

# KSCAA

Karnataka State Chartered Accountants Association ®

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KARNATAKA STATE  
CHARTERED ACCOUNTANTS ASSOCIATION ®



## UDBODHA

Knowledge  
*to*  
initiate, ignite & inspire

on  
3<sup>rd</sup> & 4<sup>th</sup> March 2017  
Friday & Saturday

Venue :

**Jnana Jyothi Convention Centre**  
Central College Campus, Bangalore University  
Palace Road (Near SBM Circle),  
Bengaluru - 560 009

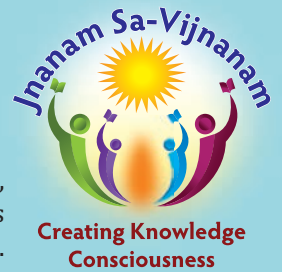
10 Hrs\*  
CPE  
Unstructured

29<sup>th</sup> kscaa  
annual conference | 2017

Celebrating  
60  
years  
1957-2016



## From the President



**Dear Professional Colleagues,**  
**O**n this occasion of New Year and Makara Sankranti, we, at the Executive Committee of noble association of KSCAA, wish each

of you reap a very good harvest in terms of health, happiness, knowledge and in all walks of life!

**A**ll too soon the year 2016 has withered away and is now but a memory and history. January 1st symbolises freshness, augurs new outlook and hope, also provides an invaluable opportunity for us to re-look at the past year and envisage what positive changes we can inculcate in our daily goings! Such introspection lends us the necessary steam to forthwith adapt to the need of the hour and seamlessly walk into the new domain with open arms to live up the dream we cherish.

**W**e took office of KSCAA, our beloved and respected professional body, with a vision to bring buoyancy and steadfastly move towards being a vibrant association proactively catering the member needs. We are pursuing this vision together with our heart and soul, step by step. We are highly committed in this effort and determined to go all out in this New Year to work aggressively towards realising this vision.

**O**ur profession is ever-changing and evolving and understandably new challenges come up all the time. I am sure we will meet each challenge with necessary determination and positivity to shape our own future. We will have to act coherently towards achieving success in this endeavour as nobody will come and do anything for us unless we initiate.

**A**s part of this endeavour and KSCAA tradition, it is indeed my pleasure in welcoming you all to the 29th KSCAA Annual Conference, UDBODHA, which is scheduled on **Friday, 3rd & Saturday, 4th of March, 2017** at Jnana Jyothi Convention Centre, Bengaluru. Kindly note our little departure of hosting conference to Friday & Saturday to accommodate members to spend quality time with their family on Sunday. The conference will showcase contemporary topics from our renowned domain experts, knowledge take-aways and topped with invigorating panel discussions. We have endeavoured to schedule various topics of interest to keep you abreast with the latest on-goings and needs of profession specifically while designing the sessions. We shall go all out in our efforts to make this a memorable event in Bengaluru. All that we look forward to is your active support by your attendance in UDBODHA and request you all do spread a word on this to your friends in practise and industry.

### **News Roundup:**

**A**s per the roadmap issued by the Ministry of Corporate Affairs (MCA) in February 2015, certain class of companies have to prepare their financial statements as per Indian Accounting Standards (Ind AS) which are converged with International Financial Reporting Standards (IFRS) w.e.f F.Y. 2016-17. Accordingly XBRL taxonomy, based on the Ind AS and Ind AS

compliant Schedule III requirements, has been developed for the companies other than certain class of companies. ICAI has sought your comments on the draft Ind AS XBRL taxonomy.

**C**entral Board of Excise & Customs (CBEC) has initiated the process of migration of its existing CENTRAL EXCISE/SERVICE TAX assesseees to GST with effect from 9th January, 2017. As part of its efforts to ensure implementation of GST by 1st April, 2017, CBEC has taken steps to ensure that its existing taxpayers are migrated to GST in a simple, user-friendly and smooth manner. Once the existing registered Taxpayers (both Central Excise as well as Service Tax) login to CBEC's Web Portal [www.aces.gov.in](http://www.aces.gov.in), a facility will be given in a secure manner to access the provisional login ID and password given by Goods and Services Tax Network (GSTN).

### **Upcoming Events & Programs for the month:**

**K**SCAA is organising a GST Weekend Workshop which would throw valuable insights on what changes you need to do in your existing system and processes to comply with GST and highlight its impact on your profession or business. Also we shall do an in-depth analysis of the model GST Law for you to understand its intricacies. Program details and schedule is available in our website, request you to register quickly to avail the benefit as the seats are limited and filling fast. We have put great effort in identifying and having elite speakers talk on the various verticals.

**A** seminar on GST has been organised jointly with Davanagere Chartered Accountants Association for the benefit of mofussil members on 21st January 2017 at Davanagere. A full day program will provide an opportunity to mofussil members to understand GST in a better manner, hence request you all to make the most of this event.

**B**asavanagudi CPE is organising a study circle meet on Valuation on 20th January 2017. This program provides An Overview of Valuation of Shares and Business.

**D**etails of the programs are provided elsewhere in the news bulletin. Also, kindly make it a habit to access our website [www.kscaa.com](http://www.kscaa.com) for regular updates of our activities, resources and events.

**W**e appreciate your patronage and support till now; but we need more support and participation, commitment, direction and loyalty from your side in this year more than ever before and on this occasion wish to quote J K Rowling's words:

"We are only as strong as we are united,  
as weak as we are divided."

**O**nce again, I take this opportunity to wish you all a prosperous New Year!

Always at your service!

**CA. Raghavendra Puranik**  
President

# KSCAA

## News Bulletin

January 2017

Vol. 4 Issue 5

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

email: kscaabl@gmail.com

Website: www.kscaa.com

### BASAVANAGUDI CPE STUDY CIRCLE

#### CPE Programme for the month of January 2017

### Valuation of Shares / Business - An Overview

by CA. Shivaprakash Viraktamath

on Friday, 20<sup>th</sup> January 2017

at 5:00 PM to 8:00 PM



Fees: Rs. 200/- Per Participant

Venue : Bangalore International Academy

# 244/C, 32nd Cross, 2nd Main Road, 7th block, Jayanagar, Bengaluru - 560082

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Participation limited to 75 Members on First Come First Serve Basis

### KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION<sup>®</sup> and

### THE DAVANGERE CHARTERED ACCOUNTANTS ASSOCIATION

### GOODS & SERVICES TAX - A ROAD MAP

on Saturday, 21st January 2017 at Bapuji MBA College, Davangere

Time: 9:30 am to 5:30 pm

Speakers :

CA. Bhanu Murthy J.S., Advocate

CA. Siddeshwar Yalamali

Contact:

CA. Kiran Patil, President, DCAA - +91 98803 66669

CA. Umesh Shetty, Secretary, DCAA - +91 94481 55182

### Career Counselling Programme

Organised by Karnataka State Chartered Accountants Association

Jointly With SICASA Bangalore Branch of SIRC of ICAI &

Department of Commerce

KLE Society's GI Bagewadi Arts, Science and Commerce College, Nipani

on 18th January, 2017

at KLE Society's GI Bagewadi College, Nipani -591237, Belagavi

Time: 10 am to 11:30 am

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Advt. material should reach us before 5th of the month,  
15% rebate if booked for minimum of 3 issues.



# INDIAN ACCOUNTING STANDARD (IND AS) 113 - FAIR VALUE MEASUREMENT

CA S. Krishnaswamy

The Standard provides a general framework for fair value accounting while retaining the valuation under specific standards. It does not state to what asset or liability it should be applied. It does not adopt an entity approach. Each asset/liability should be looked at for fair value.

A convergence Standard -

- A single framework for fair value
- Valuation methods on specific standards
- Measurement - market based – Exit price not entry price
- Valuation techniques
- Fair Value Hierarchy

Fair value accounting is defined by the The International Accounting Standards Board (IASB) as " an amount at which an asset could be exchanged between knowledgeable and willing parties in an arm's length transaction". Fair value continues to be an important measurement basis on financial reporting.

IND AS 113 is the standard on Fair value Measurement.

Corresponding IFRS 13.

## Definitions :

The objectives are as follows :

- 1 This Ind AS:
  - (i) defines fair value;
  - (ii) sets out in a single Ind AS a framework for measuring fair value; and
  - (iii) requires disclosures about fair value measurements.
  - (iv) itemwise valuation - market value based.

2 Fair value is a market-based measurement, not an entity-specific measurement. For some assets and liabilities, observable market transactions or market information might be available. For other assets and liabilities, observable market transactions and market information might not be available. However, the objective of a fair value measurement in both cases is the same—to estimate the price at which an orderly transaction to sell the asset or to transfer the liability would take place between market participants at the measurement

date under current market conditions (i.e. an exit price at the measurement date from the perspective of a market participant that holds the asset or owes the liability).

3 Where market value not available - use other techniques. When a price for an identical asset or liability is not observable, an entity measures fair value using another valuation technique that maximizes the use of relevant observable inputs and minimizes the use of unobservable inputs. Because fair value is a market-based measurement, it is measured using the assumptions that market participants would use when pricing the asset or liability, including assumptions about risk. As a result, an entity's intention to hold an asset or to settle or otherwise fulfill a liability is not relevant when measuring fair value.

