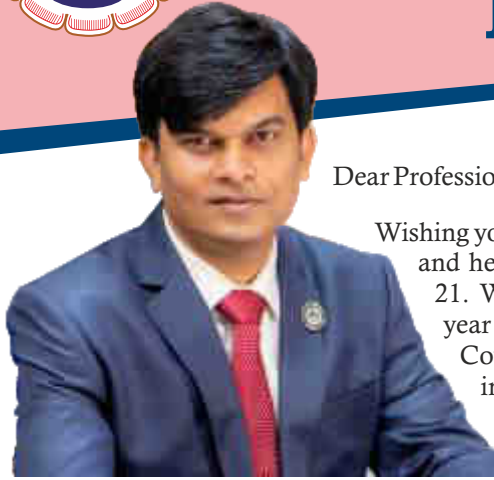




Western India Chartered Accountants Newsletter



Dear Professional Colleagues,

Wishing you and your family a prosperous and healthy new financial year 2020-21. We are beginning this financial year amidst a lockdown due to the Covid 19 pandemic. It is very important to stay at home and also ensure that family members, relatives, friends, people in your building / society / neighbourhood and everyone else you know stays at home to maintain social distancing. I request everyone to take good care of yourself and your family; with positive energy we can conquer this disease sooner than later. On behalf of the entire fraternity, I would like to extend our gratitude to all front-line workers and essential service providers who are risking their lives on a daily basis for us.

Krishna, in the Bhagavad-Gita, professes isolation as an essential characteristic of the wise who continually seek supreme wisdom. Such seekers of wisdom constantly live in solace and are detached from the general mass of people. They see social isolation not as a threat but as an opportunity for it provides them with a chance to analyse, contemplate and meditate for better solutions for a greater good.

As we undergo social distancing and isolation for the overall benefit of ourselves, our loved ones, society and country, let us utilise this golden opportunity to improve ourselves, sharpen our skills and become a better professional and person.

Certain activities which can help us during this lockdown include:

1. Health Care

“Health is Wealth”- a small but effective quote which we learned back in our school days. But growing up we started taking health for granted. In these dire situations of global pandemic, we realise the worth of our health. We can take care of our health in very simple steps like Yoga, meditation, doing in-house exercises, etc. Having a controlled and nutritious diet also helps in achieving a healthy lifestyle.

2. Family time

Our professional commitments might result in a trade-off between work life balance. The current situation is a great opportunity for

Message from Chairman's Desk

people to spend quality time with their families and make it memorable.

3. Skill development

In our hectic work schedule, staying up to date with ever changing industry and professional standards might be an uphill task. We can utilize this time for upgrading our knowledge, both professional and technical. It shall help both members in practice and in industry deal with the upcoming challenges due to technological disruptions.

In order to help members continuously upgrade and update themselves from the comfort of their homes, a one-hour webinar has been scheduled every day from Monday to Saturday between 4.00 p.m to 5.00 p.m.

WIRC of ICAI takes this opportunity to thank you all for the overwhelming response to the first webinar on Wednesday (1st April, 2020). **More than 900 participants attended the webinar.**

ICAI Initiatives

Responsibility towards the society

Apart from maintaining social distancing and isolation to break the chain of Covid 19 virus, it is our moral and social responsibility to help needy people. We should be thankful that we are currently in a position to be able to help others and we should utilise this opportunity for the same. I would request you to generously contribute to “ICAI COVID-19 Relief Fund” which shall be utilised to support government initiatives to strengthen infrastructure and fight the pandemic. The details are available at https://www.icai.org/new_post.html?post_id=16403

WIRC initiatives

Help desk for students and members

While all of us are working from home, we understand that there would be certain matters relating to WIRC and ICAI which you would like to get clarified / resolved. WIRC of ICAI have created a helpdesk where the queries can be posted by members and students and we would channelize it to the concerned person for necessary action / response. It would be appreciated if the query contains all details so that prompt action can be taken.

You are requested to post your queries on <https://helpdesk.wirc-icai.org>



Office Bearers

CA. Lalit Bajaj
Chairman

CA. Vishal P. Doshi
Vice Chairman

CA. Murtuza Kachwala
Secretary

CA. Anand Jakhotiya
Treasurer



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CA. Priti Savla

Ex-Officio

CA. Nihar Jambusaria



Forthcoming Events

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Law Updates & Miscellaneous

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Bank Audit

The statutory audit of banks forms an integral and important part of the control mechanism of the banking sector. It enhances the stakeholders' confidence in the credibility of financial information provided by banks at year end. It is essential that the statutory auditors are well equipped in terms of their knowledge of the banking industry to conduct effective and efficient bank audits.

In order to assist members in maintaining quality in bank audits, Auditing and Assurance Standards Board of ICAI, has issued "Guidance Note on Audit of Banks (2020 Edition)", providing detailed guidance to the members to undertake audits of bank and bank branches.

Further training session on bank audit is being arranged at the Regional and Branch levels through webinars and e-learning for the benefit of members.

Members can access the guidance note at <https://resource.cdn.icai.org/58602aasb47736-b.pdf>

Anthology on KAM & other Reporting in Audit Reports (SA 701, 705, 706)

We are proud to announce that WIRC of ICAI has published an e-publication titled "Anthology on KAM & other Reporting in Audit Reports (SA 701, 705, 706)". This digest comprises over 1200+ audit reporting across 190+ audit reports of listed companies covering 28 different industries. The digest shall help our members as well as finance professionals find various Key Audit Matters and reporting at one location.

The complete list with search facility can be assessed at <https://wirc-icai.org/applications/wirc-publication/>.

Vision Statement

As we move into the new financial year, I would like to present the vision statement of our Region for 2020-21. The vision shall be achieved through the combined endeavours of the torchbearers of ICAI, Central Council Members, Regional Council Team, CA members and students.

The vision statement is as follows:

Ethics & Competence Development

- Ethics being the core of our profession, regular learning on the same. A short video of a few minutes to be shared with every POU to be played during every CPE event.
- To pro-actively interact with members for successful penetration of CABF.
- To create a task force consisting of youths in different facets of the profession and get their ideas on the main board.
- To steer research activity and make it a core of our whole year agenda.
- To enter into MOU's and arrangements with various universities and institutes local and global for a 1-year training programmes for graduate students in CA offices,

fostering research leading to PHD, collaboration for developing competency and capacity of members, etc.

Governance & Public Relations

- To bring best governance practices in the overall working of WIRC and enhance environment for optimum utilisation of infrastructure.
- To generate opportunities vis-à-vis relations with local bodies, co-operatives, charitable institutions, etc.
- To make effective representations at inception of laws.
- To have more interaction with semi government bodies, institutions, etc. and ensure proper PR activity to capture the idea of larger professional interest.
- To run successful CSR activities and ensure plantation of twelve lakh trees and donation of 12,000 blood units across the region.

Innovation

- Organising events on Data Analytics, Cyber Security, Artificial Intelligence, etc. Enabling members to be equipped keeping in mind current scenario, for skill development and enhancement.
- To conduct industry specific events and research projects for the general benefit of industry and members.
- More interaction with members in industry and understanding their key points.

Knowledge Hub

- To make WIRC knowledge hub and members future ready and enable strengthening export of services globally.
- To run mentorship programmes and try to identify and consolidate available resources for the benefit of new members and students.
- To run result-oriented Career Counselling Programmes across the Region by mapping impact analysis, personalise videos of success stories, multiple help desks, etc.
- To enable more reading rooms across the Region.
- Creating a resource pool of speakers and various technical subjects to make knowledge sharing available at remotest of the places

Looking forward for your active cooperation and support in achieving our vision and praying that God will shower his blessings and help us during this difficult time.

