

# KSCAA

Karnataka State Chartered Accountants Association ®

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Wilful Defaulters - Banks | GST | Financial Reporting | Income Tax

## Prerana

*to inspire & explore possibilities*

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**Dear Professional Friends,**

At the outset, I wish to express my happiness and contentment before you all for making our Annual Conference 'PRERANA' a grand success through your active participation and support. An event of this magnitude typically takes about two months of toil by the

Office Bearers and the Executive Committee to flag off. And there is a very thin line to differentiate and bring through success, thereby margin for error is rather less. A lot of midnight oil is burnt literally and metaphorically to put forth such an event. Time and again, we are able to succeed only due to the immense support and affinity extended by our members and well-wishers. I must acknowledge and say this has been really a monumental and instrumental factor for success of this annual event.

My gratitude list and heart goes to our Past Presidents, Secretaries, well-wishers, Executive Committee members, District Associations and various Branches of ICAI, resource persons for their yeomen services, sponsors, publishers and other stakeholders without whose collective support none of this would have been possible. I would like to harp upon the critical element of belongingness and patronage which is the essential ingredient for long standing association to stand vibrant in the changing times. And, we are really strong on this element!

#### **Representations:**

On the representations front, I am happy to bring to the fore, we have made two representations expressing concerns on the new Request for Proposal regarding financial statements audit of Urban Local bodies and given our suggestions to improve the quality of ULB audits to the Director of Municipal Administration. In the wake of recent developments and irregularities in Punjab National Bank, we have made a joint representation along with Lucknow Chartered Accountants Society, Bombay Chartered Accountants Society and Ahmedabad Chartered Accountants Association on Statutory audit of branches of PSU Banks to the Governor, Reserve Bank of India, The Board of Directors of PSU Banks and the Ministry of Finance highlighting concerns in appointment of branch statutory auditors and other apprehensions in execution of bank branch audits. Copy of the above representations are published elsewhere in the News Bulletin. Alternatively, you can access all our representations at [www.kscAA.com](http://www.kscAA.com).

We request members to write to us giving pointers where they need support and we are more than willing to build around it and populate before right forums.

#### **News Roundup:**

While speaking to media after the crucial GST Council meeting on 10<sup>th</sup> March 2018, Honorable Finance Minister announced that the e-way bill system will be rolled out from April 2018 for inter-state movement of goods in a staggered manner and the entire country will be covered by June 2018. Among other key decisions, the tax exemption for exporters has been extended by six months and implementation of reverse charge mechanism has been extended by another 3 months. He said that the Council discussed alternative ways of return filing processes, but no concrete decision has been taken yet. The present system of GST return filing in Form GSTR-3B has been extended by another 3 months i.e. up to 30<sup>th</sup> June 2018. He also said that the Group of Ministers and IT experts would explore the alternative return filing models discussed and decide on the implementation.

In the wake of recent developments like PNB scam coupled with incorrect media outbursts by bureaucrats and audit increasingly being perceived as an investigation activity, the very stratosphere we were operating from is wobbling. I call upon our members to discharge attest functions with utmost caution and with deft skills, and vehemently disregard any soft corner in such functions. This era is turning out to be a renaissance one for the profession and calls for repositioning and upscaling our work ethos. Especially when bank audit is round the corner, my appeal with our members is to discharge attest functions by exercising due care and diligence by proper plan and execution. Members are well advised to keep themselves abreast with the Guidance Note issued by ICAI, IRAC norms and relevant RBI circulars.

“Proper Planning and Preparation  
Prevents Poor Performance”

I wish to conclude this message with a provoking thought:

“Every moment is a fresh beginning.” - T.S. Eliot

It is interesting to think that you can start anew with each passing moment. You can let go of the past, let go of whatever is holding you back, and start again, doing whatever it is you want to do. It's refreshing to know that the present is not entirely enmeshed in the past, and your future is being created moment by moment. If you have been mired in doubt and hesitation to start a new project or to mend a relationship because of things that have happened to you in the past, remember that this moment is totally new, and you can move in the direction you want to go.

With warm regards,

**CA. Raghavendra T.N.**  
President



## Welcoming Guests & Inaugural Session



## Impressions of 1st Day Plenary Sessions





## Impressions of Cultural Programmes





# KSCAA

## News Bulletin

March 2018

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- KSCAA shall be the trusted and value based knowledge organisation providing leadership and timely influence to support the functional breadth and technical depth of every member of CA profession;
- KSCAA shall be the nucleus of activity, amity and unity among members aimed at enhancing the CA profession's social relevance, attractiveness and pre-eminence;
- KSCAA shall in the public interest, be a proactive catalyst, offering a reliable and respected source of public statement and comments to induce effective laws and good governance;
- KSCAA shall be the source of empowerment for leadership and excellence; disseminating knowledge to members, public and students; building a framework for new opportunities and partnerships that enhance life in the community and beyond; encouraging highest ethical standards and professional integrity, in realization of India global leadership vision.

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- The KSCAA serves the interests of the members of CA profession by providing new generation skills, amity, unity, networking and leadership to strengthen the professional capabilities, integrity, objectivity, social relevance, standards and pre-eminence of India's Chartered Accountants nationally and internationally through; becoming gateway of knowledge for Chartered Accountants, students and public; helping members add value to their customers/employers by enhancing their professional excellence and services; offering a reliable and respected source of public policy advice and comments to bring about more effective laws and policies and transparent administration and governance.

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# WILFUL DEFAULTERS - BANKS

CA S. Krishnaswamy

## Introduction

One of the hiding places for corporate sins is subsidiary or multiple shell companies or off-balance sheet items. There has been considerable development on shifting items from off-balance sheet items (contingent liabilities) to on-balance sheet items. The recent episode of issue of letter of undertaking which is in the nature of guarantees has once again highlighted the issue of off-balance sheet items of guarantees. We have a number of in-built mechanisms to check frauds, where the rules are bypassed and transactions hidden. The recent episode was a case of bypassing the system by not entering the Letter of Undertakings (LoU) issued. Let us examine a few categories of borrowers who defraud the bank and the classification in financial accounts.

A 'wilful default' has been defined. Defaulters are of 2 kinds. One, who has the capacity to pay but not willing to pay and the other, who is willing to pay but no capacity to pay. The former is defined in an RBI Circular-

- **Wilful Default:**

A 'wilful default' would be deemed to have occurred if any of the following events is noted:

- a. The unit has defaulted in meeting its payment / repayment obligations to the lender even when it has the capacity to honour the said obligations.
- b. The unit has defaulted in meeting its payment / repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.
- c. The unit has defaulted in meeting its payment / repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.
- d. The unit has defaulted in meeting its payment / repayment obligations to the lender and has also

disposed off or removed the movable fixed assets or immovable property given for the purpose of securing a term loan without the knowledge of the bank / lender.

The identification of the wilful default should be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions/incidents. The default to be categorised as wilful must be intentional, deliberate and calculated.

EY report explains quoting bankers "why banks and bankers do not declare borrowers as wilful defaulters? It is more or less certain that if we declare a borrower a 'wilful defaulter', he will approach the Court. Then it becomes our responsibility to justify our action with supporting evidence. It is not always possible to establish that the borrower has siphoned off the money or used it for a purpose other than the one which loan has been taken. Hence, we need to be extremely cautious before we declare someone a 'wilful defaulter'. Otherwise, we will not only lose the case, but we will also let the defaulter hook."

State owned Punjab National Bank (PNB), the country's second-largest public sector lender, is now in the middle of a ₹13,600 crores scam.

