



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

# WESTERN INDIA CHARTERED ACCOUNTANTS NEWSLETTER

JANUARY 2017 | Vol. 43 | No. 01

Log on to <https://wirc-icai.org> for more information & updates

Together  
*We Can...*



“ Commitment ”

*Individual commitment to a group effort – that’s what makes a team, an institution and society work*

**LIVE SCREENING OF UNION BUDGET 2017**  
1st February, 2017

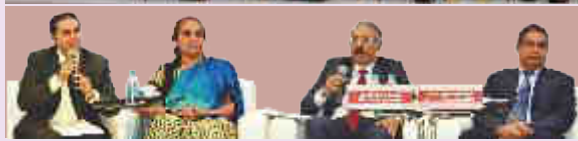
**UNION BUDGET 2017**  
4th February, 2017

... Change the  
*World*



An Open letter by Bharat Goenka  
GST – Great or Gruesome

By far, the GST amendment will be the biggest step the country has taken in ensuring economic integration. While the draft law comes with a promise of economic growth, it poses several critical pitfalls that can adversely affect businesses in the country.



Dear Colleagues,

What is commitment? Commitment is a serious, long-term promise you make and keep with yourself and others to fully dedicate yourself to your task and your team, even when times are tough. It means not only promising to do something, but actually investing the necessary effort and actions to make it happen. I am proud to state that ICAI was created as a commitment by our founders to the service of the nation, and to ensure that we always put the progress and development of our nation before all.

**31st Regional Conference of WIRC:** Our flagship knowledge and networking event of the year was inaugurated by Smt. Smriti Irani, Hon'ble Union Textiles Minister. She appreciated the active role played by ICAI and Chartered Accountants towards the growth and advancement of the Indian economy. Participants found the sessions relevant, with topics critical to the progress of the profession being discussed. WIRC launched two publications at the Conference, namely "Concurrent Audit of Bank Branches" and "Handbook on Foreign Exchange Management Act 1999", which were disseminated to all in attendance.

The Conference was purely a team effort, led by CA Sandeep Jain, Chairman, PD Committee with supportive RCMs and CCMs, eminent speakers and sponsors all committed to making the Conference a success – setting a perfect example of achieving our goals by working together.

**Conferences and Conventions:** WIRC's Regional Tax Convention in Nashik provided new perspectives to members in the field of taxation and was inaugurated by Chief Guest Shri Shivraman, former Secretary, Revenue, Government of India with Guest of Honour Shri T.S. Srinivasan, former Chairman, CBDT.

To introduce members to diverse aspects which can be taken care of by professionals under various laws, WIRC organised the 'Western Region Law Summit 2016', hosted by the Ahmedabad Branch.

WIRC also organised the 'All Gujarat Tax Convention' at Baroda, shedding light on relevant aspects of Direct and Indirect taxes including features of GST, Capital Market, etc.

To give Women Chartered Accountants opportunities to share views, boost networking and encourage women in the profession, WIRC organised the Regional Women's RRC which was hosted by the Aurangabad Branch. WIRC Chairperson also inaugurated a new Women's wing at Aurangabad, to support growth of Women Chartered Accountants in the Region.

The Sub-Regional Conference at Jamnagar was hosted by five Branches namely Jamnagar, Rajkot, Bhavnagar, Gandhidham and Bhuj. The theme of 'Profession at Crossroads', saw more than 450 members in attendance. I congratulate all the committee members who made it evident that "Together We Can".

Our students are becoming more dynamic under the able leadership of WICASA Chairman CA Pradip Agarwal. WIRC organised National Conventions for CA students across the Region at Goa, Nashik, Ahmednagar, Aurangabad, Jalgaon, Kolhapur, Sangli, Surat, Rajkot, Jamnagar and Thane. WIRC also organised the first ever 'All Region CA Students Conference' at Ahmedabad.

**Brand Building:** To promote brand 'ICAI' and the profession, WIRC inaugurated a traffic island at the crossroads near ICAI Bhawan in Baroda. This highly visible branding was inaugurated by ICAI President CA. M. Devaraja Reddy.

**Lecture Meetings:** A lecture meeting on stress management saw Sri Srimad Jagadguru Shankaracharyaji Maharaj (Puri) speak on spiritual wellness and on maintaining a holistic lifestyle.

A session on 'Manage your Image – Create a Professional Presence for an Impact' helped members from corporates as well as young members understand the importance of first impressions, branding and cultivating a confident personality.

**Branch Visits:** WIRC office bearers visited branches comprising Surat, Bharuch, Navsari and Satara where they got insights into grass root issues and committed to assist members and Branches visited.

A serious commitment comprises of a sincere promise, full investment of time and effort, willingness to sacrifice, long-term obligation promise to persevere and an agreement to act. All this is only possible when working as a team where members are enthusiastic, take pride in their work and most importantly, believe that with their solemn commitment they can achieve the impossible by doing it together.



## CHAIRPERSON'S COMMUNICATION



### OFFICE BEARERS

CA. Shruti Shah, *Chairperson*  
CA. Hardik Shah, *Vice Chairman*  
CA. Kamlesh Saboo, *Secretary*  
CA. Shilpa Shinagare, *Treasurer*

### EDITORIAL BOARD

CA. Shruti Shah, *Editor*

### MEMBERS

CA. Vishnu Agarwal  
CA. Sarvesh Joshi  
CA. Sandeep Jain  
CA. Lalit Bajaj  
CA. N. C. Hegde, *Ex-Officio*

Forthcoming Events **Pg 4**

Law Updates **Pg 8**

Recent Judgments **Pg 12**

Together  
We Can...

## AN APPEAL TO MEMBERS OF WIRC OF ICAI FOR CONTRIBUTION TO CABF

Chartered Accountants Benevolent Fund (CABF) established in 1962 by ICAI, is one of the largest bodies providing welfare and support to the Chartered Accountants fraternity. It provides financial assistance for medical treatment, education, maintenance or any other similar purpose to necessitous persons of the CA fraternity. Financial assistance in lump sum is also given to the widows/relatives of the deceased member in case of accidental/unnatural death at age below 55 years. A considerable number of members/family is already getting such assistance from CABF.

To continue this endeavour, CABF invites contribution from our CA members. The contribution can be made in the form of:

1. **Life Membership** – ₹ 2,500/-
2. **Ordinary Membership** – ₹ 500/- annually
3. **Voluntary Contribution** – An honourable amount up to any extent

All subscriptions and contributions made towards CABF is eligible for deduction under Section 80(G) of Income-tax Act, 1961.

Please contribute generously towards the Fund through at par cheque/DD favouring "Chartered Accountants Benevolent Fund" and send it to WIRC for onward submission to the said Fund.



## Annual INDOOR SPORTS 2017

**DAY & DATE** SATURDAY, 28TH JANUARY, 2017

**Venue** Goregaon Sports Club, Link Road, Goregaon (W)

**Time** 11.00 a.m. to 6.00 p.m.  
(Registration 10.00 a.m. to 11.00 a.m.)

**Fees** ₹ 500/- for first game (including lunch)  
₹ 100/- for every additional game

**Co-ordinators**

|                     |            |
|---------------------|------------|
| CA. Ashok Manghnani | 9820395195 |
| CA. Mahesh Chhabria | 9867565118 |
| CA. M. Kalahasthi   | 9029006759 |
| CA. Mandar Date     | 9819487770 |

Members are invited to participate in Annual Indoor Sports Meet of 2017 of WIRC. Badminton (Singles & Doubles), Table Tennis (Singles & Doubles), Carrom (Singles & Doubles), Chess, will be played. Please send in your entries at the earliest.

**SEPARATE FACILITIES FOR LADIES & GENTS MEMBERS**

## INTER FIRM CA CRICKET TOURNAMENT

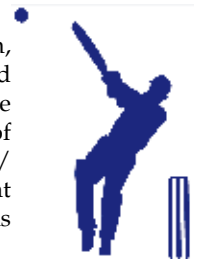
The Annual Inter Firm limited overs Cricket Tournament for Members, present article students and also students who have completed their articles and have appeared for November, 2016 CA exams.

