KSCAA

Karnataka State Chartered Accountants Association ®

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Income Tax | Financial Reporting | GST | Constitution of India | Data Privacy | BPR | Representations

Executive Committee Members 2018-19

- Workshop on
  Are you ready for a GST Audit?
  Recent Changes in Tax Audit Report-3CD
  on 17th August 2018

- One Day Seminar on
  ICDS I TO X, GST Audit
  Recent changes in Tax Audit Report-3CD
  25th August 2018 at Hotel Jai Maatha Granduer, Shivamogga

- Workshop on Foreign Exchange Management Act [FEMA]
  Practitioners Approach
  From Basics to Advanced
  on 4th to 7th September 2018

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From the President

Dear professional friends

A Very Happy Independence Day to all of you! Let us respect others' independence as much as we value ours. Freedom is when we have power and when share the power with others. That's the reason, freedom is responsibility too. Let us keep empowering people around us and become more responsible.

It is my greatest delight for your trust and faith you imparted in me as the incoming President of this Association. I feel very humbled and blessed, that I have been elected to lead this brilliant Association. I have worked for this prestigious association as a membership and public relations committee chairman, sports and skill development committee chairman, treasurer, joint secretary and vice president over a past 5 years.

Since becoming a member of the Association, I have watched my predecessors work tirelessly for the association and I know that I have very big shoes to fill. I am genuinely excited about the future of this great association.

Let me take this opportunity to acknowledge the tremendous and adorable initiatives that were undertaken by CA T.N. Raghavendra, our outgoing President and ably supported by the Executive Committee. I wish to take this opportunity to thank CA. Raghavendra T N and his team for their work and commitment. Indeed, you are an inspiration, a challenge and an avenue for us to continue doing these great works that you began, I am certain though, that with this team that we have, we shall even do much better because I have faith in this team.

Even in slightest of my dreams, I would never have dreamt that I will be becoming 45th president of one of the oldest associations in India. It's all because of you and your trust in me. You all have boosted my morale and sense of responsibility too. I will be failing in my duty, if I do not remember our Past Presidents CA. Madanaswamy B.V., CA. C.R. Davalagi, CA Raveendra S. Kore, CA. T.M. Dileep Kumar and CA Raghavendra Puranik, who brought me to the association and groomed me to take up this position. There are others who have contributed in my success story I am grateful to all of you. I specially thank my previous five term executive committee members for their wholehearted support given to me in this successful journey.

I want to take this opportunity to mention a few of the areas that I would like our association to focus on during this term:

- Association will be focussing to increase membership base through outreach programs using new age technologies.
- Activating and manning the core committees with additional members and mentoring by Past Presidents or Subject Experts to independently conduct programs, visualize hardships and difficulties faced by our members and to support Representation Committee in making timely and meaningful representations
- Identifying a suitable office premises, either on rent or outright purchase basis to magnify association's development.
- Making timely representation on matters concerning profession, trade and business community.
- Strengthening monthly news bulletin by adding articles on varied matters of professional interest.
- Publication of useful handbooks and compendiums
- Organizing endowment programs
- Joining hands with Trade bodies, Government Departments and Government agencies for conducting joint programs to improve visibility of association.

These are the broad plans for the coming year. I request you all to suggest more and more options which will strengthen association and take it to newer heights.

This journey we cannot make alone as leaders, but it is through your support, critics and encouragements that we shall have something to do together because together we shall continue to make it. I am also aware of the fact that leadership is about taking responsibility, not making excuses. Also, I remember the quote "coming together is beginning: Keeping together is Progress: working together is success" I firmly believe in teamwork, when there is teamwork and collaboration, wonderful things can be achieved.

I thank you all for this wonderful opportunity. I look forward to the challenges ahead.

Representation submitted to policy maker and regulators:

During the foregoing period we have submitted two representations, one on Deferment/Relaxation of eForm DIR3 KYC and few other ROC related issues to Ministry of Company Affairs (our initiative) and other on CBDT directive for offering incentives to CIT (Appeals) jointly with BCAS, CAA, CAAS and IMC Chamber of Commerce. It has been our initiative to proactively take up matters of professional and societal interest and steer towards rightful causes. Also, we are pleased to inform you that KSCAA pioneered representation on the extension of tax filing due date for non-tax audit assessees cases gathered momentum and was well received and in a major way influenced the extension of due date by one month. We request members to populate any such issues so that your association may take it up further before right forum and make a meaningful impact.

Upcoming Events:

We are organizing a workshop on **'Recent changes in Tax Audit Reports and GST Audit'** on Friday 17th August 2018 in Bengaluru and on Saturday 25th August 2018 in Shivamogga.

We are organizing an intensive workshop on **'FEMA - Practitioners Approach'** to provide complete insights from basic to advanced including latest trends and changes from 04th September 2018 to 07th September 2018.

I earnestly request members to actively participate in our programs and make use of it.

The details of the programs are published elsewhere in the News Bulletin. For registrations, please visit www.kscaa.com.

Sincerely,

CA. Raghavendra Shetty
President

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KSCAA welcomes articles & views from members for publication in the news bulletin / website.

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Karnataka State Chartered Accountants Association ®

organizes

Workshop on

★ **Are you ready for a GST Audit?**
CA Annapurna Kabra

★ **Recent changes in Tax Audit Report-3CD**
CA Deepak Chopra

On **Friday, 17th August 2018** | Time : **4:00 PM**

Venue: **Sharadha Sabhangana**, KLE Society's Nijalingappa College, No.1040, 2nd Block, Rajajinagar, Bengaluru- 560 010

Fee: **Rs. 400/-** (Incusive of GST)

Online Registration available at **www.kscaa.com**

Contact: **CA. Sateesha Kalkur**, Chairman - Direct Tax Committee, KSCAA, +91 98456 91705

CA. Sujatha Raghuraman, Chair Person - Indirect Tax Committee, KSCAA, +91 99455 98565

CA Raghavendra Shetty President | **CA. Chandrashekara Shetty** Vice-President | **CA.Kumar S Jigajinni** Secretary

Karnataka State Chartered Accountants Association ®

organizes

One Day Seminar

★ **ICDS I TO X**
- in the Light of Delhi High court decision and recent changes
CA Deepak Chopra

★ **Are you ready for GST Audit ?**
CA Raghavendra T.N

★ **Recent changes in Tax Audit Report-3CD**
CA Nitin Kumar P

On **Saturday, 25th August 2018** | Time : 10:00 AM

Venue: **Hotel Jai Maatha Granduer**, B.H.Road, Vidyanagar, Shimoga

CA Raghavendra Shetty President +91 99002 14030

CA.Kumar S Jigajinni Secretary +91 94803 11197

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Karnataka State Chartered Accountants Association ®

Workshop on
Foreign Exchange Management Act [FEMA]

Practitioners Approach

From Basics to Advanced

India is one of the largest FDI destinations in the world with the relaxation of foreign exchange restrictions, there has been a significant flow of investments into India. At the same time, Indian businesses have been making investments and acquisitions overseas. With the inbound and outbound investments rising, it is essential to understand the rules, regulations and policies that govern such capital inflows and outflows as practitioner. All transactions involving foreign exchange fall under preview of Foreign Exchange Management Act (FEMA) read with FDI policy.

KSCAA is organising workshop on FEMA to provide complete insight of FEMA from basics to advanced approach to the practitioner, including latest trends in FEMA and practical aspects from the Authorised Dealer Banks. This workshop will identify the practical issues and help create real-world understanding of the foreign exchange laws and policy in India.

Who can attend

Chartered Accountants, Cost Accountants, Company Secretaries, Tax Consultants, Finance Controllers, CFOs, Finance Managers, Accountants and Accounting staff involved in FEMA Activities.

Workshop Dates (4 Days)*

4th September 2018 to
7th September 2018.
Tuesday to Friday
Timing:
4.30 PM to 7.30 PM

Workshop Venue*

Vasavi Vidyanikethan Trust (VVN),
No.3, Vani Vilas Road, V.V. Puram, Basavanagudi,
Bengaluru – 560 004

Workshop Fee

Rs. 2,500 (Plus GST)
Or
Rs. 2,950 (All inclusive)
Course Fee includes Course Material, Refreshments

COURSE COVERAGE:

- FEMA regulations
- FDI Policy of India
- Investment Policies
- Export and import related regulatory issues
- Outbound Investment Policy
- International Finance: External Commercial Borrowings (ECBs)
- Remittances under FEMA

For detailed content see overleaf

COURSE EXPERTS:

- Sandeep Jhunjhunwala, FCA
- Authorised Dealer (Banker) – Regulatory teams from Standard Chartered Bank and HSBC
- Other eminent speakers

Registration/Enquiries

Course Convenor:
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*Subject to confirmation

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Workshop on
Foreign Exchange Management Act [FEMA]

Practitioners Approach

From Basics to Advanced

DETAILED COURSE CONTENT:

FEMA regulations

- Types of Transaction - Current and capital account transactions
- Automatic and Approval route
- Regulatory setup – Finance Ministry, DIPP, FIPB, RBI etc
- FEMA – Basic principles

FDI Policy of India

- Entry routes and eligible entities
- Sectoral analysis - Restricted, Prohibited & Permitted
- Eligible Instruments for Investment and pricing
- Reporting and Remittance
- Enforceability of Share Transfer Restrictions
- Indirect Foreign Investments
- Downstream Investments
- Transfer of Shares
- Round Tripping
- Recent FDI relaxation and key developments on FDI policy

Investment Policies

- Investment in Liaison office/ Branch office/ Project office/ Company / Joint ventures/ LLPs - Setup and closure
- FII and FVCI, including AIF
- Funding of subsidiaries
- Drafting of shareholders agreement (brief discussion over relevant clauses)
- Key points to be considered while making Downstream Investment
- Merger/ Acquisition – Key Developments
- Regulations, Reporting, Compliances and Compounding procedures
- Pointers for Valuation of securities (especially convertible debentures)
- Do and do not's for Investor and Investee companies
- Documents to file and permission from RBI/ AD Banker
- Form FLA and SMF - Foreign Investment Reporting Process

Export and import related regulatory issues

- Trade discount and reduction in invoice value
- Regulatory waivers
- Advance remittance, write off, netting off
- Time limit for export/ import payments, interest payments etc
- Trade credit: Supplier's credit and Buyer's credit

Outbound Investment Policy

- Overseas direct Investment by Corporates/ Partnership firms and individual
- Precautions while making an investment
- Drafting of agreements (brief discussion over relevant clauses)
- Reporting requirements, compliances and procedures
- Loan to WOS/ Pledge of shares
- Manner, mode and funding of investment
- ESOPs to non - resident employees
- ODI by LLPs/ Trusts/ Societies
- FEMA vis-à-vis Tax Treaty

International Finance: External Commercial Borrowings (ECBs)

- Basics of External Commercial Borrowings
- ECB vs other mode of financing (domestic finance/ ADR/ GDR) – Cost benefit analysis
- Drafting of ECB agreements and corporate guarantees (Points to be considered, including transfer pricing and income tax related issues)
- Conversion of ECB into equity
- Security and Guarantees
- Trade credits
- Structured Obligations
- Reporting requirements
- Instruments which requires ECB compliances

Remittances under FEMA

- Types of accounts (NRE, NRO and EEFC)
- Precautions to be taken in operation of accounts
- Remittances (manner and mode of remittances)
- Points of caution while making/ receiving remittances
- Investment in immovable property in India
- Liberalized remittance Scheme

ADDITIONAL GROUNDS – INCOME TAX ACT, 1961

CA S. Krishnaswamy

1. Cordial principle i.e., generally if no liability to tax, on facts or law to be entertained.
2. Questions of law can always s be raised.
3. Question on facts if not available from records generally not admissible.