- **Modus operandi of PNB scam:**
- Jeweller Nirav Modi wants to import diamonds to design high-end collection. He approaches Punjab Nation Bank and asks for a Letter of Undertaking (LoU).
- ❖ *LoU is a bank guarantee that allows the customer to raise money from another bank's foreign branch in the form of a short-term loan.*
- ❖ *LoU enables the payment of the customer's offshore suppliers in foreign currency. If the importer fails to make the payment on the due date, the bank honours the commitment.*
- The LoU is issued by PNB to the foreign bank through SWIFT message.
- ❖ *SWIFT (Society for Worldwide Interbank Financial Telecommunications) is a messaging network for securely*

*transmitting instructions for all financial transactions through a standardised system of codes to provide a secure transmission channel so that Bank knows that its message securely reaches the intended bank only.*

- ❖ *SWIFT is headquartered in Brussels, Belgium. It was founded in 1973 by a group of 239 banks from 15 countries who formed a cooperative utility to develop a secure electronic messaging service and common standards to facilitate cross-border payments. SWIFT carries an average of approximately 26 million financial messages each day. The majority of SWIFT system customers are banks, but it is also used by asset managers, broker dealers, market infrastructures and corporates.*

*It is used by more than 11,000 financial institutions worldwide.*

- Normally, the bank issuing the LoU asks for a cash margin – usually 100%. In this case, there was no scheduled credit limit and no margin was demanded.
- The entries in respect of LoUs issued were not recorded in PNB's Core Banking System.
- Colluding officials sent SWIFT messages from one of PNB's Mumbai branches to overseas banks offering unauthorised LoUs.
- Generally, SWIFT messages have to go through a three-layer security system; a maker, a checker and a verifier.
- In PNB's case, LoUs had been issued by the branch officials through SWIFT without the approval of the competent authorities and the necessary documents of import.
- PNB's failure to integrate SWIFT and CBS (Centralised Banking System) allowed stand-alone messages to be sent out without matching entries in the CBS.
- Under RBI guidelines, buyer's credit for import of gems should not exceed 90 days from the shipment date. In this case, however, they were rolled over repeatedly.
- Not knowing Nirav Modi or his credit history, the overseas bank extends credit based entirely on PNB's LoU. In case of a default, PNB will have to make good this amount to the overseas bank.
- Overseas bank remits funds to Nostro Account of PNB, backed by the LoU.

- ❖ **NOSTRO Accounts:** *Bank maintain foreign currency stocks in the form of bank accounts with their overseas branches; these are called NOSTRO Accounts.*

- In the normal course, on the due date, PNB should have remitted the funds to the overseas banks and recovered the amount from Nirav Modi.
- Having used the imported stones for his jewellery business, Nirav Modi should have sold his wares and settled his dues with PNB.
- But, in the Nirav-PNB case, LoUs kept getting rolled out.
- According to reports, the money was not paid back by Nirav Modi. By rolling over the credit, he had ensured that subsequent LoUs repaid the dues on the earlier LoUs.
- The scam went on and on for a shocking seven years; 151 LoUs were issued in 2017 alone.
- The scam became public after a First Information Report (FIR) was filed by a PNB official against other bank employees for issue of Letter of Undertaking (LoUs) to Nirav Modi's firms. Later, a fraud report filed by PNB revealed that the scam amount was much higher.

- **An Evergreening LoU:**

PNB would issue a LoU to an overseas branch of an Indian bank, which would credit PNB's nostro account with foreign currency. This would be paid out to overseas suppliers of rough diamonds and pearls, suspected to be front firms floated by the jewellers.

When this LoU became due, PNB would issue a fresh one to clear the outstanding dues from the earlier guarantee.

This 'evergreening' without any collateral from the borrower, in violation of bank rules, allowed the fraud to mount to such high levels.

To cover his tracks, once an outstanding LoU amount was cleared with the issuance of a fresh one, PNB returned documents related to the opening of the earlier LoU to the borrower firm. Some of these documents have been recovered during the searches conducted by CBI.

The core of the matter lies in the SWIFT messaging system. It is evident that the various checks and authorisations had been completely compromised. Hence, a SWIFT message was sent from PNB's Mumbai branch to overseas banks offering unauthorised LoUs.

Full integration and reconciliation of SWIFT transactions with the core banking solution software was not done

neither sought. The internal auditors did not tally the entries made on SWIFT daily with those on CBS, which helped in fraud going undiscovered.

Aside from the LoUs, foreign letter of Credits (LCs) were also issued, aligning the jeweller to access buyer's credit from overseas banks at a cheaper rate of interest than available in the market. The illegal issuance of LoUs and LCs dates back to 2010. PNB said there are more than 150 LoUs amounting to Rs.6,498 crore falling due between Jan 25 and Apr 20 this year and all of these were issued by PNB in 2017.

This has brought an underlying issue to light - that of contingent liabilities sitting on bank books.

The below is a snapshot of the balance sheet as at 31.03.2017-

<b>Balance Sheet as at 31.03.2017</b>			<i>Amount in crores</i>
<b>Liabilities</b>	<b>Rs.</b>	<b>Assets</b>	<b>Rs.</b>
Capital	426	Cash & Balances with Reserve Bank of India	25,210
Reserves & Surplus	41,421	Balances with Banks & Money at call & short notice	63,122
Deposits	6,21,704	Investments	1,86,725
Borrowings	40,763	Advances	4,19,493
Other Liabilities and Provisions	16,016	Fixed Assets	6,273
		Other Assets	19,507
<b>TOTAL</b>	<b>7,20,331</b>	<b>TOTAL</b>	<b>7,20,331</b>
<i>Contingent liabilities</i>	<i>Rs.3,32,831</i>		
<i>Bills for collection</i>	<i>Rs.25,779</i>		

- Total advances stood at Rs.4.19 lakh crores; out of which Rs.0.47 lakh crore (nearly 11%) is unsecured.

- Total contingent liabilities stood at Rs.3.3 lakh crore, almost half of its' total assets. Contingent liabilities includes Letters of Undertaking, foreign exchange contracts.

Event based risks are not expected to materialise under steady circumstances, if these liabilities do materialize, they could pose a sizable risk.

- **Disclosures in financial statements.**

Off-Balance sheet items are items are governed by AS 29: Provisions, Contingent Liabilities and Contingent Assets. A disclosure for contingent liabilities is made where there is a –

- a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity; or

- a present obligation that arises from past events but is not recognized because:

- it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or
- the amount of the obligation cannot be measured with sufficient reliability.

- **The various control measures:**

Most of the banks implemented and focusing more and more on risk identification, mitigation, internal control and evaluation of strategies. But, it seems as the time goes up banking industry demanding furthermore sophisticated, reliable system of control and assurance.

Most popular control measures includes-

- Pre-scrutiny of loan.
- Flagging of suspicious transactions through in-built applications.
- Delegation of authority and access control.
- Use of Asset management software modules to take control over physical assets.
- KYC compliance and bio-metric mapping and matching.
- Shielding information technology system gateways through various applications.
- Communication piping with 64/128/256 bit encryption and decryption.
- Inspection and Audit-
  - Head Office/Zonal/Circle/Regional Inspections
  - Loan Review
  - Sanction Review



- d. Off-site Transaction Monitoring
- e. Statutory Audit
- f. Risk Focused Internal Audit
- g. FEMA Audit
- h. Management Audit
- i. Credit Audit
- j. Information System Audit
- k. Foreign Offices Audit
- l. Legal Audit
- m. Audit of Outsourced Activities
- n. Others

• **Auditors' responsibilities and oversight - Sec 132 of Companies Act, 2013:**

The section envisaged the setting up of National Financial Reporting Authority (NFRA) as an oversight body to monitor auditor failings and hold out punishment replacing the power of ICAI.

• **Proposed Fugitive Economic Offenders Bill, 2018**

The Union Cabinet has approved the proposal of the Ministry of Finance to introduce the Fugitive Economic Offenders Bill, 2018 in Parliament. The Bill would help in laying down measures to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts. The cases where the total value involved in such offences is Rs.100 crore or more, will come under the purview of this Bill.

The Bill is expected to re-establish the rule of law with respect to the fugitive economic offenders as they would be forced to return to India to face trial for scheduled offences. This would also help the banks and other financial institutions to achieve higher recovery from financial defaults committed by such fugitive economic offenders, improving the financial health of such institutions.

**Salient features of the Bill:**

- a. Application before the Special Court for a declaration that an individual is a fugitive economic offender;
- b. Attachment of the property of a fugitive economic offender;
- c. Issue of a notice by the Special Court to the individual alleged to be a fugitive economic offender;
- d. Confiscation of the property of an individual declared as a fugitive economic offender resulting from the proceeds of crime;
- e. Confiscation of other property belonging to such offender in India and abroad, including benami property;
- f. Disentitlement of the fugitive economic offender from defending any civil claim; and
- g. An Administrator will be appointed to manage and dispose of the confiscated property under the Act.