**Days & Dates** : Saturday, 11th & 18th February, 2017

**Venue** : Oval Maidan, Churchgate, Mumbai

**Fees** : ₹ 12,000/- per team

Firms (2 or 3 firms can also form a team, minimum 5 CA Members) interested in participating in the tournament are requested to send in their entries by way of letter giving the names and membership/WRO Nos. of the participants. Enrolment will be restricted to twenty four teams strictly on first-come-first-serve basis.



### Chief Co-ordinators

|   |            |
|---|------------|
| CA. Kamlesh Saboo, Secretary, WIRC            | 9819195333 |
| CA. Vishnu Agarwal                            | 9324544607 |
| CA. Sandeep Jain<br>(Regional Council Member) | 9819788099 |

### Co-ordinators

|                      |            |
|----------------------|------------|
| CA. Sagar Palnitkar  | 9967325000 |
| CA. Shardul Sonawane | 9619269941 |
| CA. Vijay Vaidya     | 9869277833 |
| CA. Vishesh Sangoi   | 9819281830 |
| CA. Ankit Kothari    | 9699709490 |
| CA. Deven Dhruva     | 9833373300 |

**ENTRY CLOSED**

## GRIEVANCE CELL

### ANNOUNCEMENT FOR INFORMATION OF MEMBERS AND STUDENTS

WIRC is pleased to announce that the complaints/grievances of the Members and Students will be addressed/heard by holding personal hearing/meeting with the aggrieved member/student in addition to attending through grievances e-mail at [wircgrievance@icai.in](mailto:wircgrievance@icai.in) Under this mechanism, the designated Officer of the Institute will meet the concerned aggrieved student/ member once in a week on working Fridays between 3 p.m. to 5 p.m. after prior appointment. It may be noted that the matters will be handled in accordance with the laid down procedures and as per provisions of the Chartered Accountants Act/Regulations.

The contact details of the Officer are given below for this purpose.

Mr. Y. S. Rawat  
Jt. Secretary, WIRC  
E-mail : [wircgrievance@icai.in](mailto:wircgrievance@icai.in)  
Contact No. 022-33671428

ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai (Class Room)

| Date, Day & CPE Hrs                     | Time & Fees                                    | Topic(s)  | Speaker(s)   | Chief Co-ordinators / Mobile Nos.  | Co-ordinators / Mobile Nos.   |
|---|--|---|--|--|---|
| 11/02/2017<br>Saturday<br><br>6 CPE Hrs | 10.00 a.m.<br>to<br>6.00 p.m.<br><br>₹ 1,200/- | <b>Seminar on Audit &amp; Compliance Applicable to Stock Brokers &amp; Depository Participants</b> <ul style="list-style-type: none"> <li>Recent SEBI / Exchange / FMC / Depository Circulars applicable to stock brokers / Commodity brokers / Depository participants</li> <li>System Audit (CTCL Audit) of Stock brokers</li> <li>Issues in Audit of Stock brokers / Commodity brokers / Depository participants</li> <li>Issues in Taxation of Stock brokers &amp; Commodity brokers</li> </ul> | CA. Ravi Ramaiya<br><br>CA. Shardul J. Shah<br><br>CA. Kaushik Jethwa<br><br>CA. Dhiren Dalal  | CA. Kamlesh Saboo<br><i>Secretary, WIRC</i><br>9819195333<br>CA. Priti Savla<br>9321426883<br>CA. Umesh Sharma<br>9822079900 | CA. Likhit Dixit<br>9664189378<br>CA. Devang Doshi<br>9967923769<br>CA. Hrishikesh<br>Wandrekar<br>9892919239 |
| 18/02/2017<br>Saturday<br><br>6 CPE Hrs | 10.00 a.m.<br>to<br>6.00 p.m.<br><br>₹ 1,200/- | <b>Budget 2017 – Important Tax Implications</b><br><b>Direct tax</b> <ul style="list-style-type: none"> <li>Domestic tax provisions</li> <li>International tax provisions</li> <li>Individual tax provisions</li> </ul> <b>Indirect taxes</b> <ul style="list-style-type: none"> <li>Indirect tax provisions</li> <li>Key GST provisions</li> </ul> Panel discussion  | CA. Pritin Kumar<br>CA. Vishal Palwe<br>CA. Utpal Doshi<br><br>CA. Udayan Chokshi<br><br>Moderator:<br>CA. Utpal Doshi<br>Shri Rupak<br>Swaminathan<br>Shri Samir Shah | CA. Rakesh Alshi<br>9819427242<br>CA. Aniket Talati<br>9825551448<br>CA. Vikrant Kulkarni<br>9881880073                      | CA. Abhishek Katre<br>9821968858<br>CA. Shrenik Doshi<br>7710077038<br>CA. Sunil Sharma<br>9769949829         |
| 04/03/2017<br>Saturday<br><br>6 CPE Hrs | 10.00 a.m.<br>to<br>6.00 p.m.<br><br>₹ 1,200/- | <b>Seminar on Project Finance</b> <ul style="list-style-type: none"> <li>Role of CA in fund raising activities for Project Financing</li> <li>Debt Syndication, Understanding the basics of Debt Syndication and making of proposals</li> <li>Bank loan credit rating, what are the broad parameters looked by rating agency</li> <li>Trade Finance, what is Trade Finance and how does it work</li> </ul>  | CA. Snehal Kamdar<br><br>CA. Snehal Kamdar<br><br>Eminent Faculty<br><br>CA. Alok Mishra   | CA. Sushrut Chitale<br>9821112904<br>CA. Purushottam<br>Khandelwal<br>9825020844<br>CA. Abhijit Kelkar<br>9422126890         | CA. Yash Bansal<br>9619977988<br>CA. Prajakta Patil<br>9819041003<br>CA. Viral Mehta<br>9819030563            |

## LIVE SCREENING OF UNION BUDGET 2017

The Union Budget, a yearly exercise carried out by the Government sets the path for Economic development, by bringing changes in the fiscal policies. Chartered Accountants are looked up to by the common man for understanding not only the changes in Tax laws but also for analysing the impact on the various Industries.

WIRC, jointly with All India Association of Industries and Young Entrepreneurs Association has organised a Live Screening of the Union Budget, on a Large Screen at the Institute.

Eminent Chartered Accountants and Industrialists will give their immediate reactions on the Union Budget.

**DAY & DATE** : Wednesday, 1st February, 2017  
**Venue** : Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai  
**Time** : 10.45 a.m. onwards

**ALL ARE CORDIALLY INVITED**

## UNION BUDGET 2017

The provisions relating to Direct Taxes in the Finance Bill, 2017 will be analysed clause-wise.

A Lecture Meeting on  
The Finance Bill, 2017  
– Direct Tax Provisions

Saturday, 4th February, 2017  
5.30 p.m. onwards

at C.C.I. East Lawns, Churchgate,  
Mumbai 400 020.  
(Entrance next to Asiatic Stores & Kaysons)

By  
**CA. Bansi S. Mehta**  
(Past President of  
The Institute of Chartered Accountants of India)