4 Measurement Techniques -

- Objectives
- Scope

The definition of fair value focuses on assets and liabilities because they are a primary subject of accounting measurement. In addition, this Ind AS shall be applied to an entity's own equity instruments measured at fair value.

## Scope:

This Ind AS applies when another Ind AS requires or permits fair value measurements or disclosures about fair value measurements (and measurements, such as fair value less costs to sell, based on fair value or disclosures about those measurements)

The measurement and disclosure requirements of this Ind AS do not apply to the following:

- (a) share-based payment transactions within the scope of Ind AS 102, Sharebased Payment;
- (b) leasing transactions within the scope of Ind AS 17, Leases; and
- (c) measurements that have some similarities to fair value but are not fair value, such as net realisable value in Ind AS 2, Inventories, or value in use in Ind AS 36, Impairment of Assets.

The disclosures required by this Ind AS are not required for the following:

- (a) plan assets measured at fair value in accordance with Ind AS 19, Employee Benefits;
- (b) (Refer Appendix 1); and
- (c) assets for which recoverable amount is fair value less costs of disposal in accordance with Ind AS 36.

The fair value measurement framework described in this Ind AS applies to both initial and subsequent measurement if fair value is required or permitted by other Ind ASs.

**Reference to fair value in other IND AS**

**Ind AS 103 - Business Combinations**

	<b>Ind AS 103- Business Combinations Ind AS 38 - Intangible Assets</b>
Scope	Under Ind AS 103, if an acquirer obtains control of a 'business ' then the acquisition will be accounted as a business combination. The term ' business' is defined under Ind AS. Hence, Ind AS 103 will be applicable and goodwill be recognised if a ' business' is acquired irrespective of the legal structure of an acquisition.
Goodwill measurement/ Purchase Price Allocation	Goodwill is the difference between the fair value of the consideration and fair values of the identifiable assets (tangible and intangible ) and liabilities as of the acquisition date. Hence, assets or liabilities even if not appearing in the books of the acquiree and which can be identified will be considered at fair values for arriving at the goodwill. Some commonly identifiable intangibles in purchase price allocation include customer contracts, customer relationships, brand and technology.
Subsequent measurement of goodwill	Goodwill arising on business combination is to be tested for impairment annually . (Ind AS 36)

**Ind AS 16 - Property, Plant and Equipment**

	<b>Ind AS 16 - Property, Plant and Equipment.</b>
Revaluations	Companies will have to opt for either of the two accounting models viz. Cost model or Revaluation model permitted by the Ind AS 16 on the date of transition. Subsequently under Revaluation Model, PPE are revalued at fair value periodically, so that the carrying amount of an asset does not differ materially from its fair value at the balance sheet date. revaluations do not affect the income statement, but rather are recognised in equity, unless the revaluation decreases an asset value below its net book value.
	Under Ind AS 16, component approach is to be followed for accounting for PPE. Under componentisation, if a fixed asset has two or more major components with substantially different useful lives, then the components should be treated as separate assets and be depreciated over their respective useful lives which will ensure that the income and expenditure statement correctly reflects the consumption of economic benefits inherent in those assets.

**Ind AS 40 - Investment Property**

	<b>Ind AS 40 - Investment Property</b>
Initial and subsequent measurement	Similar to IGAAP except an entity is required to disclose the fair value of its investment property.

## Ind AS 36 - Impairment of Assets

	Ind AS 36 - Impairment of Assets / Ind AS 38 - Intangible Assets
Applicability	Applies to all assets except inventories, assets arising from construction contracts, deferred tax assets, assets arising from employee benefits and financial assets that are within the scope of Ind AS 39. Applies to financial assets classified as subsidiaries, associates and joint ventures.
Frequency of impairment testing	Similar to IGAAP. However, an entity should test the following assets for impairment annually irrespective of whether the impairment indicators exists or not : <ul style="list-style-type: none"> <li>• an intangible asset not yet available for use ;</li> <li>• an intangible asset with an indefinite useful life ; and</li> <li>• goodwill acquired in a business.</li> </ul>

## Ind AS 102 - Share-based Payment

	Ind AS 102- Share-based Payment
Measurement	Measured based on the grant-date fair value of the equity instruments issued.

## Ind AS 109 - Financial Instruments

	Ind AS 36- Impairment of Assets / Ind AS 38 - Intangible Assets
	Ind AS 109 on Financial Instruments will replace Ind AS 39 Financial Instruments ; Recognition and Measurement.
Initial Measurement	All financial instruments are initially measured at fair value plus or minus transaction costs except Fair Value . Through Profit or Loss (FVTPL) that are directly attributable to the acquisition or issue of the financial asset or financial liability.
Financial Instruments classification and subsequent measurement of financial assets	All financial assets are classified as measured at amortised cost or measured at fair value. Subsequent measurement depends on how the financial instrument is classified.

### Definition of Fair Value in accordance with Ind AS 113

Fair Value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction (Not a liquidation price or forced sale) between market participants (Market-based measurement rather than an entity-specific measurement) at the measurement date (Current Price).

### Fair Value Measurement Approach

Ind AS 113 states that fair value measurement requires an entity to determine all the following:

1. **Asset / Liability:** The particular asset / liability that is the subject of measurement maybe either a stand-alone asset / liability or a group of assets / group of liabilities / group of assets and liabilities
2. **Principal / Most advantageous market:** The principal (or most advantageous market) for the asset or liability
3. **Non-financial assets:** For a non-financial asset, the

valuation premise that is appropriate for measurement (consistent with its highest and best use)

### Fair Value Measurement – Valuation Techniques

Ind AS 113 states that the 3 valuation approaches widely used are:

#### (i) **Market Approach**

- Market Multiples of similar publicly listed companies (Revenue, EBITDA, EBIT, Price to Book etc. adjusted for differences in growth, risk and profitability)
- Guideline Transactions in the market in the same industry as the subject Company

#### (ii) **Cost Approach**

- Reflects the amount that would be required to replace the service capacity of an asset.
- For Non-financial assets=Current Replacement Cost + Obsolescence

*(Contd. on page 9)*



# IMPACT OF GST ON TEXTILE INDUSTRY

CA. Madhukar N Hiregange and CA. Mahadev R



The Indian textiles and apparel industry contributes nearly 10% to manufacturing production, 2% to India's Gross Domestic Product (GDP) and constitutes 13% of country's export earnings. The industry, currently estimated at around \$ 108 billion, is expected to reach \$ 223 billion by 2021. Textile industry has been enjoying various tax exemptions, concessions under indirect taxes. Introduction of GST replacing the present indirect taxes could have considerable impact on textile industry. In this article, an effort has been made to shed some light on GST impact.

## PRESENT INDIRECT TAXES APPLICABLE

### Central Excise duty

Central excise duty was first introduced on woven garments in year 2001 which was subsequently extended to entire textile industry by 2003. The excise duty exemption option was also provided vide notification no.30/2004 with condition of non-availment of Cenvat credit. There was also an option to pay concessional rate of excise duty with Cenvat credit benefit. However, almost all assesses opted for exemption. In 2011, mandatory excise duty was reintroduced on branded garments with Cenvat credit benefit and abatement of 55% for duty payment. This mandatory levy was again removed in 2013 and optional scheme of paying duty with Cenvat credit benefit was continued.

In 2016, mandatory excise duty has been introduced again on branded readymade garments made up of textiles falling under central excise tariff heading 61, 62 and 63. The levy is attracted only when retail sale price (RSP) is Rs.1000/- or more and levy is only on 60% value after standard abatement of 40%. For payment of duty, rate of 2% without Cenvat credit or 12.5% with Cenvat credit option is applicable. Non-branded goods continue with "Nil" levy without Cenvat credit benefit. Otherwise, option of paying 6% with Cenvat credit in case of garments / articles of cotton, not containing any other textile material is available. For garments of other composition, "Nil" rate without Cenvat credit or 12.5% with Cenvat credit is available.

### **Contract Manufacturing/ Job Work**

In garment industry many times, brand name owners outsource the goods manufactured completely or on job work basis. There are special provisions that the central excise duty levy which in normal course should be with the job worker gets shifted to brand name owner. Such brand name owner instead of job-worker needs to register and comply with excise provisions. Brand name owner alternatively could authorize his job-worker to obtain registration and pay the duty on goods.

### VAT / Sales tax

Most of the states in India have exempted textiles and fabrics from levy of VAT / Sales tax. Garments including textiles are being subject to lower rate of VAT / Sales tax in many states. For example, in Karnataka state, readymade garments and other articles suffer lower rate of 5.5% tax. Textiles are exempted from VAT. For small players, the option of paying taxes at concessional rates is also provided under composition scheme in many states.

### Entry tax

In case of many states, entry tax is levied on specified goods when goods enter local area. Even textiles such as cotton, woolen or silk or artificial silks are liable to entry tax in states like Karnataka at the rate of 1% which is adding to purchase cost.