In many tax matters it often happens that a critical ground has not been taken either during the assessment stage or even in the first appeal stage. Can a new ground be taken either in the first appeal i.e., before CIT (A) or before the ITAT? The question can be answered depending on if it relates to a 1) legal issue or 2) facts.

1. **Legal issue:**

   A legal issue can always be taken at any stage. A few judicial decision will explain the position.

   The lead case –

   National Thermal Power Ltd vs CIT (1998) 229 ITR 383 (SC) decided on Dec 4, 1996. The SC held that-

   "*the powers of Tribunal in dealing with the appeals are expressed in the widest possible terms and it has jurisdiction to examine the question of law which arises from the facts available before lower authorities and which has a bearing on the liability of the assessee, even if such question has not been raised before the lower authorities. Thus, it is argued that even if the questions involve an additional ground, it is too late for the revenue to object to it because the matter has been considered by the Division Bench and now these questions have to be decided by the Tribunal as per order made by Hon'ble President. In any case even if an additional ground is involved, the Bench has all the powers to admit it and adjudicate upon it if all the facts necessary for such decision are available on record of lower authorities. It is stated that all facts are there on record and no new fact is required to be brought on record, therefore, the ground may be admitted.*"

   The above decision is followed in a number of cases,

i. ***Ravindra Arora Praveen Arora vs. ACIT (2018) 404 ITR 452 (Rajasthan HC):***

   It was held that there is no doubt that the Tribunal has discretion to allow or not to allow a new ground to be raised but where the Tribunal is only required a **question of law** arising from the facts which are not on record in the assessment proceedings, such a question should be allowed to be raised and decided by the Tribunal in order to assess the correctness of the tax liability of an assesse.

ii. ***Dy.CIT vs. Credila Financial Services P Ltd. (2018) 64 ITR (Trib) 324 (Mumbai):***

   It was held that the new legal ground raised for the first time before the Tribunal did not require investigation of new facts and could be raised even before the appellate authorities for the first time. Thus in the interest of justice the additional ground raised in the cross-objection was to be admitted and also in the interest of substantial justice, the delay of 17 days in filing of the cross-objection needed to be condoned and consequentially the cross-objection filed by the assesse was directed to be admitted for adjudication on the merits.

iii. ***Sat Narain v. ITO (2005) 94 TTJ 499 (Delhi)(Trib.):***

   Additional ground raised by assessee that assessment order in question had been framed under section 143(3), without assuming jurisdiction to frame such assessment inasmuch as notice under section 143(2) was not issued and served within statutorily allowable period of 12 months from end of month in which return under section 148 was filed, being a legal ground and being capable of being adjudicated on material on record, was to be allowed. (A.Ys. 1999-2000, 2000-01).

iv. ***Avery Cycle Industries Ltd. v. CIT (2007) 164 Taxman 429 / 292 ITR 493 (P&H)(High Court):***

   An additional ground can always be raised under section 254 before Tribunal if it involves a question of law, which emerges from facts on record in assessment proceedings, although same might not have been raised before Commissioner (Appeals).

v. ***Himachal Gramin Bank v. Dy. CIT (2008) 9 DTR 141 / 219 CTR 670 / 305 ITR 163 / 176 Taxman 433 (HP) (High Court):***

By virtue of section 250(5), the CIT (A) is empowered to entertain any new ground raised before him which is not specified in the memorandum of appeal. (A.Y. 1990- 91)

vi. ***West Bengal State Electricity Board v. Dy. CIT (2005) 278 ITR 218 / 147 Taxman 234 / 198 CTR 122 (Cal.) (High Court):***

A question of law arising out of facts found by authorities and which goes to root of jurisdiction, can be raised for first time before Tribunal. (A.Ys. 1983-84 to 1987-88)

vii. ***Bharat Rice Mill v. CIT (2005) 278 ITR 599 / 148 Taxman 145 / 200 CTR 481 (All.)(High Court):***

Appellate Authority has power to permit party to raise additional ground which had not been raised in memorandum of appeal and further in penalty proceedings fresh material can be considered which was not available at time of the assessment or while passing the penalty order. (A.Y. 1981-82)

viii. ***Dy. CIT v. Suprint Textiles (2006) 100 TTJ 352 (Jp.) (Trib.)***

Claim whether counter sales to foreign tourists against foreign exchange can be treated as export turnover for purposes of section 80 HHC being based on a pure question of law, it can be raised and entertained at any stage of appeal. (A.Y. 1997- 98).

ix. ***Dy. CIT v. B.J.D. Paper Products (2011) 141 TTJ 108 / 60 DTR 81 (Luck.)(Trib.):***

Tribunal can admit the additional ground while deciding the penalty appeal a pure question of law not involving investigation into the facts. (A. Y. 2005-06)

x. ***ACIT v. Wolkman India Ltd. (2011) 142 TTJ 888 (Jodh.) (Trib.):***

If relevant facts are available on record Tribunal can admit a question of law as additional ground. (A. Ys. 2000-01 to 2004-05)

xi. ***Otis Elevator Co. (India) Ltd. v. Dy. CIT (2007) 159 Taxman 128 (Mag.)(Mum.)(Trib.):***

It was held that though the ground challenging the issue of Notice under section 148 was not challenged before Assessing Officer nor Commissioner (Appeals), the same can be raised before the Tribunal as it being purely a legal ground.

xii. ***Shankerlal Nebhumal (HUF) v. Dy. CIT (2003) 80 TTJ 69 / 2 SOT 671 (Ahd.)(Trib.) and Lathia Rubber Mfg. Co (P) Ltd. v. ACIT (2003) 81 TTJ 779 / 3 SOT 714 (Mum.)(Trib.):***

Additional ground which is purely a legal issue, being charging of Interest under section 139(8)/215 has to be admitted. (A.Y. 1988-89)

xiii. ***CIT v. Madhu Patani (Smt.) (2009) 18 DTR 110 (Ker.) (High Court):***

Additional Ground challenging the assessment on the ground of limitation can be raised first time before the CIT (A) in appeal against the fresh assessment order passed on remand, even though it was not raised either before the assessing authority or the CIT (A) in the first round of proceedings. (A.Y. 1987-88)

- **HC directs tribunal to accept additional ground even if raised by way of oral request.**

VMT Spinning Co. Ltd. Vs. CIT (Punjab & Haryana High Court) - IT Appeal No. 445 of 2015 date of order 16/09/2016.

The assessee raised an additional ground with regard to calculation of Minimum Alternate Tax to be carried forward to the subsequent year. According to the assessee, in the Assessment Order, the same had not been correctly calculated. As this ground was to challenge the above computation made in the assessment proceedings and had not been raised before the Commissioner, the Tribunal refused to adjudicate upon the same as according to the Tribunal prior leave of the Tribunal through an application in writing should have been obtained before raising the additional ground. An oral request made by the assessee to raise this additional ground was not considered enough. The Tribunal held that in the absence of any request in writing for admission of an additional ground in the appeal, the Revenue would be put to serious prejudice, as it would have no opportunity to counter the request of the assessee in this regard. For arriving at the above conclusion, the Tribunal relied upon a judgment of the Gujarat High Court in ***Smt. Arundhati Balkrishna v. G.M. Singhvi, ITO (1976) 103 ITR 763***, a judgment of Allahabad High Court in ***CIT v. Sahara India (2012) 347 ITR 331*** as also a judgment of this Court in ***Echo Shella v. CIT (2007) 293 ITR 234.***

Rule 11 in fact confers wide powers on the Tribunal, although it requires a party to seek the leave of the Tribunal. It does not require the same to be in writing. It merely states that the appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal. In a fit case it is always open to the Tribunal to permit an

appellant to raise an additional ground not set forth in the memorandum of appeal. The safeguard is in the proviso to rule 11 itself. The proviso states that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground. Thus even if it is a pure question of law, the Tribunal cannot consider an additional ground without affording the other side an opportunity of being heard. We venture to state that even in the absence of the proviso it would be incumbent upon the Tribunal to afford a party an opportunity of meeting an additional point raised before it. Moreover, even though rule 11 requires an appellant to seek the leave of the Tribunal, it does not confine the Tribunal to a consideration of the grounds set forth in the memorandum of appeal or even the grounds taken by the leave of the Tribunal. In other words, the Tribunal can decide the appeal on a ground neither taken in the memorandum of appeal nor by it's leave. The only requirement is that the Tribunal cannot rest its decision on any other ground unless the party who may be affected has had sufficient opportunity of being heard on that ground.

- **Appellate Authorities can allow Additional Claims made by Assessee during Proceedings:**

CIT Vs M/s. Abhinitha Foundation Pvt Ltd. (Madras High Court):

In the appeal, the Revenue seeks to raise the following questions of law for our consideration:

i. Whether on the facts and in the circumstances of the case, the Tribunal was right in directing the AO to consider the claim made under Section 80IB (10) even though the assessee did not make any such claim in the return of income filed?

ii. Is not the finding of the Tribunal bad by directing the AO to consider the claim afresh in respect of deduction u/s.80IB (10) especially when no such claim was made in the original return filed nor any revised return filed claiming the same nor any Petition under Section 264 filed which is against the law laid down by the Apex Court in the case of ***Goetze India, reported in 284 ITR page 323***?

It was held that, what emerges from a perusal of the ratio of the judgments, in particular, the judgments rendered by the Supreme Court in ***Goetze India***' case and ***National Thermal Power Co. Ltd.***'s case, and those, rendered by the Division Bench of this Court in ***Ramco Cements Ltd***. and ***CIT vs Malind Laboratories P. Ltd.,*** as also the judgments of the Delhi High Court in ***Sam Global Securities Ltd.'s*** case and ***Jai Parabolic Springs Ltd.'s*** case, that, even if, the claim made by the assessee company does not form part of the original return or even the revised return, it could still be considered, if, the relevant material was available on record, either by the appellate authorities, (which includes both the CIT (A) and the Tribunal) by themselves, or on remand, by the Assessing Officer. In the instant case, the Tribunal, on perusal of the record, found that the relevant material qua the claim made by the assessee company under Section 80 IB (10) of the Act was placed on record by the assessee company during the assessment proceedings and therefore, it deemed it fit to direct its re-examination by the Assessing Officer.

2. **Question of Facts:**

i. Commissioner Of Income Tax vs Jai Parabolic Springs Ltd. (2008) 306 ITR 42:

It was held that there is no prohibition on the powers of the Tribunal to entertain an additional ground which according to the Tribunal arises in the matter and for the just decision of the case.

ii. Amalgamated Electricity Company Limited v. Commissioner of Income-tax, (1974) 97 ITR 334.

iii. M/s. The Ramco Cements Limited vs. Deputy Commissioner of Income tax, SR-1, Madurai.

iv. Commissioner of Income Tax, Central - I V. Pruthvi Brokers and Shareholders Pvt. Ltd ITA No.3908 of 2010 (Bombay HC)

- **Conclusion:**

While it is important to take all debatable grounds which the assessing authority is likely to disagree at the assessment stage itself, nothing is lost if not taken; it can be raised at the first appeal stage or even before the Tribunal. The overarching principle that judiciary has emphasised is that no man can be fastened with unjust tax liability. This is the constitutional position. The best hedge is to place all facts at the assessment stage even if there is a missout on grounds taken in appeal.