With Best Wishes

CA. Lalit Bajaj
Chairman

Forthcoming Events

Date & Day	Time & Fees	Topic(s)	Speaker(s)	Regional Council Members (Chief Co-ordinators)	Co-ordinators
ICAI Tower, Bandra Kurla Complex, Mumbai					
06/06/2020 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/- (Incl. GST)	Seminar on Office Productivity - Technology, Tools and Tips Email Management Practice Management & Collaborative Working Document Management & Back up Management Calendar/Timesheet/Task Management Office security	CA. Maitri Chheda CA. Mitesh Katira CA. Mayur Jain CA. Alok Jajodia CA. Pranay Kochar	CA. Murtuza Kachwala 9833015334 CA. Vimal Agrawal 9320617447 CA. Vikash Jain 9327715892	CA. Gautam Mota 9594339945 CA. Abhishek Katre 9821968858 CA. Alpesh Doshi 9892504512
06/06/2020 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/- (Incl. GST)	Seminar on Internal Audit Management Expectations from Internal Auditors Panel discussion: Fundamentals of an Effective Risk Based Internal Audit Program Enhancing Effectiveness of conducting Internal Audit Panel discussion: Evolving Role of Internal Audit in Effective Corporate Governance Auditing the organizational culture	Eminent Facuties	CA. Murtuza Kachwala 9833015334 CA. Kamlesh Saboo 9819195333 CA. Balkishan Agarwal 9377110634	CA. Gaurav Save 9969001607 CA. Nitin Ombavat 9773397805 CA. Ritesh Hibare 9773418343
06/06/2020 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/- (Incl. GST)	Seminar on Audit report (KAM, qualifications, etc.) Effectiveness of audit report from stakeholders perspective (panel discussion) SA 701 - Communicating Key Audit Matters in Independent audit reports SA -705 & SA 706 revised : Modifications to the opinion & Emphasis of Matter and other matter Revised SA 720 – Auditors responsibilities relating to other information	CA. Henil Patel CA. Milan Mody C.A. Abuali Darukhanawala Eminent Speaker	CA. Vishal P. Doshi 9824059901 CA. Sushrut Chitale 9821112904 CA. Chintan Patel 9099921163	CA. Vinit Vyas 9930766805 CA. Rahul Soni 9773123976 CA. Amogh Jain 7014083760
13/06/2020 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/- (Incl. GST)	Real Estate, Construction & Infrastructure Industry Infrastructure development and challenges (Special focus on Transportation sector – Highways) Panel Discussion : Real Need of the Hour to sustain infrastructure development Real Estate development and challenges Panel Discussion : Raising project finance in a stressed environment Recent changes in the taxation regime for Infrastructure, construction and real estate development	CA Kevin Daftary Eminent speakers form the Industry CA Rohit Mehta CA Naresh Sheth	CA. Drushti Desai 9820335923 CA. Rakesh Alshi 9819427242 CA. Jayesh Kala 9820010113	CA. Sanjay Nikam 9820446329 CA. Girish Shekhar 9820812584 CA. Bipeen Mundade 9223290561

Forthcoming Events

Date & Day	Time & Fees	Topic(s)	Speaker(s)	Regional Council Members (Chief Co-ordinators)	Co-ordinators
ICAI Tower, Bandra Kurla Complex, Mumbai					
13/06/2020 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/- (Incl. GST)	Seminar on Developments in Pharmaceuticals & Life-sciences Industry through Risk Assessment & Internal Audits Pharmaceutical and Life-science Industry – Overview and Growth Opportunities Impact of Data Protection and other Information Security related requirements and challenges Panel discussion: Risk in Pharma Industry: Strategic, Operational, Regulatory and Financial Risks Panel discussion: Recent changes in Regulations impacting Pharma industry: Companies Act, Ind. AS/IFRS, GST, etc. Industry Specific Accounting treatment – Research & Development cost, etc. Data Analytics and Inferences	Eminent Faculties	CA. Murtuza Kachwala 9833015334 CA. Manish Gadia 9820537986 CA. Abhijit Kelkar 9422126890	CA. Kamlesh Kothari 9820083144 CA. Aniket Kulkarni 9821690559 CA. Ashish Bakliwal 9004315053
20/06/2020 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/- (Incl. GST)	Seminar on Technology and disruptions for CAs Key note session on Disruptions and upcoming tech Session on Fintech Understanding what Fintech, various Fintechs, Value additions Technology contracts, Software development, Payment gateways and wallets Bitcoin and Cryptocurrencies Use of Technology in Audits and automations AI, Block, Data Analytics Tools and implementation for Data Analytics and Big Data ACL, Python, Idea	CA. Abhinav Agarwal Eminent Faculty CA. Neeraj Swaroop Eminent Faculty CA. Ankit Duggar	CA. Arpit Kabra 9819007027 CA. Yashwant Kasar 9822488777 CA. Umesh Sharma 9822079900	CA. Shweta Jain CA. Anisha Shaikh 9867313969 CA. Milind Joshi 9930033939
20/06/2020 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/- (Incl. GST)	Seminar on Energy & Utilities Industry Global Energy & Utilities Landscape Energy & Utilities value chain in India Panel Discussion: Impact of different regulations on Energy & Utility sector – hindrance on Energy conservation? Panel Discussion: Role of Internal auditors to act as a pivot between sustainability & profitability. Major Financial Instruments in Energy & Utility industry and their impact on Financial statements.	Eminent Faculties	CA. Priti Savla 9321426883 CA. Drushti Desai 9820335923 CA. Arpit Kabra 9819007027	CA. Mayur Momaya 9867952010 CA. Parul Saraf 982162477 CA. Mukund Mall 9322224142

Forthcoming Events

Date & Day	Time & Fees	Topic(s)	Speaker(s)	Regional Council Members (Chief Co-ordinators)	Co-ordinators
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ICAI Tower, Bandra Kurla Complex, Mumbai

27/06/2020 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/- (Incl. GST)	Seminar on Banking and Financial Services Covid-19: Crisis and Opportunities Panel discussion: Are we ready for work place disruptions? Time to re align the strategies, policies and decisions Internal Audit in Disruptive environment – Use of Digital tools Panel discussion: Risk, Impact and Mitigations in various segments of Financial Sector Growing potential for Fintechs and startups	Eminent Faculties	CA. Hitesh Pomal 9824049402 CA. Anand Jakhotiya 9325444644 CA. Shilpa Shinagare 9820053395	CA. Y. R. Desai 9820448365 CA. Amish Sangoi 9867757972 CA. Gaurav Save 9969001607
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Webinar form 6th April till 13th May 2020 from 4.00 p.m. to 5.00 p.m.

Date	Day	Topic	Name of the Speaker
06.04.2020	Monday	How to become a good speaker?	CA Rammohan Bhavne
07.04.2020	Tuesday	Business strategy during recession	CA Rammohan Bhavne
08.04.2020	Wednesday	New Skills (hard and soft) for CAs in the changing world	CA Robin Banerjee
09.04.2020	Thursday	Decoding the recent Direct tax measures promulgated by the Indian Government due to outbreak of Pandemic - COVID 19	CA Virat Bhavsar
10.04.2020	Friday	Impact of the RBI measures on the Banking Auditors	CA Charanjit Attra
11.04.2020	Saturday	Impact of the ECL provisioning on NBFC	CA Charanjit Attra
13.04.2020	Monday	Independent Directors: an opportunity for CAs	CA Robin Banerjee
14.04.2020	Tuesday	Report writing	CA Swaminathan Srinivasan
15.04.2020	Wednesday	Cross Border Supply Chain Structuring	CA Aditya Hans
16.04.2020	Thursday	Ease of Doing Business - Incorporation of Company with Spice+ Form	CA Mehul Shah
17.04.2020	Friday	Frauds in Banking Sector and Forensic	CA Gyandeep C. Pipara

Date	Day	Topic	Name of the Speaker
18.04.2020	Saturday	Bank Concurrent Audit	CA Meera Joisher
20.04.2020	Monday	Enterprise Risk Management	CA Dipen V. Trivedi
21.04.2020	Tuesday	Audit of Third Party Service Provider (From Information Security perspective)	CA Hemang Doshi
22.04.2020	Wednesday	SA 701	CA Padmashree Crasto
23.04.2020	Thursday	Ind. AS 115	CA Vajjayantimala Belsare
24.04.2020	Friday	Certification Engagements	CA Aleem Lilani
25.04.2020	Saturday	Important updates in Companies Act, 2013 during the FY 2019-20	CA Padmashree Crasto
27.04.2020	Monday	RERA	CA Ashwin Shah
28.04.2020	Tuesday	Data Analytics for Auditors using IDEA - Overview and Case Studies	Jairam Rajshekar
29.04.2020	Wednesday	Cross-border film shoots: case study covering direct tax implications	CA Prashant Bhojwani
30.04.2020	Thursday	Audit Report and reporting to Audit Committee	CA Manish Pipalia
01.05.2020	Friday	Communication Skills (Verbal and non-verbal communication)	CA Hiram Shaikh
02.05.2020	Saturday	Latest controversies in GST	CA Avinash Poddar
04.05.2020	Monday	State & National Subsidy	CA G. B. Modi
05.05.2020	Tuesday	Fraud Investigations – Recovery Options	Rajkumar Shrivastav
06.05.2020	Wednesday	Vivad Se Vishwas	CA Vyomesh Pathak
07.05.2020	Thursday	Latest Amendments in GST	CA Avinash Poddar
08.05.2020	Friday	Value addition through IA	CA Prashant Daftary
09.05.2020	Saturday	Internal Audit in times of Covid -19 (to include how technology can be leveraged to work from home, report discussions, etc.)	CA Prashant Daftary
11.05.2020	Monday	COSO Internal Control Framework	CA Manindra Prakash
12.05.2020	Tuesday	Overview of External Commercial Borrowings	CA Darshana Jain
13.05.2020	Wednesday	Risk 2020	CA Bhavin Parekh