Kindly occupy your seat by 5.15 p.m.  
**ALL ARE CORDIALLY INVITED**

ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai

| Date, Day & CPE Hrs   | Time & Fees                                    | Topic(s)   | Speaker(s)   | Chief Co-ordinators / Mobile Nos.  | Co-ordinators / Mobile Nos.   |
|---|--|--|--|--|---|
| 14/01/2017<br>Saturday<br><br>6 CPE Hrs                         | 10.00 a.m.<br>to<br>6.00 p.m.<br><br>₹ 1,200/- | <b>Seminar on Redevelopment of Co-op. Hsg. including Conveyance / Deemed Conveyance</b><br><ul style="list-style-type: none"> <li>• Overview of Real Estate Laws, MOFA Act, 1963, Maharashtra Apartment Ownership Act, 1970, Conveyance &amp; Deemed Conveyance</li> <li>• Conveyance through Consumer Court, Formalities w.r.t. Changes in Revenue Records</li> <li>• Reading of Approved Building Plan, Survey of Land etc.</li> <li>• DCR Rules and Concepts like FSI, Fungible FSI, TDR, Stamp Duty &amp; Registration Provisions wrt Transfer of Flat &amp; Conveyance incl various Circulars on Deemed Conveyance</li> </ul> | CA. Ramesh Prabhu<br><br>Eminent Faculty<br><br>Eminent Faculty<br><br>Eminent Faculty | CA. Shilpa Shinagare<br><i>Treasurer, WIRC</i><br>9820053395<br>CA. Vikrant Kulkarni<br>9881880073<br>CA. S. G. Mundada<br>9422080814        | CA. Kalpesh Kothari<br>9029371777<br>CA. Falguni Padiya<br>8237442806<br>CA. Ashish Bakliwal<br>9821968858                          |
| 21/01/2017<br>Saturday<br><br>6 CPE Hrs                         | 10.00 a.m.<br>to<br>6.00 p.m.<br><br>₹ 1,200/- | <b>Seminar on Real Estate Financing</b><br><ul style="list-style-type: none"> <li>• Stress assets funding (Restructuring &amp; alternative fund raising)</li> <li>• Working capital finance (Understanding the need of WCL, Taking decision on most appropriate source)</li> <li>• Equity Fund Raising for SME (Understanding the Issues in SME listing, Negotiation and Documentation)</li> </ul>   | Shri Shishir Jain<br><br>CA. B. L. Maheshwari<br><br>CA. Ashish Goyal                  | CA. Hardik Shah<br><i>Vice Chairman, WIRC</i><br>9825510422<br>CA. Sandeep Jain<br>9819788099<br>CA. Drushti Desai<br>9820335923             | CA. Bhushan Ramani<br>9819666708<br>CA. Mukund Mall<br>9322224142<br>CA. Aditi Chaturvedi<br>9768350383                             |
| 21/01/2017<br>Saturday<br><br>6 CPE Hrs                         | 10.00 a.m.<br>to<br>6.00 p.m.<br><br>₹ 1,200/- | <b>Seminar on Insolvency and Bankruptcy Code</b><br><ul style="list-style-type: none"> <li>• Inauguration- Dynamics of Code</li> <li>• Policy Dimension- Rollout of the Scheme</li> <li>• New Legal Framework</li> <li>• Opportunity vis-a-vis Value Creation by CA's, Covering Registration and Practice as Insolvency Professional</li> <li>• Impact on Creditors, Bond Holders, Investors and Government Dues. Cascading mechanism of Payment</li> <li>• Impact on Revival/Liquidation of Business, Challenges and Issues</li> </ul>  | Eminent Personalities<br><br><br><br>CA. Sanjay Agarwal<br><br>CA. Uday Patwardhan     | CA. Lalit Bajaj<br>9867692321<br>CA. Sushrut Chitale<br>9821112904<br>CA. Drushti Desai<br>9820335923<br>CA. Balkishan Agarwal<br>9377110634 | CA. B. S. Rathi<br>9867751705<br>CA. Sanjay Agarwal<br>9820194235<br>CA. Kapil Laddha<br>7738386661<br>CA. Pooja Shah<br>9870786317 |
| 04/02/2017<br>Saturday<br><br>6 CPE Hrs                         | 10.00 a.m.<br>to<br>6.00 p.m.<br><br>₹ 1,200/- | <b>Seminar on Taxation and Online Compliances of Co-operative Societies</b><br><ul style="list-style-type: none"> <li>• Service Tax, VAT, Income Tax, Interactive session on controversial issues in section 80P CHS</li> <li>• Online Compliances of Co-operative Societies</li> <li>• Formation of Co-operative Societies</li> </ul>   | CA. Ramesh Prabhu<br><br>Eminent Faculty<br><br>Eminent Faculty                        | CA. Shilpa Shinagare<br><i>Treasurer, WIRC</i><br>9820053395<br>CA. Sarvesh Joshi<br>9822022292<br>CA. Lalit Bajaj<br>9867692321             | CA. Milind Joshi<br>9930033939<br>CA. Mamta Parsekar<br>9820613536<br>CA. Rajesh Jain<br>9930331272                                 |
| 11/02/2017<br>Saturday<br><br>6 CPE Hrs                         | 10.00 a.m.<br>to<br>6.00 p.m.<br><br>₹ 1,200/- | <b>Seminar on Basics on Public Finance</b>   | Eminent Personalities  | CA. Shilpa Shinagare<br><i>Treasurer, WIRC</i><br>9820053395<br>CA. Priti Savla<br>9321426883<br>CA. Umesh Sharma<br>9822079900              | CA. Dhaval Acharya<br>9819411101<br>CA. Ketan Sarage<br>9920761105<br>CA. Mihir Mehta<br>9773393007                                 |
| 18/02/2017<br>Saturday<br><br>6 CPE Hrs                         | 10.00 a.m.<br>to<br>6.00 p.m.<br><br>₹ 1,200/- | <b>Seminar on Opportunities &amp; Challenges for CAs in conversion of Single to Double entry</b>   | Eminent Personalities  | CA. Shilpa Shinagare<br><i>Treasurer, WIRC</i><br>9820053395<br>CA. S. G. Mundada<br>9422080814<br>CA. Priyam Shah<br>9824096112             | CA. Swati Bhatkar<br>9967537989<br>CA. Kalpesh Kothari<br>9029371777<br>CA. Nitin Jaisinghani<br>9967539598                         |
| 25/02 &<br>26/02/2017<br>Saturday &<br>Sunday<br><br>12 CPE Hrs | 10.00 a.m.<br>to<br>6.00 p.m.<br><br>₹ 2,400/- | <b>Faculty Development programme on Co-operatives</b><br><ul style="list-style-type: none"> <li>• Soft Skill Training</li> <li>• Technical Presentation on the topic</li> </ul>  | Eminent Personalities  | CA. Shilpa Shinagare<br><i>Treasurer, WIRC</i><br>9820053395<br>CA. Sushrut Chitale<br>9821112904<br>CA. Abhijit Kelkar<br>9422126890        | CA. Kamal Naulakha<br>9869431440<br>CA. Prachi Kulkarni<br>9819179198<br>CA. Ameet Chheda<br>9967564433                             |
| 04/03/2017<br>Saturday<br><br>6 CPE Hrs                         | 10.00 a.m.<br>to<br>6.00 p.m.<br><br>₹ 1,200/- | <b>Seminar on Internal Audit</b><br><ul style="list-style-type: none"> <li>• Standards on Internal Audit</li> <li>• Enterprise Risk Management</li> <li>• Fraud Investigation</li> <li>• Quality Assurance of Internal Audit</li> </ul>  | Eminent Faculty<br>CA. Delzad Jivaasha<br>Eminent Faculty<br>CA. Moiz Boxwala          | CA. Sandeep Jain<br>9819788099<br>CA. Manish Gadia<br>9820537986<br>CA. Purushottam Khandelwal<br>9825020844                                 | CA. Y. R. Desai<br>9820448365<br>CA. Shipra Mittal<br>8080000809<br>CA. Mayur Momaya<br>9867952010                                  |