## **GST RATE AND ITS IMPACT**

Impact of GST on textile industry could be determined only after final rates are declared for the goods. Presently, most of the garment manufacturers opt for either complete excise duty exemption or payment at 2% duty without Cenvat credit benefit as most of the raw materials do not suffer excise duty, especially in case of cotton based sector. On branded garments, the effective excise duty rate would be 1.2% (if opted for 2% payment with abatement of 40%) or 7.5% (if opted for 12.5% payment with abatement of 40%). The sales tax would also be paid at lower rates or at concessional rates under composition schemes as applicable in different states. Exports have continued to be free from taxes all these years.

In GST regime, most of the indirect taxes such as central excise duty, service tax, VAT / Sales tax and entry tax would get subsumed. For textile and its products, the GST rate of 12% is expected. If it is so, then it could have a negative impact as the industry is as such price sensitive. Paying 12% GST would be costlier for assesses who presently paying 1.2% excise duty + 5% to 6% of VAT which amounts to 6 to 7.2% tax. Even input tax credit on inputs and input services may

not be sufficient to fill the gap as natural raw materials such as cotton may continue to get exemption in GST regime. It may be noted that other materials such as chemicals, dyes, accessories and packing materials which constitutes around 8% to 12% of total material cost could be liable for standard GST of 18% which is eligible as input tax credit when output GST is paid.

However, in case of manmade fibre segment, most assesses have been paying excise duty at regular rates along with VAT. Inputs such as polyester fibre, nylon and other petrochemicals suffer excise duty which can be claimed as Cenvat credit. This segment may get level playing field as GST rate of 12% could have positive impact on them who are already paying more than 12% tax. For this sector, seamless credit could also result in lower price of goods which could boost demand for non-cotton garments benefitting consumers by way of price reduction. It is expected that there can be a gradual shift in the domestic textile industry towards manmade fibre under GST regime due to tax advantage.

#### **OPTION OF TAX PAYMENT JOB WORK IN GST**

Even in GST regime, the principal would get the option of sending inputs or capital goods for job work (Section 55 of Model GST law). Raw materials sent to be received back within 1 year and capital goods to be received back within 3 years. If the goods are not received within this time limit, then supply of goods would be treated as supply for levy of GST. The processed goods could also be sent directly to customers of principal, provided job workers are registered or the details of job workers place are added as additional place of business in principal's registration certificate.

The principal manufacturers who have authorised the job workers to pay excise duty may be required to pay GST directly instead of authorising the job workers. However, when the goods are procured and supplied by job workers after processing, then the same would be treated as supply for levy of GST by job workers. Wherever the principal manufacturers are sending goods to job work units who are not required to be registered under GST regime, such units are to be added as additional place of business in principal's registration certificate.

It may be noted that the job work processing on goods sent by the principal would be treated as service for GST purpose. Job workers could choose GST exemption if the value of such services is not exceeding Rs.20 lakh per annum. However, such option may not be feasible as it would break the input tax credit chain. GST payment option could be a better choice as GST would provide seamless credit on goods and services.

This would be beneficial even for the principal manufacturers. Therefore, the educating the job workers would be important.

There are a few transitional provisions which are applicable for the incomplete transactions and also requirement of declarations to ensure credit on the closing stock.

#### **IMPACT ON EXPORT BENEFITS**

Textile exports from India for FY 2015-16 stood at around US dollar 40 billion and Indian textile industry gets good amount of duty drawback on export of garments. Duty drawback rate varies from 7 % to 10% on FOB value of exports with cap limit varying from Rs.15 to Rs.620 when Cenvat credit benefits are not claimed. In GST regime, duty drawback may lose relevance as there would be seamless credit at each stage of value addition and better transparency. Even if duty drawback is continued to offset the impact of basic customs duty component, which is non-creditable tax, the drawback rate could be very less. This could impact largely, those assesses who are dependent on duty drawbacks for achieving good margin / profit.

Exports would be zero rated supplies under GST with benefit of credits on goods and services procured. The accumulated credits could be claimed as refund within 2 years from specified date. Due to better transparency, refunds could be faster in GST regime. Based on model GST law as updated in November 2016, 90% of the refund would be provisionally processed after filing of refund application subject to certain conditions. If this is really executed by the Government, then it could solve the cash flow problem for the industry.

#### **CREDIT ON CAPITAL GOODS**

The assesses who have plans for large investments in capital goods could plan for the same in GST regime which would enable them to take credit of taxes paid on capital goods procurement for utilisation against payment of output GST. Assesses who are engaged in export of goods could opt for Export Promotion Capital Goods (EPCG) scheme to procure the goods without payment of any duties. It is expected that the EPCG scheme wherein 6 times of duty saved amount to be exported within 6 years would continue in GST regime as this is provided under the Foreign Trade Policy under Ministry of Commerce.

#### **PROCUREMENT PLANNING**

Exemptions would be phased out in GST regime and there may not be any product specific or area specific advantage for textile industry which could create competitive environment. There is a need to plan for the procurement of inputs at better prices considering various factors such as quality, location



of supplier, type of taxes charge etc. Taxes paid on interstate purchases would be eligible for credit in GST regime. Presently, CST paid on interstate purchases is not being allowed as credit for setoff against output VAT / sales tax.

The procurements from unorganised sectors or from suppliers who opts for composition scheme under GST could increase the cost of materials as such suppliers would not be eligible for any input tax credit. Therefore, the source of procurement would also play a vital role in GST regime.

### **IMPACT ON CASHFLOW**

#### ***GST levy on supply***

Unlike present indirect taxes, GST would be levied on supply of goods or services. Stock transfers between the different units of an entity would be subject to GST. However, transfers between units within same state may not be liable unless different GST registrations are obtained. This would have initial impact on cashflow. The goods receiving unit would be eligible for input tax credit of GST charged by goods sending unit. The level of stock to be maintained at warehouses, godowns, depots etc. to be decided considering this cash flow impact.

#### ***Return filing***

All compliances including documentations would be automated in GST regime. Input credit eligibility would be subject to tax payment and return filing by supplier of inputs or services. Credits and liabilities would be matched online on monthly basis based on the various returns to be filed. As provided in GST return related reports released, there are 3 monthly regular returns to be filed in addition to one

annual return followed by audit report. For distributing the credit of GST paid on common input services relating to units in multiple states, there is a separate return prescribed (ISD return). Increase in number of returns could increase compliance cost in form of addition time and staff recruitment.

#### ***GST implementation cost***

Shift to GST regime from present indirect tax regime would have huge impact on the business. There is a need to analyse the impact on the entire business including main functions which would be helpful in preparedness for GST. ERP systems would need customisation for compliance under GST. Key personnel including the key vendors should be trained to understand the concept, impact and compliance requirement under GST. Textile industry needs to be ready for all this expenditure.

#### **Conclusion**

The impact of GST on textile industry would be substantial involving lot of transitional issues and industry needs to gear up for implementation of GST after understanding the impact. 1<sup>st</sup> June or 1<sup>st</sup> July 2017 looks to be a realistic date for implementation from recent political developments. Early preparation could provide lot of benefits including better transition planning. Professionals need to highlight the importance and assist the assessee in this regard. While analysing the impact, review of present law compliance could also provide scope for value addition assesses.

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## **INDIAN ACCOUNTING STANDARD (IND AS) 113 - FAIR VALUE MEASUREMENT**

*(Contd. from page 6)*

### **(iii) Income Approach**

- Present Value Techniques (E.G. Discounted Cash Flow Method when valuing a business)
- Option Pricing Models (E.g. Black Scholes, Monte Carlo Simulation and Binomial models in valuing ESOP or put/call options).
- Multi-Period Excess Earnings Method (E.g. Valuing the primary intangible asset in the business)
- Relief-from-royalty Method (E.g. Valuing Brand or IP)
- With-and-without Method (E.g. Valuing Non-Compete agreements)

### **Disclosures in Financial Statements**

An entity shall disclose information that helps users of its financial statements assess both of the following:

- (a) For assets and liabilities that are measured at fair value on a recurring or non-recurring basis in the balance sheet after initial recognition, the valuation techniques and used to develop those measurements.
- (b) For recurring fair value measurements using significant unobservable inputs (Level 3), the effect of the measurements on profit or loss or other comprehensive income for the period.

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e-mail: skcoca2011@yahoo.in*



## EXISTING TAXPAYERS MIGRATING TO GST

CA. Srikanth Acharya and CA. Annapurna Kabra



With effect from 08th November, 2016, The GSTN has initiated GST migration/enrolment for existing taxpayers. The GST portal is being hosted at the domain [www.gst.gov.in](http://www.gst.gov.in). The website [www.gst.gov.in](http://www.gst.gov.in) will enable taxpayers located across different states to update their information and other relevant documents as a first step towards obtaining registration number under GST. As a part of implementation of GST, the existing tax payers / registrants would be granted provisional registration certificates under the GST law. The transition provision Section 166 of Model GST Law deals with migration of existing registrants into the GST laws. All existing taxpayers having a valid PAN will be issued provisional registration certificates on the appointed day and the same will be valid for the initial period of six months. After furnishing the required information final registration will be granted. If the information is not furnished within the prescribed time limit of six months, the registration will be cancelled under the GST law.

