

WESTERN INDIA CHARTERED ACCOUNTANTS NEWSLETTER



**THE INSTITUTE OF
CHARTERED ACCOUNTANTS
OF INDIA**

(Set up by an Act of Parliament)

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RISE**

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CHAIRMAN'S COMMUNICATION

Respected Members,

"Great things in business are never done by one person. They are done by a team of people" – Steve Jobs.

These words by the great man tell us that the most important ingredient for success is our team work, without which it is difficult to Scale Up our abilities and Rise Up our performance.

I have witnessed this amongst our members as we gear up for the upcoming challenges. We have worked hard together to ensure that our members – from the big cities to the small towns – are prepared to take the best step forward in preparing and guiding their clients for the Goods and Services Tax (GST). We also pledge our full support to Shri Arun Jaitleyji, Hon'ble Finance Minister, towards the smooth roll out of GST from our side.

With the indispensable support of my Council Colleagues and learned faculties, we have conducted multiple seminars and refresher courses to equip our members and students as well as our office assistants. At the same time, we have conducted regular sessions on emerging areas of practice ranging from Data Analytics, Fraud, Risk and Security as well as various fields of Information Systems Audit, LLP, Insolvency and Bankruptcy, BFSI, Internal Financial Controls over Financial Reporting, Risk based Internal Audit and Ind AS to name a few. Our DTIRC was well conceptualised and attended. The Chief Guest on the occasion was Smt. Pawan Parmar Singh, CCIT-4, Mumbai and I thank her as well as all the respected faculties who came from across the country to address members on topics of current relevance. An interactive meeting was also held at ICAI Tower, BKC with respected MVAT officials addressing issues expressed by our members.

The profession is growing and it is our duty to inform members of the professional opportunities which can be explored. We organised "Saksham", a Live Webcast by Women Members' Empowerment Committee of WIRC, on 'Emerging Professional Opportunities'. This webcast was much appreciated by members and we shall organise the same at regular intervals for the benefit of all.

A public awareness meeting and guidance seminar on Real Estate (Regulation & Development) Act, 2016 (RERA), was organised at Ghatkopar. The event was graced by Shri Prakash Mehta, Hon'ble Minister for Housing Development, Maharashtra. We thank him for interacting on emerging issues in this new legislation.

As professionals we undergo a lot of stress. To provide a balanced perspective we organised a lecture meeting on 'Balance Sheet of Life' by Brahma Kumari Shivaniji whose insights were held in high regard by members.

The WIRC International Study tour to England & Scotland was a great success. Members from various fields attending this tour got a chance to interact with the practitioners in the U.K. and deliberate on international practices while also spending some quality time with their family members.

We have our Foundation Day coming up on 1st July. This year we have the privilege of the new CA Curriculum being unveiled by Shri Narendra Modiji, Hon'ble Prime Minister, on 1st July, 2017 at New Delhi. Let's all be a part of this historic moment. It is a joyous occasion for members and their families to perform at the 12th 'Mile Sur Mera Tumhara' cultural evening on 30th June, 2017. I wish you all a Very Happy CA Day and best wishes for a busy season ahead.

With Warm Regards

CA. Vishnu Agarwal
Chairman

Forthcoming Events
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ICAI Tower, Bandra Kurla Complex, Mumbai