J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade, Mumbai

| Date, Day & CPE Hrs                 | Time & Fees                                | Topic(s)  | Speaker(s)  | Chief Co-ordinators / Mobile Nos.  | Co-ordinators / Mobile Nos.  |
|-------------------------------------|--|---|---|--|--|
| 14/01/2017<br>Saturday<br>3 CPE Hrs | 10.00 a.m.<br>to<br>1.00 p.m.<br>₹ 700/-   | <b>Seminar on Audit &amp; Taxation of Charitable Organisation</b><br>• Audit & Taxation of Charitable Organisation  | CA. Tushar Doctor   | CA. Drushti Desai<br>9820335923<br>CA. Pradeep Agrawal<br>9898560967<br>CA. Balkishan Agarwal<br>9377110634            | CA. Abhijit Totade<br>9819659151<br>CA. Sajjan Agrawal<br>9322281706<br>CA. Nehal Turakhia<br>9833991898 |
| 21/01/2017<br>Saturday<br>6 CPE Hrs | 10.00 a.m.<br>to<br>6.00 p.m.<br>₹ 1,200/- | <b>Seminar on TDS – Law &amp; Practice</b><br>• TDS – Salary & TDS in respect of Residents<br>• Consequences of default (including prosecution & compounding)<br>• TDS on non-residents – Section 195<br>• Procedure under TRACES<br>* Subject to confirmation                                  | CA. Ankit Sanghavi<br>CA. Mahendra Sanghavi*<br>CA. Jagat Mehta<br>CA. Avinash Rawani | CA. Kamlesh Saboo<br>Secretary, WIRC<br>9819195333<br>CA. Sarvesh Joshi<br>9822022292<br>CA. Lalit Bajaj<br>9867692321 | CA. Gaurav Save<br>9969001607<br>CA. Vikram Joshi<br>9821733286<br>CA. Dhvani Karia<br>9819900489        |
| 28/01/2017<br>Saturday<br>6 CPE Hrs | 10.00 a.m.<br>to<br>6.00 p.m.<br>₹ 1,200/- | <b>Seminar on Government Subsidies</b><br>• Maharashtra Package Scheme of Incentives, 2013 as applicable to SSI & MSI<br>• Maharashtra Package Scheme of Incentives, 2013 as applicable to Large, Mega & Ultra Mega Projects<br>• Maharashtra Government Information & Technology Policy – 2015 | CA. G. B. Modi<br>CA. Milind Gujrathi<br>CA. G. B. Modi                               | CA. Manish Gadia<br>9820537986<br>CA. Balkishan Agarwal<br>9377110634<br>CA. Rakesh Alshi<br>9819427242                | CA. Amol Kamat<br>9823018763<br>CA. Rakesh Tulsian<br>9869765155<br>CA. Aumkar Gadgil<br>8007976830      |
| 04/02/2017<br>Saturday<br>6 CPE Hrs | 10.00 a.m.<br>to<br>6.00 p.m.<br>₹ 1,200/- | <b>Seminar on Ind AS Conversion: Issues, Challenges and Techniques</b><br>• Issues and Challenges<br>• Techniques   | CA. Yagnesh Desai<br>CA. Mayur Chokshi  | CA. Priyam Shah<br>9824096112<br>CA. Aniket Talati<br>9825551448<br>CA. Pradeep Agrawal<br>9898560967                  | CA. Siddharth Gupta<br>8080443380<br>CA. Nikita Mall<br>9969873294<br>CA. Ayushy Seksharia<br>9699760923 |

Information Technology Update Corner

CA. Ajay Dave

The IT Update Corner' is intended to keep members abreast with news and views on the topic with short-url link to read the update in detail on the source web page.

#RegTech #Regulatory #Compliance #Technology RegTechs will help financial services industry overcome the burden of compliance. Dealing with regulations is costly and cumbersome affair. Regulatory documents are 100-plus pages long which aren't clearly legible. Globally, around \$80 billion is spent on governance, risk and compliance, and the market is only expected to grow, reaching \$120 billion in the next five years. RegTechs offer capabilities like Customer Due Diligence, Enhanced Real-Time Verification, Automation and Reporting Solutions which make them more attractive than traditional GRC solution providers. Read more: <https://goo.gl/S50yQI>.



#Privacy #Surveillance: The Court of Justice for European Union (CJEU), the EU's highest court, ruled that "general and indiscriminate retention" of data is prohibited. If member nation wishes to ask service providers to retain data, it can only do so if that retention and any access to the data is strictly necessary for the purpose of fighting serious crime. Download press release by CJEU: <https://goo.gl/kHArwO>.

#ArtificialIntelligence #AI #Cloud #CloudComputing: The next big shift is the fusion of artificial intelligence and cloud computing, which promises to be both a source of innovation and a means to accelerate change. With pervasive AI and cognitive capabilities underpinned by the cloud, digital pioneers in today's data-intensive world have the potential to harvest and build value from this unprecedented amount of data. Read more: <https://goo.gl/10njn8>.



#EthicalHacking #Tools #PenetrationTesting: New BlackArch Linux version 2016.12.20 released for ethical hackers and penetration testers with 1600 hacking tools. The BlackArch Linux developers have released new version ISO image of the Arch Linux-based operating system designed especially for ethical hackers and security professionals. Read more: <https://goo.gl/XUUUom>.

#CyberSecurity #CrimeReporting Report and contribute to a secure and safe India. If you are ignoring cyber incidents, you are not just potentially putting your life at stake but also the lives of 1.2 billion people. Section 70B of IT Act read with Rule 12(1)(a) provides Mandatory reporting of cyber security incidents by Service Providers, Body Corporates, Data Centres, Intermediaries in the following cases: Probing of critical networks, Unauthorised access of IT systems/data, Defacement of websites, Malicious code attacks, Attacks on servers and network devices, Identity theft, spoofing and phishing attacks, Attacks on critical infrastructure and wireless networks, Attacks on applications such as e-Governance, e-Commerce, etc. Therefore if you are a Service Provider, Data Centre, Body Corporate or Intermediary report any cyber incident without any delay to [incident@cert-in.org.in](mailto:incident@cert-in.org.in)

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## DIRECT TAX

(Contributed by CA. Haresh P. Kenia & CA. Deepak Lala)

### Income-Tax (Thirtieth Amendment) Rules, 2016 – Amendment in Rules 114B & 114E

Notification No. GSR 1068(E) [No. 104/2016 (F. No. 370142/32/2016-TPL)], dated 15/11/2016

With a view to monitor cash deposits in banks, etc., in the wake of demonetisation decision of the Government, the CBDT has amended Rule 114B making quoting of PAN mandatory for cash deposits exceeding ₹ 50,000 in one day or exceeding ₹ 2.5 lakh during 9th Nov. 2016 to 30th Dec. 2016. Also CBDT has amended Rule 114E requiring Banks/Co-op. Banks to submit information in AIR about aggregate cash deposits of more than ₹ 12.5 lakh in Current A/c or ₹ 2.5 lakh in SB A/c during 9th Nov. 2016 to 30th Dec. 2016.

### Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Signing of Joint Declaration by India and Switzerland for Implementation of Automatic Exchange of Information (AEOI) between two countries

Press Release, dated 22/11/2016

Fighting the menace of Black Money stashed in offshore accounts has been a key priority area for this Government. To further this goal, Mr. Sushil Chandra, Chairman, CBDT on behalf of India and Mr. Gilles Roduit, Deputy Chief of Mission of Swiss Embassy in India, on behalf of Switzerland, signed the 'Joint Declaration' for the implementation of Automatic Exchange of Information (AEOI) between India and Switzerland. As a result, it will now be possible for India to receive from September, 2019 onwards, the financial information of accounts held by Indian residents in Switzerland for 2018 and subsequent years, on an automatic basis.

### Section 37(1) of the Income-tax Act, 1961 – Business Expenditure – Allowability of – Admissibility of Expenditure incurred by a firm on Keyman Insurance Policy in case of a Partner

Circular No. 38/2016 [F. No. 279/Misc./140/2015-IT], dated 22/11/2016

CBDT Circular No. 762/1998 dated 18/2/1998 clarifies that the premium paid on the Keyman Insurance Policy is allowable as business expenditure. However, in case of such expenditure incurred on a partner of a firm, the general approach of the assessing officers was to treat the expenditure as not incurred for the purpose of business and disallow the same. The High Court of Punjab and Haryana in the case of M/s. Ramesh Steels, ITA No. 437 of 2015, *vide* judgment dated 2/2/2016 [2016] 75 taxmann 257, held that, "the said policy when obtained to secure the life of a partner to safeguard the firm against a disruption of the business is equally for the benefit of the partnership business which may be effected as a result of premature death of a partner. Thus, the premium on the Keyman Insurance Policy of partner of the firm is wholly and exclusively for the purpose of business and is allowable as business expenditure". The above view has been accepted by CBDT and the judgment has not been further contested. In view of this, it is a settled position that in case of a firm, premium paid by the firm on the Keyman Insurance Policy of a partner, to safeguard the firm against a disruption of the business, is an admissible expenditure under section 37 of the Act.