• **Conclusion:**

This episode once again brings about shortcomings in various aspects of vigilance through Statutory audit (Branch and Head office), Internal Audit, Inspections etc., (as earlier mentioned) brings out inadequacies which means the technology has to be adequately employed since the transactions involved are numerous. A recent research report brought out by EY and titled 'Unmasking India's NPA issues – can the banking sector overcome this phase?' points out that while corporate borrowers have repeatedly blamed the economic slowdown as the primary factor behind it (i.e., defaulting on bank loans), periodic independent audits on borrowers have revealed diversion of funds or wilful default leading to stress situations.

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## EFFECTIVENESS OF ANTI-PROFITEERING PROVISIONS IN GST



CA Madhukar N Hiregange & CA Mahadev.R

Game changing GST law has brought-in lot of practical difficulties for a tax payer. Many of these difficulties are being addressed by the government which is a positive sign. One major issue which is being faced by the tax payer now is on compliance with anti-profiteering provisions. It is also a fact that implementation of anti-profiteering provisions was never been easy in any of the countries wherein GST system was introduced in the past. Even in our country it may not be a smooth sailing affair. However, a reasonable system could be implemented considering the experience of anti-profiteering in other countries with few precautions.

Dictionary meaning of profiteering is to make or seek to make an excessive or unfair profit, especially illegally. Greatest fear which any country had with introduction of GST system is effect on pricing of goods or services leading to inflation. In Indian GST law, Section 171 of CGST Act 2017 provides that any reduction in GST rate on supply of goods / services or benefit of ITC needs to be passed on to the recipient by way of commensurate reduction in prices. Therefore, the tax payer who is enjoying the benefit of extra credit or reduction in rate of taxes needs to pass on corresponding degree or proportionate benefit to the customers. Any extra profit should not be made on account GST rate or credit. The law does not consider the situations where as a result of implementation of GST, there is a drop in the orders due to uncertainty, need to incentivize the trade by increasing the rate as well as the margin provided to the retailers and many such practical downsides of GST.

Section 171 also enables the central government to constitute an authority to examine if input tax credit availed by any registered person or the reduction in tax rate have actually resulted in commensurate reduction in price of goods or services supplied. Certain transitional provisions in CGST Act provides for passing on the benefits of credits on closing stock of goods as well.

An authority has been constituted for monitoring anti-profiteering in India after introduction of GST. The authority can order for reduction in prices or order for return of

excess amount collected by supplier of goods / services with 18% interest to customer. Authority also got powers to order for cancellation of registration or levy penalty. Action would be taken by the authority based on the application made by interested party. Tenure of this authority would be for 2 years from date of selection of chairman which could be extended if required. The present chairman has been appointed from November 2017 and therefore, the present authority would be active till November 2019 to monitor anti-profiteering provisions.

When GST was introduced in countries like Australia, Canada and Singapore, the inflation rate got increased. In countries like Greece and Portugal, after introduction of GST the inflation got reduced. There were instances where inflation increased after few years of introduction of GST in some of the countries. It would not be easy to assess if introduction of GST in India would lead to increase or decrease in rate of inflation. In most of the countries where GST was introduced, the anti-profiteering provisions were also introduced. However, the countries were not successful in implementing it on all goods or services. The provisions were made applicable mostly for retail products.

### *Issues with present provisions in India*

Though most of the tax payers are aware of the requirement of anti-profiteering provisions, they are not clear how to comply with it as there are no guidelines issued prescribed for compliance. In countries like Australia, the awareness of anti-profiteering was started much prior to introduction of



GST law. Such awareness with clear guidelines would have reduced the confusion among tax payers in India.

A complaint application form has been released for public for complaining against profiteering. However, for a layman filling the form would not be an easy task as it requires the complainant to fill information like HSN, ITC claim, pre-GST price etc. Unless the form is simplified, successful implementation would be a dream. There has been news from past few months on simplification of complaint form. Faster action is requirement in this regard which otherwise provides extra time for some of the tax payers who could be taking advantage of GST to increase their profit.

More number of complaints being received are in retail and construction sector. Retail industry would find it difficult to comply with anti-profiteering provisions as most of their products would be covered under legal metrology act with MRP printed. There would be sales strategy involved in pricing of goods as well. For example, fixing price at Rs.99/- or Rs.999/-. Change in such MRP due to change in rate of GST could affect their business. Representation could be made by the industry to address such situations.

There are many factors such as seasonal sales, global commodity prices, competition, duration of sales, new business start-ups which could influence the pricing of goods. Presently it is not clear how to consider these factors for compliance with anti-profiteering provisions.

The law is also not clear as to duration or time available for compliance with anti-profiteering provision. There could be cases wherein the inventory would be held with distributors or dealers with prices printed and negotiated.

There are also legal arguments that this provision is only for “tax” and tax means GST. Therefore, only the cases where there was a reduction in GST rate – say for restaurants and

other items in 28% bracket and there was a reduction, the anti-profiteering would apply.

#### **Action by tax payers**

It is very important for the tax payers to understand that compliance with anti-profiteering provisions would continue until there would be change in rate of GST or increase in credits. Simple exercise like identifying the pre-GST profit and post-GST profit due to increased credit or reduction of rate of GST could be useful at this stage. Other factors which has led to decrease in costing of goods or services such as abolition of entry tax, central sales tax and other cesses should also be considered. There are also possibilities of increase in costing due to factors such as GST implementation cost, ERP customisation expenses, disruption due to change in business process etc. which needs to be considered for arriving at the final profit or benefit for passing on to customers. Wherever it is clear, the tax payers should pass on the benefits to the customers with clear documentation maintained to substantiate it later on in case of enquiries.

**Conclusion:** Successful implementation of anti-profiteering provisions would help the consumers in large. It is expected that the guidelines would be issued soon for anti-profiteering. Professionals could caution their clients and help them to prepare for compliance. As discussed earlier, there are many practical challenges in implementation of the provisions, especially for retail sector. Professionals could help the sector with suitable representation highlighting all the issues and disclosure of facts and why anti profiteering not applicable in border line cases to the GST authorities which could avoid longer period demand.

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## **KSCAA WELCOMES NEW MEMBERS - FEBRUARY 2018**

S.No.	Name	Place
1	Arjun M.S.	Bangalore
2	Vinayaka Hegde	Bangalore
3	Praveen M.H.	Mysore
4	Pankaj Bansal	Delhi

S.No.	Name	Place
5	Pradeep Chandrahas Hegde	Bangalore
6	Chhabhaiya Anilkumar	Bangalore
7	Srikanth V.	Bangalore
8	Sudeepa Kumar Shetty	Bangalore



# TAX NOTES

## - KARNATAKA VAT / GST UPDATES



CA B.G. Srikanth Acharya & CA Annapurna D Kabra

### I) *Karnataka VAT – Update*

#### *Maya Appliances (Known as Preethi kitchen appliances) Ltd Vs Additional Commissioner of Commercial Taxes and others TS-28-SC-2018-VAT*

The Appellant is manufacturer of mixies, grinders etc and offer the performance based quarterly discount to its distributors. The discounts were calculated on the basis of performance of dealers in the previous quarter. The department contended that quarterly discount given by the appellant was in respect of the performance of the previous quarter and not in respect of sales offered in the same invoices. While arriving at the conclusion, the judgment quoted with approval a two-judges' bench decision of the Supreme Court in Southern Motors v. State of Karnataka (2017) 3 SCC 467. From the said decision the court observed that the liability to pay tax is on the taxable turnover. Taxable turnover is arrived at after making permissible deductions from the total turnover. Among them are "all amount allowed as discounts." Such a discount must however be in accord with the regular trade practice of the dealer or the contract or agreement entered into in a particular case. Rule 3(2)(C) of KVAT Rules 2005 cannot mean that discount would not be allowed unless originally issued tax invoice pertaining to goods shows the discount. It states that the dealer must establish from his books of Accounts that the discount relates specifically to the sales with reference to which it is allowed. Therefore the discount is allowed as deduction from total turnover to compute the taxable turnover even though discounts are given subsequent to the point of original sale. It is held that trade discount is permissible deductions for arriving at Taxable Turnover under the KVAT Rules 2005.