Law Updates

DIRECT TAX – LAW UPDATE

CA. Haresh P. Kenia, CA. Deepak Lala

INCOME-TAX (THIRD AMENDMENT) RULES, 2020 - AMENDMENT IN RULE 6DD INSERTION OF RULE 6ABBA NOTIFICATION NO.8/2020[G.S.R.56(E)/F.NO.370142/14/2019-TPL], DATED 29-1-2020

The CBDT has inserted Rule 6ABBA wef 1st September, 2019 prescribing the other electronic modes for the purposes of clause (d) of first proviso to section 13A, clause (f) of sub-section (8) of section 35AD, sub-section (3), sub-section (3A), proviso to sub-section (3A) and sub-section (4) of section 40A, second proviso to clause (1) of Section 43, sub-section (4) of section 43CA, proviso to sub-section (1) of section 44AD, second proviso to sub-section (1) of section 50C, second proviso to sub-clause (b) of clause (x) of sub-section (2) of section 56, clause (b) of first proviso of clause (i) of Explanation to section 80JJA, section 269SS, section 269ST and section 269T, namely: credit card, debit card, net banking, IMPS, UPI, RTGS, NEFT, BHIM. It has also amended Rule 6DD to specify cases and circumstances in which a payment or aggregate of payments exceeding ten thousand rupees may be made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as prescribed in rule 6ABBA.

INCOME-TAX (FOURTH AMENDMENT) RULES, 2020 - INSERTION OF RULES 21AE & 21AF AND FORM NO. 10-IC AND FORM NO. 10-ID

NOTIFICATION G.S.R. 110(E) [NO. 10/2020/F. NO./370142/34/2019-TPL], DATED 12-2-2020

The CBDT in exercise of the powers conferred by section 115BAA and section 115BAB read with section 295 the Income-tax Act, 1961 has inserted Rule 21AE and prescribed Form 10-IC for exercising option under sub-section 5 of section 115BAA. It has also inserted Rule 21AF and prescribed Form 10-ID for exercising option under sub-section 7 of section 115BAB.

INCOME-TAX (FIFTH AMENDMENT) RULES, 2020 - INSERTION OF RULE 114AAA NOTIFICATION G.S.R. 112(E) [NO.11/2020/F.NO. 370149/166/2019-TPL], DATED 13-2-2020

In exercise of the powers conferred by proviso to sub-section (2) of section 139AA read with section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes has inserted new Rule 114AAA in the Income Tax Rules, 1962 prescribing the manner of making permanent account number inoperative vide Income-tax (5th Amendment) Rules, 2020, which shall come into force from the date of publication in the official gazette. As per Rule 114AAA, where a person, who has been allotted the permanent account number as on the 1st day of July, 2017 and is required to intimate his Aadhaar number under sub-section (2) of section 139AA, has failed to intimate the same on or before the 31st day of March, 2020, the permanent account number of such person shall become inoperative immediately after the said date for the purposes of furnishing, intimating or quoting under the Act. Further, where a person, whose permanent account number has become inoperative as per above, is required to furnish, intimate or quote his permanent account number under the Act, it shall be deemed that he has not furnished, intimated or quoted the permanent account number, as the case may be, in accordance with the provisions of the Act, and he shall be liable for all the consequences under the Act for not furnishing, intimating or quoting the permanent account number. Where the person whose permanent account number has become inoperative as above, has intimated his Aadhaar number under sub-section

(2) of section 139AA after the 31st day of March, 2020, his permanent account number shall become operative from the date of intimation of Aadhaar number, for the purposes of furnishing, intimating or quoting under the Act. The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) shall specify the formats and standards along with the procedure for verifying the operational status of permanent account number.

DIRECT TAX – RECENT JUDGMENT

CA. Paras K. Savla, CA. Hemant R. Shah

S.80IA- Conversion of partnership firm into Company

Partnership firm is converted into company. On such statutory vesting, all the properties of the firm, in law, vest in the company and the firm is succeeded by the company. The firm ceases to exist and assumes the status of a company after its registration as a company. A priori, it must follow that the business is carried on by the enterprise owned by a company registered in India and the agreement entered into between the erstwhile partnership firm and the State Government, by legal implication, assumes the character of an agreement between the company registered in India and the State Government for (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating a new infrastructure facility. Hence it was held requirement of S.80IA(i)(b) was fulfilled and company is entitled for the deduction – CIT v. Chetak Enterprises (P.) Ltd. [2020] 115 taxmann.com 108 (SC)

S. 43B Unutilised MODVAT Credit does not qualify for deduction

The MODVAT credit was accumulated to the account of the assessee due to payment of Excise Duty on raw materials and inputs which were supplied to it by the suppliers and reflected in the invoices by which raw materials and inputs were supplied. There is no denial to the fact that the appellant was entitled to utilise this credit in payment of Excise Duty to which the assessee was liable in payment of Excise Duty on manufacture of its products.

The credit of Excise Duty earned by the appellant under MODVAT scheme as per Central Excise Rules, 1944 is not sum payable by the assessee by way of tax, duty, cess. The scheme under Section 43B is to allow deduction when a sum is payable by assessee by way of tax, duty and cess and had been actually paid by him.

The deductions under Section 43B is allowable only when sum is actually paid by the assessee. In the present case, the Excise Duty leviable on appellant on manufacture of vehicles was already adjusted in the concerned assessment year from the credit of Excise Duty under the MODVAT scheme. The unutilised credit in the MODVAT scheme cannot be treated as sum actually paid by the appellant. The assessee when pays the cost of raw materials where the duty is embedded, it does not ipso facto mean that assessee is the one who is liable to pay Excise Duty on such raw material/inputs. It is merely the incident of Excise Duty that has shifted from the manufacturer to the purchaser and not the liability to the same.

Accordingly it was held that the unutilised credit under MODVAT scheme does not qualify for deductions under Section 43B of the Income Tax Act.

S.12AA(3) Non-compliant of section 2(15) will not automatically lead to cancelation of registration

The view taken by the Director is concerned that institution is directly hit by the proviso to Section 2(15) of the Act and such

Law Updates

satisfaction may lead to denial of exemption to the respondent in the assessment proceeding for the relevant assessment year but certainly cannot be a ground for cancellation of registration under section 12AA(3). The competent authority under section 12AA(3) must be satisfied that the activities of the Trust are not genuine or that the activities are not being carried out in accordance with the objects of the Trust or the Institution. Such satisfaction must be recorded as a matter of fact on the basis of specific materials on record. Merely saying that the activities of the respondent is hit by the proviso to section 2(15) of the Act, would not lead to automatic cancellation of registration as that is not a ground provided under section 12AA(3) of the Act for cancellation of registration. CIT(E) v. Mumbai Metropolitan Region Development Authority [2020] 115 taxmann.com 71 (Bombay)

143(3) E-assessment

The Government of India has introduced E-Governance for conduct of assessment proceedings electronically. It is a laudable steps taken by the Income-tax Department to pave way for an objective assessment without human interaction. At the same time, such proceedings can lead to erroneous assessment if officers are not able to understand the transactions and statement of accounts of an assessee without a personal hearing. The assessee should have to be therefore at least called for an explanation in writing before proceeding to conclude that the amount collected by the assessee petitioner was unusual. The assessment proceeding under the changed scenario would require proper determination of facts by proper exchange and flow of correspondence between the petitioner and the respondent Assessing Officer - Salem Sree Ramavilas Chit Company (P.) Ltd. V. DCIT [2020] 114 taxmann.com 492 (Madras)

S. 220 Stay of demand

Assessee application for grant stay of demand was rejected and Assessing Officer asked assessee to pay 20% of the disputed demanded amount on the basis of an Office Memorandum, dated 31.01.2017. Writ petition was filed against the said order. Stay was granted post payment of part demand - Suresh Anuradha v, CIT [2020] 115 taxmann.com 73 (Madras)

Penalty can be levied for deliberate defiance of the law or wilful contravention of the law

A careful and conjoint reading of the two provisions i.e. Sections 105 and 108 would therefore make it clear that imposition of penalty is to be proceeded separately as a separate proceeding. Merely because in the assessment order the Assessing Officer comes to a conclusion that the assessee had failed to collect the STT or had failed to pay such STT to the credit of the Central Government, it would not ipso-facto lead to imposition of penalty. Once such a conclusion is reached, the assessee is required to be provided reasonable opportunity of hearing and during the hearing if the assessee can prove that there was reasonable cause for such failure, no penalty shall be imposed.