### Section 80-IB, read with section 80-IC, of the Income-tax Act, 1961 – Deductions – Profits and Gains from Industrial Undertakings other than Infrastructure Development Undertakings – Notified Scheme for purposes of section 80-IB(10)

Circular No. 39/2016 [F. No. 279/Misc./140/2015/Itj], dated 29/11/2016

The issue whether revenue receipts such as transport, power and interest subsidies received by an industrial undertaking/eligible business are part of profits and gains of business derived from its business activities within the meaning of sections 80-IB/80-IC of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and thus eligible for claim of corresponding deduction under Chapter VI-A of the Act has been a contentious one. Such receipts are often treated as 'Income from other sources' by the Assessing Officers. The Hon'ble Supreme Court in its judgment dated 9/3/2016 in the case of Meghalaya Steels Ltd. in CA No. 7622 of 2014 reported in [2016] 67 taxmann 158 has held that the subsidies of transport, power and interest given by the Government to the industrial undertaking are receipts which have been reimbursed for elements of cost relating to manufacture/sale of the products. Thus, there is a direct nexus between profit and gains of the industrial undertaking/business and reimbursement of such business subsidies. Accordingly, such subsidies are part of profits and gains of business derived from the industrial undertaking and are not to be included under the head 'Income from other sources'. Therefore, deduction is admissible under section 80-IB/80-IC of the Act on such revenue receipts derived from the industrial undertaking. In view of the above, it is a settled position that revenue subsidies received from the Government towards reimbursement of cost of production/manufacture or for sale of the manufactured goods are part of profits and gains of business derived from the industrial undertaking /eligible business, and are thus, admissible for applicable deduction under Chapter VI-A of the Act.

### Income-Tax (Thirty Fourth Amendment) Rules, 2016 – Amendment in Rule 8AA

Notification No. GSR 1100(E) [No. 108/2016 [F. No. 142/01/2016-TPL], dated 29/11/2016

The amended provisions lay down that – In the case of a capital asset, declared under the Income Declaration Scheme, 2016, being an immovable property, the period for which such property is held shall be reckoned from the date on which such property is acquired if the date of acquisition is evidenced by a deed registered with any authority of a State Government and in any other case, the period for which such asset is held shall be reckoned from the 1st day of June, 2016.

### Section 132 of the Income-tax Act, 1961 – Search & Seizure – General Clarifications with respect to gold jewellery under Income-tax Law

Press Release, dated 1/12/2016

In order to remove any doubt about the current position of Income-tax Law with respect to gold jewellery, the following points are categorically clarified:

1. There is no limit on holding of gold jewellery or ornaments by anybody provided it is acquired from explained sources of income including inheritance.
2. *Vide* circular dated 11/5/1994, instructions have been issued in the matter of search and seizure of gold jewellery:-



Jewellery and ornaments to the extent of 500 gms. for married lady, 250 gms. for unmarried lady and 100 gms. for male member will not be seized, even if *prima facie*, it does not seem to be matching with the income record of the assessee.

- Officer conducting search has discretion not to seize even higher quantity of gold jewellery based on factors including family customs and traditions.

**Section 147, read with section 119, of the Income-tax Act, 1961 – Income Escaping Assessment – General Directions under Section 119**

**Circular No. 40/2016 (F. No. 225/326/2016/ITA.II), dated 9/12/2016**

Recent initiatives of the Government to curb the black economy in the country has encouraged people to shift towards digital mode of payment while making financial transactions. By adopting digital mode of payment, no financial transactions would remain undisclosed and consequently an enhanced turnover of business might get reflected in the books of account. Under the circumstances, an apprehension has been raised that increased turnover in the current year may lead to reopening of earlier years' cases involving lower turnover u/s. 147 of the Income-tax Act, 1961 ('Act') by the Assessing Officer causing undue harassment to taxpayers. It is hereby clarified that reopening of cases u/s. 147 of the Act is feasible only when the Assessing Officer "has reason to believe that any income chargeable to tax has escaped assessment for any assessment year" and not merely on the basis of any reason to suspect. Mere increase in turnover, because of use of digital means of payment or otherwise, in a particular year cannot be a sole reason to believe that income has escaped assessment in earlier years. Hence, Assessing Officers are advised not to reopen past assessments in cases merely on the ground that the current year's turnover has increased.

**Section 139(5) of the Income-tax Act, 1961 – return of Income – Revised Return - Filing of Revised Income Tax Returns by taxpayers post demonetisation of currency**

**Press Release, dated 14/12/2016**

Under the existing provisions of section 139(5) of the Income-tax Act, 1961 ('Act'), Revised Return can only be filed if any person, who has filed a return under section 139(1) of the Act or in response to notice u/s. 142(1), discovers any omission or any wrong statement therein. Post demonetisation of the currency on 8th November, 2016, some taxpayers may misuse this provision to revise the return-of-income filed by them for the earlier assessment year, for manipulating the figures of income, cash-in-hand, profits etc. with an intention to show the current year's undisclosed income (including the unaccounted income held in the form of demonetised currency in current year) in the earlier return.

It is hereby clarified that the provision to file a revised return of income u/s. 139(5) of the Act has been stipulated for revising any omission or wrong statement made in the original return of income and not for resorting to make changes in the income initially declared so as to drastically alter the form, substance and quantum of the earlier disclosed income.

It is brought to the notice of taxpayers that any instance coming to the notice of Income-tax Department which reflects manipulation in the amount of income, cash-in-hand, profits etc. and fudging of accounts may necessitate scrutiny of such

cases so as to ascertain the correct income of the year and may also attract penalty/prosecution in appropriate cases as per provisions of law.

## MAHARASHTRA VAT (Contributed by CA. C. B. Thakar)

**Maharashtra Settlement of Arrears in Dispute Rules, 2016**

### Ordinance

The Maharashtra Government issued Maharashtra Ordinance No. XXVII of 2016 dated 17/11/2016 by which time limit of Settlement Scheme under Maharashtra Settlement of Arrears in Disputes Act, 2016 was extended till 30/11/2016.

**Maharashtra Settlement of Arrears in Dispute Rules, 2016**

### Notification

The Government of Maharashtra by Notification dated 19/11/2016 made amendments in above Rules so as to extend the date of payment, subject to condition.

### Circulars

- The Commissioner of Sales Tax has issued Circular bearing No. 36T of 2016 dated 21/11/2016 by which exemption is given from making payment of late fee under section 20(6) of MVAT Act for filing of return.
- The Commissioner of Sales Tax has issued Circular bearing No. 37T of 2016 dated 25/11/2016 by which clarification about the Computerised Desk Audit (CDA) assessment for the period 2013-14 is given.

## GUJARAT VAT (Contributed by CA. Kishor R. Gheewala)

### Time Limits Extended

*Vide* Public Circular No : GUJKA/ VAT-17C/ 16-17/ o.t.w.193/ 168, dated 20/12/2016, time limit for obtaining VAT Audit Report is extended from 31/12/2016 to 28/2/2017.

*Vide* Public Circular No : VAVEK/GUJKA/ VAT-SALE TAX SAMADHAN YOJNA/16-17/o.t.w.191/166 dated 17/12/2016, time limit for SAMADHAN SCHEME is extended from 31/12/2016 to 31/3/2017.

### ITC Denial/Reduction

*Vide* Notification No. (GHN-68)VAT-2016-S.11(6)(6)-TH:- dated 10th November, 2016, no ITC will be admissible for following goods consigned or dispatched for branch transfer or to agent outside the State and inc ase of inter State sales of the said goods, ITC in excess of 2% will not be admissible.

- Pan Masala
- Aerated and carbonated beverages
- Mobile phone
- Goods to which total rates applies 20% or more (including additional tax) excluding cigarettes made from tobacco.

### R.C. Amendment

*Vide* Public Circular No : GUJKA/ VAT-5/ 16-17/ o.t.w.184/ 159 dated 13/10/2016, documents and evidences to be submitted for various types of amendments in Registration Certificate etc. have been prescribed.

## CORPORATE LAWS

(Contributed by CA. Rahul Joglekar)

MCA ([www.mca.gov.in](http://www.mca.gov.in))

**MCA Notification No. GSR 1134(E) dated 14th December 2016 – Companies (Compromises, Arrangements and Amalgamations) Rules, 2016**

MCA has notified the aforesaid Rules to lay down the procedures for compromises and arrangements including amalgamations. The Rules include detailed guidelines in respect of calling of meetings of creditors, corporate debt restructuring, price to be paid to minority and dissenting shareholders etc. various enabling sections of the Companies Act have also been notified with effect from 15th December. For complete text of the Rules, please refer the link: [http://www.mca.gov.in/Ministry/pdf/compromisesrules2016\\_15122016.pdf](http://www.mca.gov.in/Ministry/pdf/compromisesrules2016_15122016.pdf). For a complete list of the sections coming into force from 15th December 2016, please refer the link [http://www.mca.gov.in/Ministry/pdf/commencementnotif\\_08122016.pdf](http://www.mca.gov.in/Ministry/pdf/commencementnotif_08122016.pdf).