#### *M/s Kirloskar Electric Co. Ltd. & Ors. Vs. The State of Karnataka & Ors in the W.P. Nos.58917-58928/2016 (Karnataka High Court)*

The petitioner engaged in the manufacture and sale of Electrical Motors, Generators, Transformers, etc. purchased materials from within the state and outside

the state. The petitioner has claimed Input Tax Credit in different tax periods by filing the Returns. The Respondent denied the Input Tax Credit on the ground that the ITC is deductible only in that tax period during which the invoices of the selling dealer is raised and the accumulated VAT ITC available in the various months preceding the "Tax period" in question could not be used/given by way of input tax credit against the output tax for the tax period of a particular month. The Honorable High Court held that the claim of Input Tax credit cannot be restricted and denied because Input Tax credit is not made in respect of sale invoices which are not pertaining to same tax period nor it can be denied on the ground that such claim is not made immediately in the month or months following the month of purchase of goods in question. The machinery provisions of filing the returns under section 35 of the KVAT Act cannot defeat the substantive claims under section 10(3) of the Act. The Revenue is entitled only to verify that the sale invoices are genuine and valid and such ITC claim is not duplicate, fictitious or bogus. Therefore it directs the Commissioner of Commercial Taxes to issue circular to avoid multiplicity of litigation pertaining to claim of Input tax credit.

### GST Updates

- With reference to **Notification No. 3/2018- CT dated 23.01.2018 and Notification (4-M/2017) No.FD 47 CSL 2017 dated 31.01.2018**, amends the following rules.
  - In **Rule 3 sub- rule (3A)**, Statement of ITC-3 by composition dealer should be furnished within one hundred and eighty days from the day on which such person commences to pay tax under section 10.
  - In **Rule 7**, Manufacturer is liable for composition rate of 1% and traders are liable for composition rate of 1% of turnover of taxable supplies of goods in the state.
  - In **Rule 31A**, the value of supply to be determined in case of lottery, betting, gambling and horse racing- Value of supply in case of lottery run by the State Government is 100/112 or price notified in official gazette or Value of



- supply in case of lottery authorized by State Government is 100/128 or price notified in official gazette and further the value of supply in case of Actionable claim in the form of chance to win in betting gambling or horse racing in a Race club is 100% of the face value of the bet or the amount paid into the totalizator.
- **Rule 42 and Rule 43** pertaining to exempt supply exclude value of supply of services having place of supply in Nepal or Bhutan against payment in Indian Rupees, Value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount except in case of banking or Financial Institution.
  - **Rule 55A-** The person in charge should carry bill of supply or tax invoice in cases where it is not required to carry E- way bill.
    - With reference to **Notification No. 12/2018- CT dated 07.03.2018** the registered person should submit the Trans-2 by 31<sup>st</sup> March 2018.
    - With reference to **Notification No. 5/2018- CT (Rate) dated 25.01.2018, Notification No. 05/2018- IT (Rate) dated 25.01.2018 and Notification (05/2018) No.FD 48 CSL 2017 dated 25.01.2018**, exempts the intra-State supply of services by **way of grant of license or lease** to explore or mine petroleum crude or natural gas or both, leviable on the consideration paid to the Central Government.
    - With reference to **Notification No. 3/2018-CT (Rate) dated 25.01.2018, Notification No. 3/2018- IT (Rate) dated 25.01.2018 and Notification (03/2018) No.FD 48 CSL 2017 dated 25.01.2018**, specifies services supplied by the **Central Government, State Government, Union territory or local authority** by way of **Renting of immovable property** to a registered person to be taxed under **Reverse Charge Mechanism (RCM)**.
    - With reference to **Notification No. 6/2018- IT(Rate) dated 25.01.2018**, exempts **royalty and license fee** from Integrated tax to the extent it is paid on the consideration attributable to royalty and license fee **included in transaction value** under Rule 10(1)(c) of Customs Valuation (Determination of value of imported Goods) Rules, 2007
    - With reference to **Circular 33/07/2018- GST dated 23.02.2018**, directions regarding non- transition of CENVAT credit u/s 140 of the CGST Act or non-utilization.
  - **Non-utilization of Disputed Credit carried forward:** In relation to certain CENVAT credit pertaining to the show cause notice issued under Rule 14 of the CENVAT Credit Rules, 2004 which has been adjudicated or where in the last adjudication order or the last order- in- appeal, as it existed on 1<sup>st</sup> July, 2017, it is held that if such **CENVAT credit is inadmissible**, then the credited amount to the electronic credit ledger u/s 140(1), (2), (3), (4), (5), (6) or (8) **cannot be utilized** by the registered taxable person to discharge the tax liability either under CGST or IGST. In case it is utilized, then the same shall be recovered along with interest and penalty as applicable.
  - **Non-transition of Blocked Credit:** As per Section 140(1) (i) of the CGST Act, 2017, the registered person cannot carried forward in the electronic credit ledger, the amounts which are **not eligible u/ s 17(5) of the Act** such as telecommunication towers and pipelines laid outside the factory premises. It case such **credit has been utilized in contravention** to the provision, then the same shall be **recovered along with interest and penalty** as applicable.
    - With reference to **Circular No. 34/08/2018- GST dated 01.03.2018**, provides clarification on certain services.
  - The **bus body building** involves both supply of goods and services. Hence, the same is considered as composite supply which would further depend on the principal supply based on the facts and circumstances for the purposes of taxability.
  - **Retreading of Tyres:** Retreading of tyres is a composite supply, where the pre- dominant supply is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. However, which is the principal supply should be determined keeping in the view the nature of supply involved. Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded Tyres, is a supply of goods (retreaded tyres under heading 4012 of the Customs Tariff attracting GST @ 28%).
  - **Priority Sector Lending Certificates (PSLCs):** As per RBI, PSLC is construed to be in the nature of goods, which is a permissible activity under section 6(1) of the Banking Regulation Act, 1949.
  - **PSLC are not Securities.** PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT in the earlier law. In GST there is **no exemption to**

**trading in PSLCs.** Thus, PSLCs are taxable as goods at standard rate of 18% under the residuary S. No. 453 of Schedule III. Further ITC would be available to the bank buying the certificates.

- Service by way of **Transmission or distribution of electricity by an electricity transmission or distribution utility** is **exempt** from GST under **notification No. 12/2017- CT (R), Sl. No. 25.** However, other services provided the such as application fee for releasing connection of electricity, Rental Charges against metering equipment, Testing fee for meters/transformers, capacitors etc, Labour charges from customers for shifting of meters or shifting of service lines, charges for duplicate bill are taxable when provided by DISCOMS to consumers.
- The service provided by Central Government/State Government to any business entity including PSUs by **way of Guaranteeing the loans** taken by them from financial institutions against consideration in any form **including Guarantee Commission** are taxable.
- With reference to **Circular No. 32/06/2018- GST** dated 12.02.2018 provides clarifications on the following:
  - **Hostel accommodation services** do not fall under the definition of charitable activities as defined in Notification No. 12/2017- CT (Rate). However, accommodation service in hostels including in hostels including by Trusts having declared tariff rate **below Rs. 1,000/- shall be exempt as per 12/2017- CT (Rate).**
  - In case fees paid to **Consumer Disputes Redressal Commission** or penalty paid in certain cases will not be leviable to GST. This is in respect with the services provided by any Court or Tribunal established will be **considered as neither supply of goods nor services.**
  - The **Elephant/ Camel Rides** cannot be classified as Transportation Services. These services will **attract 18%** with threshold limit available to small service providers.
  - Rate applicable on **Rental services of Self- Propelled Access Equipment-** where the equipment is imported at GST rate 28% and leased further in India where operator is supplied by the leasing company, then leasing or rental will be applicable at the same rate of GST on supply of like goods involving transfer of title in goods. Thus, the **GST rate in this case will be 28% subject to the goods attracting the same GST rate.**
  - Services provided by **Senior Doctors/ Consultants/ Technicians** hired by hospitals, whether employee or

not, are **health care services** which are exempt. The entire amount charged by the hospitals from the patients including retention money and fees/ payments made to doctors is health care services to the patient and is **exempt.**