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Change in Form 3CD and GST disclosures

CA Madhukar N Hiregange & CA Mahadev R

The season of audit under Companies Act provisions and Income tax provisions has been just started for the FY 2017-18. By the time the auditors got engaged in their work helping their clients in their compliance, a new format of income tax form 3CD has been notified by the income central direct tax board which would be effective for filings made from 20th August 2018. The present Central Government has been taking lot of measures to undertake data mining of information obtained . The cross tax implications ensure that additional tax revenues are generated with less scope for evading taxes. However, some of these measures have resulted in increased compliance for businessmen which may go against the objective of making business friendly laws in India. Ease of doing business may also become difficult. The objective of this article is to highlight the requirement of compliance in GST in this new income tax form.

Changes in income tax forms

This is not the first time that the Central Board of Direct Taxes (CBDT) has made the changes in forms to extract extra information in order to link direct tax information with indirect tax information such as GST. The income tax forms such as ITR-3, ITR-4, ITR-5 and ITR-6 have been amended in the past to disclose following information with respect to GST:

Sl.No.	Form no.	Information to be disclosed
1	ITR-3	i. Details of CGST, SGST, IGST, UTGST received or receivable in respect of outward supplies ii. Details of CGST, SGST, IGST, UTGST payable or paid in respect of inward supplies iii. Details of CGST, SGST, IGST, UTGST paid or payable to Government iv. Details of amount not credit to P&L account – Refund of GST v. Amount of credit outstanding in respect of GST
2	ITR-4	Details of amount of turnover / gross turnover as per GSTR return
3	ITR-5	i. Details of CGST, SGST, IGST, UTGST received or receivable in respect of outward supplies ii. Details of CGST, SGST, IGST, UTGST payable or paid in respect of inward supplies iii. Details of CGST, SGST, IGST, UTGST paid or payable to Government iv. Details of amount not credit to P&L account – Refund of GST v. Amount of credit outstanding in respect of GST
4	ITR-6	i. Details of CGST, SGST, IGST, UTGST received or receivable in respect of outward supplies ii. Details of CGST, SGST, IGST, UTGST payable or paid in respect of inward supplies iii. Details of CGST, SGST, IGST, UTGST paid or payable to Government iv. Details of amount not credit to P&L account – Refund of GST v. Amount of credit outstanding in respect of GST

Even in the past there were few amendments made to obtain details of sales turnover as per sales tax returns. All this information about taxes could help the GST / Income tax department to reconcile the differences in the details furnished and demand for taxes unpaid /short paid, if any.

Recent change in Form 3CD

The major change notified recently by CBDT vide Notification No. 33/2018 dated 20.07.2018 requires certain additional details including GST related details in tax audit form 3CD. The revised form would be applicable for the reports which would get filed from 20.08.2018 onwards. As we understand there is lot of urgency among tax payers to file the form before 20th to overcome extra reporting requirements. The new form requires disclosure of GSTIN which would help the

government to know details of GST registrations obtained. In addition to this, details of expenditures in below format is required in clause 44 of the form:

Sl. No.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure relating to entities not registered under GST
		Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Analysis of new disclosure requirement

Though the requirement seems to be simple, providing the details of expenditure with breakup as desired could take substantial time and efforts especially in cases where the number of transactions are high. The statements would have to be prepared for the past financial year 2017-18 for compliance with new requirement. It is very interesting to note that the present monthly return in form GSTR-3B (column 5) requires disclosure of inward supplies in below format:

Nature of supplies	Interstate supplies	Intrastate supplies
From a supplier under composition scheme, Exempt and Nil rated Supply		
Non-GST supply		

If the tax payers have strictly filled and followed the above requirement, furnishing the details for form 3CD may be easy as compared to tax payers who have ignored filling the details in column 5 while filing GST return in form 3B. It is time for tax payers to identify such procurements now and continue to do the same for income tax compliance. Tax payers could also find following advantages in this exercise:

a. Get to know value of procurements from composition dealers which could be avoided considering the fact that such dealers are ineligible for credits and therefore, cost of supplies are high.

b. Get to know the details exempt supplies to analyse if actually such supplies are exempt or the suppliers are unregistered which could be avoided as their supply cost could be high.

c. Get to know payments made to registered suppliers to ascertain fulfilment of 180 days payment condition to be eligible for GST input tax credit in terms of Section 16(2) of CGST Act 2017.

ICAI has made representation for postponing the applicability of new format as preparing for submitting extra information could take extra time and effort. There have been high court judgments as well wherein it has been held that sufficient time should be provided for the tax payers for compliance with new requirement. However, as there is uncertainty, the tax payers should either try to file their 3CD forms before 20th August or be ready for furnishing GST expenditure details. The collation of information could also be useful for submission of GST annual return and GST audit report under Section 35(5) of CGST Act 2017 which is due on 31st December 2018.

Conclusion

It is commendable that government is keen towards increasing the revenue from tax collections which could be used for nation development. However, more thought needs to go in the measures taken considering the pros and cons. Taking expenditure details in income tax return and again in GST returns may not really serve any purpose. GST annul return and audit report could seek such additional information which is to be made known to tax payers well in advance to prepare themselves. Nevertheless, it is great opportunity for professionals practicing in income tax to get updated about GST as well. They could rely on the work of other professionals practicing in GST for this purpose and guide the tax payers for better compliance.

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Constitutional Validity of Legislation

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Introduction

This is the first in a series of articles I intend to write addressing various basic, yet critical, Constitutional issues. The Constitution is the supreme law of the land, and ensures that the rights and liberties of the people of India are protected. One crucial way the Constitution achieves this end is by keeping a check on the vast powers of the Legislative branch of the State by empowering the Supreme Court and the High Courts to issue writs striking down laws enacted by Parliament and State Legislatures. This article briefly discusses the circumstances in which the Courts can strike down legislation as being invalid and, therefore, unenforceable.

Laws that violate Part III

The primary ground on which the Supreme Court can strike down a legislative provision is if it violates the fundamental rights protected under Part III of the Constitution. Part III of the Constitution is, arguably, its most important and guarantees certain basic fundamental rights. Part III sets out and protects various rights enshrined under the Constitution, such as, the right to equality, the right to freedom of speech, the right to practice any profession or occupation, the right against deprivation of life or personal liberty, etc. Perhaps the most important right, without which all the other fundamental rights would be illusory, is guaranteed under Article 32. Article 32 provides a remedy for the enforcement of all fundamental rights by guaranteeing "the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by [Part III]." Article 226 of the Constitution also empowers the High Courts to issue writs "for the enforcement of any of the rights conferred by Part III and for any other purpose." Therefore, a person whose fundamental rights have been violated as a result of any legislative action can approach the Supreme Court or the High Court for enforcement of her rights.

Article 13(2) of the Constitution states that "the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void." Therefore, no law made by either Parliament or a State Legislature shall take away or abridge any fundamental rights guaranteed under the Constitution, and any law that does take away or abridge a fundamental right shall be void. In State of Tamil Nadu v. Shyam Sunder, (2011) 8 SCC 737, the Supreme Court held as under:

> *"In Behram Khurshid Pesikaka v. State of Bombay* AIR 1955 SC 123; and *Mahendra Lal Jaini v. State of Uttar Pradesh & Ors. AIR 1963 SC 1019, this Court held that in case a statute violates any of the fundamental rights enshrined in Part III of the Constitution of India, such statute remains still-born; void; ineffectual and nugatory, without having legal force and effect in view of the provisions of Article 13(2)* of the Constitution. The effect of the declaration of a statute as unconstitutional amounts to as if it has never been in existence. Rights cannot be built up under it; contracts which depend upon it for their consideration are void. The unconstitutional act is not the law. It confers no right and imposes no duties. More so, it does not uphold any protection nor create any office. In legal contemplation it remains not operative as it has never been passed. In case the statute had been declared unconstitutional, the effect being just to ignore or disregard.

It is thus clear that a law, whether enacted by Parliament or by a State Legislature, that violates any of the fundamental rights guaranteed under Part III is void and unenforceable. Needless to state, tax enactments and provisions are not immune from the rigors of Article 13(2). Therefore, a tax law that, for instance, violates the right to equality or curtails any of the freedoms guaranteed under Article 19 is liable to be struck down as unconstitutional by the Supreme Court under Article 32 or the High Courts under Article 226. In Jindal Stainless Ltd. v. State of Haryana, (2017) 12 SCC 1, a nine-judge Bench of the Supreme Court observed as follows:

> "*A tax legislation could be challenged on the ground of legislative competence as well as violation of Fundamental Rights guaranteed under Part III of the Constitution. In Rai Ramkrishna and Ors. v. The State of Bihar* (1964) 1

SCR 897, this Court while holding that tax Statutes were not beyond the constitutional limitation prescribed by Articles 14 and 19 held that the challenge must however be dealt with caution and circumspection: "13. …..that taxing statutes are not beyond the pale of the constitutional limitations prescribed by Articles 19 and 14, and he also concedes that the test of reasonableness prescribed by *Art. 304(b)* is justiciable. It is, of course, true that the power of taxing the people and their property is an essential attribute of the Government and Government may legitimately exercise the said power by reference to the objects to which it is applicable to the utmost extent to which Government thinks it expedient to do so. The objects to be taxed so long as they happen to be within the legislative competence of the legislature can be taxed by the legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes *Art. 19, courts would naturally be circumspect and cautious. Where for instance, it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, Courts would be justified in striking down the impugned statute as unconstitutional.*"

There is, therefore, no doubt whatsoever that all laws, including tax laws, enacted by either Parliament or State Legislatures have to pass the muster of Article 13(2), failing which, they would be liable to be struck down by the Supreme Court or the High Courts as unconstitutional and unenforceable.

Laws that suffer from want of Legislative Competence

Our Constitution is quasi-federal in structure, that is to say, there is a clear division of powers between the Union and the States as regards the power to legislate on various subjects, with a strong bias towards the Union. Article 245 states that, "subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State." The Parliament and State Legislatures derive their power to legislate on specific subject matters from Article 246, read with the VII Schedule to the Constitution. Article 246(1) states that Parliament has exclusive power to make laws with respect to matters enumerated in List I in the VII Schedule ("the Union list"). Article 246(2) states that both Parliament and the State Legislatures have power to legislate on matters enumerated in List III in the VII Schedule ("the Concurrent list"). Article 246(3) empowers the State Legislatures to legislate on matters enumerated in List II in the VII Schedule ("the State list"). Article 246-A is the only exception to the general rule, where under an additional and independent source of power is conferred on both the Union and the States to legislate with respect to Goods and Services Tax.

In Kuldip Nayar v. Union of India, (2006) 7 SCC 1, the Supreme Court observed that, "a challenge to Legislation cannot be decided on the basis of there being another view which may be more reasonable or acceptable." The Court further held that "a matter within the legislative competence of the legislature has to be left to the discretion and wisdom of the latter so long as it does not infringe any Constitutional provision or violate the Fundamental rights." Therefore, Parliament or the State Legislatures are supreme to legislate within the scope of their respective reserved subjects, and a law cannot be struck down merely because there might exist a better law or policy. In Jindal Stainless, the Supreme Court reiterated the aforesaid principle by observing that, "in a federal system, the legislative power is exercised by distribution of powers between the Union and the States; both are supreme in their respective spheres."

However, in order to maintain the sanctity of the federal structure of the Constitution, a law made by Parliament that encroaches upon a subject reserved for the States is constitutionally invalid, and a State enactment that encroaches upon a subject reserved for the Union is similarly unconstitutional for want of legislative competence. In such cases, the Supreme Court or the High Courts would strike down such legislations as *ultra vires* the power of the Parliament or State, as the case may be.