The expression 'penalty' is a word of wide significance, but in substance penalty is in the nature of punishment. Therefore, before imposing penalty the Assessing Officer must come to the conclusion that there was deliberate defiance of the law or wilful contravention of the law by the assessee - PCIT v. National Stock Exchange [2020] 115 taxmann.com 302 (Bombay)

S. 24 Deduction on interest where property commonly occupied and let to financially independent Son & Daughter

It was observed that the arrangement is highly unusual, particularly considering that the rent is in respect of a self-owned property (i.e., for which no rent is being paid), which constituted the family's residence, with, further, the assessee's son and daughter being unmarried. That, however, to our mind, may

not be conclusive of the matter. Being a private arrangement, not involving any third party, not informing the cooperative housing society may also not be of much consequence.

The assessee's major son and daughter are financially independent (or substantially so), with independent incomes, sharing the interest burden of their common residence with their father. And, as such, instead of transfer of funds to him per se, have regarded, by mutual agreements, the same as rent, as that would, apart from meeting the interest burden to that extent, also allow tax saving to the assessee-father. A genuine arrangement cannot be disregarded as the same results or operates to minimize the assessee's tax liability.

It was held that the assessee's interest claim cannot be allowed in full and shall have to be suitable proportioned between the self-occupied and rented property. The assessee shall provide a reasonable basis for such allocation as well as the working of the area let. We say so as it may well, in view of the joint residence, be that no area (portion) is specified in the rent agreements. The number of family members living jointly; their living requirements - which may not be uniform; fair rental value of the property, etc., are some of the parameters which could be considered for the purpose - Md. Hussain Habib Pathan v. ACIT [2020] 115 taxmann.com 179 (Mumbai - Trib.)

INTERNATIONAL TAXATION

CA. Hinesh Doshi, CA. Ronak Soni

Alstom India T & D India Ltd. vs. Assistant Commissioner of Income Tax [TS-79-ITAT-2020 (CHNY)] dated 7th January, 2020

Facts:

The assessee, an Indian company, was engaged in the business of manufacture of heavy electrical equipments and was also engaged in execution of projects involving transmission and distribution of power and other turnkey projects.

The assessee paid testing fees to the Netherland company to test the transformers manufactured by the assessee and did not deduct TDS on these payments.

AO disallowed the payments u/s 40(a)(ia) of Income Tax Act due to non-deduction of TDS.

On appeal before CIT against AO's order, CIT ruled in favour of the revenue.

Aggrieved, the assessee filed an appeal with ITAT.

Issue:

Whether the testing fees paid to foreign company can be considered as Fees for technical services under India-Netherlands DTAA?

Whether TDS u/s 195 of IT Act will be applicable on these payments?

Held:

ITAT observed that the transformers manufactured by the assessee company were sent to Netherlands for testing and the Netherlands company only sent report.

ITAT opined that knowledge of testing was not made available to the assessee and in absence of knowledge made available as per Article 12(4) of India-Netherlands DTAA, it could not be considered as fees for technical services.

ITAT relied on the Tribunal's decision in the case of Romer Labs Singapore Pte. Ltd. and concluded that that payment made to Netherland company was not liable to tax deduction at source u/s. 195

Accordingly, ITAT ruled in favour of the assessee.

Law Updates

Roche Diagnostics India Pvt Ltd vs. Assistant Commissioner of Income Tax [TS-38-ITAT-2020(MUM)] dated 10th January, 2020

Facts:

The assessee company was engaged in distribution of biomedical equipment, reagents and spares for such equipment in India.

The assessee made payments to non-resident entities towards employees' participation fees in conference/seminar held outside India without deduction of TDS.

AO disallowed these expenses under section 40(a)(i) on the ground of non-deduction of TDS u/s 195.

Aggrieved, the assessee filed an appeal before Mumbai ITAT.

Issue:

Whether TDS u/s. 195 is applicable on payment made towards employees' participation fees in conference/seminar held outside India?

Held:

ITAT observed that participation fees paid outside India cannot be characterized as FTS u/s 9(1)(vii) as no services in the nature of consultancy, technical or managerial have been provided.

ITAT further observed that 'make available' condition was not satisfied under Singapore-India DTAA.

ITAT also observed these payments cannot be taxed as business income in case of absence of non-resident entities' PE in India.

Accordingly, the question of TDS on these payments does not arise as these payments were not taxable in India.

Hence, the appeal was concluded in favour of the assessee.

Deputy Director of Income Tax vs. Mitsui & Co. Ltd [TS-24-ITAT-2020 (DEL)] dated 7th January, 2020

Facts:

The assessee, a Japanese company, established a Liaison office in New Delhi and undertakes several projects in connection with big industrial installations and power projects.

The assessee entered into various contracts with NHPC and taxed income from execution of the projects u/s. 44BBB of the Income Tax Act. AO ordered to tax the income from offshore supplies.

CIT ruled in favour of the assessee and deleted the additions made by AO.

Aggrieved, the Revenue filed an appeal with ITAT.

Issue:

Whether Income from offshore supplies shall be liable to tax as per section 44BBB and India- Japan DTAA?

Held:

ITAT observed that the sale of goods was completed outside India and payments were received outside India for offshore supplies.

Relying on the Delhi HC ruling of LG Cables Ltd, ITAT observed that in absence of PE, income in respect of offshore supplies will accrue outside India and will not be taxed u/s. 44BBB of the Income Tax Act as well as article 7 of Japan-India DTAA.

Accordingly, ITAT ruled in favour of the assessee.

Commissioner of Income Tax (IT) vs. Taj TV Limited [TS-126-HC-2020(BOM)] dated 06th February, 2020

Facts:

The assessee, a Mauritian company, engaged in telecasting sports channel, had entered into an agreement with an Indian entity to be appointed as its advertisement sales agent and its distributor

to distribute its channels to cable systems for exhibition to subscribers in India.

During the assessment proceedings, AO stated that the assessee carried on business through its PE and therefore the income earned by the assessee was taxable in India.

The assessee, aggrieved, filed an appeal before CIT(A) wherein the CIT(A) ruled in favour the assessee.

Aggrieved, the revenue filed an appeal before ITAT.

Issue:

Whether the advertising revenue earned by the assessee was liable to be taxed in India?

Held:

ITAT observed that the Indian entity was not acting as an agent of the assessee but it had obtained the distribution rights of the channel for itself and was acting independently qua its distribution rights and, accordingly, had entered into contracts with other parties in its own name.

ITAT also noted that the distribution of the revenue between the assessee and the

Indian entity was in the ratio of 60:40 and the entire relationship was on principal to principal basis.

ITAT held that the distribution income earned by the assessee cannot be taxed in India as the Indian entity does not constitute an agency PE under the terms of Article 5(4) of the India-Mauritius DTAA.

Accordingly, ITAT ruled in favour of the assessee.

FEMA

CA. Manoj Shah, CA. Sudha G. Bhushan, CA. Mitesh Majithia

Settlement system under Asian Clearing Union (ACU) Mechanism A.P. (DIR Series) Circular No.22 dated March 17, 2020

The Board of Directors of ACU have decided to permit Japanese Yen for settling payments among the ACU member countries. Accordingly, clause (a) and (b) of Article IV of the General Provisions of Agreement establishing the Asian Clearing Union have been revised and the Asian Monetary Unit is now denominated as "ACU Dollar", "ACU Euro" and "ACU Yen" which shall be equivalent in value to one US Dollar, one Euro and one Japanese Yen respectively.

In order to facilitate transactions / settlements, effective March 06, 2020, participants in the Asian Clearing Union will have the option to settle their transactions either in ACU Dollar or ACU Euro or in ACU Japanese Yen.

AD banks are also allowed to open and maintain ACU Dollar, ACU Euro and ACU Japanese Yen accounts with their correspondent banks in other participating countries. All eligible payments are required to be settled by the concerned banks through these accounts.

To give effect of the above amendment, necessary amendments are made to Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 by issue of Foreign Exchange Management (Manner of Receipt and Payment) (Second Amendment) Regulations, 2020 vide Notification No. FEMA 14(R)/(2)/2020-RB dated March 4, 2020.

Review of Foreign Direct Investment (FDI) Policy in Insurance Sector

Press Note No. 1 (2020 Series) dated February 21, 2020 issued by Department for Promotion of Industry and Internal Trade (DPIIT)

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Finance Minister had announced that the FDI limit in insurance intermediaries will be increased from 49% to 100%. Consequently, the Indian Insurance Companies (Foreign Investment) Rules 2015 was amended on September 2, 2019 to increase the limit on FDI in insurance intermediaries to 100%.

DPIIT has now amended the Consolidated Foreign Direct Investment Policy of 2017 vide Press Note No. 1 (2020 Series) to increase the limit on FDI in insurance intermediaries to 100% and align the same with the aforesaid rules. These amendments will take effect from the date of FEMA notification.