#### **Recommendations during 26<sup>th</sup> GST Council Meeting held on 10<sup>th</sup> March 2018**

- The Reverse Charge Mechanism under section 9(4) of the Act is deferred to 30.6.2018
- The present system of Filing of Form 3B and GSTR-1 to be extended to 30.6.2018
- The Provisions for Compliance of TDS and TCS extended to 30.6.2018.
- GST Implementation Committee has been tasked with the work of redressing the grievances caused to the taxpayers arising out of IT glitches
- To Introduce E-wallets where the notional or virtual currency would be credited by the DGFT and this would be used by the exporters to make the payment of GST/IGST on the goods imported/procured by them so that funds are not blocked.
- Extension of Tax Exemptions for Exporters for Six Months.
- There is variance between the amount of IGST and Compensation Cess paid by importers at customs ports and input tax credit of the same may be claimed in GSTR- 3B. There are major data gaps between self-declared liability in Form GSTR- 1 and Form GSTR- 3B. This information may be analyzed and adequate action may be initiated. E-way bills will be implemented from April 1<sup>st</sup> for Inter State Movement of Goods
- Major Improvements over the last set of Rules as approved by Council are as follows
  - E-way bill is required to be generated only where the value of the consignment exceeds Rs. 50000/-. For smaller value consignments, no e-way bill is required.
  - The provisions of sub-rule (7) of Rule 138 will be notified from a later date. Therefore, at present there is no requirement to generate e-way bill where an individual consignment value is less than Rs. 50,000/-, even if the transporter is carrying goods of more than Rs. 50,000/- in a single conveyance.
  - Value of exempted goods has been excluded from value of the consignment, for the purpose of e-way bill generation.



- Public conveyance has also been included as a mode of transport and the responsibility of generating e-way bill in case of movement of goods by public transport would be that of the consignor or consignee.
- Railways have been exempted from generation and carrying of e-way bill with the condition that without the production of e-way bill, railways will not deliver the goods to the recipient. But railways are required to carry invoice or delivery challan etc.
- Time period for the recipient to communicate his acceptance or rejection of the consignment would be the validity period of the concerned e-way bill or 72 hours, whichever is earlier.
- In case of movement of goods on account of job-work, the registered job worker can also generate e-way bill.
- Consignor can authorize the transporter, courier agency and e-commerce operator to fill PART-A of e-way bill on his behalf.
- Movement of goods from the place of consignor to the place of transporter up to a distance of 50 Km [increased from 10 km] does not require filling of PART-B of e-way bill. They have to generate PART-A of e-way bill.
- Extra validity period has been provided for Over Dimensional Cargo (ODC).
- If the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period in case of transshipment or in case of circumstances of an exceptional nature.
- Validity of one day will expire at midnight of the day immediately following the date of generation of e-way bill.
- Once verified by any tax officer, the same conveyance will not be subject to a second check in any State or Union territory, unless and until, specific information for the same is received.
- In case of movement of goods by railways, airways and waterways, the e-way bill can be generated even after commencement of movement of goods.
- Movement of goods on account of Bill-To-Ship-To supply will be handled through the capturing of place of dispatch in PART-A of e-way bill.

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# FINANCIAL REPORTING AND ASSURANCE

CA Vinayak Pai V

## 1. Heads Up – The Latest/Upcoming Changes

AS	
1	<b>AS 22 – Accounting for Taxes on Income:</b> Non applicability of provisions relating to DTA/DTL to Government companies that is a PFI, NBFC or engaged in infrastructure leasing finance
IND-AS	
1	<b>IND-AS 117 – Insurance Contracts</b> (Draft Exposed)
2	<b>IND AS 12 – Income Taxes:</b> Non applicability of provisions relating to DTA/DTL to Government companies that is a PFI, NBFC or engaged in infrastructure leasing finance
3	<b>IND-AS 108 – Operating Segments – MCA</b> Notification regarding non-applicability to government companies engaged in defence production
IFRS	
1	<b>IAS 19 – Employee Benefits.</b> Narrow amendments to pension accounting: <i>Plan Amendment, Curtailment or Settlement</i>
2	Goodwill and Impairment - <b>IAS 36</b>
Company Law	
1	<b>Section 132 – National Financial Reporting Authority</b> (to be notified)
2	MCA Notification dated February 16, 2018 amending Companies (Audit and Auditors) Rules – <b>Forms ADT 1 and ADT 2</b>
3	MCA Notification dated February 27, 2018 amending Companies (Accounts) Rules – <b>Form AOC-3A for IND-AS compliant companies</b>
Assurance	
1	<b>SA 701 – Communicating Key Audit Matters in the Independent Auditors Report</b> – ICAI Implementation Guide

## 2. IND-AS Transition Impact: A Case Study

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

	Impact of IND-AS Transition		
	Equity	Revenue for the comparative period	Net Profits for the comparative period
Impact in comparison with reported numbers as per AS	Increase of <b>2.0%</b>	Increase of <b>350.0%</b>	Decrease of <b>33.8%</b>

### Key GAAP Differences:

- **Grossing up of revenues** from sale of services.
- Under AS, the **cost of equity-settled employee share based plan** was recognized using the intrinsic value method whereas under AS, the same is recognized based on fair value of the options at grant date.
- Under IND-AS, re-measurements i.e actuarial gains and losses and the return on plan assets excluding amounts included in net interest expenses on the **net defined benefit liability** is recognized in OCI whereas it was recognized in the income statement under AS.



- IND-AS requires **straight lining of lease rental payments** if the lease escalation is not in line with the general inflation rate whereas under AS, there was an option available and availed by company not to straight line.
- Under AS, the premium/discount on forward contracts were required to be amortized over the period of the contract and the outstanding forward contracts were required to be restated at the prevailing rate at each reporting date whereas under IND-AS, the financial instruments standards requires **derivatives to be fair valued** at each reporting date.
- Under IND-AS, **goodwill** is considered not to have a **definite determinable useful life** and hence is not subject to amortization whereas under AS, goodwill was amortized over a period of five years.

### 3. Institute Clarification: Financial Accounting Of Advance Payments Under IND-AS 18

The IND-AS transition facilitation group has recently provided a clarification with respect to isolating the financing component in **sale transactions** that have **advance payment** component as part of a sale contract. The salient aspects of the clarification are summarized herein below.

- When an entity upon entering into contracts to supply goods/services requires advance payment from its customers, the entity would be required to **adjust such advance payments received** over a long term for the **effect of time value of money** in accordance with IND-AS. This would be required where the period and effective interest rate between the date of receipt of the advance payment and the date that the entity transfers the risks and rewards of the goods and services to the customer are considered significant.
- IND-AS 18 requires revenue to be measured at the fair value of the consideration received or receivable and when the inflow of cash or cash equivalents is deferred, the fair value of the consideration may be less than the nominal amount of cash received or receivable. When the **arrangement effectively constitutes a financing transaction**, the fair value of the consideration is determined by **discounting all future receipts** using an imputed rate of interest.
- While making an evaluation, **judgment** is to be exercised and consideration be given to factors such as whether, the arrangement has been entered in the normal course of business, the advance payment is per typical payment terms within industry and having a primary purpose other than financing, it is a security for a future supply of limited goods or services or other relevant factors depending on facts and circumstances of each case.
- If it is concluded that the arrangement does effectively constitute a significant financing component, i.e., a loan provided by the customer to the supplier for providing the promised goods, then the entity should adjust the consideration (including advance payments) for the **effect of time value of money**.

### 4. SA 701 And Unlisted Companies

SA 701, the latest in the field of Indian auditing literature is effective for audits of financial statements for periods beginning on or after **April 1, 2018**. SA 701 – *Communicating Key Audit Matters in the Independent Auditors Report* is mandatory in the case of **audit of listed entities** and casts new reporting requirement on auditors to communicate key audit matters in their audit reports. SA 701 is **also applicable in audit of unlisted entities** in situations where **law or regulation requires communication** of key audit matters in the audit report.

Our Institute has recently released an implementation guide to SA 701 and the same has also dealt with the applicability of this auditing standard to the audit of unlisted entities. The salient aspects of the same are provided herein below.

- SA 701 is applicable for audit of unlisted entities under circumstances when the **auditor decides to communicate** key audit matters (KAM) in the auditor's report, or when the auditor is **required by law or regulation to communicate** KAMs in the auditor's report.
- It can be given by the auditors on **voluntary basis** when communication of KAM will promote consistency and comparability in auditor reporting and assist users in understanding those matters that, in the auditor's professional judgment, were of most significance in the audit of the financials of the current period.
- When an auditor is not mandatorily required to communicate key audit matters under SA 701, the discussions with those charged with governance for

such entities may **highlight interest or value in the communication** of matters to the intended users of the financial statements.