An “existing taxpayer” is an entity currently registered under any of the Acts like Central Excise, Service Tax, State Sales Tax / VAT (except exclusive liquor dealers if registered under VAT), Entry Tax, Luxury Tax, Entertainment Tax (except levied by the local bodies). The migration process has been initiated in a staggered manner. Government has launched GST Portal (i.e., [www.gst.gov.in](http://www.gst.gov.in)) for the enrolment of existing taxpayers of VAT, Service Tax and Excise for smooth transition to GST. Existing dealers have to collect provisional ID from tax officer, update their profile information and upload the required documents on the GST portal.

Before the appointed day all the registered tax payers under Central excise, Service Tax, VAT, Entry Tax, Luxury Tax and Entertainment Tax need to enroll at the GST common portal [gst.gov.in](http://gst.gov.in). To begin with all State VAT Department will be issuing Provisional ID and password to registered taxpayers with the VAT department. The Taxpayer Registered with other tax departments and not under VAT department will be shared the provisional ID at a later date. The state wise schedule for enrolment with GST is available in the link. Provisional ID received from one department is enough for merging all

tax registration into GST. The State VAT Department will be communicating provisional ID and password to every registered tax payer. In case dealers are registered tax payers with State VAT department and if provisional ID and password is not received then the registered tax payers can contact State Vat Department. Once dealer get provisional ID and password, they need to access the GST common portal [www.gst.gov.in](http://www.gst.gov.in) to create unique username and new password using provisional ID and password. Before dealer creates user name and password for GST common portal, they need to have a valid e-mail and mobile phone number. After creating user ID and password dealers should login to the GST common portal [www.gst.gov.in](http://www.gst.gov.in). They should fill Enrolment Application and provide business details. The dealers should verify the auto populated details from state VAT system and sign the enrolment application electronically. They should submit Enrolment Application with necessary attachment electronically. Once the details are submitted the details will be verified by the GST systems. If details are satisfactory an Application Reference Number (ARN) will be issued to you in ‘migrated’ status. The status of provisional ID will change to “Active” on the approved date and a provisional registration Certificate will be issued.

After verifying the Enrolment application, the dealer needs to sign the form. There are two options to electronically sign the application, the dealer can e-sign or sign using digital signature Certificate (DSC). Dealer can e-sign only if Aadhaar details of the authorized signatory are provided in the authorized signatory of the Enrolment Application. In case of Companies, LLP, it is mandatory to sign the form electronically using DSC. E-Sign stands for Electronic Signature. E-Sign is an online electronic signature service that allows an Aadhaar holder to digitally sign a document.

If the taxpayer opts to electronically sign the enrollment application or any other document at the GST Common Portal using the e-sign service, the following steps are performed. The taxpayer should click the E-sign button. The GST common portal prompts the tax payer to enter the Aadhaar number of the Authorized signatory. After Validating the Aadhaar Number the GST common portal sends a request to

UIDAI system to send an one time password(OTP). UIDAI system sends an OTP to email address and mobile number registered against Aadhaar number. The GST System prompts the tax payer to enter the OTP. The tax payers enter the OTP and submit the enrollment application or the document. The E- signing process is completed. In case the assessee is also registered with State Commercial Tax Dept. (State VAT/ Luxury Tax/ Entry Tax/ Entertainment Tax) and has already initiated this process of migration, then no further action is required to be taken in terms of the Guidance Note by such assessee as a Central Excise/Service Tax assessee.

Though GSTN is encouraging taxpayers in a particular state to register within the specific time frame allotted to each state, the window will remain open till the prescribed date. Since in GST regime, one unique registration for a single PAN plus state would be issued, the existing assessee would be given one provisional ID per State where place of business is registered in current central excise and service Tax registrations. The remaining registrations in a State could be added as additional place of business in the details filled at the GSTN portal.

After logging into the GSTN using the provisional user ID and password, mobile number and email address of authorized signatory shall be provided which shall be verified through OTP, which will be received at the respective email-ID and mobile number. The mobile number and email address of authorized signatory shall be used for all future correspondences as well. After successful login, a fresh username and password is required to be created, which shall be consist of Capital letters, Small letters, Numerical and Special characters. A further set of five mandatory security questions need to be answered, which can be used to recover the above credentials, if lost in future. The above credentials created, shall be used for future logins into the GST portal. On next time login, the following details will be auto-populated in the enrolment application based on the existing data PAN of the Business, Legal Name of Business State, Email Address and Mobile number of primary Authorized Signatory entered during enrolling with GST System Portal. Any changes with regard to above fields cannot be made in the enrolment application as these details are migrated from the existing tax systems of State or Center. The information sought, must be filled in and the specified documents would be required to be uploaded (in prescribed size and format). Thereafter the applications need to be digitally signed and submitted. DSC is mandatory for enrolment by Companies, Foreign Companies, Limited Liability Partnership (LLP), Foreign Limited Liability

(FLLPs) and for others Aadhaar based e-sign will also be allowed. E-sign is an online Electronic Signature service to facilitate Aadhaar holder to digitally sign a document. After submission of enrolment application, an Application Reference Number (ARN) shall be generated which can be used to track status of the enrolment application. On successful completion of enrolment application, a Provisional Registration Certificate shall be available on the common portal Dashboard on the “appointed date” (to be prescribed) in [Form GST REG – 21] which shall be valid for six months. Thereafter, the final Registration certificate will be provided after verification of documents (within 6 months) by proper officer(s) Centre/State of concerned jurisdiction(s) after appointed date.

It is noteworthy, that paramount consideration at this juncture must be to determine the nature of registration and optimum locations for registration in terms of present and future business transactions as separate registrations shall be required at each state from where supply of goods and/ services will be made. It is important for businesses to collate all required details for GST migration at the earliest. The roll out of GST is scheduled from April 1, 2017. The taxes of Central Excise and Service Tax would be subsumed in the GST. All existing Central Excise and Service Tax assessees will be migrated to GST **starting January 14, 2017**.

GST Enrolment app is an offline utility to enrol an existing State VAT / Central Tax / Service tax payer to new GST regime. The app enables user to fill in all the GST registration migration application form in an offline mode and the app automatically creates the data upload file accordingly. The user has to come online and login to the GST portal through app and submit the data upload file. The dealer / taxpayer will receive an email / SMS intimation upon the successful validation of information submitted by him / her in 15 mins. Once the enrolment application is submitted successfully through the app, s/he has to visit the web GST portal for editing any data or for signing the application form digitally. You can sign your application at any time later as stipulated by law, after filling up and submitting on GST portal.

In the mobile device Home Page, Dealer Registration Logo (National Emblem) & Name of the app will appear. Tap the GST Registration Migration App icon. Goods and Service Tax landing page will be displayed. For filling up the application form, mobile data connectivity is not required (Offline mode).

*(Contd. on page 15)*



## VALIDITY OF NOTICES UNDER THE INCOME TAX ACT IN CERTAIN CIRCUMSTANCES



CA. Prakash Hegde and CA. Raghavendra N

In most of the proceedings under the Income Tax Act, 1961 ('the Act'), issue and service of notices form a very important part. The initiation proceeding commences on issue of proper notice and proper service of that notice. An issue of notice serves the dual purpose of (i) giving an assessee the opportunity of being heard and hence, ensure natural justice and (ii) act as means for obtaining information / details from the assessee.

In many instances, the assessee questions the validity of service of notice after responding to those notices or after participating in the proceedings or during appeal. In situations where the notice is found to be invalid, the income tax authorities may issue fresh notice appropriately provided the time limit for such notice is not over. However, if the objection is raised by the assessee after the time limit for issuance of a valid fresh notice is over, the defect cannot be remedied by the income tax authorities.

Therefore, the Government thought it necessary to restrict the assessee from questioning the validity of service of notice once he participates in the proceedings in pursuance of a notice. As a result, the Finance Act, 2008 inserted section 292BB with effect from 01 April 2008 to deem notices to be valid in certain circumstances, which reads as under:

*"292BB. Notice deemed to be valid in certain circumstances — Where an assessee has appeared in any proceedings or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was-*

*(d) not served upon him; or*

*(e) not served upon him in time; or*

*(f) served upon him in an improper manner*

**Provided that** nothing contained in this section shall apply where the assessee has raised such objection before the

*completion of such assessment or reassessment."*

In short, if an assessee had appeared in any proceedings or co-operated in any inquiry, it shall be deemed that any notice required to be served on him, has been duly served upon him in time and in accordance with the provisions of the Act. It is important to note that such deeming provision will not apply where the assessee has raised an objection (either regarding non-service of notice or non-service of notice in time or improper service of notice) before the completion of such assessment or reassessment.

The Central Board of Direct Taxes ('CBDT') *vide* **Circular No. 1 of 2009** has clarified that the provisions of section 292BB shall be applicable to all proceedings which were pending on 01 April 2008.

### Judicial Precedents

In a very recent decision by the Kerala High Court in the case of **Travancore Diagnostics (P) Ltd. Vs ACIT [2016] 74 taxmann.com 239 (Kerala)**, the issue under consideration was the contention of the assessee that before making an assessment under section 143(3) read with section 147, the Assessing Officer ought to have given a statutory notice under section 143(2) of the Act. In the absence of a notice under section 143(2), it is obvious that no further proceedings can be continued for assessment under section 143 and without such a notice, the Assessing Officer could not assume jurisdiction and that this defect cannot be cured subsequently, since it is not a procedural defect, but it is a defect that goes to the root of the jurisdiction. In this case, it was admitted by the assessee that his representative had appeared before the Assessing Officer. The Revenue, therefore asserted that since the assessee had appeared in the proceeding and had co-operated with the inquiry, he shall be precluded under section 292BB from raising any contention that no notice had been served on him. The High Court held that:

*"On a clear reading of the section 292BB it becomes inscrutable that the issue of estoppel would arise against the assessee only after he had appeared in the assessment*

proceeding pursuant to a notice validly issued. Therefore, in the absence of a section 143(2) notice, proceedings of assessment initiated, conducted and completed would have to fail.”