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
22/07/2017 Saturday 	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Tax planning for NRIs <ul style="list-style-type: none"> Tax Planning for NRIs FEMA Regulation relating to a) Investments in India b) Investments outside India with rupee funds Do's & Don'ts under FEMA for NRIs TDS provisions for payment to non-residents 	CA. Namrata Dedhia CA. Rajesh P. Shah CA. Gaurang Gandhi CA. Rutvik Sanghvi	CA. Shilpa Shinagare 9820053395 CA. Aniket Talati 9825551448 CA. Sarvesh Joshi 9822022292	CA. Shardul Shah 9820287625 CA. Ritesh Hibare 9773418343 CA. Bipeen Mundade 9223290561 CA. Hiral Mehta 9892592283
22/07/2017 Saturday 	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on ICDS <ul style="list-style-type: none"> General changes, Tax Audit implication, ICDS I Accounting policies, ICDS II Valuation of Inventories ICDS III Construction Contracts, ICDS IV Revenue Recognition, ICDS V Tangible Fixed Assets ICDS VI Effects of changes in foreign exchange rates, ICDS VII Government Grants, ICDS VIII Securities ICDS IX Borrowing Costs, ICDS X Provisions, Contingent liabilities and contingent assets 	CA. Sanjeev Pandit CA. Bijal Desai CA. Chandresh Bimani CA. Ameet Patel	CA. Pradeep Agrawal 9898560967 CA. Priti Savla 9321426883 CA. Satyanarayan Mundada 9422080814	CA. Shardul Shah 9820287625 CA. Abhishek Katre 9821968858 CA. Sunil Sharma 9769949829 CA. Sheetal Mehta 9969403883
29/07/2017 Saturday 	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Business Restructuring <ul style="list-style-type: none"> Forms and Tax Implications of Business Restructuring Forms and Tax Implications of Business Restructuring Provisions of Company law and Competition Commission relating to Mergers and Acquisitions SEBI Regulations, Takeover Code, Implications of Mergers and Acquisitions 	CA. Yogesh Thar CA. Yogesh Thar CA. Marylou Bilawala Eminent Faculty	CA. Drushti Desai 9820335923 CA. Priyam Shah 9824096112 CA. Sushrut Chitale 9821112904	CA. Aniruddh Krishnan 9769087627 CA. Minal Suba 9699672951 CA. Mehul Sheth 9820297310 CA. Parul Saraf 9821162477
05/08/2017 Saturday 	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on FEMA <ul style="list-style-type: none"> FDI & Indirect foreign investments Outbound investments External commercial borrowings Compounding of contraventions 	CA. Isha Sekhri CA. Hinesh Doshi CA. Shabbir Motorwalla CA. Naresh Ajwani	CA. Rakesh Alshi 9819427242 CA. Kamlesh Saboo 9819195333 CA. Abhijit Kelkar 9422126890	CA. Yash Bansal 9819977988 CA. Nayna Barwe 9820082480 CA. Vivek Shah 9819633348 CA. Navneet Lahoti 9824236755
12/08/2017 Saturday 	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on HUF & Family Arrangements <ul style="list-style-type: none"> Preparation of Will and Documents in relation to HUF & Family Arrangements Taxation of HUF, Family Arrangements, Trust & Will Tax Planning through HUF & Family Arrangements 	Adv. Priyahas Jani CA. Vimal Punmiya CA. Nina Kapasi	CA. Sandeep Jain 9819788099 CA. Balkishan Agarwal 9377110634 CA. Vikrant Kulkarni 9881880073	CA. Y. R. Desai 9820448365 CA. Milind Joshi 9930033939 CA. Ajeet Taparia 9920710121
12/08/2017 Saturday 	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Domestic Transfer Pricing <ul style="list-style-type: none"> Indian TP landscape version 2020 India's response to BEPS in TP PE a reality, how to go about attribution of Profits to PE Applicability of TP in other areas - Companies Act, GST, Customs, etc. 	CA. Rakesh Kotak CA. Amit Amlani CA. Bipin Pawar CA. Arun Saripalli	CA. Aniket Talati 9825551448 CA. Sarvesh Joshi 9822022292 CA. Manish Gadia 9820537986	CA. Aniket Kulkarni 9821690559 CA. Shipra Mittal 8080000809 CA. Siddharth Gupta 8080443080 CA. Nidhi Pandya 7506358911

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ICAI Tower, Bandra Kurla Complex, Mumbai

