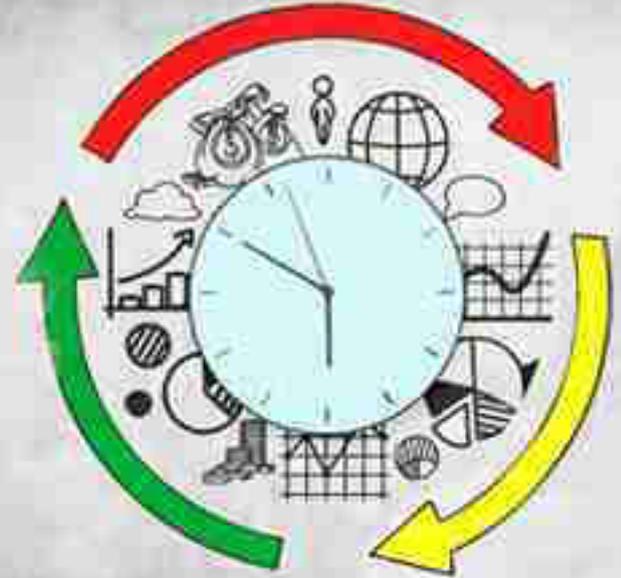




# Smart Time Management Techniques



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## WIRC CHAIRPERSON'S COMMUNICATION



Dear Students,

'Great people have great values and great ethics'.

This is the common thread across the spectrum of truly great individuals whether it is politics - Mahatma Gandhi, Abraham Lincoln and Nelson Mandela or business - JRD Tata, Warren Buffet, etc.

What we have to understand is that being ethical is a mind-set where maintaining good ethics is being consistent with the principles of correct moral conduct at all times. Being ethical is actually a direct reflection of our commitment to doing everything the right way whether it is studying, interning and most importantly being true to our profession.

Good ethics are a fundamental requirement of any profession and business. In fact, it is integral to the success of the business because good ethics is good business. This is true due to the simple fact that ethics or simple honesty forms the building blocks upon which our whole society is based, and since business is a part of our society, it is integral to the practice of being able to conduct business, that you have a set of honest standards. The positive by-product is that ethical business practices lead to growth through positive word of mouth and other forms of growth and development by leaving a good impression about the company in the marketplace. This is especially true in today's world of social media.

In daily life, it could be that there are several factors that may encourage one to adopt unethical behaviour, but the right person is he who, despite facing ethical dilemmas, assesses the situations and makes a differentiation between what is morally good and bad in order to follow the written and unwritten rules and code of professional conduct.

For students taking the next step, good ethics also goes far in gaining the confidence of superiors while promoting integrity, which means to continue doing right things even when not being watched.

The importance of ethics in professional life can be evidenced by a number of instances showing failure of businesses and several scandals. It may be rightly said that the situations would not have been so worsened had there been observance of ethical standards. Therefore, maintaining ethical standards is a must for the greater good of the profession, the organization and most importantly for the development of one's own self.

Your Institution has always been at the forefront in outlining a specific and professional 'Code of Ethics' for Chartered Accountants. There is absolute clarity where professional ethics are concerned and I encourage all students to look more closely at the code because you are in the foundation level of your career. The correct decision and choice at this stage will create a great career for you.

Remember that our core values and business ethics will always be paramount in all that we do, and we are always looking to do the right thing as professionals.

I also take this opportunity to inform students that while the WIRC is going the extra mile by organising extra courses for students, it is also necessary that you take advantage of these courses and work hard towards achieving the goal of becoming the most elite of all professionals – the Chartered Accountant.

CA. Priti Savla  
Chairperson, WIRC



## WICASA CHAIRMAN'S COMMUNICATION



Dear students,

Very warm wishes!!

Wishing you all happy new financial year 2019-20. For me the accountancy profession has been a very thoughtful and dynamic journey of excellence and enormous opportunities to serve the society.

I am happy to state that the required measures for the benefit of our students including organizing career counseling programs, industrial and educational visits for the practical knowledge, Crash courses for the exam preparation, Revisionary lectures, various seminars on audit & Compliance applicable to guide and update student with current economy change and conducting mock tests for the betterment of their preparation and execution of their forthcoming examinations. I am sure that such measures will enhance the performance of our students in examinations. I would like to urge our students to do hard work and success is bound to follow.