#### 5. AS 22 And IND-AS 12 – Notification Regarding Non-Applicability Of DTA/DTL Provisions To Certain Categories Of Companies

The MCA vide notification No.S.O.529 (E) has directed in the interest of the public that the provisions of AS 22/IND-AS 12 relating to deferred tax asset (DTA) or deferred tax liability (DTL) shall **not apply for 7 years** w.e.f April 1, 2017 to a **government company** which is a:

- **Public financial institution** (Section 2(72)(iv))
- **Non-Banking Financial Company** registered with the RBI, and
- Engaged in the business of **infrastructure finance leasing** with not less than 75% of its total revenue being generated from such business with Government companies/ other entities owned/controlled by Government.

#### 6. New IND-AS On Insurance Contracts (Exposure Draft)

Our Institute issued an exposure draft (ED) of IND-AS 117 – *Insurance Contracts* on February 12, 2018 that would replace IND-AS 104. Per the ED, in India it has been decided to implement IND-AS 117 w.e.f **April 1, 2020**. In case of insurance companies, **early application of the said standard will be permitted for consolidation purposes only**. It may be pertinent to note that the IRDA has set the dates for IND-AS implementation for Indian insurance companies. Certain salient aspects of the standard are summarized herein below.

- Insurance contracts to be **measured** using updated estimates and assumptions that reflect the **timing of cash flows** and any **uncertainty** relating to insurance contracts.
- Recognition of profits **as entity delivers insurance services** rather than when it receives premiums and providing information about insurance contract **profits the company expects to recognize in the future**.
- Recognition of insurance contracts at the earliest of the beginning of the coverage period, date when first payment is due and for a group of onerous contracts, when the group becomes onerous.
- **Initial measurement** at total of **fulfillment cash flows** and the **contractual service margin**. Fulfillment cash flows comprise estimates of future cash flows, adjustment to reflect the time value of money and financial risks related to cash flows and a risk adjustment for non-financial risk. Contractual service margin is a component of the asset or liability for the group of insurance contracts representing the unearned profit that the entity will recognize as it provides services in future.
- Subsequent measurement of the carrying amount of a group of insurance contracts is the sum of the liability for remaining coverage and the liability for incurred claims.
- Recognition of income and expense based on changes in carrying amount of liabilities.

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## Request for KSCAA Legal Fund

*KSCAA requests the members to generously contribute towards the legal fund and support in its constant endeavour to protect the interests of our profession.*

*Kindly issue Cheque / DD in favour of "KSCAA" payable at Bengaluru.*



# THE ERA OF E-ASSESSMENTS UNDER INCOME TAX: WHAT WE NEED TO KNOW

CA Sandeep Jhunjhunwala



"With the experience gained so far, we are now ready to roll out the e-assessment across the country. Accordingly, I propose to amend the Income-tax Act to notify a new scheme for assessment where the assessment will be done in electronic mode which will almost eliminate person to person contact leading to greater efficiency and transparency" - the Finance Minister said in his Budget speech for 2018-19 tabled in the Parliament earlier last month. The proposed e-assessment would surely transform the age-old assessment procedures of the Income Tax Department and the manner in which interactions occur between taxpayers and the taxman.

The Central Board of Direct Taxes (CBDT), the policy-making body of the Income Tax Department had been running a pilot project in few major cities and testing the feasibility of implementing this new regime of tax assessment for the last few years. The "faceless and nameless" e-assessment initiative was launched to reduce visits by taxpayers to Income tax offices and their interface with the taxman, thereby bringing anonymity in proceedings using technology in order to ensure that vested interests do not obstruct the due course of law. With the earlier set of instructions and notifications on e-assessments, the CBDT has now notified a "Centralised Communication Scheme 2018" for serving e-notices to income taxpayers as part of the Government's ambitious plan to usher in a countrywide paperless system of interface between the taxman and the assessee. The scheme stipulates that an internet-based independent Centralised Communication Centre (CCC) would be established in the Income Tax Department that would issue notice to any person through email or by placing a copy in the registered account on the web portal followed by an intimation on SMS. The CCC has also been tasked with running a sustained campaign to ensure compliance (on taxpayer side) by sending emails, SMS, reminders and letters.

With the colours of Government's programmes such as E-governance and Digital India, this "Man to tech" approach has many advantages such as time savings (not going through the traffic snarls, waiting in the lobby to

meet the tax officer), avoiding voluminous prints etc. There are, however, few significant limitations as well to the proposed system of e-assessment that needs to be kept in mind in deciding the approach and best practices. Generally, a "checklist" approach is followed while issuing notices, seeking documents and information that may not be too relevant for examination in a particular scrutiny case (for instance, seeking details of opening and closing stock in case of pure play service provider). Additionally, few documents such as return of income, tax audit report, certificate under transfer pricing (Form 3CEB) and other certificates such as Forms 56F and 29B etc, which would have already been uploaded by the assessee at the time of filing of return and hence available with the tax department, also form a part of such list in the notice issued. At the same time, the capacity for uploading documents under e-assessment proceedings (whether on site or on mail size) is limited. This could lead to hassles in terms of uploading or emailing the requisitioned documents. Other important drawback is lack of understanding of commercial transactions on the part of tax officers, which could lead to an unwarranted addition to the reported income. Currently, during the course of face-to-face assessment hearings, the tax professional is in a position to explain such rationale to the examining officer and clarify any doubts straightaway, thereby reducing the chances of misinterpretation. At times, even eloquent written submissions require oral explanations for a better clarity. Forwarding the previous emails of submissions to the succeeding tax officer on transfer of the preceding one, is another issue, though it subsists in a similar form in the existing regime as well, where copies of previously filed submissions are requisitioned by the newly deputed officer on the change of incumbent of an office under Section 129 of the Income Tax Act.

Though it is not practical to develop a "one-size fits all" approach that could be followed under e-assessment, the taxpayers could consider a set of best practices, including a few mentioned in the para ahead, in tailoring their own conduct - (i) Technical submissions should be clear,

*(Contd. on page 22)*



## ANALYSIS OF EXEMPTION FROM GST ON SUPPLY OF SERVICES:



**NOTIFICATION NO. 12/2017 CENTRAL TAX(RATE)**

**DATED 28.06.2017 – SERVICES BY CHARITABLE INSTITUTIONS - PART III**

**CA Raghavendra C R, B.com, FCA, LLB, Advocate and CA Bhanu Murthy J S, B.com, FCA, LLB, Advocate**

### Analysis of the entry No. 13 (b) of the exemption notification:

This is in continuation of the analysis on the exemption available to charitable or religious institutions, as detailed in the previous issue.

We reiterate here that before any exemption entry to be tested or to be applied the issue of taxability of such an entity shall have to be examined. This finds relevance in the background of the fact that only those activities which are in the course of business would alone be treated as supplies attracting levy of GST. Where an activity being a religious in nature does not fall within the ambit of supply, then the question of analysing exemption would not arise.

The exemption entry reads as below:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
13	Heading 9963 or Heading 9972 or Heading 9995 or any other Heading of Section 9	<p>Services by a person by way of-</p> <p>(b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act) or a trust or an institution registered under sub-clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act</p> <p>Provided that nothing contained in entry (b) of this exemption shall apply to,-</p> <p>(i) renting of rooms where charges are one thousand rupees or more per day;</p> <p>(ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ten thousand rupees or more per day</p> <p>(iii) renting of shops or other spaces for business or commerce where charges are ten thousand rupees or more per month.</p>	Nil	Nil

Note: Similar exemption entry was there under Chapter V of Finance Act, 1994 [Service Tax law] vide notification No. 25/2012 ST dt. 20.06.2012 - entry No. 5(a) which granted exemption from payment of service tax on the services of renting of precincts of a religious place meant for general public.