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
18/08/2017 19/08/2017 Friday & Saturday 12 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 2,400/-	Seminar on Internal Audit Friday, 18th August, 2017 <ul style="list-style-type: none"> Internal Audit (IA) Methodology – (IA Infrastructure – Charter / Manual, Risk based IA Plan, IA Process, Reporting, Follow up, ACM, etc.) Risk based IA Plan – (Developing a Risk based IA Plan and updating the Audit Universe) Process Audit – (Audit Process, Sampling, Data Analytics, Audit Evidence & Documentation & Red Flag Indicators) Report Writing – (Presentation of findings, root cause, Impact, recommendations, Management actions & observations & report rating) Saturday, 19th August, 2017 <ul style="list-style-type: none"> Standards on Internal Audit – (Importance of Standards and Compliance) Data Analytics & Tools and Audit Management Software – (Importance of data analytics in IA, application of various tools for data analytics and Audit Management Software) Stakeholder Management & Soft Skills Quality Assurance of IA – (Framework, review of internal and external quality) 	CA. Akhilesh Thakur CA. Milan Mody CA. Delzad Jivasha Eminent Faculty Eminent Faculty CA. Apoorva Yatindra CA. Prashant Chikal CA. Vijay Pandit	CA. Purushottam Khandelwal 9825020844 CA. Pradeep Agrawal 9898560967 CA. Kamlesh Saboo 9819195333 CA. Aniket Talati 9825551448	CA. Abhijit Totade 9819659151 CA. Nehal Turakhia 9833991898 CA. Sandesh Bhandare 9930398330
02/09/2017 09/09/2017 16/09/2017 23/09/2017 Saturdays 12 CPE Hrs	10.00 a.m. to 1.00 p.m. ₹ 2,400/-	Refresher Course in Transfer Pricing 2nd September, 2017 <ul style="list-style-type: none"> Recent Transfer Pricing Developments in India (including secondary adjustment) Key Transfer Pricing Rulings 9th September, 2017 <ul style="list-style-type: none"> BEPS Action Plans 13 – Country by Country Reporting BEPS – Action Plan 8 to 10 (Intangibles) 16th September, 2017 <ul style="list-style-type: none"> APA & MAP – Status update Industry specific transfer pricing issues – Manufacturing & Service industry 23rd September, 2017 <ul style="list-style-type: none"> Brainstorming – Question & Answers [Panel Discussion] 	CA. Vispi Patel CA. Sunil M. Lala CA. Rohan Phatarphekar Shri Anis Chakravarty CA. Tehmina Sharma CA. Mukesh Bhutani CA. T. P. Ostwal CA. Samir Gandhi CA. Dilip Bhatia CA. Vishweshwar Mudigonda CA. Samir Shah	CA. Rakesh Alshi 9819427242 CA. Umesh Sharma 9822079900 CA. Vikrant Kulkarni 9881880073	CA. Vinit Vyas 9930766805 CA. Dhavni Karia 9819900489 CA. Adesh Gupta 9819806769
09/09/2017 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Tax Audit <ul style="list-style-type: none"> Issues in clauses of Tax Audit Standards on Auditing vis-à-vis Tax Audit Various other legal issues in Tax Audit Impact on ICDS on Tax Audit 	CA. Sanjeev Lalan CA. Mehul Shah CA. Ketan Vajani CA. Vishesh Sangoi	CA. Priti Savla 9321426883 CA. Sandeep Jain 9819788099 CA. Hardik Shah 9825510422	CA. Diti Shah 9870131165 CA. Mayur Momaya 9867952010 CA. Alpesh Doshi 9892504512
16/09/2017 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Project Finance <ul style="list-style-type: none"> Insolvency & Bankruptcy Act PE Funding Infrastructure Finance Stress assets funding (Restructuring & alternative fund raising options) 	Eminent Faculties	CA. Sushrut Chitale 9821112904 CA. Umesh Sharma 9822079900 CA. Hardik Shah 9825510422	CA. Vidhyut Jain 9892414386 CA. Abhishek Shah 9773050495 CA. Kinjal Mirani 9930187990

ICAI Tower, Bandra Kurla Complex, Mumbai

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
23/09/2017 Saturday 	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Transfer Pricing <ul style="list-style-type: none"> • Analysis of provisions of Transfer Pricing under the Income-tax Act, 1961 • Valuation Approaches and their applicability under Transfer Pricing • Functions, Assets and Risk Analysis under Transfer Pricing • Case laws and case studies relating to Transfer Pricing 	CA. Darpan Mehta Eminent Faculty Eminent Faculty CA. Ronak Doshi	CA. Drushti Desai 9820335923 CA. Purushottam Khandelwal 9825020844 CA. Lalit Bajaj 9867692321	CA. Abhishek Agrawal 9619818336 CA. Preeti Singhania 9892986278 CA. Virag Shah 7943154500

Mark your Calendar for **32nd REGIONAL CONFERENCE OF WIRC** **12 CPE Hrs**

Dates: 2nd & 3rd September, 2017 Time: 9.00 a.m. to 6.00 p.m. Venue: Hotel Grand Hyatt, Santacruz, Mumbai

Fees ₹ 4,250/-

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 webpage.