For detailed conditions and amendments, Press Note No. 1 available at https://dipp.gov.in/sites/default/files/pn2_2020.pdf may be referred.

Review of Foreign Direct Investment (FDI) Policy in Civil Aviation **Press Note No. 2 (2020 Series) dated March 19, 2020 issued by Department for Promotion of Industry and Internal Trade (DPIIT)**

DPIIT has amended the Consolidated Foreign Direct Investment Policy of 2017 to liberalised and simplify FDI policy relating to Civil Aviation sector; to attract NRI investment in civil aviation sector and to permit foreign investment in M/s. Air India Ltd. at par with other scheduled operators. The said amendments will take effect from the date of FEMA notification.

For detailed conditions and amendments, Press Note No. 1 available at https://dipp.gov.in/sites/default/files/pn1_2020.pdf may be referred.

CORPORATE LAWS CA. Premal Gandhi, CA. Rahul Joglekar

Vide CIRCULAR NO. SEBI/HO/DDHS/CIR/P/2020/42 Government has given Relaxation from compliance to REITs and InvITs due to the CoVID -19 virus pandemic.

Relaxation from compliance with certain provisions of the SEBI (Listing obligations and disclosure requirements) Regulations, 2015 due to the Covid-19 virus pandemic Vide Circular no. SEBI/HO/CFD/CMD1/ CIR/P/2020/38, dated 19-3-2020

A. Extension of timeline for filings: The timelines for certain filings as required under the provisions of the LODR are extended, as follows:

Sl. No.	Regulation and associated filing	Filing		Relaxation w.r.t. the quarter / financial year ending March 31, 2020		
		Frequency	Due within	Due Date	Extended date	Period of relaxation
1.	Regulation 7(3) relating to compliance certificate on share transfer facility	Half yearly	One month of the end of each half of the financial year	April 30, 2020	May 31, 2020	1 month
2.	Regulation 13(3) relating to Statement of Investor complaints	Quarterly	21 days from the end of each quarter	April 21, 2020	May 15, 2020	3 weeks (appx.)
3.	Regulation 24A read with circular No CIR/CFD/CMD1/27/2019 dated February 8, 2019 relating to Secretarial Compliance report	Yearly	60 days from the end of the financial year	May 30, 2020	June 30, 2020	1 month

4.	Regulation 27(2) relating to Corporate Governance report	Quarterly	15 days from the end of the quarter	April 15, 2020	May 15, 2020	1 month
5.	Regulation 31 relating to Shareholding Pattern	Quarterly	21 days from the end of the quarter	April 21, 2020	May 15, 2020	3 weeks (appx.)
6.	Regulation 33 relating to Financial Results	Quarterly / Annual	45 days from the end of the quarter for quarterly results	May 15, 2020	June 30, 2020	45 days
			60 days from the end of Financial Year for Annual Financial Results	May 30, 2020	June 30, 2020	1 month

B. Relaxation of time gap between two board/Audit Committee meetings:

Regulatory provision	Relaxation
Regulation 17(2): The board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.	The board of directors and Audit Committee of the listed entity are exempted from observing the maximum stipulated time gap between two meetings for the meetings held or proposed to be held between the period December 1, 2019 and June 30, 2020. However the board of directors/Audit Committee shall ensure that they meet at least four times a year, as stipulated under regulations 17(2) and 18(2)(a) of the LODR
Regulation 18(2)(a): The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings	

GOODS AND SERVICES TAX CA. Rajiv Luthia

CBIC vide Notification No. 8/2020-CT dated 2nd March, 2020 has amended Rule 31A of CGST Rule, 2017 from 1st March, 2020 to provide that value of supply of lottery shall deemed to be 100/128 of the face value of ticket or Price Notified in official gazette by organising state, whichever is higher

Explanation: For the purposes of this sub-rule, the expression "Organising State" has the same meaning as assigned to it in rule 2(1) (f) of the Lotteries (Regulation) Rules, 2010."

CBIC vide Notification No. 9/2020-CT dated 16th March, 2020 notified Foreign Airlines company covered under notification issued u/s 381(1) of companies Act, 2013 & who has complied with Rule 4(2) of companies (Registration of Foreign company) Rules, 2014 as a person who shall not require to furnish reconciliation statement in Form GSTR 9C (GST Audit report).

The said company instead of furnishing GSTR 9C, shall furnish statement of receipts and payments for the financial year in respect of its Indian Business operations, duly authenticated by a practicing CA for each GSTIN by the 30th September of the year succeeding the financial year.

CBIC vide Notification No. 10/2020-CT dated 21st March, 2020 provides that person whose principal place of business or place of business was in the erstwhile Union territory of Daman and Diu or in the erstwhile Union territory of Dadra and Nagar Haveli till the 26th day of January, 2020; and is in the merged Union territory of Daman and Diu and Dadra and Nagar Haveli from the 27th day of January, 2020 onwards shall follow special procedure till 31st May, 2020 listed here under:

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- Ascertain the "Tax period" as follows for the purposes of any of the provisions of the CGST Act for the month of January, 2020 and February, 2020 as below:-
 - (a) January, 2020 - 1st January, 2020 to 25th January, 2020;
 - (b) February, 2020 - 26th January, 2020 to 29th February, 2020
- Irrespective of the particulars of tax charged in the invoices, or in other like documents, raised from 26th January, 2020 onwards till the transition date, pay the appropriate applicable tax in the return under section 39
- Who have registered GSTIN in the erstwhile Union territory of Daman and Diu and the erstwhile Union territory of Dadra and Nagar Haveli till the 25th day of January, 2019 have an option to transfer the balance of input tax credit (ITC) after the filing of the return for January, 2020, from the registered GSTIN in the erstwhile Union territory of Daman and Diu to the registered GSTIN in the new Union territory of Daman and Diu and Dadra and Nagar Haveli by following the procedure as below
 - o The said persons shall intimate the jurisdictional tax officer of the transferor and the transferee regarding the transfer of ITC, within 1 month of obtaining new registration;
 - o The ITC shall be transferred on the basis of the balance in the electronic credit ledger upon filing of the return in the erstwhile Union territory of Daman and Diu, for the tax period immediately before the transition date;
 - o The transfer of ITC shall be carried out through the return under section 39 of the said Act for the tax period immediately before the transition date and the transferor GSTIN shall debit the said ITC from its electronic credit ledger in Table 4(B)(2) of FORM GSTR-3B and the transferee GSTIN shall credit the equal amount of ITC in its electronic credit ledger in Table 4(A)(5) of FORM GSTR-3B.
- The balance of UT taxes in electronic credit ledger of the said persons, whose principal place of business lies in the Union territory of Daman and Diu, as on the 25th day of January, 2020, shall be transferred as balance of Union territory tax in the electronic credit ledger.

CBIC vide Notification No. 11/2020-CT dated 23rd March, 2020 provide special procedure to be followed for registration, returns & ITC by registered person who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016, undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP), from the date of appointment of IPR/RP till the period they undergo corporate insolvency resolution process.

CBIC vide Notification No. 12/2020-CT dated 23rd March, 2020 provides that registered person who have opted for special composition scheme under notification 2/2019-CT (rate) are not required to furnish FORM GSTR-1 or FORM GST CMP 08 for F.Y 2019-20. They are required to file GSTR 3B only.

CBIC vide Notification No. 13/2020-CT dated 23rd March, 2020 provides that registered person whose aggregate turnover in a financial year exceeds Rs. 100 crore shall issue E-Invoice & other prescribed documents w.e.f. 1st October, 2020.

CBIC vide Notification No. 14/2020-CT dated 23rd March, 2020 provides that registered person whose aggregate turnover in a financial year exceeds Rs. 500 crore shall have QR code on invoice

issued to unregistered person. The said notification shall come in force from 1st October, 2020

CBIC vide Notification No. 15/2020-CT dated 23rd March, 2020 extends the due date for furnishing GSTR 9 (Annual return) for financial year 2018-19 till 30th June, 2020.

CBIC vide Notification No. 16/2020-CT dated 23rd March, 2020 makes following amendment to CGST Rule, 2017 which shall come in force from date of notification, unless specified otherwise.