## CENTRAL EXCISE

(Contributed by CA. Jayesh Gogri)

**Notifications**

**Tariff**

**POS devices and inputs for manufacture of POS devices granted exemption till 31st March, 2017**

One of the impacts of demonetisation is increase in demand of POS (Point of Sale) devices. Therefore, to promote digital payments, full exemption is granted from Central Excise Duty to manufacture of POS devices falling under Tariff ID 8470 from 28th November, 2016 till 31st March, 2017.

Further, all inputs for manufacture of POS devices are also granted complete exemption from Central Excise Duty from 28th November, 2016 till 31st March, 2017. However, the exemption to such inputs is subject to a condition that procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 is followed. (Notification No. 35/2016-CE dated 28th November, 2016).

**Conditional exemption to gold coins of purity 99.5% and above bearing brand name**

Hitherto, gold coins of purity 99.5% and above, bearing a brand name, when manufactured from gold on which appropriate duty of customs or excise has been paid, falling under Tariff ID 7114 were granted unconditional complete exemption.

Now, with effect from 1st December, 2016, such gold coins would be continued to be covered under complete exemption but subject to the condition that such gold coins are manufactured from appropriate duty/tax paid inputs, capital goods and input services and CENVAT Credit thereof is not availed by manufacturer of such gold coins. (Notification No. 36/2016-CE dated 1st December, 2016).

**Circulars**

**Extension of export warehousing facility to Ahmedabad District of Gujarat**

Export warehousing facility for excisable goods is now extended to Ahmedabad District of Gujarat subject to various conditions and procedures to be followed as provided under

Circular No. 581/18/2001-CX dated 29th June, 2001. (Circular No. 1051/39/2016-CX dated 15th December, 2016).

## SERVICE TAX

(Contributed by CA. Rajiv Luthia)

**SYNOPSIS OF NOTIFICATIONS, CIRCULARS & LETTERS**

**Central Government, vide Notification No. 50/2016-ST dated 22nd November, 2016**, has amended Notification No. 20/2014-ST dated 16th September, 2014 whereby the Principal Commissioner, LTU, Bengaluru and the officers subordinate to him shall have the exclusive jurisdiction in case of online information and database access or retrieval services provided or agreed to be provided by a person located in non-taxable territory and received by a non-assessee online recipient.

**Central Government, vide Notification No. 51/2016-ST dated 30th November, 2016**, has amended Rule 2(q) of the Place of Provision of Service Rules, 2012 whereby the "telecommunication services", defined under the said Rule, shall not include online information and database access or retrieval services.

**Central Government, vide Notification No. 52/2016-ST dated 8th December, 2016**, has inserted Entry No. 64 in Mega Exemption Notification No. 25/2012-ST dated 20th June, 2012 whereby exemption is granted to services by an acquiring bank, to any person in relation to settlement of an amount up to ₹ 2,000/- in a single transaction transacted through credit card, debit card, charge card or other payment card service. The term "acquiring bank" is defined under Explanation to the said Entry.

**Central Government, vide Notification No. 53/2016-ST dated 19th December, 2016**, has inserted proviso to Rule 4C(1) whereby a person located in non-taxable territory providing online information and database access or retrieval services to a non-assessee online recipient located in taxable territory may issue online invoices not authenticated by means of a digital signature for a period up to 31st January, 2017.

## FEMA

(Contributed by CA. Manoj Shah, CA. Sudha G. Bhushan & CA. Mitesh Majithia)

**Exchange facility to foreign citizens**

*A.P. (DIR Series) Circular No. 20 dated November 25, 2016*

*A.P. (DIR Series) Circular No. 22 dated December 16, 2016*

RBI had vide A.P. (DIR Series) Circular No. 16 dated November 9, 2016 given certain exemptions to foreign tourists visiting India for use of banknotes in the denominations of ₹ 500 and ₹ 1,000 until November 11, 2016.

In supersession of aforesaid instructions, RBI has vide circular dated November 25, 2016 allowed foreign citizens (i.e., foreign passport holders) to exchange foreign exchange for Indian currency notes up to a limit of ₹ 5,000/- per week till December 15, 2016 subject to the tenderer submitting a self-declaration that this facility has not been availed of during the week. This timeline has further been extended till December 31, 2016 vide circular dated December 16, 2016.

The authorized person is required to keep the passport details and the above declaration on record. The authorized person may also ensure that the total value of such exchange to Indian currency notes does not exceed ₹ 5,000/- during the week.

**Amendments to Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000**

*Notification No. FEMA.372/2016-RB dated October 27, 2016*

*Notification No. FEMA.373/2016-RB dated October 24, 2016*

*Notification No. FEMA.379/2016-RB dated November 4, 2016*

*Notification No. FEMA.381/2016-RB dated December 7, 2016*

The RBI has issued following regulations to amend the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 to give effect to various amendments announced by the Government of India from time-to-time:

- Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Tenth Amendment) Regulations, 2016;
- Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Eleventh Amendment) Regulations, 2016;
- Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Sixteenth Amendment) Regulations, 2016;
- Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Eighteenth Amendment) Regulations, 2016.

**CO-OPERATIVE SECTION**

**(Contributed by CA. Ramesh Prabhu)**

**Appointment of Auditors under Proviso to section 81(1) of the MCS Act, 1960**

The District Deputy Registrar (DDR) have started issuing the appointment of Auditors for the year 2016-17 by using the powers conferred on them under proviso to section 81(1) of the Maharashtra Co-operative Societies Act, 1960 in respect of the societies where the auditors did not generate e-order for the appointments done to them by passing a resolution in the General Body meeting on or before 31st Oct., 2016. The co-operative panel auditors who did not so far generate the e-order can still generate them as the facility to generate e-order by the auditors is still kept open for the societies where appointment by respective DDR have not been done till date. In case, Co-operative panel auditor could not generate e-order due to some technical reasons, they may approach the respective DDR to submit the AGM resolution of the society and get the e-order issued by DDR in their favour by revoking the appointment of another auditor done by the concerned DDR at the earliest. The panel auditors are advised to visit Mahasahakar web portal on weekly basis through their login and password to check if any allotment of audits are done in their favour. If the auditors do not want to accept such audits for some reasons, need to intimate their inability, within a reasonable time, to the respective DDR to reappoint another interested auditor as clarified by the Shri Chandrakant Dalvi, Co-operative Commissioner in the webcast done on 7th Oct., 2016. WIRC has sent necessary representation to this effect and other issues affect the auditors to the commissioner for Co-operation and Registrar, Co-operative Society, Maharashtra State which is uploaded on WIRC website under Co-operative Section.

**Suggestions and objections invited by 13th December, 2016 regarding the draft rules on filling up of casual vacancies**

Draft Rules regarding the filling of casual vacancies in the Managing Committee by Amending Rule 74 of Maharashtra Co-operative Societies (Election to Committee) Rules, 2016 has been notified on 11th November, 2016. The suggestions and objections were invited for the said draft rules by 13th December, 2016. The draft notification is uploaded on the website of WIRC of ICAI in Co-operative Section.

**Publication of Draft Rules on Real Estate (Regulation and Development) Act, 2016 by the Government of Maharashtra**

As per the Section 84 of the Real Estate (Regulation and Development) Act, 2016 the State Government has made the following rules for carrying out the provisions of the Act for which suggestions and objections have been invited by the public at large by 23rd December, 2016 :

- The Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2016
- The Maharashtra Real Estate Regulatory Authority, Officers and Employees (Appointment and Service Conditions) Rules, 2016
- The Maharashtra Real Estate Appellate Tribunal, Officers and Employees ( Appointment and Service Conditions) Rules, 2016
- The Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of complaints and Appeal, etc.) Rules, 2016.