#Windows #RansomWare #WannaCry The Server Message Block version 1 (SMBv1) — a 30-year-old file sharing protocol will be removed from the upcoming Windows 10 (1709) Redstone 3 Update. The SMBv1 is one of the internet's most ancient networking protocols that allows the operating systems and applications to read and write data to a system and a system to request services from a server. The WannaCry ransomware, which wreaked havoc last month, was also leveraging an NSA's Windows SMB exploit, dubbed EternalBlue, leaked by the Shadow Brokers in its April data dump. Read more at: <https://goo.gl/a3REGt>



#DataBreach #Cost #CyberSecurity IBM Security and Ponemon Institute presented the 2017 Cost of Data Breach Study: India, their sixth annual benchmark study on the cost of data breach incidents for companies located in India. The cost of data breach increased significantly from 3,704 INR (Indian rupees) in 2016 to 4,210 INR per compromised record. The average total cost also increased from 97.3 million INR in 2016 to 110.0 million INR in 2017. Download and read India Report at: <https://goo.gl/Tu9jqs>



#InternetOfThings #IoT #WebCams #SecurityBreach The Internet of Things is no longer a futuristic idea – it's upon us. Gartner forecasts that 8.4 billion connected things will be in use worldwide in 2017, and will reach 20.4 billion by 2020. Smart things promise a multitude of cost savings and efficiencies. F-Secure's discovery of multiple flaws in two models of Foscam-made IP cameras is another example of a poorly engineered device that offers attackers a n easy target. Should an attacker infiltrate the company network and find such a device, they could infect it with malware that would not only fully compromise the device, but also grant free reign inside the network, including access to network systems and resources. Download and read report at: <https://goo.gl/SyW8Ks>



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Personal Column

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DIRECT TAX
(Contributed by

CA. Haresh P. Kenia & CA. Deepak Lala)



Section 200 of the Income-tax Act, 1961 – Deduction of Tax at Source – Duty of Person Deducting Tax – TDS and Filing of ITR in case both the parents are Dead of Minor

Notification No.5/2017[F.No.DGIT(S)/CPC(TDS)/Notification/2017-18, dated 29/5/2017

It has been brought to the notice of CBDT that in cases of minors whose both the parents have deceased, TDS deductors/Banks are clubbing the interest income accrued to the minor in the hands of grandparents and issuing TDS certificates to the grandparents, which is not in accordance with the law as the Income-tax Act envisages clubbing of minor's income with that of the parents only and not any other relative. Ideally in such type of situations, the income should be assessed in the hands of the minor and the income-tax returns be filed by the minor through his/her guardian. Under sub-rule (5) of Rule 31A of the Income-tax Rules, 1962, the Director General of Income-tax (Systems) is authorised to specify the procedures, formats and standards for the purposes of furnishing and verification of the statements or claim for refund in Form 26B and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements or claim for refund in Form 26B in the manner so specified. In exercise of the powers delegated by the Central Board of Direct Taxes (Board) under sub-rule (5) of Rule 31A of the Income-tax Rules, 1962, the Principal Director General of Income-tax (Systems) hereby specifies that in case of minors where both the parents have deceased, TDS on the interest income accrued to the minor is required to be deducted and reported against PAN of the minor child unless a declaration is filed under sub-rule (2) of Rule 37BA of the IT Rules, 1962 to that effect.

For more details visit www.wirc-icai.org

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



MVAT ACT, 2002

Notification

1. The Government of Maharashtra has issued notification dated 16/5/2017 under section 9(1) of MVAT Act by which Entry 10 in Schedule D is amended to enhance the VAT rate on petrol from 17/5/2017.
2. The Government of Maharashtra has issued notification dated 26/5/2017 by which the amendment is effected to earlier notification dated 9/7/2010 for 1% Composition Scheme for Builders and Developers and 1% is now fixed on advance payment received.