Similarly, the Punjab & Haryana High Court, in the case of **Cebon India Ltd [TS-105-HC-2009(P & H)]** has held that in the absence of service of notice under section 143(2), the AO had no jurisdiction to proceed with assessment. The High Court observed that notice was not served within the stipulated time and hence, held that the absence of a notice cannot be held to be curable under section 292BB of the Act. On a similar question of whether the revenue could not take advantage of provisions of section 292BB where no notice under section 143(2) was issued within period of limitation, the Bangalore Tribunal in the case of **ACIT vs. Ashed Properties & Investments (P.) Ltd [2015] 62 taxmann.com 340 (Bangalore - Trib.)** has held that the issue and service of notice under section 143(2) within the period of limitation contemplated under the proviso to section 143(2)(ii) is mandatory for validity of assessment under section 147. On the applicability of provisions of section 292BB, when the records show that there was no issue of notice under section 143(2) within the period of limitation prescribed under the said proviso, the revenue cannot take advantage of the provisions of section 292BB. In other words, 'issue of notice' and 'service of notice' are two different aspects and what is covered by section 292BB is only 'service of notice'. Non-issue of notice under section 143(2) within the period of limitation

would not be covered under the ambit of section 292BB.

### Conclusion

Based on the above, it can be understood that, non-issue of notice within the period of limitation would not be covered under the ambit of section 292BB. Further, where an assessee appears in any proceedings or co-operates in any inquiry, without raising any objection regarding non-service of notice or non-service of notice in time or improper service of notice before the completion of such assessment or reassessment, it shall be deemed that any notice required to be served on him has been duly served upon him in time and in accordance with the provisions of the Act.

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## KSCAA WELCOMES NEW MEMBERS - JANUARY 2017

Sl.No.	Name	Place
1	CA. Lavanya N. Rao	Bengaluru
2	CA. Bhavesh S. Patel	Bengaluru
3	CA. Arun Shetty	Bengaluru
4	CA. Ramesh S.	Bengaluru
5	CA. Shivashankar R. Shetty	Bengaluru
6	CA. Vishwanath N. Vishwakarma	Bengaluru





# FINANCIAL REPORTING – PRACTITIONERS UPDATE

CA. Vinayak Pai V

## 1. Introduction

2017 heralds a new era in Indian corporate reporting. Indian companies bid adieu to AS and embrace the Indian variant of International Financial Reporting Standards. The first phase of companies will present their first IND-AS annual financial statements for the year ending March 31, 2017. The second phase of companies will switch over to IND-AS from April 1, 2017.

## 2. Financial Reporting Updates

### a) Tangible Fixed Assets under ICDS (Revised)

Revised Income Computation and Disclosure Standards (ICDS) are **applicable from Assessment Year 2017-18** and the salient aspects related to tangible fixed assets addressed in ICDS V- *Tangible Fixed Assets* are provided herein below.

- **Stand-by equipment** and **servicing equipment** need to be **capitalized** as tangible fixed assets.
- **Machinery spares** are required to be **charged** to the income statement as and when consumed.
- **Spare parts** that can be used only in connection with an item of asset, with irregular expected usage, need to be capitalized.
- **Cost** of asset is subject to **post acquisition changes** due to price adjustments, exchange fluctuations etc.
- For tangible fixed assets acquired in **exchange transactions**, the accounting needs to be on the basis of **fair valuation**.
- In case of assets **owned** by a person **jointly with others**, the **proportion** in the actual cost, accumulated depreciation and WDV should be grouped together with similar fully owned assets.
- In case of basket purchase (for a consolidated price) of assets, the consideration needs to be apportioned to the various assets on a **fair basis**.
- **Depreciation** and **income arising on transfer** of tangible fixed assets need to be computed in **compliance** with the provisions of the **Income Tax Act**.

### b) IND-AS applicability for Fiscal year ending March 31, 2017

Indian companies transition to IND-AS in a phased approach commencing fiscal 2016-17. The **net worth** of a company is a **key determinant** of the phase it belongs to.

The Transition Facilitation Group for the new accounting framework set up by our Institute has recently issued the following clarification with respect to applicability of IND-AS viz.

- Since, the net worth shall be calculated in accordance with the stand-alone financial statements of the company as on March 31, 2014, if the **net worth threshold criteria for a company are once met**, then it shall be required to comply with IND-AS, **irrespective of the fact that as on later date its net worth falls below the criteria** specified.

It may be noted that as per the IND-AS transition roadmap laid down by the MCA, the following companies are required to migrate to IND-AS for fiscal year commencing April 1, 2016 with an **opening IND-AS balance sheet** to be prepared **as at April 1, 2015** viz.

- Companies that are listed or are in the process of listing having a net worth of Rs. 500 crore or more,
- Unlisted companies having a net worth of Rs. 500 crore or more, and
- Holding, subsidiary, joint venture or associate companies of above companies.

Net worth for the purpose of IND-AS applicability is as defined under section 2(57) of the Companies Act 2013 viz. the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

### c) Audit Opinion on Financial Statements – Changes to SA 700

The revised Standard on Auditing (SA) 705 – **Modifications to the Opinion in the Independent Auditor's Report** is effective for audits of financial statements for periods beginning on or after **April 1, 2017**. Some of the salient aspects of the same are highlighted herein below.

- If management refuses to remove any limitation imposed on the scope of audit, the auditor shall communicate the matter to those charged with governance, **unless all of those charged with governance are involved in managing the entity**.

- Where the auditor disclaims an opinion due to inability to obtain sufficient appropriate audit evidence, the auditor is required to **state** that the auditor **does not express an opinion** on the accompanying financial statements, and also state that because of the significance of the matter described in the *Basis of Disclaimer of Opinion* section, the auditor has not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion.
- Where the auditor **disclaims an opinion** on the financial statements, the auditor's report **shall not include** the elements required by SA700 namely the reference to the section of the auditor's report where the auditor's responsibilities are described and the statement about whether the audit evidence obtained is sufficient and appropriate to provide a basis for the auditor's opinion.

d) **Planning for unlisted companies IND-AS Transition in 2017-18**

Unlisted companies with net worth in the range of Rs. 250 – 500 crore (reckoned as of March 31, 2014) are required to switch over from “AS” based accounting framework to IND-AS (the Indian version of IFRS) from **April 1, 2017**. Such companies are required to prepare an opening balance sheet as per IND-AS as of **April 1, 2016**.

In the financials for 2017-18, such companies are required to provide additional data on the impact of migration from erstwhile framework to IND-AS as detailed herein below.

- The first time adoption standard viz. **IND-AS 101** mandates an entity to explain how the GAAP transition impacted its *Balance Sheet, Income Statement and Cash Flows*.

- The following reconciliation statements are required to be disclosed in the notes to the financial statements
  - *Equity reconciliation (AS to IND-AS)*
    - At the date of transition (**01.04.2016**).
    - At the end of the latest period presented in the entity's most recent “AS” annual financial statements (**31.03.2017**)
  - *Profit reconciliation (AS to IND-AS)*
    - Reconciliation to its total comprehensive income in accordance with IND-ASs for the latest period in the entity's most recent annual financial statements (**2016-17**).
  - *Cash Flows*
    - Explanation of any material adjustments to cash flows

It may be noted that the above reconciliations require the provision of sufficient detail to enable users to understand the material adjustments to the Balance Sheet and the Statement of profit and loss.

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## Congratulations



**CA. N. Nityananda**  
on being appointed to  
C & AG Advisory Committee  
as a Expert in Auditing  
and Accounting Standards.

## EXISTING TAXPAYERS MIGRATING TO GST

(Contd. from page 11)

Dealer can fill the Enrolment Application form in the offline mode. To submit the Enrolment Application, dealer need to be ONLINE (Mobile data connectivity is required). For submission, dealer will be redirected to the GST Common Portal from your mobile device. At this point of time the app will prompt you to become online i.e. your mobile data should be switched on. The dealer should be connected to the Internet to proceed further. There is also a toggle button on the top right hand corner of the screen which enables and disables the mobile data. Dealer need to login to the portal to

create your credentials. Dealer can then use your credentials (username and password) to upload the data. Dealer cannot edit and resubmit the Enrolment Application after successful submission on the GST Common Portal from the mobile app. Any changes after submission can only be done from the web GST Common Portal available at [www.gst.gov.in](http://www.gst.gov.in).

An e-mail message and SMS will be sent on your registered e-mail address and mobile phone number confirming submission of data. You can check the status of the Enrolment Application from the web GST Common Portal available at [www.gst.gov.in](http://www.gst.gov.in).