Requesting all to get maximum benefit out of it..!!

As Quoted by Steve Jobs "If You Are Working On Something That You Really Care About, You Don't Have To Be Pushed. The Vision Pulls You." Keep your vision clear so that nothing can stop you from achieving your goals. As due to election process exams of students has postponed to June month. Students now got one more month to prepare for examination. Utilized this time efficiently & plan well for examinations .Good planning & Its Execution is core part in preparation for examination. "Setting a goal is not the main thing. It is deciding how you will go about achieving it and staying with that plan." The famous quote by Thomas Edison "Good fortune is what happens when opportunity meets with planning."This explains the importance of planning in the path of success.

I would like to conclude with some wise words

Push yourself, because no one else is going to do it for you. Sometimes later becomes never. Do it now. And always remember words given by **Winston Churchill** "**The Pessimist Sees Difficulty In Every Opportunity. The Optimist Sees Opportunity In Every Difficulty.**"

Regards,

**CA. Jayesh Kala**

Chairman WICASA



## ACADEMIC EVENTS

### One Day Programme

**1**

**One Day Students Seminar on  
GST Return and GST Audit**

Date :  
26/04/2019

Venue :  
ICAI Tower,  
BKC,  
Mumbai

Fees : ₹ 600/-

### Coaching Classes

**1**

**Intermediate (IPCC) Nov 19,  
Morning batch at L N College**

Date :  
20/11/2018 to 15/09/2019

Venue :  
L N College  
Borivali

Fees : ₹ 24000/-

**2**

**Intermediate Nov 19,  
Afternoon & Evening batch  
at L N College**

Date :  
27/01/2019 To 15/09/2019

Venue :  
L N College  
Borivali

Fees : ₹ 24000/-

### CA Foundation / CPT Crash Courses

**1**

**Principles and Practice of  
Accounting- Foundation  
CPT Crash Course**

Date :  
21/04/2019 to 25/04/2019

Venue :  
ICAI Tower,  
BKC,  
Mumbai

Fees : ₹1600/-

**2**

**Business Economics and Business  
and Commercial Knowledge -  
Foundation / CPT Crash Course**

Date :  
26/04/2019 To 28/04/2019

Venue :  
ICAI Tower,  
BKC,  
Mumbai

Fees : ₹ 1000/-

**3**

**Business Laws and Business  
Correspondence and Reporting -  
Foundation / CPT Crash Course**

Date :  
30/04/2019 To 01/05/2019

Venue :  
ICAI Tower,  
BKC,  
Mumbai

Fees : ₹ 1000/-

**4**

**Business Mathematics and Logical  
Reasoning & Statistics - Foundation  
CPT Crash Course**

Date :  
02/05/2019 To 06/05/2019

Venue :  
ICAI Tower,  
BKC,  
Mumbai

Fees : ₹ 1600/-

**5**

**CA Foundation /CPT Crash Course  
All Subjects**

Date :  
21/04/2019 To 06/05/2019

Venue :  
ICAI Tower,  
BKC,  
Mumbai

Fees : ₹ 4500/-



**Risha Tolia**  
Reg No. WRO0574657

## Serving Nation

**As rightly quoted by Bhagat Singh:**

“They may kill me, but they cannot kill my ideas.

They can crush my body, but they will not be able to crush my spirit.”

On 14th February, 2019 when the whole world was blooming in red roses in the garden of love, my country India was sobbing. She lost her 40 soldiers from lap. Yes my friends you are right!! I am talking about the Pulwama attack. The day when each and every Indian irrespective of creed, color had burning fire inside them, the patriotism in the hearts wanted a surgical strike again. Wait!! Friends do you think that war is the only way out to each and every problem? If yes, then why the hat-redness is still alive inside us even after having a defend? Would you go to BSF and shed your blood to serve the nation or its just giving recommendations from your seat? Why can't you go? Having patriotism and willing to do for nation is not only by serving the nation from borders but can serve by helping the nation to grow from all the blind beliefs and blind faith. We the aspirants of magnificent course Chartered Accountants could be a part in nation building by saving our motherland from the clutches of corruption, nepotism, politics, etc. Today we youth need to fill up the pockets of our motherland instead of filling ours, creating a favorable situation for our country to develop instead of developing ourselves. The saying India was a golden bird needs to be changed to India is a golden bird. It is high time to recover our country from all the clutches and make it swachh in true sense. Today lets pledge one thing “Though I may not serve my India from borders but surely serve her from all the corrupt activities.” This will be the finest gift to our mother land and to all the martyrs. Let us make our country the developed nation and break the chain of brain drain. Let the world see what magic an Indian can do.