Maharashtra Goods and Services Tax Act, 2017 (MGST).

The Government has brought in Maharashtra Act No. XLIII of 2017 dated 15/6/2017 by which the above MGST Act is enacted in light of National Policy of introducing GST in India from 1/7/2017. In general the provisions are in consonance with CGST Act. Other related laws are also enacted.

MVAT Amendment Act, 2017

The Government of Maharashtra has effected various amendments in MVAT Act and Allied Acts in light of incoming GST. The main impact of the amendment is to restrict the MVAT Act to petroleum products and alcoholic liquors.

The changes are effected by the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 (Mah. Act No. XLII of 2017 dated 29/5/2017.

For more details visit www.wirc-icai.org

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



Issue Based Assessment

Vide Departmental Internal Circular No. 1289 dated 19/6/2017, Instructions have been issued as under:

- In Cases of Statutory Forms (C, F, etc.) submitted by dealers, verification of the same is to be carried out on TIN/XSYS. In case of discrepancy only, Issue Based Assessment will have to be carried out.
- In Cases of Statutory Forms (C, F, etc.) not submitted by dealers, Assessment under CST Act only will have to be carried out

Capital Assets – NOT “Inputs”

The Hon'ble GVAT Tribunal decided Second Appeal No. 427 of 2016, vide Order dated 4/3/2017, in the case of Meghmani Organics Limited, by Holding that the Tax Credit @ 2% cannot be reduced in respect of Plant & Machinery used in the manufacturing of goods, which are sold in the course of Interstate Trade or Commerce. It was held that Capital Goods cannot be covered under the term as “Input” as Inputs are the thing or the goods which go into making of final product. Capital Goods are neither raw material nor inputs and hence, tax credit cannot be reduced for the same.

CORPORATE LAWS
(Contributed by CA. Rahul Joglekar)



MCA (www.mca.gov.in)

MCA notifications GSR (E) dated 13th June, 2017 – Relaxations from applicability of certain provisions of Companies Act, 2013 to Private Companies, Government Companies and Section 8 Companies

In exercise of its powers u/s. 462 of the Companies Act, 2013, the Central Govt. has provided additional relaxations from the applicability of certain provisions of the Companies Act, 2013 to Private Companies, Government Companies and Sec.8 Companies. For complete text of the notification, please refer the link: <http://www.mca.gov.in/Ministry/pdf/ExemptionPrivateCompanies.pdf>

http://www.mca.gov.in/Ministry/pdf/ExemptionGovernmentCompanies_14062017.pdf

http://www.mca.gov.in/Ministry/pdf/ExemptionSection8Companies_14062017.pdf

SEBI (www.sebi.gov.in)

SEBI Circular No. CIR/IMD/DF/51/2017 – Disclosure Requirements for Issuance and listing of Green Debt Securities

SEBI has released a set of guidelines for issuance and listing of green debt securities. These guidelines inter alia include definition of Green Debt Securities, disclosure of various objectives of the issue, review of the processes of the issuer etc. For complete text of the circular, please refer the link: <http://www.sebi.gov.in/legal/circulars/may-2017/disclosure->



requirements-for-issuance-and-listing-of-green-debt-securities_34988.html.

FEMA

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



Abolition of the Foreign Investment Promotion Board (FIPB)

Press Release dated April 26, 2017 issued by the Government of India (GOI) and Office Memorandum dated June 5, 2017 issued by the Ministry of Finance

The Union Cabinet chaired by the Prime Minister has, on April 26, 2017, approved phasing out of FIPB and allowed administrative Ministries/Departments to process application for Foreign Direct Investment (FDI) required Government approval.

Consequently, the Ministry of Finance issued on June 5, 2017 Office Memorandum for abolition of FIPB. Subsequent to the abolition of the FIPB, the work of granting Government approval for foreign investment under the extant FDI Policy and FEMA Regulations is entrusted to the concerned Administrative Ministries/Departments. The eleven notified sectors/activities requiring Government approval with the concerned Administrative Ministry/Department are also listed down in the said Office Memorandum.