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# INPUT TAX DEDUCTION UNDER KARNATAKA VALUE ADDED TAX ACT 2003 – JUDICIAL CONUNDRUM



**CA. S. Ramasubramanian and CA. Prateek Marlecha**

## 1.0 Introduction

1.1 Most of the States in India moved over to value added tax in 2005. The legislative frame work for levying of VAT was introduced in 2003 and it was implemented from April 2005. Some of the States initially did not come into VAT stream. But later, all the States fell in line and introduced the VAT. Under the value added taxation the tax is levied on value added at each stage. The main advantage of VAT system is that it avoids cascading effect of tax. Under sales tax system, tax on tax is levied which has a cascading effect. VAT system eliminates cascading. Unlike the erstwhile sales tax, the value added tax was levied on each sale, but only on the value addition. The most practical method of taxing the value addition is by giving a set-off of the input tax paid against the output tax payable. This system is known as “invoice credit system”. Therefore, the input tax deduction forms the bed rock of VAT system.

1.2 Karnataka is one of the earliest States to have passed the necessary legislation in 2003 itself. Karnataka Value Added Tax Act 2003(Act or KVAT Act for short) is the statute dealing with the levy of VAT in Karnataka.

## 2.0 Statutory Provisions:

2.1 S.10 of KVAT Act deals with output tax, input tax and the net tax payable. S.10 as it stood before its amendment in 2005 is reproduced below:

### 10. Output tax, input tax and net tax

(1) Output tax in relation to any registered dealer means the tax payable under this Act in respect of any taxable sale of goods made by that dealer in the course of his business, and includes tax payable by a commission agent in respect of taxable sales of goods made on behalf os such dealer subject to issue of a prescribed declaration by such agent.

(2) Subject to input tax restrictions specified in Sections 11, 12, 14,17 and 18, input tax in relation to any registered dealer means the tax collected or payable under this Act on the sale of him to any goods for use in the course of his business, and includes the tax on the sale of goods to his agent who purchases such goods on his behalf subject to the manner as may be prescribed to claim input tax in such cases.

(3) Subject to input tax restrictions specified in Sections 11,12,14,17,18 and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and shall be accounted for in accordance with the provisions of this Act.

(4) For the purpose of calculating the amount of net tax to be paid or refunded, no deduction of input tax shall be made unless a tax invoice, debit note or credit note, in relation to a sale, has been issued in accordance with Section 29 or Section 30 and is with the registered dealer taking the deduction at the time any return in respect of the sale is furnished, except such tax paid under sub-section (2) of Section 3.

(5) Subject to input tax restrictions specified in Sections 11,12, 14,17,18 and 19, where under sub-section (3) the input tax deductible by a dealer exceeds the output tax payable by him, the excess amount shall be adjusted or refunded together with interest, as may be prescribed.

2.2 In 2015 S.10(3) was amended. The amended section is reproduced below:

(3) Subject to input tax restriction specified in Sections 11,12,14,17,18 and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and relatable to goods purchased during the period immediately preceding five tax periods of such tax period, if input tax of such goods is not claimed in any of such five preceding tax periods and shall be accounted for in accordance with the provisions of this Act.

2.3 S.10(3) was amended against that retrospective effect from April 2015 by an amendment introduced in 2016. This amendment is retrospective from 1<sup>st</sup> April 2015. The amended S.10(3) is reproduced below:

(3) Subject to input tax restriction specified in Sections 11,12,14,17,18 and 19, and net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax



deductible by him as may be prescribed in that period and shall be accounted for in accordance with the provisions of this Act. Provided that, a registered dealer while calculating the net tax payable on or after first day of April 2015 may claim input tax relatable to goods purchased during the period immediately preceding five tax periods of such tax period, if input tax of such goods is not claimed in any of such five preceding tax periods.

### 3.0 Issues on Input Tax Deduction – Timing

3.1 Until 2010 or 2011, the KVAT officials did not take a view that the input tax deduction should be claimed within a specified time. Sometime in 2011, the department seems to have formed an opinion that the input tax deduction should be claimed in the same month to which the purchase invoice relates. For instance, if the purchase invoice is dated 25<sup>th</sup> of April 2012, the department was of the view that the input tax deduction should be claimed only in the return for the month of April 2012. If by any chance, the deduction was not claimed, the only remedy available to the dealer was to file a revised return as provided in S.35(4) of KVAT Act. U/s 35(4) of KVAT Act the revised return can be filed within six months from the end of the relevant tax period. Obviously, the dealer will not be able to claim the input tax deduction if the time limit for filing the revised return had expired.

3.2 This view of the department was challenged in appeal and the Karnataka Appellate Tribunal held that S.10(3) does not prescribe any time limit for claiming the deduction and therefore, a dealer can claim the input tax deduction in any tax period and not necessarily in the same tax period to which the purchase invoice relates. This matter was taken up in appeal before the Hon'ble Karnataka High Court. The following are some of the judgments of the Karnataka High Court dealing with the issue of timing of the input tax deduction claim.

Sl No	Title	Citation	Date of Order
1.	State of Karnataka Vs K.Bond Polymers Pvt Ltd	2012 (73) KLJ 429	02.03.2012
2.	Infinite Builders and Developers Vs ACCT	2013 (76) KLJ 390	30.05.2013
3.	Suma Oil Agencies Vs Additional Commissioner of Commercial Taxes	2014 (72) VST 472	12.03.2014
4.	State of Karnataka Vs Centum Industries Pvt Ltd	2014 (80) KLJ 65	30.09.2015
5.	State of Karnataka Vs Manyata Promoters Pvt Ltd	2015(83) KLJ 375	30.09.2015
6.	Sonal Apparel Pvt Ltd Vs State of Karnataka	2016 (85) KLJ 1	29.03.2016

7.	Ajantha Digital Lab Vs Commercial Tax Officer (Audit 2.2)	2016(85) KLJ 653	31.05.2016
8.	Bhoorathnom Construction Co.(P) Ltd Vs State of Karnataka	2016(96) VST 325	19.10.2016

3.3 As can be seen from the following discussions, contrary and conflicting judgments have been rendered. In many decisions, the earlier judgments have not been noted or even if cited, have been distinguished on perfunctory grounds.

3.4 This article discusses the decisions, points out the contradiction and also critiques the judgments.

3.5 Let us first discuss the earliest decision of the Karnataka High Court in K.Bond's case. In this case the dealer received a debit note for the extra tax paid by the seller sometime in the month of July 2006 though the original sales took place much earlier. The dealer was not clear in his mind as to whether he is entitled to claim the input tax deduction if he reimbursed to the seller the extra tax demanded in the debit note. The dealer sought a clarification from his LVO and on not hearing anything from the LVO, decided to claim the input tax deduction in the return filed for the month of December 2006 on the basis of legal advice. It may be noted that the dealer did not file a revised return for the month of July 2006 claiming the extra input tax as per the debit note. As a consequence of claiming the input tax deduction in the return filed for the month of December 2006, the dealer was entitled to a refund of Rs. 1,04,375/-. The VAT authorities rejected the claim of the dealer. This is ostensibly on the ground that the claim should have been made in the tax period of July 2006 and since no revised return has been filed for July 2006, the input tax deduction cannot be allowed. When the matter reached the High Court, the High court observed as under :

Once the tax is paid under the Act, the assessee is entitled to the benefit of input tax. Either he may retain the difference of the amount collected and appropriate it and if he has paid the money and he can put forth the claim for refund. The delay in putting forth the claim for refund does not in any way effect his right to claim the said amount, which is legitimately due to him under Act nor it amounts to contravention and resulting in liability to pay the tax. Interest and penalty as sought to be levied by the Assessing Authority. The entire approach of the Assessing Authority and the First Appellate Authority is contrary to law and runs counter to the spirit of the Act.

The High court allowed the claim of the dealer.

### 3.6 Infinite Builders

The dealer therein was taking a consistent stand that he is not executing any works contract and all his contracts are for sale of completed immovable properties

and therefore, he is not liable to pay KVAT. Finally, on merits the matter was held against the dealer. During the assessment, the dealer claimed that he is entitled to input tax deduction. The assessing officer disallowed the deduction. On appeal, JCCT(Appeals) allowed the claim. But the revisional authority held that the input tax deduction is not allowable on the ground that it was not claimed in the returns originally filed. On appeal to High Court, the dealer argued that he could not have claimed the input tax deduction in the original return consistent with his stand that he is not liable to pay any output tax. (The dealer's stand that input tax deduction could have been claimed only if output tax is liable to be paid on a taxable transaction and if the transaction is non-taxable, deduction cannot be claimed seems to be correct in view of a later decision of High Court in M.K. Agrotech (P) ltd vs State of Karnataka 80 KLJ 1. Please see observations at page 7 paragraph 9) But the Hon'ble High Court rejected this argument and held that the input tax deduction is to be claimed in the tax period to which the purchase invoices relates. With respect it is submitted that the Hon'ble High Court proceeded on the assumption that there is a time limit inbuilt in S.10(3) of KVAT Act and that time limit is the tax period to which the purchase invoice relates. The High Court rested its case on the fact that no revised return was filed and in the original return no claim for input tax deduction was made. As stated earlier, it was also held that there is an inbuilt time limit prescribed in S.10(3) of the Act. But there is no analysis of S.10(3) to arrive at the above conclusion. The decision in K.Bond was cited before the Hon'ble Tribunal but the court did not deal with the submissions. Though it noted the submission of the dealer that it is entitled to claim input tax deduction on the basis of the decision of K.Bond, there is no discussion by the court on this submission.