In the context of taxation entries under the VII Schedule, in Gujarat Ambuja Cements Ltd. v. Union of India, (2005) 4 SCC 214, the Supreme Court explained that under Article 246, read with the Union and State Lists, "there is a complete and careful demarcation of taxes in the Constitution, and there is no overlapping as far as the fields of taxation are concerned." According to the Court, the mutual exclusivity which has been reflected in Article 246 means that "taxing entries must be construed so as to maintain exclusivity," and

"although generally speaking, a liberal interpretation must be given to taxing entries, this would not bring within its purview a tax on a subject-matter which a fair reading of the entry does not cover." The Court further observed that, "if in substance, the statute is not referable to a field given to the State, the Court will not by any principle of interpretation allow a statute not covered by it to intrude upon this field." In short, the law is clear that when a field of taxation has been reserved by the Constitution for either the Union or the States, the Courts would not permit the other to encroach upon that sphere, and if there is any such encroachment, the Supreme Court and the High Courts would strike down such a legislation for want of legislative competence.

Laws contrary to other Constitutional Provisions

Laws that violate certain Constitutional provisions, other than Part III, are also prone to be struck down as invalid and unconstitutional. For instance, Article 301 states that, "trade, commerce and intercourse throughout the territory of India shall be free." Accordingly, any law that curtails such freedom will be liable to be struck down as violative of the freedom guaranteed under Article 301. Similarly, a law that has been enacted contrary to the procedure prescribed under the Constitution for passing of legislations is invalid. For instance, a bill or amendment imposing reasonable restrictions on the freedom of trade, commerce or intercourse in the interests of the public would be unconstitutional if sanction of the President is not obtained in accordance with the proviso to Article 304(b).

Conclusion

The two primary grounds on which a legislation is amendable to be struck down are: (a) if the law violates any of the fundamental rights under the Constitution; and (b) if the law suffers from want of legislative competence. There are, of course, certain other grounds on which a law may be struck down, such as if the law is contrary to other provisions of the Constitution and, more recently, as held in Shreya Singhal v. Union of India, (2015) 5 SCC 1, if law suffers from vagueness. However, the cardinal principle is that the Constitution is supreme in our country, and all laws must be in conformity with the mandate of the Constitution, failing which the law would be liable to be struck down by the Supreme Court or the High Courts.

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KSCAA WELCOMES NEW MEMBERS - AUGUST 2018

S.No.	Name	Place
1	SUMANT T. HEGDE	BENGALURU
2	SUMANTH ANANTHARAM	CHITRADURGA
3	PRADEEP KUMAR REDDY S	BENGALURU
4	MANGALA HAMPASAGAR	HOSPET
5	TEJAS MEHTA	BELAGAVI
6	SRINIDHI K.P.	SHIMOGA
7	PRAVEENA RAJASHEKARA SHASTRI	BENGALURU
8	KRUSHNARAO UDAGATTI	BAGALKOT
9	KAUSTUBHA L	MALUR
10	HANUMANTHA REDDY C.	BALLARI
11	GADIGEPPA SHIVANAND TIGADI	BENGALURU
12	SUBRAMANYA B.L.	BENGALURU
13	NAVEEN S HEGDE	BENGALURU
14	LAKSHMIKANTH R.	HOSPET
15	MATHAD JYOTI GURURAJ	BELGAUM
16	AMARNATH N	BENGALURU
17	VASANTH KUMAR	BENGALURU
18	VIJANTH KUMAR D.R.	BENGALURU
19	SOMANATH BALAYYA HIREMATH	CHIKKODI
20	CHOUGULE CHETAN VIJAY	BELAGAVI
21	SACHIN SHRIHAIL	BELGAUM
22	SHIVAKUMAR KHADABADI	BELAGAVI
23	ASHOK C MENSHI	BELAGAVI
24	JAYKUMAR PATIL	BELGAUM
25	MAHADEVAGOUDA R. MUDIGOUDAR	BELAGAVI
26	VIRENDRA VIJAY MAHAJAN	BELGAUM
27	UMESH G DADDIMANI	BELAGAVI
28	MADIWALAPPA TIGADI	BELAGAVI
29	VARSHA A CHILAL	BELAGAVI

Tax Notes - CST and GST Updates

CA GB Srikanth Acharya & CA Annapurna D Kabra

Notifications under Central Sales Tax law

I) **CST Karasamadhana Scheme 2018:**

- The Karasamadhana Scheme is introduced with a view to reduce the arrears under the Provisions of Central Sales Tax Act 1956. The State Government has passed the order (Order No FD 38 CSL 2018, Bengaluru dated 4/8/2018).
- It grants waiver of 100% arrears of penalty and Interest payable by a dealer under the CST Act 1956 relating to Assessments/Re-Assessments completed on or before 30/6/2018 subject to following conditions:

o The waiver of penalty and interest is subject to that it should be paid on or before 30/10/2018.

o It is not applicable to penalty levied under section 10-A (Imposition of penalty in lieu of Prosecution) of the CST Act.

o Where the dealer has no arrear of Taxes but has only arrears of Penalty and Interest then also it can also be waived.

o In case if the dealer has filed an already preferred appeal or an application against the order or proceedings relating to arrears of tax and arrears of penalty and Interest before any Appellate Authority or Court and disposal of such application is pending, the dealer shall withdraw such appeal or other application before availing the benefit of waiver of arrears of penalty and interest under the scheme.

o The dealer shall file a declaration in support of withdrawal of appeal or other application in **Annexure II** along with the application for waiver of interest and penalty in Annexure **I** attached to this order. Such application and declaration shall be filed for each year separately.

o After the appeal or other application is withdrawn, the amount of arrear of penalty and interest shall be considered for waiver under the scheme.

o Any amount of interest and penalty paid at the time of filing of appeal or other application shall be eligible for outstanding for the assessment year for which the benefit of waiver is claimed.

o The dealer shall not be eligible for refund of any amount that may become excess as a result of such adjustment under this scheme.

o The dealer shall not file an appeal or other application before any Appellate Authority or Court or shall not seek rectification of orders/proceedings after filing applications for availing the benefits of this scheme or after availing the benefits of this scheme for whatever reasons.

o The dealer shall not be eligible to avail the benefits of this scheme in relation to an order giving rise to arrears of tax, penalty and interest where

➢ The State has filed an appeal before the Karnataka Appellate Tribunal or the Central Sales Tax Appellate Authority.

➢ The State has filed an appeal or revision or any kind of application before the High Court or Supreme Court or

➢ Any competent Authority has initiated suo moto revision proceedings under the CST Act as on 30/6/2018 or any rectification is made after 30/6/2018.

o **Procedure:**

- The dealer opting for this scheme shall submit an application in the Format **Annexure-I** appended to this order under the CST Act for each year relating to the assessment/reassessment concluded up to 30/6/2018 electronically through the website http://ctax.kar.nic.in or http: //gst.kar.nic.in on or before 30/10/2018.
- The signed copy of the said application downloaded shall be submitted to the concerned Assessing Authority as prescribed before 30/10/2018.
- The concerned Assessing Authority shall scrutinize the application and calculate the actual arrears of tax, penalty and interest payable by the dealer up to the date of filing of application.

- If there is any discrepancy is found in the arrears of tax and penalty payable it shall be intimated in Annexure III and on satisfaction with the application the Assessing Authority the appellant shall pass the order in Annexure IV waiving the amount of arrears of interest and penalty payable by the dealer for each assessment year separately
- The order of the waiver shall be passed within fifteen days from the date of making payment and the same shall be served on the dealer within ten days from the date of passing the order.
- The Assessing Authority shall assist the dealer in correct quantification of the amount of interest and penalty.

Notifications under GST law

➢ **Due date for filing of FORM GSTR- 3B: Notification No. 34/2018- Central Tax dated 10.08.2018** prescribes the due date for filing of FORM GSTR- 3B for the months of July' 2018 to March' 2019 to be on the **20th of the month succeeding such month.** Further the payment of taxes, interest, penalty and late fees have to be discharged within the said due date.

➢ **Due date for filing of quarterly FORM GSTR- 1:**

Notification No. 33/2018- Central Tax dated 10.08.2018 prescribes the due date for quarterly filing of FORM GSTR- 1 for taxpayers having aggregate turnover of up to Rs. 1.5 crores for the months of July' 2018 to March' 2019 as follows:

Sl No.	Quarter for which details in FORM GSTR- 1 are furnished	Time period for furnishing details in FORM GSTR- 1
1	July- September 2018	31st October, 2018
2	October- December 2018	31st January 2019
3	January- March 2019	30th April 2019

➢ **Due date for filing of monthly FORM GSTR- 1:**

Notification No. 32/2018- Central Tax dated 10.08.2018 prescribes the due date for monthly filing of FORM GSTR- 1 for taxpayers having aggregate turnover of more than Rs. 1.5 crores for the months of July' 2018 to March' 2019 till the **eleventh day of the month succeeding such month**.

➢ **Special Procedure for completing migration of taxpayers who received Provisional ID: Notification No. 31/2018- Central Tax and Notification (13/2018) No. FD 47 CSL 2017 dated 06.08.2018** lays down the special procedure for completing the migration for those tax payers who did not complete the filing of FORM GST REG- 26 under the CGST Rules, 2017 but received only Provisional ID till 31st December, 2017 may now apply for GSTIN. The special procedure is provided as under

❖ The details in the prescribed format should be furnished to the jurisdictional nodal officer of the CG or SG on or before the 31st August, 2018.

❖ The taxpayers will receive an email from the GSTN, on such receipt, apply for registration by logging onto www.gst.gov.in in the 'Services' tab and filling up the application in FORM GST REG- 01 of the CGST Rules, 2017.

❖ After due approval of the application by the proper officer, such taxpayers will receive an email from GSTN mentioning the Application Reference Number (ARN), a new GSTIN and a new access token.

❖ Upon receipt, such taxpayers are required to furnish the following details to GSTN by email, on or before the 30th September, 2018, to migration@gstn.org.in:– (a) New GSTIN; (b) Access Token for new GSTIN; (c) ARN of new application; (d) Old GSTIN (PID).

❖ Upon receipt of the above information from such taxpayers, GSTN shall complete the process of mapping the new GSTIN to the old GSTIN and inform such taxpayers

❖ Such taxpayers are required to log onto the common portal www.gstn.gov.in using the old GSTIN as "First Time Login" for generation of the Registration Certificate.

➢ **Extension for filing of due date of FORM GSTR- 6**

Notification No. 30/2018- Central Tax (Rate) and Notification (1-I/2018) No. KGST.CR.01/2017-18 dated 30.07.2018 extends the time limit for furnishing the return of Input Tax Distributor (ISD) in FORM GSTR- 6, for the months of July'2018 to August'2018 till the 30th September, 2018.

➢ **Exemption from payment of tax under Section 9(4)**

Notification No. 22/2018- Central Tax (Rate) and 23/2018- Integrated Tax (Rate) dated 06.08.2018 exempts payment of tax under Section 9(4) of the CGST Act, 2017 till 30.09.2019.

- **Refund of unutilized Input tax credit:**

  Notification No. 20/2018- Central Tax (Rate) and 21/2018- Integrated Tax (Rate) dated 26.07.2018 notifies that the fabric manufacturers (woven fabrics) are now eligible to claim refund of the unutilized input tax credit u/s 54 (3) of the CGST Act, 2017. Earlier there was restriction on claiming refund of the unutilized input tax credit u/s 54(3). Further, with respect of such goods the accumulated input tax credit lying unutilized in balance, after payment of tax for and up to the month of July, 2018, on the inward supplies received up to 30.07.2018, shall lapse.

- **Reverse Charge Mechanism:**

  Notification No. 15/2018- Central Tax (Rate) and 16/2018- Integrated Tax (Rate) dated 26.07.2018 notifies that services supplied by Individual Direct Selling Agent (DSA's) to banks/ non- banking financial company (NBFC's) to be taxed under Reverse Charge Mechanism.