**Saurabh Jain**

Regn No.: CRO0514711

## LEGALITY OF TAXABILITY OF TRANSFER OF DEVELOPMENT RIGHTS UNDER GST REGIME

### 1. DEVELOPMENT RIGHTS

#### 1.1 WHAT ARE DEVELOPMENT RIGHTS?

Development right is a right to develop the land for residential, commercial or agricultural use.

Land, like any other asset, contains a bundle of several rights that accrue to it. Several rights that may be identified with land are development rights, possession right, cultivation right etc. It is a right given by a statutory body in respect of a land to construct/develop it up to a certain permissible Floor Space Index (FSI) which is within the permissible limit of Development Control Regulations (DCR).

A transaction, involving transfer of development rights can be understood as follows:



#### 1.2 TRANSFERRABLE DEVELOPMENT RIGHTS

TDR is granted by a local authority in pursuance of Development Control Regulations ('DCR'). In lieu of the area relinquished or surrendered by the owner of the land, the Government allows construction of additional built-up area. The landowner can use extra built-up area, either himself or transfer it to another who is in need of the extra built-up area for an agreed sum of money. TDR is, thus, an instrument issued by the government authorities which gives the right to person to build over and above the permissible Floor Space Index (FSI) within the permissible limit of DCR. The TDR certificates can also be traded in the market for cash. Developers purchase and utilise them for increasing their development rights.

Such *transferrable* development rights, in the form of TDR certificates, are not inherently associated with the land and is not a benefit arising out of it and its taxability is not questioned in this write up

### 2. CURRENT POSITION OF TAXABILITY OF 'TRANSFER OF DEVELOPMENT RIGHTS' (TDR) UNDER GST

#### 2.1 NOTIFICATION 4/2018-CENTRAL TAX(RATE)

Vide the aforementioned notification, the Central Government, on the recommendations of the Council, notified that in case of supply by *registered persons* who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure, the liability to pay central tax on supply of the said services shall arise at the time when the said

W  
**ARTICLES**

**LEGALITY OF TAXABILITY OF TRANSFER OF DEVELOPMENT RIGHTS UNDER GST REGIME**

developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).

The aforementioned notification deals only with time of supply of development rights and does not shed any light on taxability and valuation of the said transaction.

Moreover, the notification deals with transfer of development rights by registered persons only and does not apply to unregistered persons. This notification does not, and cannot create a charge on something that is not taxable within the purview of the charging section of the Act.

**2.2 PROPOSAL ON TAXABILITY OF TDR BEFORE THE JOINT LAW AND FITMENT COMMITTEE (JLFC)**

It is obtained from reliable sources that in the course of meeting held on January 4, 2019, the following proposals have been made regarding taxability of TDR:

<p>TDR to the extent used for construction of <u>residential property</u> except where entire consideration is received after issuance of completion certificate may be exempted</p>	<p>In respect of properties which were not booked before completion for sale and for which completion certificate has been issued, exemption from GST on TDR/development rights in JDA shall be withdrawn.</p>	<p>Time of supply of TDR/JDR for residential property may be shifted to point of issue of completion certificate. This would lead to extinguishing of interest liability on TDR/development rights in JDA</p>	<p>GST on TDR/development rights in JDA for properties other than residential purpose may continue to be taxed as usual.</p>
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To summarise, the proposal on TDR before the JLFC results in taxing of TDR to the extent used for construction of other than residential purpose whereas, exemption is proposed to be granted to the extent the TDR is used for residential purpose. Further, it is contended that transfer of development rights does not amount to an outright sale of land and is in fact, a service by the land owner to the developer of the property who is in return providing a taxable supply of construction service.