- 3.7 In Sumo Oil Agencies the High court without any analysis of S.10(3) simply held that unless the dealer claims the input tax deduction in the monthly return (VAT 100), deduction is not allowable. There is no discussion at all on S.10(3).
- 3.8 Decision which really stirred the hornet nest was Centum Industries' case. In this case the dealer claimed the input tax deduction in the month of February 2007 though the purchases were not pertaining to the tax period of February 2007. The authorities rejected the claim of the dealer. The Tribunal allowed the claim. When the matter was taken up by the department to High court, the High Court reversed the judgment of the Tribunal and held that the dealer is entitled to input tax deduction only if the deduction is claimed in the tax period in

which the tax is paid. In paragraph 12 at page 71 of 80 KLJ, the High court rejected the contention of the dealer that once input tax has been paid, by the virtue of S.10 the assessee is entitled to rebate of tax against the output tax notwithstanding the fact that such a claim is not put forth in the returns filed within the aforesaid period. The court held that if the said interpretation that has to be accepted it would render the period prescribed under the Act meaningless. The court was referring to the period prescribed u/s 35(4) for filing the revised return. The court also rejected the contention of the dealer that S.10(3) does not prescribe the time limit. Again, with respect it is submitted that the court rejected this argument without a proper and detailed analysis of S.10(3). The court held that words "in that period" specifies the period during which the input tax is paid and the output tax is payable and the same has to be accounted in accordance with the provisions of the Act. It is submitted that the expression "in that period" in S.10(3) as far as input tax is concerned does not in any way refer to any particular period in which the input tax is to be claimed. While there can be no doubt the output tax is payable in the tax period in which the sale takes place as provided in S.10(1) of the Act, there is nothing in S.10(2) or S.10(3) which prescribes in which tax period the input tax deduction is to be claimed. S.10(2) defines the input tax to mean the tax collected or payable under the Act on the sale to him of any goods for use in the course of business and it goes on to say that input tax deduction is to be claimed subject to restriction in S.11, 12 etc. There is nothing in Sub-section 10(2) prescribing the period in which the deduction is to be claimed. Similarly, S.10(3) also does not specifically state that the input tax should be claimed in a particular tax period. A more detailed analysis of S.10(3) will follow later.

In Centums' case the Hon'ble High Court held that the decision in K.Bond is not applicable to the facts of the Centum. It was held that in K.Bond the issue was with reference to the refund arising out of debit/credit notes. It is submitted with respect that the above distinction by the Hon'ble High Court is not tenable in law. The court failed to recognize that the refund is a consequence of the input tax deduction. Unless the deduction is allowed, the question of refund does not arise at all. Therefore, the distinction made by the court is not correct in law and it is a distinction without a difference.

*(Contd. to next month)*

*For detailed article, visit: [www.kscAA.com](http://www.kscAA.com)*

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# BUY-BACK OF SHARES

## – KEY INCOME-TAX IMPLICATIONS

CA. Anand R Bhat

### 1. *Introduction*

- Companies having surplus reserves and economic resources often resort to buy-back shares to reward its shareholders when no visible investment plan exists in future and perceived internal rate of return on investment of such economic resources is not so attractive. Often, buy-back is also resorted to as a tax planning tool.
- Finance Act, 2013 made significant changes in the scheme of taxation of buy-back of shares in the case of unlisted companies, while existing scheme of taxation continues for listed companies. Recently, the Finance Act 2016 carried some amendments and CBDT has issued rules providing operational guidelines and clarity to the subject. In the light of above background, key tax implications are analysed in the ensuing paras.

### 2. *Listed Companies – how it is taxed?*

- Taxation of buy-back of shares of listed companies is covered u/s 46A of Income-tax Act. The provision was introduced by the Finance Act, 1999, with effect from 1/4/2000. According to this section, shareholder (or holder of specified securities) is liable for income-tax on account of capital gains. The differential between the buy-back price (consideration) and the cost of acquisition which is computed in accordance with provisions of S. 48 would be the taxable income. These are taxable in the year in which the shares are purchased by the Company.
- It may be pointed out that the income arising to shareholder cannot be regarded as dividend income in view of specific provision u/s 2(22)(e)(iv).
- Prior to introduction of S. 115QA (with effect from 1/6/2013), the buy-back of shares by unlisted companies were also covered under the provisions of S. 46A. There was an issue relating to interpretation as to whether dividend distribution tax u/s 115-O would be applicable or capital gains u/s 46A. It has been contented that subsequent to introduction of S.115QA and placing reliance on a decision of the Authority for Advance Ruling, income-tax authorities, in some cases have sought to re-characterise the purchase consideration received on account of buy-back of shares, undertaken prior to 1/6/2013, as dividend and accordingly, subjecting the amounts so distributed by the companies to dividend distribution tax. It is in this context, CBDT has issued a

Circular (No. 3/2016 dated 26/2/2016) and clarified that consideration received on buy-back of shares between the period 1/4/2000 till 31/05/2013 would be taxed as capital gains in the hands of the recipient in accordance with S. 46A and no such amount shall be treated as dividend. It is further clarified and directed, as a step towards non-adversarial tax regime, that no fresh notice for assessment/reassessment/non-deduction of tax at source shall be issued where buy-back of shares has taken place prior to 1/6/2013 and the case is covered u/s 46A r.w. 2(22)(e)(iv). It is further directed that pending cases shall be completed by applying above principle.

### 3. *Scheme of taxation in case of buy-back by unlisted companies*

- The scheme of taxation in case of buy-back of shares by unlisted companies is significantly changed by Finance Act, 2013 with effect from 1/6/2013. Prior to 1/6/2013 the scheme of taxation for listed and unlisted company shares were same as noted in the preceding para.
- Consequent to the levy of DDT, the amount of dividend received by the shareholders is not included in the total income of the shareholder. The consideration received by a shareholder on buy-back of shares by the company is not treated as dividend but is taxable as capital gains under section 46A of the Act. A company, having distributable reserves, has two options to distribute the same to its shareholders either by declaration and payment of dividends to the shareholders, or by way of purchase of its own shares (i.e. buy-back of shares) at a consideration fixed by it. In the first case, the payment by company is subject to DDT and income in the hands of shareholders is exempt. In the second case the income is taxed in the hands of shareholder as capital gains. Unlisted Companies, as part of tax avoidance scheme, were resorting to buy-back of shares instead of payment of dividends in order to avoid payment of tax by way of DDT particularly where the capital gains arising to the shareholders are either not chargeable to tax or are taxable at a lower rate.
- In order to curb such practice, the law was amended by insertion of new Chapter XII-DA, to provide that the consideration paid by the company for purchase of its own unlisted shares which is in excess of the sum received by

the company at the time of issue of such shares (distributed income) will be charged to tax and the company would be liable to pay additional income-tax @ 20% of the distributed income paid to the shareholder. The additional income-tax payable by the company shall be the final tax on similar lines as dividend distribution tax. The income arising to the shareholders in respect of such buy-back by the company would be exempt where the company is liable to pay the additional income-tax on the buy-back of shares.

- In the light of above, following are the key features of the taxation :
  - The provisions of S. 115QA is an overriding provision. It starts with the expression “Notwithstanding anything contained in any other provisions of this Act...”
  - Income-tax levied u/s 115QA is additional tax on the Company. In other words, it is in addition to income-tax levy on the taxable income of the Company. Even if the company is not liable to pay income-tax, in the event of buy-back of shares, the company is required to pay tax.
  - The provisions apply to domestic company which is not listed in the stock exchange.
  - The provisions apply to distributed income on account of buy-back of shares.
  - The tax rate is 20% (base rate) on the distributed income.
  - The term “distributed income” was defined to mean the consideration paid by the Company on buy-back of shares as reduced by the amount which was received by the company for issues of such shares.
  - The taxes are to be paid within 14 days from the date of payment of consideration to the shareholder. Failure to pay tax attracts interest at 1% p.m.
  - The taxes so paid are treated as final tax in so far as buy-back is concerned and no further tax deduction or tax credit is permissible to the Company or to the shareholder under income-tax law.

#### 4. **Limitations**

The scheme of taxation u. S 115QA suffered from following limitations:

- Earlier the term buy-back was defined to mean purchase by a company of its own shares in accordance with the provisions of S. 77A of the Companies Act, 1956. In the year 2013, the Companies Act, 2013 is implemented and it contained legal provision u/s 68 relating to buy-back of shares which was effective from 1/4/2014. Hence, any buy-back of shares effected after 1/4/2014 would not affected taxation u/s 115QA. Additionally, the provisions of S. 115QA will not have any application if the shares are required by companies under any other provisions of the Act for example capital reduction.

- There could be situations where the shares of the company would have been allotted/issued at different point in time and at different prices. There could be situations such as amalgamations, mergers or demergers and the main issue was how to computed cost in such situations.