- **Valuation for Hotel Industry :**

  Notification No. 14/2018- Central Tax (Rate) and 15/2018- Integrated Tax (Rate) dated 26.07.2018 provides relief to Hotel Industry by substituting the words "Declared Tariff" with "Value of Supply" for claiming exemption.

Circulars under GST law

- **Taxability of services provided by Industrial Training Institutes (ITI)**

  Circular No. 55/2018 dated 10.08.2018 clarifies the taxability of the following:

a) Services provided by a private ITI in respect of designated trades notified under Apprenticeship Act, 1961 are exempt from GST. And Services provided by private ITI in respect of other than designated trades would be liable to GST.

- **Classification of fertilizers supplied for use in the manufacture of other fertilizers at 5% GST rate**

  Circular No. 54/2018 dated 09.08.2018 clarifies the classification of fertilizers for use in the manufacture of other fertilizers. Fertilizers supplied for direct use as fertilizers or supplied for use in the manufacturing of other complex fertilizers for agricultural use (soil or crop fertilizers) will attract 5% IGST.

- **Clarification regarding applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products:**

  Circular No. 53/2018 dated 09.08.2018 provides clarification on the following issue:

  Here, the raw materials are supplied by oil refineries to manufacturers on continuous basis through dedicated pipelines, while a portion of the raw material is retained by the manufacturers. The issue is whether in this transaction GST would be leviable on the whole quantity of the principal raw materials supplied by the oil refinery or on the net quantity retained by the manufacturers of petrochemical and chemical products. It has been clarified that GST will be payable by the refinery only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products. And the refinery will be liable to pay GST on such returned quantity of petroleum gases, when the same is supplied to any other person. This clarification will mutatis mutandis apply to feed stock which is retained by the recipient and remaining residual material is returned back to the supplier. The net billing is to be done on the retained by the recipient.

- **Applicability of GST on ambulance services provided to Government by Private service providers (PSP's) under National Health Mission (NHM):**

  Circular No. 51/2018 dated 31.07.2018 states that service of transportation in ambulance provided by SG's and private service providers to patients are exempt vide Notification No. 25/2012 dated 20.06.2012 under the Service Tax Law. The ambulance services provided by PSP's to State Government under NHM is a service provided to Government by way of public health and hence exempt under Notification no. 25/2012 dated 20.06.2018. Similar provisions under GST law exist; the above mentioned services are exempt under Notification No. 12/2017- Central Tax (rate) dated 28.06.2017.

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Financial Reporting and Assurance

CA Vinayak Pai V

1. **Heads Up – Latest/Upcoming Changes**

Accounting Standards (AS)	
1	**Concept of Other Comprehensive Income** making its entry in the "AS" accounting framework
2	**AS 19** – *Employee Benefits* (Exposure Draft issued) **to replace AS 15** – *Employee Benefits*
Indian Accounting Standards (IND-AS)	
1	First annual period (current) under Indian Accounting Standards for unlisted lower tier companies breaching threshold.
International Financial Reporting Standards (IFRS)	
1	IASB project focusing on classification of **financial instruments** from the **perspective of the issuer**, as financial liabilities or equity instruments
Assurance	
1	**SA 800 (Revised)** – *Special Considerations – Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks* (Draft Exposed)
2	**SA 805 (Revised)** – *Special Considerations – Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement* (Draft Exposed)
3	**SA 810 (Revised)** – *Engagements to Report on Summary Financial Statements* (Draft Exposed)
Tax Audit Report	
1	**Form 3CD** – Income Tax (8th Amendment) Rules 2018 coming into force from August 20, 2018
Company Law – Accounts and Audit Related	
1	**Companies (Accounts) Amendment Rules, 2018** amending Companies (Accounts) Rules 2014
Financial Reporting- Banking sector	
1	RBI Circular – ***Prudential Norms*** *for Classification, Valuation and Operation of Investment Portfolio by Banks* – Spreading of MTM losses and creation of Investment Fluctuation Reserve (IFR) by **Co-operative Banks**
2	RBI Notification – ***Prudential Norms*** *for Classification, Valuation and Operation of* ***Investment Portfolio by Banks*** – **Valuation of State Development Loans (SDLs)**

2. **Companies (Accounts) Amendment Rules, 2018 amending Companies (Accounts) Rules 2014**

The latest amendments inter-alia, pertain to the following aspects:

- **Matters to be included in Boards Report** - Disclosures w.r.t maintenance of cost records.
- **Insertion of new rule** – Matters to be included in the Board's Report for One Person Company and Small Company.

3. **Circulars/Notification Relevant To Financial Statements of Banks**

- July 2018 RBI Circular – *Prudential Norms for Classification, Valuation and Operation of Investment Portfolio by Banks* – Spreading of MTM losses and creation of Investment Fluctuation Reserve (IFR) by **Co-operative Banks**
  - **Option to spread** provisioning for **MTM losses** on investments (AFS and HFT categories) for QE Dec 31, 2017, March 31, 2018 and June 30, 2018 only.
- July 2018 RBI Notification – *Prudential Norms for Classification, Valuation and Operation of* ***Investment Portfolio by Banks*** – **Valuation of State Development Loans (SDLs)**

- SDLs shall be **valued** in a manner that would objectively reflect their **fair value** based on observed prices/yields. FBIL shall make available prices for valuation of SDLs based on this principle w.e.f. Sep 30, 2018 and the same should be used for valuation of SDLs from that date.

4. **Case Study: IND-AS Transition Impact**

The following case study of an **IND-AS first-time adopter** is based on published financial statements available in public domain.

IND-AS Impact	Impact (%)
Net profit for the comparative period	Increase of 0.3%
Total equity at date of transition	Increase of 4.0%
Total equity at end of comparative period	Increase of 5.4%

Key **Contributing Factors** for IND-AS Impact:

- Under AS, current investments were being measured at lower of cost or fair value and long-term investments were measured at cost less diminution in value which is other than temporary. Under the new accounting framework IND-AS, **investments in mutual funds** are classified as fair value through profit and loss (FVTPL) and **changes in fair value are recognized in the income statement**.
- The company regularly enters into **foreign currency forward contracts** to hedge certain of its foreign currency financial liability. Under AS, the premium/discount on forward contracts are amortized over the period of the forward contracts and outstanding forward contracts restated at the balance sheet date. In contrast, under IND-AS, such contracts are **fair valued** by recognizing the MTM gains/losses in the statement of profit and loss. The premium/discounts on the forward contracts are expensed as and when they are incurred.
- Under IND-AS, **provision** has been made for **site restoration/decommissioning liabilities** for **land taken on lease** by the company, with a corresponding increase in Property, plant and equipment to the extent of the present value of such provision.

5. **Form 3CD – Income Tax (8th Amendment) Rules 2018, coming into force from August 20, 2018**

The CBDT vide **Notification No. GSR 666(E)** dated July 20, 2018 has amended **Form 3CD** coming into force from August 20, 2018. The amendment to the Form requires inter-alia the below mentioned particulars to be submitted.

- GST registration number
- Break-up of total expenditure incurred during the year – Analyzing the same as expenditure in respect of entities registered under GST and expenditure relating to entities not registered under GST.
- Amount received in the nature of dividend.
- Particulars of each receipt in an amount exceeding the limit specified in section 269ST
- Section 92 CE – Transfer pricing – Primary Adjustments
- Section 94 B– Interest on borrowings from associated enterprises
- Section 32AD – Depreciation allowance
- Section 286 – Country by Country reporting.

6. **Case Study: IND-AS Accounting for Interest-Free Security Deposits**

The financial instruments standard under IND-AS accounting framework drives the accounting and reporting of long-term security deposits (that are not interest bearing or bear interest rates that are sub par prevailing market rates of interest). In this section, a case study of accounting analyses and the related journal entries are discussed. It may be noted that the same is based on high-level summary data.

Applicable accounting framework	Indian Accounting Standards
First-time adoption/steady-state reporting	Steady state reporting
Transaction	Long-term security deposit has been given by the reporting entity against leased office space premises.
Details of above transaction	• Security deposit payment made at contract commencement date • Refundable in cash on completion of contract term. • Bears no interest. • Contract term – 3 years
IND-AS's applicable	• IND-AS 109 Financial Instruments Standard • Some standards although relevant have not been included here.
Nature of the security deposit	• Meets the definition of a **"Financial Asset"**
Initial measurement	• **Fair Value**
Measurement of fair value	• **Present value technique**
Assumptions required in valuation technique above	• To use a discount rate based on the assumptions that market participants would use to determine the interest rate to be charged on a similar instrument with similar terms, risks etc.
Few considerations in arriving at discount rate	• Risk free rate of interest. • Basis spread for cash flow risk. • Term structure.
Subsequent measurement of the Financial Asset	• Not at fair value but at **amortized cost**
Other Aspects to be considered separately	• Current tax and deferred tax • MAT
Security deposit paid	• Rs. 25.00 lakhs
Contract term	• 3 years
Computed discount rate (illustrative purposes)	• 9.5%
Computed present value of the above financial asset	• Rs. 19.04 lakhs (Rs. 25 lakhs, discount rate 9.5%, term – 3 years)

	Particulars (Amounts is Rs.lakhs)	*Day 0*	*Year 1*	*Year 2*	*Year 3*
Dr	Financial Asset – Security Deposit	19.04			
Dr	Prepaid rent	5.96			
Cr	Bank	25.00			
	(Security deposit at fair value and difference accounted as prepaid rent based on substance)				
Dr	P&L – Rent expense		1.99	1.99	1.98
Cr	Prepaid rent		1.99	1.99	1.98
	(Prepaid rental charged to income statement on SLM basis)				
Dr	Financial Asset – Security Deposit		1.81	1.98	2.17
Cr	P&L – Finance/Interest income		1.81	1.98	2.17
	(Unwinding of discount on the fair value of deposit accreting the deposit at the earlier discounted rate of 9.5% (applied to the opening balance in the asset GL)				
GL	Financial Asset – Security deposit balance	19.04	20.85	22.83	25.00
GL	Prepaid rent - balance	5.96	3.97	1.98	-

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Data Privacy – The Imminent Turbulence

CA Guruprasad Kasaravalli

Indian Professionals (particularly CAs) have come a long way in building successful outsourcing businesses in the areas of Accounting, Tax, Finance and other allied areas. Thanks to internet, social media growth, digitisation, cloud computing etc., the way business is done is constantly evolving. Another wave of turbulence is expected in the form of Data Privacy laws that may drastically alter the ways in which we deal with the data in the future. Therefore, it is imperative to take note of developments in this arena to stay compliant, be competitive and successfully meet challenges posed by the regulatory changes.

Few professionals wonder whether these developments directly affect their day to day operations; thanks to disruption caused by GST implementation in the last one year, we are still recovering! At least one section of professionals who are involved in cross border rendering of services, outsourcing operations, offshore document processing etc. are situated in the direct line of sight and will be certainly affected by the developments in this area. Overseas clients have started demanding compliance with data privacy standards before committing future business. Therefore, this subject is not academic anymore. Here is a concise write-up that dwells on certain fundamental principles.

On 14th April 2016, EU parliament approved the General Data Protection Regulation (GDPR). After a two year adoption period, the regulations are effective 25 May 2018. In India, the 10-member "committee of experts" headed by former Supreme Court Justice B N Srikrishna recently submitted the draft of the Data Protection Bill (on the lines of GDPR). However, unlike GDPR, which involved a thorough process of consultation and evolution over four years, the committee report is more revolutionary in approach. Either way, one thing is certain, lot of developments in the coming days!

The GDPR replaces the earlier Data Protection Directive 95/46/EC which was designed to harmonize data privacy laws across Europe, to protect and empower all EU citizens data privacy and to reshape the way organizations across the region approach data privacy. (Please note it was a 'Directive' that provided guidance which was non-binding in nature; but the current 'Regulation' is legally enforceable).