**3. ARGUMENTS AGAINST TAXABILITY OF TDR UNDER GST**

**3.1 DEVELOPMENT RIGHT AS IMMOVABLE PROPERTY**

**3.1.1 DEFINITION OF IMMOVABLE PROPERTY**

Since the GST Acts do not define immovable property, we refer the following legislations for the same:

<p>The Real Estate (Regulation and Development) Act, 2016</p>	<p>• "Immovable property" includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass</p>
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**LEGALITY OF TAXABILITY OF TRANSFER OF DEVELOPMENT RIGHTS UNDER GST REGIME**

General Clauses Act, 1897	<ul style="list-style-type: none"> <li>• "Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.</li> </ul>
Bombay Land Revenue Code, 1879	<ul style="list-style-type: none"> <li>• 'land' includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth and also shares in or charges on the revenue or rent of village or other defined portions of territory. (Section 3(4))</li> </ul>
Land Acquisition Act, 1894	<ul style="list-style-type: none"> <li>• the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth (Section 3(a))</li> </ul>
Bombay Provincial Municipal Act, 1949	<ul style="list-style-type: none"> <li>• "land" includes land which is being built upon or is built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street (Section 2(30))</li> </ul>

3.1.2 REGISTRATION ACT, 1908

Under section 2(6) of the Registration Act, 1908 "immovable property" is defined to include land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or *any other benefit* to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.

**Further**, in the practical scenario as well, a joint development agreement is registered under the Registration Act to affect the transfer of title to the developer.

Hence, it can be concluded that for the purpose of the said Act, transfer of development rights is an agreement involving transfer of immovable property.

3.1.3 VARIOUS CASE LAWS

Safiya Bee v. Mohd. Vajahath Hussain [2011] 2 SCC 94

- The Apex court held that 'land' includes rights in or over land, benefits to arise out of land.

Pradeep Oil Corpn. v. Municipal Corporation of Delhi [2011] 5 SCC 270

- The Apex court observed that land includes benefits to arise out of land.



## ARTICLES

### LEGALITY OF TAXABILITY OF TRANSFER OF DEVELOPMENT RIGHTS UNDER GST REGIME

Anand Behera v. State of Orissa [1955] 2 SCR 919

- Lake is an immovable property and therefore the petitioner's right to enter in that estate, which he does not own and take away fish from the lake is a 'Profit a Prendre' and in India it is regarded as a benefit to arise out of the land and hence it is immovable property.

State of Orissa v. Titagarh Paper Mills Company Limited AIR 1985 SC 1293

- Felling, cutting and removing bamboos from forest for the manufacture of paper is a benefit to arise out of land and hence it would be an interest in immovable property.

Chheda Housing Development Corpn. v. Bibijan Shaikh Farid 2007 (3) Mah. L.J.P. 402  
Sadoday Builders Pvt. Limited v. Joint Charity Commissioner (2011 SCC Online Bombay 760)

- Hon'ble Mumbai High Court laid down that "the expression TDR, is transfer of development rights, which enables the FSI to be used on any other plot of land generated from some other plot and can be used in terms of DC Regulations in force. It is the benefit arising out of land and is immovable property.

Anant Mills Co. Ltd. v. State of Gujarat

- The apex court stated that the word "land" has also been defined in clause (30) of section 2 of the Bombay Provincial Corporations Act. The definition is of inclusive nature and does not exclude from its ambit the underground strata of the land.

The scope of the term 'immovable property' is not restricted to mere land or a building but extends even to the benefits arising out of land.

In light of the above definitions & Acts and upon understanding the law laid down by various courts, it can be concluded that immovable property includes any rights associated therewith. Hence, the right to develop an immovable property, being a benefit arising out of the land, is in itself an immovable property.

#### 3.2 TAXABILITY OF IMMOVABLE PROPERTY

Now that it is established via various judicial pronouncements and legal definitions that development rights are immovable property, let's evaluate its taxability.

##### 3.2.1 CONSTITUTIONAL PROVISIONS

The Constitution of India, under article 246(2), grants exclusive powers to make laws in respect of matters enumerated under List II to of the Seventh Schedule of the Constitution, referred to as 'State List', to the State Legislature.