For further detailed guideline, please refer to aforesaid Office Memorandum at:

<http://fipb.gov.in/Forms/OMabolitionFIPB.pdf>

Issuance of Rupee denominated bonds overseas

A. P. (DIR Series) Circular No. 47 dated June 7, 2017

The extant framework for issuance of Rupee denominated bonds overseas (popularly known as 'Masala Bonds') has been reviewed with a view to harmonize the various elements of the ECB framework and it has been decided that any proposal of borrowing by eligible Indian entities by issuance of these bonds will be examined at the Foreign Exchange Department, Central Office, Mumbai.

The provisions relating maturity period, all-in-cost ceiling and recognised lenders (investors) of Masala Bonds have also been revised as under:

Maturity period: Minimum original maturity period for Masala Bonds raised up to USD 50 million equivalent in INR per financial year should be 3 years and for bonds raised above USD 50 million equivalent in INR per financial year should be 5 years.

All-in-cost ceiling: The all-in-cost ceiling for such bonds will be 300 basis points over the prevailing yield of the Government of India securities of corresponding maturity.

Recognised investors: Entities permitted as investors (under the provisions of paragraph 3.3.3 of the Master Direction No. 5 dated January 1, 2016 as amended from time-to-time) but should not be related party within the meaning as given in Ind AS 24.

CO-OPERATIVE SECTION

(Contributed by CA. Ramesh Prabhu)



Co-operative Audit Empanelment for 2017 to 2020

(i) The Scrutiny Committee constituted at the district level by respective DDR have completed the scrutiny. They have recommended the applicants who have fulfilled all the documents and who are eligible for empanelment

to the Commissioner Officer for next course of action. The applicants whose application has been rejected have received an e-mail with the reasons for rejection.

(ii) Appeal before the Grievances Committee: Such rejected applicants now will be able to file a complaint before the Grievance Committee headed by the Divisional Joint Registrar from 21st June, 2017 to 29th June, 2017 and the applicants whom the approval is given by the Grievances Committee will be allowed to upload information from 27th June, 2017 to 4th July, 2017.

RERA Update

(i) *Suo motu* case 1/2017 : RERA vs. Sai Estate Consultant Chembur Pvt. Ltd. levied a penalty of ₹ 10,000/- per day for 12 days aggregating to ₹ 1,20,000/- for advertising and facilitating the sale of the project which was not registered with RERA.

(ii) MahaRERA order : Dated 11th May 2017 : Recognised the role of the land owners, investors, finances who will be deemed to be Co-promoter who may share the revenue or the area in a real estate project and their responsibility will be same as the promoter regarding all aspect including the opening and operation of designated account.

(iii) MahaRERA order No. 2/ 25th May 2017 : Every real estate project/Agent registered with MahaRERA require to provide the local address.

For more details visit www.wirc-icai.org

DIRECT TAX

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



JUDICIAL PRONOUNCEMENTS

SUPREME COURT DECISIONS

Honda Siel Cars India Ltd vs. CIT (Supreme Court)

Technical know-how: Entire law is explained on whether expenditure incurred under a Technical Collaboration Agreement for setting up of new plant for the first time to manufacture cars constitutes capital or revenue expenditure.

TRIBUNAL DECISIONS

ITO vs. Aditya Narain Verma (HUF) (ITAT Delhi)

Section 50C: Failure by the Assessing Officer (AO) to refer the valuation of the capital asset to a Valuation Officer instead of adopting the value taken by the stamp duty authorities is a fatal error and the assessment order has to be annulled. The matter cannot be set aside to the AO for a second chance. The power of the ITAT to set aside cannot be exercised so as to allow the AO to cover up the deficiencies in his case.

When the assessee in the present case had claimed before the AO that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer, the AO should have referred the valuation of the capital asset to a Valuation Officer instead of adopting the value taken by the State authority for the purpose of stamp duty. The very purpose of the Legislature behind the provisions laid down u/s. 50C(2) of the Act is that a Valuation Officer is an expert of the subject for such valuation and is certainly in a better position than the AO to determine the valuation. Thus, non-compliance of the provisions laid down



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u/s. 50C(2) by the AO cannot be held valid and justified.