- Rule 8 – New sub rule 4A has been inserted w.e.f 1st April, 2020 to provide that applicant shall undergo Aadhar Authentication for grant of GST registration.
- Rule 9 – Proviso has been inserted w.e.f. 1st April, 2020 which provides that if an applicant fails Aadhar authentication under Rule 8, then registration shall be granted only after physical verification of the principle place of business in the presence of the said person. The Physical verification shall be made within 60 days from date of registration application
- Rule 80 – Proviso has been inserted in Rule 80 to provide that every registered person whose aggregate turnover during the financial year 2018-2019 exceeds 5Crore shall get his accounts audited u/s 35(5) and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C.
- Rule 86 – New sub rule 4A has been inserted to provide that where a registered person has claimed refund of any amount paid as tax wrongly or paid in excess, for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03
- Rule 89 – Sub Rule 4(c) has been substitutes as follows:
 "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or LUT or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;
- Rule 92 – A new sub rule 1A has been inserted to provide that Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under 54(5) of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger.
- Rule 96B – A new rule has been inserted as follows:
 "96B. Recovery of refund of unutilised ITC or integrated tax paid on export of goods where export proceeds not realised.
 (1) Where any refund of unutilised ITC on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in

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respect of such export goods have not been realised, in full or in part, in India within the period allowed under the FEMA, 1999, including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the proportion of non-realisation of sale proceeds, along with applicable interest within 30 days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the FEMA, 1999 (42 of 1999), but the RBI writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

- (2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of 3 months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant in proportion of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by RBI”.

CBIC vide Notification No. 17/2020-CT dated 23th March, 2020 provides that Aadhar authentication for GST registration shall not be required for a person who is not a citizen of India or to any other person other than

- Individual
- Authorised signatory of all types
- Managing & Authorised partner
- Karta of a Hindu undivided family

The said notification shall come into force from 1st April, 2020.

CBIC vide Notification No. 18/2020-CT dated 23rd March, 2020 provide that for obtaining GST registration an individual shall undergo Aadhaar Authentication as specified in Rule 8 of CGST Rule, 2017

If Aadhaar number is not assigned to the said individual, he shall be offered alternate and viable means of identification in the manner specified in rule 9 of CGST Rules.

The said notification shall come into force from 1st April, 2020.

CBIC vide Notification No. 19/2020-CT dated 23rd March, 2020 provide that for obtaining GST following person shall undergo Aadhaar Authentication

- (a) authorised signatory of all types;
- (b) Managing and Authorised partners of a partnership firm; and
- (c) Karta of a Hindu undivided family,

The said notification shall come into force from 1st April, 2020.

CBIC vide Notification No.20/2020-CT , Notification No.21/2020-CT, Notification No.22/2020- CT, Notification No.23/2020- CT, Notification No.24/2020- CT, Notification No.25/2020- CT, & Notification No.26/2020- CT all dated 23rd March 2020 extended the due dates to 24th March,2020 for furnishing of the following forms for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir or the Union

territory of Jammu and Kashmir or the Union territory of Ladakh as under:-

S l . No	Form No.	Period
1.	FORM GSTR-7 (Form for furnishing the monthly details of TDS) (For registered persons in the erstwhile State of Jammu & Kashmir)	For each of the months of: - July,2019; August,2019; September,2019; October,2019
2.	FORM GSTR-7 (Form for furnishing the monthly details of TDS) (For registered persons in the Union territory of Jammu and Kashmir or the Union territory of Ladakh)	For each of the months of:- November,2019; December,2019; January,2020; February,2020
3.	FORM GSTR-1 (Form for furnishing the details of outward supply of goods or services or both.) For registered persons in the erstwhile State of Jammu & Kashmir or the Union territory of Jammu and Kashmir or the Union territory of Ladakh)	For the Quarter :- October-December, 2019
4.	FORM GSTR-1 (Form for furnishing the details of outward supply of goods or services or both.) (For registered persons in the erstwhile state of Jammu & Kashmir & having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year)	For the month of:- October, 2019
5.	FORM GSTR-1 (Form for furnishing the details of outward supply of goods or services or both.) (For registered persons in the Union territory of Jammu and Kashmir or the Union territory of Ladakh & having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year)	For each of the months of:- November,2019; December,2019; January,2020; February,2020

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6.	FORM GSTR-1 (Form for furnishing the details of outward supply of goods or services or both.) (For registered persons in the erstwhile state of Jammu & Kashmir & having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year)	For each of the months of: - July,2019 August,2019, September,2019
7.	FORM GSTR-1 (Form for furnishing the details of outward supply of goods or services or both.) (For registered persons in the erstwhile State of Jammu & Kashmir)	For the quarter: - July-September, 2019
8.	FORM GSTR-3B (Form to furnish monthly summary of data) (For registered persons in the erstwhile State of Jammu & Kashmir)	For the month of :- October, 2019
9.	FORM GSTR-3B (Form to furnish monthly summary of data) (For registered persons in the Union territory of Jammu and Kashmir or the Union territory of Ladakh)	For each of the months of :- November,2019; December,2019; January,2020; February,2020
10.	FORM GSTR-3B (Form to furnish monthly summary of data) (For registered persons in the erstwhile State of Jammu & Kashmir)	For each of the months of:- July,2019 August,2019, September,2019

CBIC vide Notification No.27/2020- CT, Notification No.28/2020-CT & Notification 29/2020-CT all dated 23rd March 2020 notified due dates for filling following Forms :-

S I . No	Form No.	Period	Due Date
1.	FORM GSTR-1 (Form for furnishing the details of outward supply of goods or services or both.) (For registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year)	For the Quarter :- April, 2020 to June, 2020 July, 2020 to September, 2020	31st July, 2020 31st October, 2020

2.	FORM GSTR-1 (Form for furnishing the details of outward supply of goods or services or both.) (For registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year)	For each of the months from April, 2020 to September, 2020.	11th day of the month succeeding such month
3.	FORM GSTR 3B (Form to furnish monthly summary of data) (For registered persons having aggregate turnover of more than 5 crore rupees in the preceding financial year or the current financial year)	For each of the months from April, 2020 to September, 2020.	20th day of the month succeeding such month
4.	FORM GSTR 3B (Form to furnish monthly summary of data) (For registered persons having aggregate turnover of upto 5 crore rupees in the preceding financial year or the current financial year in state of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep)	For each of the months from April, 2020 to September, 2020.	22th day of the month succeeding such month
5.	FORM GSTR 3B (Form to furnish monthly summary of data) (For registered persons having aggregate turnover upto 5 crore rupees in the preceding financial year or the current financial year in states of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi,)	For each of the months from April, 2020 to September, 2020.	24th day of the month succeeding such month

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CBIC vide notification 2/2020 – CT (Rate) dated 25th March, 2020 has reduced the rate of GST on Maintenance, repair or overhaul services in respect of aircrafts, aircraft engines and other aircraft components or parts from 9% to 2.5% w.e.f. 1st April,2020.

CBIC vide notification 2/2020-IG dated 25th March, 2020 provides that place of supply of service in respect of Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business shall be the location of recipient of service. This amendment is w.e.f. 1st April,2020.

TRANSFER PRICING

CA. Bhavesh Dedhia, CA. Bhavya Goyal,
CA. Shazia Khatri

Section 92A(1) cannot be applied on standalone basis, and has to be essentially considered in conjunction of Section 92A(2) of the Act – Kaybee Pvt. Ltd. vs. Income Tax Officer [ITA No. 2164/Mum/15]

Govind Karunakaram (GK) holds 99.9 percent shareholding in the Assessee. GK is also one of the three directors in Singapore based entity named Kaybee Exim Pte Ltd. ('KE-S'). The Assessee had certain business transactions with KE-S. The Assessee contended that the KE-S cannot be treated as AE as the relationship between the Assessee and KE-S does not satisfy the conditions laid out in section 92A(2) of the Act. The Transfer Pricing Officer however observed that GK participates in the management of KE-S and also hold entire shareholding in the Assessee. Accordingly, the TPO was of the view that the condition of one enterprise participates directly or indirectly or through one or more intermediaries in its management or control or capital as prescribed under clause (a) & (b) of Sub-Section (1) of Section 92A of the Act is satisfied. CIT(A) upheld the said view. The Assessee filed an appeal before Hon'ble Tribunal.

The Hon'ble Tribunal relying on the reasoning in case of ACIT vs Veer Gems [(2017) 77 taxmann.com 127 (approved by Hon'ble High Court in the judgment reported as PCIT Vs Veer Gems [(2017) 83 taxmann.com 271 and department's SLP rejected by Hon'ble Supreme Court in PCIT Vs Veer Gems [(2018) 95 taxmann.16]), Orchid Pharma Ltd Vs DCIT [(2016) 76 taxmann.com 63 (Chennai - Trib.)] and Page Industries Ltd Vs DCIT [(2016) 159 ITD 680 (Bang)] held that "Section 92A(1) cannot be applied on standalone basis, and has to be essentially considered in conjunction of Section 92A(2) – only when it satisfies at least one of the conditions set out therein, it is clear that the relationship between the assessee company and its KE-S cannot be said to be that of the associated enterprises."