Both the GDPR and the Directive 95/46/EC are based on an even older set of principles. The Organisation for Economic Co-operation and Development (OECD) published its Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, which was a set of recommendations endorsed by both the EU and the US that set out to protect personal data and the fundamental human right of privacy. The document was originally adopted on 23 September 1980 and proposed the following eight principles for the processing of personal data. These principles are relevant and still hold true even today.

Collection Limitation: There should be limits to the collection of personal data, data should be obtained by lawful and fair means, and where appropriate, with the knowledge or consent of the data subject.

Data Quality: Personal data should be relevant to the purposes for which they are to be used, and, to the extent necessary for those purposes, should be accurate, complete and kept up-to-date.

Purpose Specification: The purpose for the collection of data should be specified at the time of collection and data should not be used for anything other than its original intention without again notifying the data subject.

Use Limitation: Personal data should not be used for purposes outside of the original intended and specified purpose, except with the consent of the data subject or the authority of the law.

Security Safeguards: Personal data should be protected by reasonable security safeguards against such risks as loss or unauthorised access, destruction, use, modification or disclosure of data.

Openness: There should be a general policy of openness about developments, practices and policies with respect to personal data. Individuals should have easy access to information about their personal data, who is holding it, and what they are using it for.

Individual Participation: An individual should have the right to know if a controller has data about him/her and to have access to that data in an intelligible form for a charge, if any, that is not excessive. An individual should also have the right to challenge a controller for refusing to grant access to his/her data, as well as challenging the accuracy of the data. Should such data be found to be inaccurate, the data should be erased or rectified.

Accountability Principle: Data controllers should be accountable for complying with the measures detailed above.

Who does the GDPR affect?

The GDPR applies to organisations located outside of the EU if they offer goods or services to, or monitor the behaviour of, EU data subjects. It applies to all companies processing and holding the personal data of data subjects residing in the European Union, regardless of the company's location.

Imagine a professional firm in India handling tax or payroll data of individuals in the EU region, which contains personal data; such firms are squarely hit by these regulations. Are you one among them?

What constitutes personal data?

The GDPR applies to 'personal data' i.e. any information that relates to an identified or identifiable living individual. Different pieces of information, which collected together can lead to the identification of a particular person, also constitute personal data.

Examples of personal data

- a name and surname;
- a home address;
- an email address such as name.surname@company.com;
- an identification card number; (Social Security Number, Driver's Licence Number, Tax ID etc.)
- location data (for example the location data function on a mobile phone);
- an Internet Protocol (IP) address;
- a cookie ID;
- the advertising identifier of your phone;
- data held by a hospital or doctor, which could be a symbol that uniquely identifies a person

Examples of data not considered personal data

- a company registration number;
- an email address such as info@company.com;
- anonymised data

Complete body of regulations deal with many topics in detail like subject's right to access data, right to be forgotten (Data erasure), consent requirements, concept of data minimisation, notifications of breach, data protection authorities, strict penalties for violation, increased scope (in the nature of extra-territorial applicability) etc.

Professionals (or enterprises) directly affected by these developments may consider professional assistance in the form of one time exercise to evaluate compliance with the data privacy standards, review their IT policy, review data security safeguards and may even consider certifications that lend credibility to their operations.

Regardless of global developments, the data privacy laws are imminent in India as well. In the coming days, one may have to devote greater focus in this area, to be prepared for changes and to continue being relevant in the marketplace.

Reference:
https://ec.europa.eu and https://www.eugdpr.org

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Analysis of Exemption from GST on Supply of Services:

NOTIFICATION NO. 12/2017 CENTRAL TAX(RATE) DATED 28.06.2017 – HEALTH CARE SERVICES

CA Raghavendra C R & CA Bhanu Murthy J S

In this write up the emphasis is on analysis of exemptions related to healthcare services. The relevant entries from Notification 12/2017 CT(R) dt. 28.06.2017 is reproduced for the sake of easy reference:

Sl No.	*Chapter, Section, Heading, Group or Service Code (Tariff)*	*Description of Services*	*Rate (per cent.)*	*Condition*
74	*Heading 9993*	*Services by way of-* *(a) health care services by a clinical establishment, an authorised medical practitioner or para-medics;* *(b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.*	*Nil*	*Nil*

Relevant definitions are as below:

(k) "authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognised by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

(s) "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases

(zg) "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

Analysis of the exemption entry

A. Who is eligible for claiming exemption: following supplier of services are eligible for claiming exemption:

a) Clinical establishment,

b) Authorised medical practitioner or

c) Para-medics

Clinical establishment has been defined in the notification to mean as hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.

Therefore, any institution which offers services or facility of diagnosis or treatment or care for illness, injury etc., are termed as clinical establishments.

It is to be noted that similar exemption was in vogue under erstwhile service tax provisions. It is interesting to note that High Court of Andhra Pradesh in the case of Manthena Satyanarana Raju Charitable Trust Vs. Union of India, 2017 (3) G.S.T.L. 213 (A.P.) while examining exemption notification, held that naturopathy treatment provided by a Charitable organisation qualifies to be health care services.

Therefore, any institution, which provides any of the above listed services in any of the system of medicine which is recognized by Government of India would be termed as clinical establishment eligible for exemption.

It shall be noted that above referred definition of the phrase 'clinical establishment' is similar to the definition of clinical establishment as defined in the Clinical Establishments (Registration and Regulation) Act, 2010. However, it is to be noted that under GST provisions to qualify as clinical establishment, there is no condition that the said establishment shall have to have registered under any of the statutes.

B. Nature of services which are exempt:

Health care services provided by the above listed suppliers of services would be exempt from GST. Healthcare services is defined in the notification. The said definition has three limbs to its

i) service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India;

ii) services by way of transportation of the patient to and from a clinical establishment;

iii) but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

Recognised system of medicine

Section 2(h) of the Clinical Establishments (Registration and Regulation) Act, 2010 defined the phrase 'recognised system of medicine as below:

(h) recognised system of medicine means Allopathy, Ayurveda, Yoga, Naturopathy, Homoeopathy, Siddha and Unani system of medicines or any other system of medicine as may be recognised by the Central Government.

It is to be noted that hair transplant or cosmetic or plastic surgery is excluded from the scope of health care services except where the said activities are undertaken restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

C. Clarifications and circulars issued by the Government as regards healthcare services:

i) Circular No. 32/06/2018-GST, dated 12-2-2018

5.	Is GST leviable in following cases : (1) Hospitals hire senior doctors/consultants/technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer-employee relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?	Health care services provided by a clinical establishment, an authorised medical practitioner or paramedics are exempt. [Sl. No. 74 of notification No. 12/2017-C.T. (Rate), dated 28-6-2017 as amended *refers*]. (1) Services provided by senior doctors/consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.

	(2) Retention money : Hospitals charge the patients, say, Rs. 10000/- and pay to the consultants/technicians only Rs. 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc. Will GST be applicable on such money retained by the hospitals? (3) Food supplied to the patients : Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.	(2) Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India [para 2(zg) of notification No. 12/2017-C.T. (Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt. (3) Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

It is to be noted that the Tribunal in the case of Sir Ganga Ram Hospital Vs. CCE, 2018 (11) G.S.T.L. 427 (Tri. – Del.) held that amount retained by the hospital towards managing the facilities at the hospital cannot be termed as business support services and such services fall under health care services which his not liable to service tax.

Considering the clarification given that food supplied by the hospitals to will also get exempted from tax as it is part of composite supply of healthcare. Similar stance can also be taken for supply of medicines to patients and exemption can be claimed for sale of medicines which is part of composite supply of healthcare services.

i) C.B.E. & C. Circular No. 27/01/2018-GST, dated 4-1-2018

In view of the specific exemption granted to health sector vide entry 74 of Notification 12/2017 CT(R) dt. 28.06.2017, it has been clarified by this Circular that the renting of rooms provided to in-patients is also exempted. The relevant extract of the Circular is given below:

4.	1. Whether for the purpose of entries at Sl. Nos. 34(ii) [admission to cinema] and 7(ii)(vi)(viii) [Accommodation in hotels, inns, etc.], of notification 11/2017-C.T. (Rate), dated 28th June, 2017, price/ declared tariff includes the tax component or not? 2. Whether rent on rooms provided to in-patients is exempted? If liable to tax, please mention the entry of CGST Notification 11/2017-C.T. (Rate) 3. What will be the rate of tax for bakery items supplied where eating place is attached - manufacturer for the purpose of composition levy?	1. Price/declared tariff does not include taxes. 2. Room rent in hospitals is exempt. 3. Any service by way of serving of food or drinks including by a bakery qualifies under section 10(1)(b) of CGST Act and hence GST rate of composition levy for the same would be 5%.

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Get BPR Ready Get Future-Ready

CA Jatin Bhatt

Business Process Reengineering (BPR) can be defined as a threadbare analysis of processes of an organization. These processes are enterprise wide covering each and every function/department.

It would be an absolute requirement in one or more of the following instances:

1. Organizational change – strategy, vision and mission statement, revised goals – for eg. all the organization's processes shall be directed to the mission statement
2. Merger / acquisition / demerger – for eg, revised structure may call for revised processes
3. Lean implementation – for eg. reduced manpower or processes thereby directly impacting the functioning of related departments
4. Major cost cutting exercise – for eg. Increasing the vendors to be evaluated before placing an order, reduced overheads
5. Tax changes (viz GST) – for eg. the avenue of a stock transfer to delay or reduce tax incidence is no longer relevant in GST. This may call for relocating warehouses and quotes with transporters.

An ERP implementation – to make sense, be effective and efficient – should be preceded by a BPR.

At the outset, let me stress that what's written here holds true for all organizations, big and small. Though, bigger the organization, the larger the gain in Rupee or Dollar terms.

When you plan for your enterprise, you plan for the way ahead. While you do so, you keep the past in mind, but you don't allow the baggage of past to influence your future. Rather, in more direct words, you would learn from your mistakes but you will still enter and plan for uncharted territories; else you are not doing and planning enough.

With that, you would be performing tasks - Marketing, Production, Procurement, Sales as well as support functions like Finance, HR, IT among others – differently. When you plan these tasks differently, you obviously need to re-look at your existing processes and how these processes will hold good in future.

That's where BPR comes in.

It helps you slice and dice each and every process into sub-processes and the next level of sub-processes to ensure you are able to see through each of them. This shall help you with the following:

- whether you need a process at all
- whether the process is as relevant today, and more importantly going further, as it was meant to be in the first place
- whether the organization needs to change the process to make it more suitable for the future business growth and functions
- whether it shall tie up with organization's internal control systems
- if it helps measure KRAs/KPIs

Transpose these for all the entire organization's processes stressing on inter- dependent processes. If yours is a global organization with operations in multiple countries and this exercise is enterprise wide, look at similar processes across countries. This will have benefits, which we shall cover in subsequent paragraphs.

To start with look at all your present processes across each function, in isolation and interdependent. Ensure that you challenge yourself (your team members) enough and that you evaluate all your processes threadbare. This requires all participants to share their processes as transparently as possible. There may be resistance from the staff as they may take this as an audit. It is upto the management to drive down the message and for the consulting team to take them into confidence that this is not an audit and instead, an organization transformation exercise.

We call it the AS-IS study.

AS-IS study done, the next phase is to check if the present processes match the future growth plans (business plans followed by Sales, Production, Procurement, HR, other plans). We call it the gap analysis.