Co-operative Study group of WIRC of ICAI had detailed deliberation on the above Rules and submitted necessary suggestions and objections in this regard to the Housing Department, Government of Maharashtra which is uploaded on website of WIRC under Co-operative Section.

**Hon'ble High Court held that Nominee does not get the absolute title to the property**

The Bombay High Court (Divisional Bench headed by Abyay Oka J.) in Appeal No. 313 of 2015, decided on 1/12/2016, at paragraph No. 34, after citing several judgments, including the recent judgment of Hon'ble Supreme Court, has conclusively settled the law that nominee does not get absolute title to the property subject matter of nomination. The reason is by its very nature, when a shareholder or a deposit holder or an insurance policy holder or a member of a co-operative society makes a nomination during his life time, he does not transfer his interest in favour of the nominee. It is always held that the nomination does not override the law relation to testamentary or intestate succession. The provisions regarding nomination are made with a view to ensure that the estate or the rights of the deceased subject matter of nomination are protected till the legal representatives of the deceased take appropriate steps.... As observed by the Apex Court, the legislative intention is not to provide a third kind of succession. It's hoped the controversy is set to rest, once for all.

...

## DIRECT TAX

(Contributed by CA. Paras K. Savla & CA. Hemant Shah)

### JUDICIAL PRONOUNCEMENTS

#### SUPREME COURT

##### CIT vs. Yokogawa India Limited (Supreme Court)

Sections 10A/ 10B: Sections 10A/10B were amended by FA 2000 w.e.f. 1/4/2001 to change "exemption" to "deduction", the "deduction" contemplated therein is *qua* the eligible undertaking of an assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction is given by the Act to the individual undertaking and resultantly flows to the assessee. The deduction of the profits and gains of the business of an eligible undertaking has to be made independently and before giving effect to the provisions for set off and carry forward contained in Sections 70, 72 and 74. The deductions u/ss. 10A/10B are prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income.

If the specific provisions of the Act provide [first proviso to Sections 10A(1); 10A(1A) and 10A(4)] that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking and that is also how the contemporaneous Circular of the department (No. 794 dated 9/8/2000) understood the situation, it is only logical and natural that the stage of deduction of the profits and gains of the business of an eligible undertaking has to be made independently and, therefore, immediately after the stage of determination of its profits and gains. At that stage the aggregate of the incomes under other heads and the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be premature for application. The deductions under Section 10A therefore would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income. The somewhat discordant use of the expression "total income of the assessee" in Section 10A has already been dealt with earlier and in the overall scenario unfolded by the provisions of Section 10A the aforesaid discord can be reconciled by understanding the expression "total income of the assessee" in Section 10A as 'total income of the undertaking'.

##### Jeans Knit Private Limited vs. DCIT (Supreme Court)

Writ Petition to challenge the issue of a reopening notice u/s. 148 is maintainable as per the law laid down in *Calcutta Discount 41 ITR 191 (SC)*. The law laid down in *Chhabil Dass Agarwal 357 ITR 357 (SC)* deals with the maintainability of a Writ to challenge the reassessment order and does not apply to a challenge to the reassessment notice [Sections 147/ 148]:

The High Courts dismissed the writ petitions preferred by the assessee challenging the issuance of notice u/s. 148 of the Income-tax Act, 1961 and the reasons which were recorded by the Assessing Officer for reopening the assessment. The writ petitions were dismissed by the High Courts as not maintainable. The aforesaid view taken is contrary to the law laid down by this Court in *Calcutta Discount Limited Company vs. Income Tax Officer, Companies District I, Calcutta & Anr. [(1961) 41 ITR 191 (SC)]*

##### Siemens Public Communications Network Ltd. vs. CIT (Supreme Court)

Law laid down in *Sahney Steel 228 ITR 253 (SC)* and *Ponni Sugars 306 ITR 392 (SC)* regarding the taxability of subsidies as a revenue receipt does not apply to voluntary subsidies

(subvention) paid by a holding company to its loss making subsidiary. The said subsidy is to protect the capital investment of the holding company and is a capital receipt in the hands of the recipient [Section 4]

The question of law that was presented before the High Court, namely, whether subvention was capital or revenue receipt, was sought to be answered by the High Court by making a reference to two decisions of this Court in *Sahney Steel & Press Works Ltd., Hyderabad vs. Commissioner of Income Tax, A.P.-I, Hyderabad [(1997) 7 SCC 764]/ 228 ITR 253* and *Commissioner of Income Tax, Madras vs. Ponni Sugars and Chemicals Limited [(2008) 9 SCC 337]/ 306 ITR 392 (SC)*. The view expressed by this Court that unless the grant-in-aid received by an assessee is utilised for acquisition of an asset, the same must be understood to be in the nature of a revenue receipt was held by the High Court to be a principle of law applicable to all situations. The aforesaid view tends to overlook the fact that in both *Ponni Sugars (supra)* and *Sahney Steel (supra)* the subsidies received were in the nature of grant-in-aid from public funds and not by way of voluntary contribution by the parent company as in the present cases. The above apart, the voluntary payments made by the parent Company to its loss making Indian company can also be understood to be payments made in order to protect the capital investment of the assessee company. In view of the above, the Apex Court has held that the payments made to the assessee company by the parent company for assessment years in question cannot be held to be revenue receipts.

#### HIGH COURT DECISIONS

##### Pr. CIT vs. Bharat Heavy Electricals Ltd. (P&H High Court)

Law on whether payments for construction, erection & commissioning etc. of plants involving inputs from technical personnel constitutes "payments for technical services" and attracts TDS obligations u/s. 194] in the light of *Bharti Cellular 330 ITR 239 (SC)* explained [Section 194C vs. 194J]:

The contention of the Revenue that in accordance with the judgment of the Supreme Court in *CIT vs. Bharti Cellular Ltd., (2011) 330 ITR 239 (SC)*, the matter ought to be remanded to the AO to examine technical experts on this issue is not well founded. Firstly, the department never made an application for examining an expert. Secondly, it is not the department's case that there was any material other than the contracts which required consideration. Apart from raising this contention, no such case was made out even before us at the hearing of this appeal. The case before us merely requires a construction of the contract. The extent of human intervention that was relied upon by the department is based on the provisions of the contract itself.

##### Pr. CIT vs. Atotech India Ltd. (P&H High Court)

Penalty u/s. 271(1)(c) cannot be levied in a case where the assessee has relied on legal opinion of a professional and there is no tax impact i.e. the loss disallowed in year one is allowed set off in a later year.

The Tribunal noted that the respondent had claimed the set off of its business income of ₹ 1.85 crores against the brought forward business losses of the earlier years on the basis of a legal opinion received from a leading firm of Chartered Accountants. The Tribunal found nothing clandestine in the manner in which the opinion was sought. In any event, even our attention was not invited to anything which suggests any *mala fides* either in the obtaining of the opinion or otherwise. Further, the loss was allowed to be carried forward in the assessment year, namely, assessment year 2002-03.

For more details visit [www.wirc-icai.org](http://www.wirc-icai.org)

## INTERNATIONAL TAXATION

(Contributed by CA. Hinesh Doshi & CA. Ronak Soni)

**M/s. Kotak Mahindra Bank Limited vs. The Income Tax Officer [TS-528-ITAT-2016 (Mum.)] dated 25th August, 2016**

### Facts

The assessee is engaged in the banking business and paid certain legal fees to one legal firm situated in UK. As per the agreement, withholding tax @20% on gross amount was the liability of the assessee which was duly deposited.

Subsequently, the assessee filed an appeal u/s. 248 before CIT(A) and contended that the impugned payment was not liable to be taxed in India as per the Treaty provisions and also as per domestic laws hence there was no liability to deduct tax at source in respect of this payment.

CIT (A) dismissed assessee's contentions and held the amount as taxable and declared the payment as Royalty/Fees for technical services, on the grounds that under domestic Law "The legal services did not develop any new source of income and was thus construed as 'Royalty' or 'FTS' u/s. 9(1)(vi)/(vii).

Also under DTAA "service provider rendered specialised knowledge relevant to regulatory norms prevalent in the USA, which assessee was capable of utilising independently without direct assistance from the service provider.