Distinguishing negative decisions in Assessee's own case for two years and Diageo India Pvt Ltd Vs DCIT [(2011) 47 SOT 252], Hon'ble Tribunal observed that the those benches did not had any occasion to consider the Memorandum to the related Finance Bill which reflects the legislative intent behind amendment in section 92A(2) with effect from 1st April 2002. The Hon'ble Tribunal noted an amendment in Section 92A(2) which specifically provided that "for the purpose of sub section (1)" restricted the scope of Section 92A(1).

The Hon'ble Tribunal also rejected department's request for constitution of Larger / Special Bench on account of the following:

- It would be an inappropriate parallel exercise as a higher judicial forum has expressed its view on the subject;
- The Hon'ble jurisdictional High Court has admitted appeals of the Assessee for earlier years which were decided against the Assessee and it is only a matter of time that the views of Hon'ble jurisdictional High Court would be available;
- In any case the views of non-jurisdictional High Court will bind the Special Bench, and constitution of special bench will be a meaningless ritualistic exercise.

TP provisions not applicable to the Assessee opting for tonnage tax scheme and a letter for negative lien cannot be equated to guarantee – Essar Shipping Ltd. vs. ACIT (ITA No. 7371/Mum/2017)

The Assessee is engaged in the business of shipping operations, crude oil transportation, drilling oil rigs, transportation management services and integrated dry bulk transportation services. The AO passed draft assessment order comprising certain disallowances and additions to the total income declared by the Assessee. The additions inter-alia included TP adjustments in respect of (a) interest on purchase price of two ships; and (b) alleged commission income on account of providing letter of negative lien to the lender bank of the AE. Summarized below are key facts and Tribunal decision in this regard:

- Interest on purchase price of two ships:
 - The Assessee purchase ships from the AE at the total price of USD 148 million. The TPO determined the ALP of the transaction at USD 145.5 million (disallowing namely the mobilisation and demobilisation charges paid for ships). The excess payment was treated as advance by the Assessee to the AE and interest income was imputed thereon. DRP upheld the addition.
 - The Hon'ble Tribunal noted that the Assessee offered its income as per tonnage taxation scheme under Chapter XII-G of the Act. The Ships so purchased were qualifying ships as per tonnage tax provision.
 - Relying on coordinate bench decision in case of Van Oord India Private Ltd. vs. ACIT, Hon'ble Tribunal held "Tonnage Tax Scheme, as per Chapter XII-G of the Act, is a separate code by itself in as much as it provides a self-contained changing provision as well as 'method of computation of income in the chapter, and, the method of computation of income under TTS is not dependent on receipt or expenditure of the assessee.... The provisions of chapter X have been invoked to alter an expenditure, namely the mobilisation and demobilisation charges paid for a qualifying ship, an item which has no bearing on the income as computed under Chapter XIIG and accordingly the provisions of Chapter X have no application in computing the income of the assessee chargeable to tax as per Chapter XII-G of the Act.... in our considered view, the transfer pricing regulations do not apply to the assessee to the extent of operations carried out through operating qualifying ships where the income is taxed under TTS."
- Alleged commission income on account of providing letter of negative lien to the lender bank of the AE:
 - The Essar Global Limited (EGL), the ultimate parent company of Assessee had taken loan from foreign branch of ICICI bank. In this regard, the Assessee has undertaken not to transfer, assign and dispose of 49% of equity shares in Essar Logistics Ltd (ELL) without prior written approval of lenders during pendency of loan. In other words, i.e. a negative lien was provided on transfer of shares.
 - The TPO / AO held such negative lien as equivalent to a guarantee and alleged a commission income @ 0.5 percent. DRP upheld the said approach.

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- The Hon'ble Tribunal after considering detailed arguments held that a negative lien on transfer of shares cannot be equated to guarantee. Hon'ble Tribunal appreciated the fact that in case of any loan repayment default, there will be no liability on Assessee for paying any amount since Assessee is not a guarantor. However, considering totality of the facts, Hon'ble Tribunal retained the adjustment applying rate of 0.25 percent to the said transaction.

In view of omission of clause (i) of Section 92BA of the Act, the penalty under Section 271BA of the Act for failure to furnish report in respect of such transactions also does not survive – M/s SKM-UMSL JV vs ITO (ITA no. 229/Ctk/2019)

The Assessee is a Joint Venture and engaged in the business of contract works and filed its return of income electronically on 30 Sept. 2017. During the course of assessment proceedings, on an enquiry from the AO, the Assessee furnished Accountant's Report in Form no. 3CEB in respect of Specified Domestic Transaction under clause (i) of Section 92B of the Act. The Assessing Officer initiated and levied a penalty under Section 271BA of the Act. The Assessee argued before the CIT(A) that there was no mala fide intention behind it and non-filing of audit report is only a technical default and, therefore, no penalty can be levied. However, CIT(A) dismissed the appeal and upheld the order of the AO.

The Hon'ble Tribunal while adjudicating the issue noted that the provision of clause (i) of Section 92BA of the Act has already been omitted by the Finance Act, 2017 with effect from 1 April 2017. Relying on coordinate Bench decision in case of Textport Overseas Pvt. Ltd. (ITA No.1722/Bang/2017), Hon'ble Tribunal observed that with the omission of clause(i) of Section 92BA of the Act, it would be deemed that it was never been on the statute. Thus, deleting the penalty under Section 271BA of the Act, Hon'ble Tribunal observed "we are of the considered opinion that when the transactions related to the assessee falls under the clause(i) of Section 92BA of the Act, which has already been removed by the Finance Act, 2017 w.e.f. 01.04.2017, therefore, the imposition of penalty u/s.271BA of the Act for failure to furnish the report in prescribed Form No.3CEB in terms of provisions of section 92E of the Act, does not survive at all."

Draft Assessment Order not required to be issued in case there is no variation in income (prior to 1 April 2020). Consequently, Final Assessment Order is time barred. – IPF India Property Cyprus (No. 1) Ltd. vs. DCIT [ITA No. 6077/Mum/2018]

In this case of a non-resident Assessee, there was no variations in the returned income and the assessed income. The controversy related to only the tax rate. While the Assessee had claimed taxation @ 10 percent under Article 11(2) of the India Cyprus DTAA, the AO brought the income to tax @ 40 percent denying treaty benefit. The AO issued a draft assessment order followed by final assessment order post DRP proceedings.

The Hon'ble Tribunal on the legal issue noted that in the light of provisions of Section 144C(1) of the Act as there is no variation in the income of the Assessee, the draft assessment order in this case would not be required. The Hon'ble Tribunal also noted that "While the Finance Bill proposes to make the issuance of draft assessment orders in the case of eligible assessee mandatory even when there is no variation in the income or loss returned by the assessee but then this amendment is with effect from 1st April 2020."

On second legal aspect of assessment proceedings being time barred, Hon'ble Tribunal held "The mere issuance of draft assessment order, when it was legally not required to be issued, cannot end up enhancing the time limit for completing the assessment under section 143(3). We, therefore, uphold the plea of the assessee on this point as well. The impugned assessment order is indeed, in our considered view, time barred. We, accordingly, hold so."

Other Update

Organization for Economic Cooperation and Development ('OECD') issued final recommendations regarding the arm's length treatment of various financial transactions among related parties.

On 11 February 2020, OECD as part of BEPS Action Plan 8-10, issued final report regarding the arm's length treatment of various financial transactions among related parties. The Report represents the first time that guidance on financial transactions is included in the OECD Transfer Pricing Guidelines which may contribute to consistency in the application of transfer pricing principles on such transactions. The Report covers guidance around wide range of key financial transactions - intercompany loans, cash pools, financial guarantees, hedging transactions and captive insurers.

The Report lays strong emphasis on "accurate delineation" of a transaction and a burden on the taxpayers to show debt (or other financial transaction) is bona-fide. In respect of inter-company loans, the Report endorses two-sided approach (i.e. lender as well as borrower's perspective) and emphasis on use of realistic alternatives on both side of the transaction while determining key economic factors impacting loan pricing. It also suggests that in circumstances under "accurate delineation" of a transaction, the economic and business rationale of a loan can also be challenged.

In relation to financial guarantee, the Report reiterates that they are compensable if provide measurable benefits. Implicit support should be considered when pricing a guarantee transaction, such as when applying a yield-differential approach. Further, the report also suggest that if a guarantee from a related party has at least the partial effect of increasing the beneficiary's borrowing capacity, an accurate delineation analysis may split the transaction into two parts: (1) a loan from the lender to the borrower, based on the latter's capacity without the guarantee; and (2) a loan from the lender to the guarantor, followed by a capital contribution to the borrower. The guarantee fee should be calculated only on (1).