#### 5. **Amendments by Finance Act, 2013**

- In order to overcome above limitations, the Finance Act, 2013 amended definitions of “buy-back” as well as “distributed income”. The Memorandum explaining the provisions in Finance Bill, 2016 stated the rationale for modifying the definition and explained that for the purpose of S.115QA, it is the effect of buy-back being in the nature of distribution of income which is relevant rather than particular provision of law relating to companies under which it has been undertaken. It further stated that lack of clarity in the manner of determination of consideration received by the company would lead to avoidable disputes and also presents a tax arbitrage opportunity of scaling up of consideration particularly under a tax neutral business reorganisation followed by buy-back of shares.
  - Accordingly, the definitions now reads as follows :
  - “buy-back” means purchase of its own shares in accordance with the provisions of any law for the time being in force relating to companies.
  - “distributed income” means the consideration paid by the company on buy-back of shares as reduced by the amounts, which was received by the company for issue of such shares, determined in the manner as may be prescribed.
- With reference to amendment to buy-back definition, the modified definition applies with effect from 1/6/2016. Hence, a question/controversy may arise as to the scheme of taxation for the period 1/4/2014 till 31/5/2016 where the shares are subjected to buy-back under the provisions of S. 68 under new Companies Act, 2013 ?. Possible interpretation can be found in the Memorandum explaining the provisions in Finance Bill 2016 which stated that it is the effect of buy-back being in the nature of distribution of income which is relevant rather than particular provision of law relating to companies under which it has been undertaken. In spite of this, there exists possibility of interpretation as to taxability u/s 46A. Hence, it is hoped that forthcoming Finance Bill may address this issue.

*(Contd. to next month)*

*For detailed article, visit: [www.kscAA.com](http://www.kscAA.com)*

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on 3<sup>rd</sup> & 4<sup>th</sup> March 2017 (Friday & Saturday)

at Jnana Jyothi Convention Centre, Central College Campus, Bengaluru

**10 CPE Hrs.\***  
Unstructured

### PROGRAMME SCHEDULE

Friday, 3 <sup>rd</sup> March, 2017		
08:30 AM	Registration	
INAUGURAL SESSION		
09:15 AM	Inaugural Address by <b>Chief Guest &amp; Guest of Honour</b> Release of Publications & Release of Souvenir	
10:45 AM	Inauguration of Exhibition & Tea Break	
FIRST PLENARY SESSION		
11:00 AM	Big Bang Economic Reforms - Redefining Roles of CAs <b>CA. S Gurumurthy*</b>	
12:00 AM	Impact of Benami Transactions Act <b>Sri Uday Holla, Advocate</b>	
01:00 PM	Lunch Break	
SECOND PLENARY SESSION		
02:00 PM	The Profession of the Future <b>CA. P R Ramesh, Hyderabad</b>	
02:45 PM	Taxation of Capital Gains on Securities <b>CA. Ameet Patel, Mumbai</b>	
03:30 PM	Tea Break	
THIRD PLENARY SESSION		
03:45 PM	Panel Discussion: Budgetary Amendments and Issues in Direct Taxes <i>Panelists:</i> <b>CA. Padamchand Khincha, CA. K P Kumar</b> <b>CA. B P Sachin Kumar, CA. Prashanth G S</b> <i>Moderator: CA. S Ramasubramanian</i>	
06:00 PM	FAMILY ENTERTAINMENT PROGRAMME	
How to Deal with Your Children - <b>Dr. Ali Kwaja</b>		
Entertainment Activities		
<b>BHOJYA - Family Theme Dinner</b>		

\*Confirmation awaited

Saturday, 4 <sup>th</sup> March, 2017	
08:00 AM	Break Fast
FOURTH PLENARY SESSION	
09:15 AM	Health / Spiritual Session
10:15 AM	Recent Developments in Companies Act <b>CA. Gururaj Acharya</b>
11:00 AM	Tea Break
FIFTH PLENARY SESSION	
11:15 AM	The Insolvency and Bankruptcy Code - Professional Opportunities for CAs <b>CA. Sripriya Kumar, Chennai</b>
01:00 PM	Lunch Break
SIXTH PLENARY SESSION	
02:00 PM	Management Lessons from Unusual Examples <b>CA. V. Pattabhi Ram, Chennai</b>
02:45 PM	Choosing the Right Entity for NPOs/NGOs <b>Dr. CA. N Suresh</b>
03:30 PM	Tea Break
SEVENTH PLENARY SESSION	
03:45 PM	Panel Discussion: "Devil's Advocacy on GST - Transitional & Other Issues" <i>Panelists:</i> <b>CA. Madhukar Hiregange, CA. S Venkataramani</b> <b>Sri Shivadass G, Advocate, CA. Jatin Christopher</b> <i>Moderator: CA. Sanjay Dhariwal</i>
05:45 PM	VALEDICTORY SESSION

₹ 2,200/- for CA's - Registrations on or before 15.02.2017,  
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# KSCAA

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The introduction of GST is going to have a sea change impact and will touch each and every business in one way or the other. The entire framework of indirect taxation including nature of levy, rates of tax and tax administration. GST introduction is expected to rationalise the tax element in product/service price, enhance the ability of business entities to compete globally and possibly dribble down the costs to benefit the ultimate customer.

GST is promoted as a tax panacea which subsumes most of indirect taxes like Excise, Service tax, VAT & CST, Entry tax etc and is expected to usher in significant transformation of ways of conducting business and give "MAKE IN INDIA"

project a shot in the arm. Also, GST implementation requires a lot of preparedness and overhauling of entire supply chain management, costing analysis, invoicing methodology, accounting software, documentation. This big ticket reform throws in an enormous opportunity for the tax professionals.

To address this larger need of the hour, **KSCAA** is organising a **Weekend Workshop** which would throw valuable insights on what changes you need to do in your existing system and processes to comply with GST and highlight its impact on your profession or business. Also we shall do an in-depth analysis of the model GST Law for you to understand its intricacies.

#### Who can attend

Chartered Accountants, Cost Accountants, Company Secretaries, Tax Consultants, Financial Controllers, Finance Managers, Accountants and Accounting staff involved in the preparation of GST returns.

#### Workshop Content/Speakers

28 Jan 2017, Saturday

Overview of GST, Levy of CGST, SGST and IGST

➤ Adv. V Raghuraman

Meaning and Scope of Supply, Time of Supply of Goods & Services

➤ CA. Jatin Christopher

4 Feb 2017, Saturday

Opportunities in GST - Areas of Service in Pre- GST

➤ CA. Madhukar N. Hiregange

Place of Supply of Goods and Services

➤ Adv. Sai Prasad

**CA. Raghavendra Puranik**

President

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11 Feb 2017, Saturday

Valuation with illustrations

➤ Adv. C R Raghavendra

Input Tax Credit

➤ CA. Deepak Jain

17 Feb 2017, Friday

Job work, E-Commerce operations, TDS & TCS Provisions

➤ CA. Naveen Rajpurohit

Exports, Refunds & Assessments under GST

➤ CA. Hanish S

**CA. Nagappa Nesur**

Secretary

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## Goods and Services Tax Weekend Workshop

### Practical Approach to GST

#### Workshop Venue

**Bangalore International  
Academy,**

No.244/C, 32nd Cross, 2nd  
Main, 7th Block, Jayanagar,  
Bengaluru – 560 082

#### Course Fee

- Rs. 5,000 (Plus ST) for  
Members

- Rs. 6,000 (Plus ST) For  
Non-Members

Course Fee includes Course  
Material, Refreshments

#### Registration/Enquiries

##### Course Convenor:

CA. Raghavendra T N  
+91 98801 87870

[vp@kscaa.com](mailto:vp@kscaa.com)

##### Course Co-ordinator:

CA. Vijaykumar Patel  
+91 94800 05323

[vijaymp8@gmail.com](mailto:vijaymp8@gmail.com)

For details: [www.kscaa.com](http://www.kscaa.com)

Timing: 4.00 PM to 8.00 PM

18 Feb 2017, Saturday

Demand & Recovery

➤ CA. Bhanu Murthy J.S.

Tax Invoice, Credit and Debit Notes,  
Accounts and Records

➤ CA. B.D. Chandrashekar

24 Feb 2017, Friday

Transitional Provisions with illustrations

➤ CA. T.R. Rajesh Kumar

Use of Technology in GST regime

25 Feb 2017, Saturday

Payment & Filing of Returns and  
matching of input tax credits

➤ CA. Annapoorna Kabra

How to advice client in Pre GST

➤ CA. Mahadev R

## Seminar on GST & TDS Provisions at Bagalkot



## Interactive Session on Migration of Existing Tax Payers under GST



## Opening of GST Helpdesk at KSCAA Premises



## GST Migration Awareness Jatha in Bengaluru



## Speakers at Study Circle Meetings





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#### SCHEDULE

**STUDENTS - Thursday, 26<sup>th</sup> January 2017**

**MEMBERS - Friday, 27<sup>th</sup> January 2017**

**09.00am Onwards**



#### VENUE

Karnataka Badminton Association  
Jasma Bhavan Road, Vasanth Nagar,  
Bangaluru - 560 052 | Karnataka | India

For Registration and Queries Contact: Mrs. Manjula G.M

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For All the Events Registrations will be closed on: 23rd Jan 2017.

Limited Slots Only...! Registrations are First Come First Served Basis. No Spot Registration are Entertained.