Applicability of this exemption entry:

Supplier of service	Any person
Nature of supply	Renting of precincts of a religious place meant for general public
Conditions	<p>I. Such religious place shall be owned or managed by:</p> <p>a) Entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 or</p> <p>b) A trust or an institution registered under Section 10(23C)(v) the Income-tax Act, 1961 or</p> <p>c) A body or an authority covered under section 10(23BBA) of Income-tax Act, 1961</p> <p>II. Exemption is not applicable to following supplies:</p> <p>(i) renting of rooms where charges are one thousand rupees or more per day;</p> <p>(ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ten thousand rupees or more per day</p> <p>(iii) renting of shops or other spaces for business or commerce where charges are ten thousand rupees or more per month</p>
Meaning of phrase 'religious place'	Religious place has been defined in the notification to mean as a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality
Meaning of phrase 'general public'	The phrase "general public" has been defined to mean the body of people at large sufficiently defined by some common quality of public or impersonal nature

It is to be noted that the phrase 'precincts' is neither defined in the notification nor in GST provisions, hence for understanding the term 'precincts' we shall have to refer to its dictionary meaning:

Chambers English Dictionary defines the term 'precincts' to mean "a space especially an enclosed space, around a building or other object".

Stroud's Judicial Dictionary defines the word 'precincts' to mean "Place situate within the close, curtilage, or precincts, forming a factory or workshop."

It appears from the above definitions that in the context of 'religious place', the 'precincts' which covers the enclosed space around the religious place. Therefore, all the areas in the immediate neighbourhood of the religious place within the designated boundary of the religious place would get covered under this entry.

In the context of 'mines', Supreme Court in South Eastern Coalfields Ltd v. CCE - 2006 (200) E.L.T. 357 (S.C.) held that in view of the fact that the word 'precincts' is included in the definition of 'mines' under Section 2(j) of Mines Act, 1952, the word 'Precincts' is to be given a broader meaning and not a narrower meaning. The said phrase was interpreted by Hon'ble Apex Court to mean the surrounding region or area, as defined in Collins English Dictionary or the

surroundings or environs of a place.

Further, while examining the exemption from service tax to the mandaps within the precincts of a temple, the Tribunal in the case of CCE, Mangalore v. Dakshina Kannada Mogaveera Mahajana Sangha 2010 (17) S.T.R. 258 (Tri. - Bang.), observed that since the entire temple complex and marriage hall were enclosed by a boundary wall, the marriage hall was within the precincts of the temple and thus eligible for benefit of exemption.

The said entry of the exemption is restrictive in the sense that the exemption would not be applicable in the following scenarios:

- Where the renting is of rooms and the charges for such rooms is Rs. 1,000/- or more per day. Where rent per day is less than Rs. 1000/- towards residential accommodation entry 14 of the notification grants exemption from payment of GST irrespective of nature of the supplier of service.
- Where renting is that of premises, community halls, kalyanmandapam or open area, and the like where charges are Rs. 10,000/- or more per day.
- renting of shops or other spaces for business or commerce where charges are Rs. 10,000/- or more per month.

In effect, exemption under this entry for renting in the precincts of religious place would be eligible in the following scenarios:

- I. **Rooms for residential purpose:** exemption is eligible where rent per day is less than Rs. 1000 per day.
- II. **As kalyana mandapam or community halls:** exemption is eligible where rent per day is less than Rs. 10,000/-
- III. **Commercial purposes:** exemption is eligible where rent charged is less than Rs. 10,000/- per month.

However, at this juncture, a question may arise as to where one shop or one of the rooms or one of the collection

towards community hall exceeds the prescribed limit above, whether the exemption would be denied on whole of the rents collected or the exemption would not be eligible on such supply alone.

In our view, from the plain reading of the conditions under the notification, the exemption has to be examined on each of the supply / transaction and not as a whole. Therefore, the exemption would get denied only to the extent to which the conditions are not met and entire rental income cannot be subjected to denial of exemption.

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## THE ERA OF E-ASSESSMENTS UNDER INCOME TAX: WHAT WE NEED TO KNOW

*(Contd. from page 19)*

comprehensive and logical in structure (following principles of clear writing) for easy absorption (ii) Commercial rationale of any anticipated adjustments should be explained in a lucid and coherent manner to avoid any undesired additions (iii) It may also be a good practise to provide a memorandum explaining the basis of preparation of the return of income along with the computation of taxable income, which may assist the tax officer in understanding the key technical positions adopted by the assessee in arriving at taxable income (iv) Order sheet notings as provided by the tax officer through electronic means to be examined and read cautiously and any deviations in the understanding should be formally communicated to avoid unjustified adjustments to the returned income (v) In cases of request for previously filed information/ documents, references to the past submissions such as date of filing could be provided, instead of submitting the documents/ information all over again (vi) "Request a delivery receipt" option could be selected while sending e-mails to ensure that documents have landed in the recipient's mailbox and the delivery receipt could be used as an acknowledgment for having sent the documents to the tax officer (vii) Needless to mention, data security is of utmost importance and due care must be taken towards phishing or fake emails.

The perception that a tax administration is effective, efficient and fair is a fundamental component of public confidence in the Government. While the idea of e-assessment, in principle, an outstanding one, the administrative systems and procedures need to be tweaked a little to ensure that it does not result in an uncalled-for injustice to the taxpayers in the form of meaningless adjustments to the reported income. It is recommended that the scheme of e-assessments be made optional in the first few years, so that the administrative anomalies could be ironed out in such test phase. Administrative guidance and training may be provided to the tax officers to empower them take up scrutiny examination on an e-assessment mode, without causing any undue hardship to taxpayers. Once the technical and administrative glitches are ironed out and the system is evolved, the e-assessment mode to be made mandatory for all taxpayers. In parallel, to ensure a uniform and systematic approach to conduct audits under e-assessment mode, the tax administration needs to delve into the key performance drivers such as targeted correspondence, centralised guidance on key issues (instead of individual judgement), taxpayer segmentation (followed by differentiated operating model for each segment) and training of field examination staff with industry specific knowledge, coupled with a constant on-the-job coaching – few measures which emerged economies have already adopted long back.

*Author can be reached on e-mail:  
Mailboxofsandeepj@gmail.com*



## Representation on statutory audit of bank branches - 14.03.2018



Dr. Urjit R. Patel

Governor, RESERVE BANK OF INDIA,

C/o CGM and Secretary, Secretary's Department,  
Reserve Bank of India, 16th floor, Central Office Building,  
Shahid Bhagat Singh Marg, Mumbai - 400 001

14th March, 2018

Dear Sir/s

**RE: Statutory branch audit of branches of Indian PSU banks- In wake of recent developments/ irregularities in Punjab National Bank**

In wake of recent developments/irregularities noticed in the banking industry, we as professionals' associations would like to draw your attention to the following issues which, if attended to effectively and with a sense of urgency, would go a long way in bringing about substantial improvement in the present situation in the banking industry :

- (a) Environment created after change in policy of appointment of branch statutory auditors (giving autonomy to bank management) has not yielded desired results for the banking industry. Our regulatory body, the Institute of Chartered Accountants of India (ICAI) has been opposing this change from the very beginning.
- (b) The appointment of branch statutory auditors should be made latest by end of February. For instance, for F/Year 2017-18 the appointment should have been made latest by 28th of February 2018. Moreover, the instructions circular/booklet issued by the Head Office to the branches for annual closing of accounts should be sent to the branch statutory auditors along with the appointment letters.
- (c) Presently bank branches with advances of less than Rs. 20 crores are not subjected to annual independent audit. Instead of advances, only the branches with total business (deposits+advances) of less than Rs. 20 crores should be excluded from annual independent audit. Moreover, advances for this purpose should include both funded and as well as non-funded advances. It may be added that for concurrent audits and for various other purposes the branch categorisation is based on total business and not just advances. Also, presently only 1/5th of the remaining branches (branches with advances of less than Rs. 20 crores) are subjected to annual independent audit. We recommend that 1/3rd of the remaining branches (branches with business of less than Rs. 20 crores, including non-funded advances) should be also subject to annual independent audit along with the rider that all branches should be audited at least once every 3 years.
2. Pressure exerted on the auditor on the pretext of reporting deadline (period at disposal of the branch auditor being squeezed from 15 days to merely a week-reporting being expected to be completed by end of 1st week of April) has been hampering both quality and depth of audit. Branch auditor should be given a period of at least 15 days which should start only after the full set of financial statements/annual returns is made available to the auditor. There is a mad rush and competition among the PSBs to be the earliest to declare their results and this is the main reason for the peer pressure.
3. Pressure being exerted on the branch auditors to issue CLEAN REPORTS (with NIL MOC) by RO/ZO top officials is uncalled for and should be avoided.
4. MOCs with material relevant changes, at times at a later stage are ignored/dropped without any valid reason and without any dialogue with branch statutory auditor who had initiated the MOC. This practice needs to be curtailed. We suggest that all the suggested changes in the MOC which are not considered at the time of finalisation of accounts at the Head Office should be listed in a statement and that statement should be placed before the Audit Committee for its consideration and comments
5. Due care is not being taken at branch level to respond properly to the Letter of Engagements issued by branch auditors. This is taken by the branch management as an unnecessary requirement, not realizing this is essential for the proper conduct of branch audit and is also prescribed in the Standards on Auditing issued by ICAI, which the members of ICAI are governed by and must follow compulsorily.
6. Prior to commencement of branch statutory audits, it is important to organise meetings between the Bank Management, Central Statutory Auditors and Branch Statutory Auditors. Only a few banks are organising these meetings and even in most of such cases the meetings are not organised properly and with the seriousness that they deserve.