This is also a very crucial component of the BPR exercise. Business stakeholders find identifying the gaps or agreeing

with gaps identified by the BPR consultants very difficult. Gap is when a present process is either not compliant or not sustainable for the future model/function to perform considering the future enterprise model. In simple terms, a process that either has or shall become redundant with the future enterprise model is a gap. A process that allows for revenue leakage or compliance gaps is also a gap. For example, if an organization uses SAP or another ERP for Sales Invoices and still keeps the option of Manual invoice open, it's a gap since its likely that certain Sales Invoices manually issued may not be entered in SAP. This may also result in inconsistencies in Stock positions.

The organization needs to consider these seriously as they are potential organization derailers.

Once you conduct the AS-IS analysis and identify gaps in the processes it becomes imperative to perform the TO-BE study – where you plan for processes for the future. Ensure that you come up with your TO-BE processes with the following very closely monitored. These are must-be's and also advantages of a BPR's TO-BE exercise.

- introducing maker-checker concept to ensure Internal controls work efficiently
- Greater SOD control
- Automating the approval processes using workflows. High end ERPs like SAP and Oracle have workflows. However, smaller organizations can have other simple and cost effective workflow tools implemented. This is a great idea towards lesser paperwork and greater digitization with better Internal Control.
- potential to move repetitive functions to shared services model. Outsource tasks that do not make sense to be performed in-house or can be managed more efficiently in an outsourced model – Finance and HR processes can be outsourced very efficiently
- KRAs and KPIs identified afresh considering the future model
- introducing internal controls (through refined or changed processes) where they are weak or non-existent
- enhancing present reporting templates or formats and/ or introducing new reports for management and/or compliance reporting
- Overall enhanced Digitization and Automation

Other potential impacts would be to the organization structure and the functioning of departments. For example, a procurement process that was under Finance before the BPR exercise may now come under purview of the Supply Chain team (or Purchase Department).

When this exercise is across different countries of an enterprise, the project team should look for standardization of similar processes. Cross geography entities – be it within different cities in one country or in multiple countries, have great scope of leveraging the shared service concept for all support functions, apart from consolidating their manufacturing operations appropriately. However, care has to be taken to ensure that standardization is not at the cost of compliance or organizational efficiencies.

A major BPR exercise usually results in systems automation and digitization. In fact, it would be a great disservice to the enterprise if these are not seriously and sincerely implemented. For eg if an enterprise uses SAP as its ERP, there is a potential to digitally sign all Sales invoices, therefore avoiding any further paperwork. Further, if proper scanning techniques are used then the organization can automate lot of its incoming vendor invoices' booking. Similarly, workflow tools can be used to automate approvals – rather than cumbersome paperwork. For organizations on other ERPs or simpler accounting systems (like Tally in India), there is still ample of scope for digitization and automation. The organization needs to be guided to a paperless office or a less paper office, thereby not only making all processes efficient but also contributing to a greener planet and reducing its carbon footprint.

Prerequisites:

1. From the organization, people who know the processes should be made part of the project – NOT people who can be freed up.
2. The organization should ensure maximum transparency for better understanding of management's strategic direction, future goals and that the employees and subsequently the consultants are able to relate to them.
3. The consultant/s propose the To Be scenarios based on the organization's requirements and not just what they would have implemented elsewhere.
4. The consultant/s should have a participative approach and not an auditor's.
5. Management participation in Organization Change management is mandatory to ensure that all stakeholders receive the change positively.

What needs to be considered:

1. In case if processes are being migrated to a shared services center, then ensure that robust documentation is made of all processes that are being so migrated. There can be a lot of bad blood later if this is not taken care of.
2. Standard Operating Procedures and Work Instructions – when a shared service center is developed or created inhouse, detailed Standard Operating Procedures and Work instructions need to be prepared, both for the local business as well as for the shared services teams. When the work is outsourced to another entity, additionally, the agreement entered between the organizations need to be documented thoroughly. Advice from an experienced Chartered Accountant or a Legal practitioner who has done similar exercise in the past shall be absolutely essential.
3. Compliance – it's at the center of each reengineering exercise. Especially true if the BPR exercise is across countries. This is because different countries have different legal requirements. Indian operations need an E-way bill for every inter-state consignment. However, this is not the requirement in UAE. Brazil, for example, has a requirement of every document being issued in a particular format, called Nota Fiscal. Further, some countries have the requirement of storing data within servers of that country.

   For eg. Rule 3 of Companies (Account) Rules 2014 requires - The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, shall be kept in servers physically located in India on a periodic basis. Therefore, if the reengineering exercise results in global data being stored in a centralized server outside India, an organization should ensure that the data is stored in India on a periodic basis.

   Unless compliance is addressed at each and every stage of the process by the business, it becomes difficult for the consulting team to comprehend and come out with a robust To-Be process.
4. Revised KPIs and KRAs – any or more of the process changes would result in revised KPIs and KRAs. These are important for the organization since they measure organization and employee performance.
5. Training - revised processes call for revised training of all impacted resources. This is important to avoid duplication of effort or omission of transactions. Further, this training needs to be documented so that new joinees can go through the relevant training at the time of induction.

This article is indicative. Each BPR exercise is subjective and depends on number of factors like the organization's size, functioning, global reach, management control, among others.

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JOINT REPRESENTATION ON CBDT DIRECTIVE FOR OFFERING INCENTIVES TO COMMISSIONERS OF INCOME-TAX (APPEALS) FOR PASSING QUALITY ORDERS BASED ON ENHANCEMENT OF ASSESSMENT AND IMPOSITION OF FRESH PENALTY AND OTHER ISSUES

2nd August 2018

To
Dr Hasmukh Adhia,
Finance Secretary,
Government of India
128-A North Block,
New Delhi

Respected Sir,

Sub: CBDT directive for offering incentives to Commissioners of Income-tax (Appeals) for passing quality orders based on Enhancement of assessment and imposition of fresh penalty and other issues

Clarifications/ Initiatives of Government for "Taxpayer friendly atmosphere":

The Central Board of Direct Taxes ('CBDT') has time and again been issuing directions to the tax authorities to make the functioning of the tax authorities "non-adversarial" and "tax-payer friendly", which has been the motto of the current Government. The said directions act as a guidance to the tax authorities for smooth functioning and create confidence among the tax payers. All such actions of the CBDT have been appreciated by the Industry and stakeholders.

Suggestions invited by CBDT for simplification/ clarifications:

Similarly, CBDT has been inviting suggestions from stakeholders for simplification of tax laws, smoothening of return processing, issue of refunds, timely disposal of appeals etc., to which several organisations have been regularly providing their thoughts and suggestions to the CBDT.

CBDT circular regarding Central Action plan for appeals before CIT(A):

Recently, CBDT has issued a Central Action Plan 2018-19 wherein, in order to reduce the huge pendency before the Commissioner of Income-tax (Appeals) ('CIT(A)'), CBDT has assigned specific targets for disposal of appeals to CIT(A)s. The said direction of CBDT is highly appreciated, as this step of having specific disposal targets for CIT(A)s will facilitate reduction of pending litigation at the stage of first appellate authority.

Certain instructions contrary to government initiatives:

However, it has been observed that some of the directions/guidance issued by the CBDT to the tax authorities have been completely contrary to the steps taken in the recent past and the promises made by the Government of providing a "non-adversarial regime" to the Industry and stakeholders. Some of the examples are as under:

- CBDT Instruction dated 8th March 2018 – PCIT/ CCIT directed to monitor functioning of CIT(A)s under their jurisdiction;
- CBDT letter dated 7th March 2018 regarding initiation of prosecution proceedings; and
- CBDT Central Action Plan 2018-19

Monitoring of functioning of CIT(A):

CBDT had issued Instructions dated 8th March 2018 to the Principal Chief Commissioner of Income-tax ('Pr.CCIT')/ Chief Commissioner of Income-tax ('CCIT'), wherein they were required to conduct regular inspection of working of CIT(A)s

under them and keep watch on quality and quantity of orders issued by them.

Several representations were made by Industry and stakeholders before your Honour and before the CBDT chairman, since this instruction was likely to interfere with the independent functioning of CIT(A) which is a quasi-judicial authority constituted under the Act (representation made by IMC dated 16th April 2018 is enclosed for your reference by way of an example).

After, strong representations made by the Industry and Stakeholders, we felt that said instruction dated 8th March 2018, would be withdrawn by the CBDT.

However, in the recently issued Central Action Plan, the CBDT has again reiterated that Pr.CCIT/ CCITs have been assigned responsibilities to monitor and ensure that the CIT(A)s and AOs discharge their duties in the manner envisaged by the CBDT.

Incentives to CIT(A) for Quality orders:

Further, in the Central Action Plan, the CBDT has offered incentives to CIT(A)s for passing "quality" orders. The incentives have been offered where the CIT(A) :

i). enhances the assessment made by the Assessing officer ('AO') or

ii). strengthens the stand of the AO on the issues in appeals or

iii). levies penalty u/s 271(1)(c) of the Income-tax Act, 1961 ('Act') on the additions confirmed in the CIT(A) order.

Hence, by this action of CBDT under the Central Action Plan, CIT(A)s are incentivised to decide matters against tax payers. This completely erodes their impartiality and independence, and creates a bias in favour of the tax department in a quasi-judicial proceeding. Industry and stakeholders envisage that the functioning of CIT(A) as an independent judicial authority will be severely affected.

Hence, we would like to draw your attention to the following:

Monitoring of CIT(A) functioning by Pr.CCIT/ CCIT

1. CIT(A) is a quasi-judicial authority. It functions independently from the tax administration authorities. Accordingly, on account of the directive given in the Central Action Plan and earlier CBDT direction dated 8th March 2018 to the effect that the Pr.CCIT/ CCITs will monitor the functioning of CIT(A)s, there is a strong apprehension that monitoring of CIT(A)s' orders by Pr.CCIT/CCIT having administrative functions as well, will severely impact the judicial decisions making by the CIT(A) as their decision making would get influenced by the fear that their orders would attract attention of CCITs if taxpayer is given relief. This, in our opinion, is against the principles of judicial independence. The very purpose of the first appellate authority, being an independent judicial functionary, would be defeated if the qualitative aspects of the decision is monitored/ influenced by any senior officer of the Department.
2. It is important to note that monitoring of "qualitative" aspect of the CIT(A) orders are not even within the jurisdiction of Comptroller and Auditor General ('CAG') during the annual audit proceedings. CAG only monitors the quantitative aspect of the CIT(A)'s functioning and whether it has been effectively monitored by the CCIT in charge.
3. A few years ago, the then CCIT 1, Mumbai, had issued similar instructions that CCIT should monitor orders passed by CIT(A)s and this was later withdrawn after strong protests made to the CBDT by professionals and industrial organisations. We also believe that on strong representation made by professionals and industrial organisations against CBDT Instruction dated 8th March, 2018, the same was withdrawn. However, instead of that the Central Action Plan has made the intentions of the CBDT very clear.

Accordingly, it is apprehended that bringing in Pr.CCIT and CCIT to monitor qualitative aspects of CIT(A) order is likely to encroach the independent functioning of CIT(A) as a judicial authority and hence, such directions issued by CBDT should be withdrawn immediately.

Incentives provided to CIT(A)s under Central Action Plan for enhancement of assessment and initiating penalty proceedings

4. The incentives for passing "Quality" order being offered to CIT(A) based on enhancement criteria and imposition of penalty is likely to affect the judicial decision making process of CIT(A). In this scenario, a CIT(A) is bound to act

as quasi-revenue authority and more likely than not, function as a "Revisionary Authority" (like Commissioner of Income-tax in exercise of power under section 263 of the Act) and not like an independent appellate authority.