There are two relevant entries in List II which need our attention when it comes to subjects related to real estate sector. These are:



## LEGALITY OF TAXABILITY OF TRANSFER OF DEVELOPMENT RIGHTS UNDER GST REGIME

*"Entry 18 - Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."*

*"Entry 49 - Taxes on lands and buildings."*

The aforementioned State List, vide entry number 49, includes "tax on land and building". The State has already subjected development rights to tax under the respective State stamp duty Acts.

Since it has already been established that development rights are an inherent part of the land itself, the State legislatures have the exclusive right to make laws regarding their taxability. Hence, Central Goods and Service Tax Act, 2017, enacted by the Parliament of India, is not applicable on transfer of land development rights. Thus, GST cannot be levied on transfer of development rights. It is reiterated that, taxability of *transferrable* development rights as mentioned in Para 1.2 is not questioned.

### 3.2.2 SCHEDULE III OF THE CGST ACT, 2017

Schedule III of the CGST Act, 2017, read with section 7(2)(a) of the Act, contains a negative list of activities and transactions which shall neither be treated as supply of goods nor a supply of services. Paragraph 5 of the said schedule covers "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building".

Sale of land has been explicitly excluded from the scope of supply. Since, neither the term 'land' nor 'sale of land' has been defined in the Act, one may refer to definitions enumerated in para 3.1.1 and judicial pronouncements in para 3.1.3.

Also, it had already been established in earlier paragraphs that development right is an inherent component of land. **Thus, Transfer of Development Rights on a permanent basis, being a transfer of immovable property, shall be outside the ambit of GST.**

### 3.3 BOARD'S VIEW UNDER ERSTWHILE INDIRECT TAX LAW

#### 3.3.2 CIRCULAR NO. 151 /2 /2012-ST DATED FEBRUARY 10, 2012

In paragraph 2.1 of the aforementioned circular, a Tripartite Business Model of construction services has been discussed. A tripartite model involves three parties: (i) landowner; (ii) builder or developer; and (iii) contractor who undertakes construction.

As per the clarification provided in the said circular, development rights by land owner to developer is treated as sale of land and thus is not a taxable service.

#### 3.3.3 EDUCATION GUIDE ON SERVICE TAX ISSUED BY CBEC

In Paragraph 6.2.1 of the education guide on service tax, issued by CBEC in 2012, development rights by land owner to developer is treated as sale of land by the land owner to a developer and is explicitly mentioned to be a transaction which is not a taxable service. Relevant extract is as under:

**LEGALITY OF TAXABILITY OF TRANSFER OF DEVELOPMENT RIGHTS UNDER GST REGIME**

**"6.2.1 What would be the liability to pay service tax on flats/houses agreed to be given by builder/developer to the land owner towards the land /development rights and to other buyers. If payable, how would the services be valued?"**

Here two important transactions are identifiable: (a) sale of land by the landowner which is not a taxable service; and (b) construction service provided by the builder/developer. The builder/developer receives consideration for the construction service provided by him, from two categories of service receivers: (a) from landowner: in the form of land/ development rights; and (b) from other buyers: normally in cash. Construction service provided by the builder/developer is taxable in case any part of the payment/ development rights of the land was received by the builder/ developer before the issuance of completion certificate and the service tax would be required to be paid by builder / developers even for the flats given to the land owner.

Value, in the case of flats given to first category of service receiver will be the value of the land when the same is transferred and the point of taxation will also be determined accordingly."

To conclude, in the erstwhile laws as well, transfer of rights and title to the developer for development of land is considered to be sale of land and outside the purview of tax.

**3.4 OBJECTS AND REASONS OF GST**

Statements of Objects and Reasons of the CGST Act, 2017, states the following:

"In view of the aforesaid difficulties, all the above mentioned taxes are proposed to be subsumed in a single tax called the goods and services tax which will be levied on supply of goods or services or both at each stage of supply chain starting from manufacture or import and till the last retail level. So, any tax that is presently being levied by the Central Government or the State Governments on the supply of goods or services is going to be converged in goods and services tax which is proposed to be a dual levy where the Central Government will levy and collect tax in the form of central goods and services tax and the State Government will levy and collect tax in the form of state goods and services tax on intra-State supply of goods or services or both."

The object, as envisaged behind implementation of GST, was mere consolidation of taxes. Immovable property which was not taxable in earlier regime should not be intended to be taxed under GST by merely by issuance of notification/circular.