GST-ADVANCE RULINGS CA. C. B. Thakar, CA. Jinal Maru

The Maharashtra Goods and Services Tax Act, 2017

Circulars

1. The Commissioner of Goods and Services Tax, Maharashtra State, has issued Circular bearing no. 2T of 2020 dated 24.2.2020 by which the clarification about physical submission of Audit report in Form 704 for the year 2018-19 is given.
2. The Commissioner of Goods and Services Tax, Maharashtra State, has issued Circular bearing no. 3T of 2020 dated 17.3.2020 by which the guidelines in view of outbreak of Corona virus is given to department authorities and dealers.
3. The Commissioner of Goods and Services Tax, Maharashtra State, has issued Circular bearing no.4T of 2020 dated 19.3.2020 by which the exemption from payment of late fees u/s.6(3) of the Maharashtra State Tax on Professions, Trades, Calling and Employments Act, 1975 is clarified.
4. The Commissioner of Goods and Services Tax, Maharashtra State, has issued Circular bearing no.5T of 2020 dated 19.3.2020 by which the instructions about Standard Operating Procedure (SOP) to be followed by exporters is explained.

Law Updates

CO-OPERATIVE HOUSING SOCIETIES

CA. Ramesh Prabhu, CA. Mukul Varma

As per powers vested in the State Government to postpone election under Section 73CC of the M.C.S.Act 1960, the State Government vide its order dated 18.03.2020 bearing Reference No 0120/P.K.70/13-S has stayed elections to the managing committee of all Co-operative Societies for 3 months from the date of order i.e. till 17.06.2020 . The said decision has been taken in public interest looking at the present epidemic of COVID 19.

- (1) To prevent the spread of Covid- 19, Cooperative Department vide GR dated 18th March, 2020 has postponed the elections in all Cooperative Societies for further period of 3 months.

MAHARERA

CA. Ashwin Shah

UPDATE ON REAL ESTATE (REGULATION & DEVELOPMENT) ACT , 2016

Recent Pronouncement by Maharashtra Real Estate Appellate Tribunal

In the matter of Rohit Chawla & others Vs Bombay Dyeing & Mfg Co.Ltd

Various allottee have booked flats in the “ Island City Center.” at Wadala ,Mumbai in the scheme of 20 : 80 wherein 80 % of the consideration was to be paid by allottees at the time of possession. Promoter have issued allotment letters.

Promoter have assured date of possession in 2017 as per advertisement material but has failed to provide the possession in time. This itself is false information u/s 12 of the Act.

Before Authority relief was claimed for violation of Section 12 of the Act and thereupon refund of principal with interest is claimed.

However, Authority declined the relief to the allottees stating that Section 12 of the Act cannot be applied retrospectively or retroactively.

MahaRera authority provided alternative remedy for withdrawal from project as per terms of allotment but without any interest on refund and directed allottees to execute the agreement with promoter, if not agreed upon.

The MahaRera Authority order dated 09-01-2019 & 25-01-2019 was challenged by the allottees on correctness and legality.

The main issue before Tribunal was whether section 12 of the RERDA, 2016 is retrospective or retroactive and whether allottees are entitled to refund of consideration paid with interest ?

Various Supreme Court decisions were analysed and put forward by allottees and promoter in support of their respective claim.

Conclusion :

1. It is held that Section 12 is compensatory in nature as it compensate the allottees for any false information provided by the promoter at the time of booking.

2. It is held that Section 12 has the retroactive effect and even for transactions entered into prior to enactment of RERDA , 2016 , RERA has the jurisdiction.
3. The impugned order dated 09-101-2019 & 25-01-2019 are set aside.
4. It is held that allottees are entitled to refund of principal paid with interest for violation of Section 12 an 18 of the Act by the promoter.
5. It is further held that interest is not penalty hence can be retroactive.

INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Viral Doshi

Hon'ble Supreme Court Directions on Preferential Transactions in Insolvency

The landmark decision in relation to the corporate insolvency resolution process (CIRP) of Jaypee Infratech Limited (JIL), the Hon'ble Supreme Court in Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited vs. Axis Bank Limited, has rested down the law on Preferential Transactions.

Indispensable Elements of a Preferential Transaction:

The Hon'ble Supreme Court, after carrying out analysis of Section 43(2) and (4) of the Code held that in the event the following conditions are met, a transaction is deemed to be a preferential transaction:

- the transaction is of transfer of property or interest of the CD, for the advantage of a creditor or surety or guarantor, for or because of a forebear financial debt or operational debt or other liability;
- such transfer has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets in accordance with Section 53 of the Code; and
- such transaction has been carried out during the period of two years preceding the CIRP commencement when the beneficiary is a related party (other than an employee), or in case of an unrelated party, during the period of one year preceding the CIRP.

However, preferential transactions satisfying the above conditions are permissible if:

- (i) Entered during the ordinary course of business of the corporate debtor 'and' transferee; or
- (ii) Resulting in provision of new value to the corporate debtor.

For more details on updates, visit www.wirc-icai.org

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Group Photo taken during the Dewan Kuldip Singh CA. Students Hostel Meet



Interactive Meeting with RVG Trustees



CA. Manoj Singrodia, CA. Jayesh Kala, RCM, CA. Manish Gadia, RCM, CA. Sunil Goal, Past Chairman, WIRC, CA. Lalit Bajaj, Chairman, WIRC, CA. Lalchand Choudhary, CA. Sunil Patodia, Past Chairman, WIRC, CA. Arpit Kabra, RCM, and others.

Interactive Meeting with RS Campus Trustees



CA. Alok Chowdhary, CA. Sunil Patodia, Past Chairman, WIRC, CA. Kailash Kejriwal, Shri. Ashok Sharaf, CA. Lalit Bajaj, Chairman, WIRC, CA. Manish Gadia, RCM, CA. Arpit Kabra, RCM

Bhoomi Poojan New Branch Premises of Ahmedabad Branch of WIRC of ICAI





Seminar on Tax & FEMA Provisions in relation to Cross Border Payments



CA. Samir Shah, Faculty, CA. Murtuza Kachwala, Secretary, WIRC, CA. Anand Jakhotiya, Treasurer, WIRC, CA. Lalit Bajaj, Chairman, WIRC, CA. Vishal P. Doshi, Vice Chairman, WIRC, CA. Rajesh Patil, Faculty, CA. Manish Gadia, RCM, CA. Priti Savla, Imm. Past Chairperson, WIRC, CA. Balkishan Agarwal, RCM, CA. Parul Shah, Faculty



CA. Samir Parekh



CA. Anjana Singh



CA. Hema Lohiya



CA. Gauri Sharma



CA. Rakesh Gupta



Shri L. N. Pant



CA. Vijay Dhingra

Seminar on Co-operative Housing Societies



CA. Anand Jakhotiya, Treasurer, WIRC, CA. Ameet Israni, Faculty, CA. Lalit Bajaj, Chairman, WIRC, CA. Shilpa Shinagare, RCM, CA. Murtuza Kachwala, Secretary, WIRC, CA. Vishal P. Doshi, Vice Chairman, WIRC, CA. Ramesh Prabhu, Faculty



CA. Amit Mohare



CA. Sunil Dandekar



CA. Gopal Kedia

Lecture Meeting on Women in Profession



CA. Drushti Desai, RCM, Ms. Dhara Pabari, Faculty, CA. Daksha Baxi, Faculty, CA. Priti Savla, Imm. Past Chairperson, WIRC

Interactive Meet with Shri Satish Gutpa Principal CCIT



Interactive Meet with Smt K. Kamakshi CCIT-1



**Lecture Meeting on Valuation:
Evaluation of Profits and projections**



CA. Anisa Shaikh, CA. Drushti Desai, RCM, CA. Nihar Jambusaria, Vice President, ICAI, CA. Aseem Mankodi, Faculty.

**Aayakar Bhavan Income Tax
Library Visit**



CA. Lalit Bajaj, Chairman, WIRC, Smt. Monica Pandey, Deputy Commissioner of Income Tax and others

Meeting of Study Circle Convenor/Dy Convenor



Meeting of Co-ordination with GMCS Faculties



Meeting of Past Presidents of ICAI from WIRC & Past Chairmen/Chairpersons of WIRC



Release of WIRC Publication



Anthology on KAM and other Reporting in Audit Reports (SA 701, 705, 706): CA. Arpit Kabra, RCM, CA. Drushti Desai, RCM, CA. Manish Gadia, RCM, CA. Priti Savla, Imm. Past Chairperson, WIRC, CA. Anand Jakhotiya, Treasurer, WIRC, CA. Lalit Bajaj, Chairman, WIRC, CA. Nihar Jambusaria, Vice President, ICAI, CA. Atul Kumar Gupta, President, ICAI, CA. Dhiraj Khandelwal, CCM, CA. Aniket Talati, CCM, CA. Vishal P. Doshi, Vice Chairman, WIRC, CA. Murtuza Kachwala, Secretary, WIRC and others

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