For more details visit www.wirc-icai.org

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



Gemological Institute International Inc vs. DCIT [TS-189-ITAT-2017(Mum.)] dated 9th May, 2017

Facts

Gemological Institute International Inc ('assessee') is a non-resident company incorporated in USA and engaged in grading and certification of diamonds. Assessee had entered into a training and technical service agreement with GIA Laboratories India Pvt. Ltd. for training the employees of GIA India and providing technical services for the implementation of grading policies, procedures and processes.

In pursuance to the said agreement, the assessee raised separate debit notes for 'fee for training and technical services' rendered by it to GIA India and also on account of 'reimbursement of travel expenses, group health insurance and other minor incidental expenses' incurred by it pertaining to the aforesaid assignment.

The assessee filed its return of income excluding the amount received by way of reimbursement, for the reason that these constituted actual cost borne by the assessee, and therefore, these were not in the nature of income.

AO held impugned sum as part of FTS and added the same. On appeal, CIT (A) upheld AO's order.

Aggrieved, assessee filed an appeal before Mumbai ITAT.

Issue

Whether expenses incurred on cost to cost basis (Reimbursement) will be included in FTS?

Held

ITAT notes that assessee was entitled to receive by way of fee only the amount incurred by towards cost to 'employ' individuals plus mark-up of 6.5%. It remarks that "the expression cost to 'employ' individuals is different from the expression cost incurred to 'depute' a person". It ruled that the cost of employment would include only internal costs incurred by organisation to employ individual, whereas any cost incurred over and above that to depute the individual for a particular assignment (i.e. travel, insurance etc.), would be external cost, not includible as FTS.

ITAT further noticed that there was a clear bifurcation in the agreement between the internal cost incurred by assessee and external cost borne or paid by it on behalf of GIA India.

ITAT referred past Supreme Court judgments wherein it was held that "Once the character of the payment is found to be in the nature of reimbursement of the expenses, it cannot be income chargeable to tax". ITAT also took into account Transfer Pricing study report of GIA India where it was evident that there was no profit element involved in expenses reimbursed.

ITAT thereby directed AO to delete impugned addition.

ITAT thus ruled in assessee's favour.

Marck Biosciences Ltd. vs. Income tax Officer, International Taxation -II, Ahmedabad [275 (Ahmedabad Trib.)/ [2017] 164 ITD 205 (Ahmedabad Trib.) dated 28th March, 2017

Facts

The assessee is involved in the business of manufacturing pharmaceutical products.

The assessee made payment to a US company for professional fee for global biopharmaceutical strategic counselling and advisory services. The assessee did not deduct TDS on the ground that the income embedded therein was not taxable in India in view of the provisions of the DTAA.

AO was of the view that TDS should be deducted at the rate of 10% on the said payment as the services rendered by the US entity were covered by the definition of royalty under Exp. 2 to Section 9(1)(vi) and Article 12(3) (a). Hence, tax withholding liability u/s. 201 r.w.s. 195 was raised on the assessee.

The assessee aggrieved also preferred an appeal before CIT but without any success.

Aggrieved, assessee preferred an appeal to ITAT.

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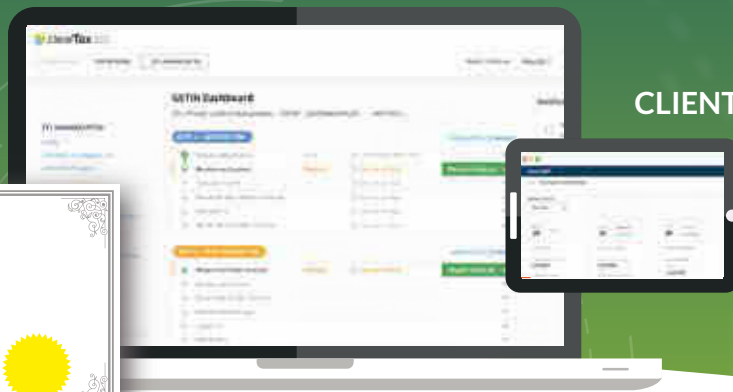
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