**4. CONCLUSION**

Taxing/Non-taxing of transfer of development rights under GST will have the following consequences:

If transfer of development rights not considered as supply	If transfer of development rights considered as supply and taxed
Constitutional validity	Ambiguity regarding Valuation of supply, leading to lasting unnecessary litigations
Board's view under erstwhile law shall be upheld	Legal controversies leading to litigation resulting in waste of time and resources of tax payer, exchequer and nation as a whole. One should not forget similar issue of works contract dragged county to litigation for decades.

## LEGALITY OF TAXABILITY OF TRANSFER OF DEVELOPMENT RIGHTS UNDER GST REGIME

<p>No revenue loss as in majority of the cases, this is revenue neutral due to availment of ITC</p>	<p>Compliance challenges Ex. There are numerous popular real estate models like - revenue sharing, area sharing, built-on-transfer etc. Let's say, a very old residential society approaches to a developer to reconstruct their dwellings and in exchange developer retain an agreed number of flats for himself. If the said transaction is taxed, it will result in numerous compliances and difficulties to the society. Hence, each model will have to be clarified as to how it is to be dealt.</p>
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### 5. SUMMARY

To sum it up, the following statements can be made:

- 1) Upon analysis of various Acts and judicial pronouncements, it can be concluded that Immovable Property includes benefits and rights accruing out of it.
- 2) Development right, being a right inherently attached to the land, is immovable property. However, *transferrable* development rights, as discussed earlier, are not inherently associated with the land and hence are not in the nature of immovable property.
- 3) Constitutionally, tax on land and building can be imposed only by State Legislature, hence it is outside the purview of Central Goods and Service Tax Act, 2017.
- 4) Schedule III of CGST Act, 2017 explicitly specifies sale of land to be neither a supply of goods nor of services.
- 5) The Board in erstwhile service tax laws also clarified and provided for non-taxability of transfer of land to developer under joint development agreement.



## March 2019 EVENT SNAPSHOTS

### Costing & OR for CA final



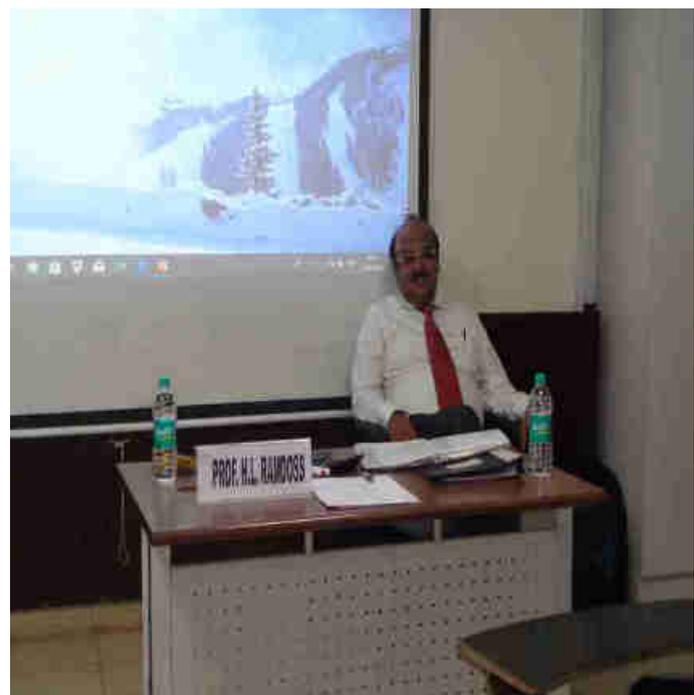


## March 2019 EVENT SNAPSHOTS

### Career Counselling Laxmichand Golwala College



### Strategic Financial Management





## March 2019 EVENT SNAPSHOTS

### Direct Tax for CA Final





## March 2019 EVENT SNAPSHOTS

### Indirect Tax for CA Final



Students Lecture Meeting on Forming Effective Habits to powerfully face the challenges during CA Journey





## March 2019 EVENT SNAPSHOTS

### One Day Students Seminar on Bank Branch Audit





## March 2019 EVENT SNAPSHOTS

### Students Lecture Meeting on Preparations for CA Exams



### ISCA for CA Final



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