5. It is to be noted that under the Act, the CIT(A) has no power to look for new source of income, i.e. he can enhance the assessment only on the issues which are subject matter of AO's order. The said position has been affirmed by various courts in several decisions:
   - Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC),
   - CIT v. Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443 (SC)
   - Sterling Construction & Trading Co [1975] 99 ITR 236 (Kar)
   - CIT v. Associated Garments Makers (1992) 197 ITR 350 (Raj),
   - CIT v. Sardari Lal & Co (2001) 251 ITR 864 (Del) (FB), and
   - CIT v. B. P. Sherafudin (2017) 399 ITR 524 (Ker).

   Accordingly, this action plan virtually makes the CIT(A) travel beyond the role/ responsibility of CIT(A) enshrined in the Act and this is likely to impact the judicious functioning of CIT(A).

6. The number of appeals being filed with the CIT(A)s in high demand cases and transfer pricing matters were reduced on account of introduction of Dispute Resolution Panel ('DRP') by Finance Act, 2009. Many taxpayers used to opt for DRP route as it was a time bound dispute resolution mechanism and fast track route for appeals to ITAT. The DRP orders were not appealable by department from 1st April, 2009 to 1st July, 2012. Consequently, DRP virtually functioned as an approving authority. However, once the DRP orders were made appealable by the Department, the DRP started functioning as a judicious authority during the period of 1st July, 2012 to 1st June, 2016. With the amendment made by Finance Act, 2016 whereby the powers of department to appeal against the order passed by DRP have been withdrawn, DRP has once again become an approving authority or enhancement authority and also acting for improving the draft orders passed by the AO.

   On account of this, several taxpayers having huge tax demand have preferred to file an appeal before CIT(A) instead of approaching the DRP. This has been the case because the CBDT had issued directions to AOs for granting of stay of demand on collecting 15%/ 20% of the demand when appeal is pending before the first appellate authority i.e. CIT(A). This approach was adopted by taxpayers since it has been observed that more often than not, CIT(A) has been a judicious authority and was likely to follow orders passed by Tribunal/High Courts, unlike the DRP, on account of which taxpayer would get necessary relief.

7. Thus, on account of this directive by the CBDT of offering incentive based on enhancement done to AO order or initiation of penalty proceeding, it is likely that the CIT(A) will also become an extension of Assessing officer, similar to the DRP. Taxpayers will then have no confidence at all in the judicial process, as this will in effect make the entire First Appellate Authority an ineffective forum. The taxpayer would therefore be left high and dry and have no recourse to get justice.

Hence, it is strongly suggested that the said Action Plan should be withdrawn/ modified and the incentives to the CIT(A) may be linked to number of cases disposed off, quality of the orders based on how many orders have been sustained at Tribunal and High Court, rather than the enhancement criterion laid down in the Action Plan.

Non-taxpayer friendly steps/ Action - experience of last 1 year:

Guidance on launching of prosecution proceeding vide letter dated 7th March, 2018

8. The CBDT Chairman had addressed a letter dated 7th March, 2018 to the PCITs in which he had observed that the work relating to the filing of prosecution complaints and disposal of compounding applications "is not up-to the mark". CBDT Chairman had opined that prosecution proceedings can be successfully initiated in several cases and he had directed the officers to put in their best and expedite filing of prosecution complaints and disposal of compounding applications. These type of directions by the CBDT are likely to create distrust among the taxpayers. We understand that in view of this instruction, several prosecution notices were issued and a large number of prosecution cases were launched by PCITs and AOs without considering the "merits" or "making qualitative analysis of defaults", just to meet

their "targets" of prosecution. This has led to a large number of prosecution notices being mechanically issued and prosecution proceedings being launched for the smallest of TDS defaults or additions to income or non-filing of return of income or non-payment of taxes on time. Intimation received in response to an RTI query shows that around 1 lakh notices have been issued to show action taken in response to such instruction by the CBDT. This has led to fear in the minds of taxpayers as they are being prosecuted for smallest of the additions without considering the legal position of the claims made by them. Many notices were also issued to non-resident directors of Indian subsidiaries of foreign companies. This high handed approach has also led to fear amongst foreign investors coming into India.

Revision and Recovery proceedings

9. Also, there are several instances wherein the CITs have issued revision notices under section 263 in the garb of "Erroneous Order" passed by the lower authorities. Statistics show that a majority of such notices have been issued as a direct fall out of queries raised by the audit team. It is a well known fact that more than 75% to 80% of these orders have ultimately been quashed by the Tribunals. Such actions of CITs have already created lot of distrust of the tax department in the minds of taxpayers.
10. Also it is to be noted that the tax authorities have been regularly causing havoc by coercive recovery measures taken every year during the period from October to March to achieve revenue targets set for their respective charges. It is seen that on several occasions, High Courts have come to the rescue of the taxpayer and have taken action against the tax authorities.

Request to keep larger interest of the country in mind by avoiding frivolous litigation or creating fear psychosis:

In view of the above, it is shocking that when, on the one hand, the Hon'ble Prime Minister and Hon'ble Finance Minister talk of a tax payer friendly and non-adversarial tax regime, the CBDT on the other hand, issues directions which are completely contrary to the vision of present government. **It is imperative that necessary directives be issued to the CBDT by the Ministry that no steps be taken by CBDT whereby the actions cause harm to taxpayers and the promise of non-adversarial tax regime is broken**.

We humbly request your Honour to resolve the above issues at the earliest in order to avoid unnecessary hardship being caused to the taxpayers.

Thanking you,

Yours sincerely,

Raj Nair
President,
IMC Chamber of Commerce and Industry

Sunil Gabhawalla
President,
Bombay Chartered Accountants' Society

CA. Chintan M. Doshi
President,
Chartered Accountants Association Ahmedabad

Rasesh Shah
President,
Chartered Accountants Association Surat

Raghavendra Shetty
President
Karnataka State Chartered Accountants' Association

Gyanesh Verma
President
Lucknow Chartered Accountants' Society

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION

CELEBRATING 62 YEARS
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CA Raghavendra Shetty
President

CA Kumar S Jigajinni
Secretary

Date: 9th August 2018

To,
Shri. Piyush Vedprakash Goyal
Hon'ble Union Minister of Finance, Railways,
Coal and Corporate Affairs
Government of India
North Block
New Delhi - 110001

Hon'ble Sir,

Re: REPRESENTATION ON EXTENSION/ DEFERMENT AND RELAXATION OF E-FORM DIR3 KYC

The Karnataka State Chartered Accountants Association (R) (in short **'KSCAA'**) is an association of Chartered Accountants, registered under the Karnataka Societies Registration Act, in the year 1957. KSCAA is primarily formed for the welfare of Chartered Accountants and represents before various regulatory authorities to resolve the professional problems faced by chartered accountants and business community.

We have written to your good selves many a times populating issues and possible solutions. Herein, we are presenting difficulties and hardship faced by the trade, consultants and directors at large pursuant to introduction of Form DIR-3 KYC and also, relating to adhering the timelines for filing of the forms within 31st Aug 2018. Having a wide outreach to Chartered Accountants, tax practitioners, trade bodies etc., and the pressing issues populated by them, KSCAA felt necessary to put forth these issues and seek your redressal mechanism to alleviate the pain caused as well as seek a reasonable extension of due date. We wish to present before you the following facts on the ongoings and public sentiment on the matter under two segments:

A] DIR-3 KYC- Hardships

- DIR-3 form has been in existence since way back and the prospective directors would have already uploaded PAN and address proof like Aadhar and Passport. We understand the necessity of having passport related details of the directors in the wake of the events wherein few high-profile directors having turned fugitive and fled country. This section has been a marginal segment who have resorted to such ill practices.
- While the step is well received amongst the fraternity and the directors, the timing of such introduction is questionable. It is a well-known fact that the directors and companies rely heavily upon the Chartered Accountants and Company Secretaries.
- The sudden introduction of these form, out of the blue, calls for the practitioners to realign their work schedule to accommodate the form filings. It is important to note that the process requires collating of the data and certification of such forms and uploading. Many a times the directors are foreign directors and non-residents, and adhering the timelines is not an easy ask in the peak season for both the fraternities as well as the directors and companies, who are already mired with the compliance and audit obligations.
- The Chartered Accountants usually around this time are preoccupied with Tax audits, Company Audits, new

incorporations as well as uploading of ROC annual forms, the due date spillover for income tax filing not helping the cause in any way. Company Secretaries as well are preoccupied with new incorporations, ROC annual forms. In this context, it will be a tough ask on the MCA webpage as well to support such an exercise now within such a short span of time.

- Completing this kind of entire exercise of updating the Directors KYC form through DIR3 KYC pan India basis will be a humongous ask for the companies, directors and professionals, especially non-compliance has penal provisions and bearing upon the filing of routine forms.
- Even the Supreme Court of India has taken a moderate view on linking of Aadhar with bank accounts and mobile phone numbers by extending the 31st March deadline indefinitely considering the data privacy concerns. Now, making Aadhar linkage mandatory with DIN while filing KYC is definitely an attempt indirectly, and will go against the law of the land. Further, it creates unnecessary hardships on directors who are in the process of obtaining Aadhar.
- The adherence of timelines assumption is quite far-fetched especially as the load on the MCA webpage would be increased on two counts, one all the stakeholders would be on the web page and two, the OTPs mobile and email and the timelines of such OTPs would keep both the professionals and directors on their toes and extending the working for professionals to time beyond normal hours to beat the traffic.
- Another pertinent issue is levy of late fee of Rs.5,000/- for delayed compliance. It seems extremely harsh especially in cases of prospective directors having DINs which are not linked any company.
- There are as many issues faced by the practising professionals on the LLP formation, closure of LLP etc., which are already discussed and deliberated in the public domain. We invite your kind attention to resolve those issues at the earliest to enable smooth functioning of these.

B] Suggestions:

The due date fixed for filing KYC before 31st August seems more than enough to comply but for various factors which are practically acting in concert against such compliance on the part of the directors, companies and practitioners. We have presented here in below our suggestions-

- DIR-3 KYC for the year 2018-19 be should be deferred to January 2019 keeping in view of efficiency of transacting and form filing without hindrance of blockage of DIN as it suits for the directors and professionals to plan efficiently for updation. Presently, professionals are already overburdened with compliances under GST, Income Tax and deadline for completing audit and annual filings under the Companies Act is around the corner.
- This annual KYC exercise should be immediately dispensed with. Instead, it may be integrated with Annual Form AOC-4 which anyways capture similar information of directors. This will help ease compliance, reduce burden on IT infrastructure and avoid duplication of work for professionals and directors.
- Linking KYC exercise with Annual Returns will give enough head room to relook at the levy of late fees of Rs.5,000/-.

This write-up is on the back of representation received from directors, companies, trade bodies, who are in the thick of things and stakeholders who are perturbed with limited compliance time span.

We would be highly thankful if you could extend the due date well in advance, which would be very useful in planning the filings for the directors, companies and practitioners.

Thanking you,

Yours sincerely,

For **Karnataka State Chartered Accountants Association ®**

CA. Raghavendra Shetty President	CA. Kumar S Jigajinni Secretary	CA. Vijay Sagar Shenoy Representation Chairman

CC To: Hon. Minister of State for Corporate Affairs, New Delhi

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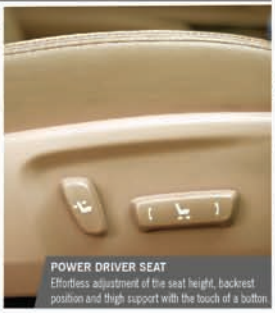
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Minister of Higher Education, GOK

Workshop on GST Audit

CA Annapurna Kabra

Participants

Workshop on ICDS I to X

CA Sandeep Jhunjhunwala

CA Thirumalesh B N

Participants

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