The above is some of our suggestions which if considered will go a long way in substantial improvement in allotment process, auditors' independence, ensuring quality of reporting and substantial improvement in effective conduct of bank audits.

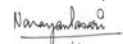
We remain,

Yours sincerely

  
Gyanesh Verma  
President, Lucknow Chartered Accountants' Society

  
Raghavendra T.N.  
President, Karnataka State Chartered Accountants' Association

  
Kunal Ashvin Shah  
President, Ahmedabad Chartered Accountants' Association

  
Narayan R. Pasari  
President, Bombay Chartered Accountants' Society

CC to:

1. The Board of Directors of all PSU banks;
2. Secretary (Financial Services), Ministry of Finance, Government of India;
3. The Governor, Reserve Bank of India

# Suggestions for improvements in ULB Audits - 16.03.2018

To,

**The Director of Municipal Administration**  
V.V. Towers, Dr. Ambedkar Road  
Bengaluru

Date: 16<sup>th</sup> March 2018

Dear Sir,

**Subject: Empanelment of CA Firms for Financial Statements audit of ULBs**

**Reference: (1) RFP No. 20246 DMA 18 KMDS 2017-18  
(2) Our meeting with DMA on 12<sup>th</sup> March 2018 and Pre-bid meeting on 15<sup>th</sup> March 2018**

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. With this backdrop, we have written to your good selves earlier populating issues in RFP and possible solutions.

At the outset, we wish to thank you for acknowledging our previous submissions and recognizing the concerns expressed by our fraternity.

We understand your concern about quality of financial statements audit and your expectation of follow-up and hand-holding by the financial statements auditors. The role of a Financial Statements Auditor (for short 'FSA') is clearly defined in KMABR, 2006 and the RFP. FSA shall audit the books of accounts and other relevant records and express his independent opinion on the financial statements prepared by ULB. He should also undertake correction of wrong entries observed during the course of his audit and ensure that 'the financial statements reflect a true and fair view of the state of affairs'. Irrespective of whether the audit is going to be carried out by a big firm, or small/mid-sized firm, the FSA must comply with the mandate of the statute. In that direction, we wish to make following suggestions that would bring improvements in the ULB accounting as well as auditing.

## 1. Introduction of internal audit:

An FSA's role starts from the date of his appointment and ends with submission of the audit report. After the audit is completed, DMA office makes fresh appointment for next year. Since there is no continuity of his service, the FSA is not in a position to go back to the ULB and check compliance of his observations. This is in stark contrast to the role of an internal auditor whose duties, responsibilities and tenure are defined by the terms of his appointment. Internal audit is a more detailed audit that focuses on internal control weaknesses and gives suggestions for improvement. The periodicity of the audit could be monthly/quarterly/half-yearly or yearly depending on the terms of his appointment. As internal auditor's visits are more frequent and repetitive, he can check and report on compliance of his audit observations. The Directorate may consider introduction of internal audit especially in bigger ULBs and in ULBs where there are issues of concern, for evaluating and improving the effectiveness of risk management, and internal controls.

## 2. Suggestions for improving the efficiency of FS audit:

- The tenure of an auditor of an ULB to be for a period of three continuous years. The continuity of his tenure would enable him to monitor compliance of the previous audit reports.
- The main audit report is an expression of auditor's opinion on the financial statements. In addition, he shall also report on additional matters as per Schedule IX of KMABR, 2006. Other than these standard reports, an auditor can also give qualifying or adverse comments or disclaimers wherever he finds matters affecting the reliability of financial statements. The role of audit review committee is very important for the effectiveness of audit, since the auditor's term ends on submission of audit report. The audit review committee can make a list of audit observations which are qualifying/adverse/ disclaimer in nature and call for explanations from concerned ULBs. Every year, after the ULB audits are over, the Committee can call meetings of FSA to discuss specific audit related issues.
- After the empanelment process, and before commencement of ULB audits, DMA/KMDS may hold a meeting of empanelled auditors and ULB accountants to have a common understanding of the audit requirements, preparedness of ULBs in terms of closure of accounts, as well as the facilities to be provided by ULBs. The auditors may also be asked to cover specific additional areas which DMA/KMDS feel necessary to be covered.

- ULB staff and officers need to be given training on facilitating audit, and on making use of the audit to improve their efficiency and effectiveness.

## 3. C & AG and MEF empanelment:

It was explained to us in the Meeting that the scoring norms used in the RFP is taken from C & AG norms. We would like to point out that:

- Though C & AG and MEF (ICAI) award marks for number of FCAs/ACAs and number of years in practice, these marks are used only for categorization of CA Firms, and not for empanelment. Also, there are no maximum marks for eligibility. There are several small/mid-sized firms which are in both the panels, and they are allotted PSU and bank audits. Most of the CA firms who were in KMDS panel earlier, were empanelled with C & AG, and were also carrying out C & AG audit.
- Most of the ULBs are much smaller in size as compared to PSUs and banks. Therefore, we request your kind selves not to consider the size of the audit firms as a criterion for empanelment for audit of ULBs. Instead, C & AG empanelment may be given a weightage as in the case of earlier EOI.

## 4. Audit Fees:

The audit fees for ULB audit was fixed for the first time in 2007 when ULB audits first came into existence. There has been no revision in the audit fees since then. We request for an enhancement in audit fees by 50% across all slabs, to make it commensurate with the increased cost of conducting audits in the past ten years.

## 5. Proposed Empanelment Criteria and marks:

Since terms and conditions of earlier empanelment has withstood the test of time and the ULBs were audited successfully for past three years, we propose to your kind selves to retain the same. We have reproduced the empanelment criteria of previous RFP for the sake of ease of reference.

S.No.	Criteria
1.	<b>Turnover</b>
	Rs. 25 lakhs
	Rs. 25 lakhs to Rs. 35 lakhs
	Above Rs. 35 lakhs
2.	<b>Experience in accounting and auditing (Appointment letter copies/certificates to be produced).</b>
	03 years
	3-5 years
	Above 5 years
3.	<b>CA firms should have completed audit transactions not less than the amounts specified below, in State/Central Govt undertakings including ULBs in last 5 years</b>
	Rs. 25 crores
	Rs. 25 crores to Rs. 50 crores
	Above Rs. 50 crores
4.	<b>CA firms should have completed 2 statutory audits in last five years of corporate entities/trusts each having a turnover of not less than:</b>
5.	<b>Knowledge of Kannada is mandatory, and the Proprietor/Partner should produce necessary proof of the same.</b>
6.	<b>CAG Empanelment is mandatory and the necessary proof to be enclosed.</b>
7.	<b>Head Office of the CA Firm should be in Karnataka and the necessary proof to be attached.</b>

We request you to kindly have a re-look at the eligibility conditions of the current RFP and marks for individual items may be awarded as per your discretion.

We will request all our members through our official communique to make sincere and honest efforts to improve the quality of audit and bring noticeable changes in ULBs.

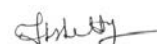
Thanking you,

Yours sincerely,

For Karnataka State Chartered Accountants Association \*



CA. Raghavendra T.N.  
President



CA. Chandrashekara Shetty  
Secretary



CA. Vijay Sagar Shenoy  
Chairman  
Representation Committee



## Impressions of 2nd Day Plenary Sessions



## Impressions of Valedictory Session





## Impressions of Valedictory Session





## Impressions of Valedictory Session



## Exhibitors at Conference





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