Aggrieved assessee filed an appeal before Mumbai, ITAT.

### Issue

Whether that payment of legal fees by Kotak Mahindra Bank to UK based firm constitutes as royalty/FTS either under India-UK DTAA or under the domestic law? And whether such payment is subject to deduction of tax under Section 195 of the Income-tax Act, 1961?

### Held

ITAT noted that, assessee had advanced payments for educating its officials, wherein bank officials visited USA and foreign attorneys discussed numerous legal and regulatory requirements of USA for setting up of a branch or acquisition of banking company etc. Evidentially, these services focused at obtaining sources of income outside India.

Upon reading and dissecting Section 9(1)(vi)/(vii), ITAT noted that the relevant sections give an exceptions to the payments treated as Royalty/FTS, in the cases where the resident renders payment for obtaining a new source of income outside India, which is the case in present scenario of the factual matrix.

With respect to applicability of DTAA, ITAT accepts assessee's stand that since it has obtained legal services, Article 15 being more specific in nature shall apply over Article 13. As services were rendered outside India and no employee of UK firm were present in India for more than 90 days it concluded that payment not taxable in India.

ITAT rules in favour of the assessee.

**Outotec Oyj vs. Deputy Director of Income-tax [TS-569-ITAT-2016 (Kol.)] dated 14th October, 2016**

### Facts

Outotec Oyj is a tax resident of Finland engaged in the business of providing innovative and environmentally sound solutions for a wide variety of customers in metals and mineral processing industries.

Assessee earned income from management support and other services which were provided to its group company Outotec India Pvt. Ltd. and the assessee filed a nil return claiming that it provided managerial services and the same were outside the definition of FTS under Article 13 of India-Finland DTAA and hence there was no question of deducting tax.

The assessee also argued that services rendered to Outotec India Pvt. Ltd. and other Indian parties do not 'make available' technical know-how, skills to the recipients.

But the AO treated said amount as Fee for Technical Services and required deduction of tax at source. It stated that services rendered by the assessee squarely falls within the ambit of FTS as per the treaty and the technology is also made available to the Indian group company.

On reference to DRP upheld AO's order. Aggrieved assessee filed an appeal before ITAT.

### Issue

Whether the payment made constituted as Fees for Technical Services or Managerial Fees? Whether such payment is subject to deduction of tax? Whether the services satisfy the make available clause?

### Held

ITAT reverses DRP's order and held that revenue earned by assessee company in respect of management support and other services rendered to its Indian group company not taxable as Fees for Technical Services under the provisions of Article 13 of India-Finland DTAA.

ITAT also opined that merely because the provision of the service might require technical input by the service provider, it could not be said that technical knowledge, skills, etc. were made available to the person availing such service.

ITAT further noted that the agreement entered into between the assessee and the Indian group company was for an indefinite period and such services were provided on a recurring basis; Thus accepts assessee's plea that had the technical knowhow, skills, etc. was made available then there was no need for the payer to recourse to the recipient for these services. Thus rules that services rendered by the assessee were only managerial in nature and that "there is no technology or technical knowhow, skills etc. that were made available by the assessee in order to enable the Indian group company to function on its own without the dependence of the assessee".

ITAT rules in favour of the assessee.

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## SERVICE TAX

(Contributed by CA. A. R. Krishnan & CA. Girish Raman)

### Construction of residential complex services

Construction services in respect of residential quarters for the staff of the service recipient would be considered as construction of complex for personal use as residence by such person and hence would be excluded from the definition of residential complex and accordingly would not be liable for service tax [CCE vs. Mall Enterprises (2016) 41 STR 119 (Tri.-Mumbai)].

### Intellectual property right services

The definition of 'Intellectual Property Right' includes only such IPRs (except copyrights) that are prescribed under Indian laws 'for the time being in force'. IPRs not covered under the Indian laws would not be covered under the category of intellectual property rights services. Thus where appellant was granted a licence to use the technical information, know-how and system software relating to the manufacture of Document Processing System by an overseas company and there was no clue on records as to which type of IPR is received by the appellant, the Tribunal held that the royalty payments made to the overseas company was not liable under the category of intellectual property rights services. [Tata Consultancy Services Ltd. vs. CST (2016) 41 STR 121 (Tri.-Mumbai)].

### Show Cause Notice

Where the SCN did not give the break up amounts under each head of input service which was sought to be disallowed by it and also did not discuss the allegations raised by the audit or the appellant's reply thereto or give any reasons as to why the said services were not eligible as input services, the Tribunal held that the SCN was very vague and accordingly the order confirming the demand in respect of such SCN was liable to be set aside. [*SBI Capital Markets Ltd. vs. Commr. of C. Ex. & S.T. (LTU), Mumbai (2016) 41 S.T.R. 76 (Tri.-Mumbai)*].

### Adjustment of service tax

Where the assessee had wrongly paid service tax under its Bombay registration number instead of paying under its Noida service tax registration number the Tribunal held that procedure prescribed under Trade Notice No. 3/2014-ST dated 10.7.2014 was required to be followed and assessee should not be asked to pay Service Tax again. [*Sahara India TV Network vs. CST (2016) 41 STR 145 (Tri.-Del.)*].

### Penalty

Where, the revenue had sought to impose penalty u/s. 76 read with rule 15(1) of CCR for wrong availment of input credit the Tribunal held that penalty u/s. 76 can be levied only where service tax is held to be payable by the assessee in accordance with provisions of section 68 or the rules made thereunder. As the issue involved incorrect availment of CENVAT Credit and not non-payment of service tax in accordance with section 68 no penalty u/s. 76 was impossible but penalty of ₹ 2000/- u/r. 15(3) of the CENVAT Credit Rules, 2004 was held to be impossible. [*Omkar Agencies (Hutch) vs. CCE (2015) 40 STR 1135 (Tri.-Del.)*].

### CENVAT Credit

Where the assessee has paid service tax to the service provider, he is entitled to avail the credit of the same without finding out whether the service provider has further deposited the said amount with the Government since it is neither possible nor practical for the service recipient to verify this fact. If Revenue is of the view that the service provider has not deposited the tax with the Government, the remedy lies at the end of the service provider and denial of CENVAT credit to the service recipient is incorrect. [*Adecco Flexione Workforce Solutions Ltd. vs. CCE&ST (2015) 40 STR 288 (Tri.-Bang.)*].

In this case the Tribunal held that

- Denial of CENVAT credit on professional services on pure technical grounds that the invoices did not contain the address of the factory but that of the Head Office is incorrect.

- Credit of service tax paid on car insurance and medical insurance would be admissible since they are activities related to business of manufacture and would fall within definition of input service.

[*Jai Chemical vs. CCE (2015) 40 STR 345 (Tri.-Del.)*].

In this case on facts the Tribunal held as follows –

- Credit of service tax paid for renting car parking space used by employees of assessee company for parking vehicles is admissible being an activity related to its business.
- Credit of service tax paid on hotel accommodation services availed for stay of auditors being a service related to auditing of the appellant's company, which is covered within definition of input service, is admissible.
- Cleaning service availed for cleaning of carpets, chairs and glasses being an activity related to business, CENVAT credit thereon is admissible.
- Credit of service tax paid on renting of equipments for organising events and event management services is permissible.
- Credit of service tax paid on advertisement and sponsorship service availed for promotion of appellant's brand name is admissible.
- Credit of service tax paid on out of pocket expenses reimbursed to advertisement agency professionals and management consultants is not admissible since there being no relation between out of pocket expense and service exported by the appellant.
- Credit of service tax paid on arranging visa and immigration documents to the extent pertaining to the employees visit abroad is admissible. Such service availed to the extent of the family member of employees is not admissible.
- Credit of service tax paid on garden maintenance service is admissible.
- Credit of service tax paid on Rent-a-Cab service availed for pick up and drop of employees is admissible (period December 2010 to March 2011)
- Credit of service tax paid on hotel accommodation service availed by the employees of the company who were required to travel for onsite support and software implementation is not admissible since the possibility of use of such service for personal use of employees cannot be ruled out.

[*HCL Technologies Ltd. vs. CCE (2015) 40 STR 369(Tri.-Del.)*].

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