the form, it is recommended to use the free name search facility on MCA portal. The system will provide the list of closely resembling names of existing companies/LLPs based on the search criteria filled up. This will help in choosing names not similar to already existing names. Six names are required to be provided in the order of preference in Form 1.

4. Incorporation of LLP

Form 2 is the application form for the incorporation of the LLP. Following points must kept in mind while filing Form 2.

- All the details in the form must be filled correctly like – total number of partners and designated partners, amount of partner's contribution, etc.
- The prescribed registration fee has to be paid based on the contribution of partners in the proposed LLP.



- The form must be digitally signed by a person named in the incorporation document as a designated partner having DIN. Also, it has to be digitally signed by an advocate/Company Secretary/Chartered Accountant/Cost Accountant in practice.
- On the submission of the form, if the registrar is satisfied, they will register the proposed LLP.
- It takes 15-20 days for the registration of LLP subject to government processing time and submission of necessary documents.

5. File Limited Liability Partnership Agreement

LLP agreement governs the mutual rights, terms and conditions decided

amongst the partners and also between the LLP and its partners.

Form 3 for LLP agreement has to be filed within 30 days of the date of incorporation on the MCA Portal.

The LLP Agreement has to be printed on Stamp Paper. It is to be noted that the value of Stamp Paper is different for every state.

6. Documents required to register LLP

Documents of Partners:

- PAN Card/ ID Proof of the Partners
- Address Proof of the partners
- Residence Proof of Partners
- Photograph

- Passport (in case of Foreign Nationals/ NRIs)

Documents of LLP:

- Proof of Registered Office Address
- Digital Signature Certificate

LLP formation starting from obtaining DSC to Filing Form 3 takes approximately 15 days subject to availability of all the documents.

Hence, be it a Company or an LLP, the procedure for formation of the same is required to be followed with utmost diligence to avoid violation of any of the provisions of the Companies Act, 2013 as well as the LLP Act, 2008.

RESTAURANT TAXATION & PRACTICAL ISSUES

◀ (Contd. from page 12)

There are 2 supplies i.e. Hotel Service and Restaurant Service and the principal supply here is Hotel Service based on the intention of the customer. This transaction would get categorized as a Composite Supply and the tax rate applicable for principal supply i.e. Hotel service, would apply for the complete transaction including service of food.

Composition Scheme Vs Regular Scheme: With tax rate reduced to 5%, there is no major difference between composition scheme and regular scheme as, even the composition scheme would attract a tax of 5%. In both the cases, Input Tax credit is restricted. Differences being that there is no option to collect tax under composition whereas tax can be collected when the restaurant is in regular scheme.

As the law is new with frequent changes by notifications and clarifications, each case has to be analyzed separately and the best possible option/solution has to be worked out for the businesses.

In case of any queries, views or suggestions authors could be contacted at shekar@ca-sny.com / subramanya.bl@ca-sny.com



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Oath taking - Swachh Bharath



Invocation



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DELEGATES



Dining Hall - Lunch arranged for Senior Members

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on **Saturday, 12th January 2018**

at **10.00 a.m to 5.30 p.m**

Venue : No.16/0, ICAI Bhawan, Millers Tank Bed Area, Vasanthnagar, Bangalore- 560052

INAUGURAL SESSION :

Chief Guest: **Sri B.R. Balakrishnan**, IRS, Director General of Income Tax (Investigation), Bangalore

Moderator & Co-ordinator of the Program:

CA. Naveen Khariwal G

**6 hrs
CPE**

Sl. No.	MORNING SESSION SPEAKERS	AFTERNOON SESSION SPEAKERS
1	CA. A Shankar	CA. H. Padamchand Khincha
2	CA. K.R. Pradeep	CA. K.K. Chytanya
3	CA. Deepak Chopra (Supportive Role)	CA. P. Nitin Kumar (Supportive Role)

Delegate Fee : **Rs.600/-**

Mode of Payment : **Online/DD/Cheque in favour of Bangalore Branch of SIRC of ICAI**

Contact : **080-3056 3500 / 512 / 515**

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

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Members are requested to pass on the information to their Accounts Executives and their clients

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Date	: 15th & 16th February 2018
Fee	: Rs.3,000/- (Inclusive of GST)
Venue	: No.16/0, ICAI Bhawan, Millers Tank Bed Area, Vasanthnagar, Bangalore-560052
Mode of Payment	: Online/DD/Cheque in favour of Bangalore Branch of SIRC of ICAI
Contact	: 080-3056 3500/512/515, E-mail: blrprogrammes@icai.org / blrregistrations@icai.org
website	: www.bangaloreicai.org

Day 1 – 15 th February 2018	
Timings	Topics
09.00 am to 09.30 am	Registration
9.30 am to 10.30 am	Background of GST including opportunities in different service areas
10.30 am to 11.30 am	Levy of CGST/IGST including definition of supply, Composition scheme Composite supply, exempt, zero rated and non-taxable supply
11.30 am to 11.45 am	Tea Break
11.45 am to 01.30 pm	Place of Supply of Goods and Services
01.30 pm to 2.30 pm	Lunch Break
02.30 pm to 3.15 pm	Time of Supply of Goods and Services
03.15 pm to 04.30 pm	Valuation of taxable Supply & Rules thereto (including practical examples)
04.30 pm to 04.45 pm	Tea Break
04.45 pm to 05.45 pm	Tax Credit (Capital goods, Services & Input) including input Service Distributor & Manner of Recovery of Excess Credit (with practical case studies)
Day 2 – 16 th February 2018	
9.30 am to 10.30 am	Classification of Goods and Services including reporting requirements
10.30 am to 11.30 am	Registrations : Law documents required, amendment, cancellation, etc
11.30 am to 11.45 am	Tea Break
11.45 am to 01.45 pm	1. Invoice / Bill of Supply & Documentation including contents of invoice, time of issuance, consequences of invalid documentation, E-way bill 2. Returns including Annual and Final Return, Matching of ITC 3. Importance of Filing Last Return and consequences of late filing/non-filing of returns 4. Payment of Tax, Interest, Fee & Penalty
01.45 pm to 2.30 pm	Lunch Break
02.30 pm to 04.30 pm	Practical issues of Mismatching of ITC Transitional Compliances including Last Return, Status of Assessments/Appeals/Refund, etc
04.30 pm to 04.45 pm	Tea Break
04.45 pm to 05.45 pm	Accounting entries and Records including Ledger creation, Cash and Credit Ledger and bank reconciliations, etc.

Note : Expert & Experienced Members of the Faculty will be conducting the sessions

Bangalore Branch of SIRC News Letter English Monthly Printed, Published & Edited by **Editor CA. Geetha A.B.**, Chairman, on behalf of **Bangalore Branch of SIRC of ICAI**, No.16/O, 'ICAI Bhawan', Millers Tank Bed Area, Vasanthnagar, Bangalore-560052, Karnataka
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Printed at: **Jwalamukhi Mudranalaya Pvt. Ltd.**, 44/1, K.R. Road, Basavanagudi, Bangalore-560 004, Ph : 080-26617243, e-mail : jwalmuki@gmail.com