KSCAA

Karnataka State Chartered Accountants Association ®

NEWS BULLETIN

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Financial Reporting and Assurance

Shell Companies

Few challenges in GST Annual Return

Ethics and Governance in Vedas

High Sea Sales Transaction under GST

Introduction to International Taxation

Proposed Rules are far from FAR

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Together We Grow

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Dear Professional Friends,

I'm existed to write and share in this forum that KSCAA is trying to reach all its members across Karnataka, in this long journey it has extended its wing by conducting a first ever program for CA's in whitefield, Bengaluru on Goods and Service Tax. More about the program in the newsletter.

In an interesting unprecedented turnout of events, bar council of Delhi has asked Big fours to refrain from providing any services that tantamount to practice of law. However, Ministry of Corporate Affairs (MCA) had constituted an expert panel which had recommended for amending the Advocate Act to allow specified legal service to CA's. Report of the expert panel quoted "For Indian firms to evolve into global leaders in auditing, legal, consultancy, and ancillary services, it is necessary to rationalise the Advocate Act 1961 to facilitate development of Indian audit firms as well as legal firms". Any outcome in this space of tussle between the two large professions in the era of multi-disciplinary world would hamper the future of SMP's in a hefty way.

Representations:

On the representations front, one, we have represented before the concerned bureaucrat regarding the need for audit fees upward revision in respect of Co-operative Societies and Co-operative Banks in Karnataka. Further, one more representation was put forth in the month on the need for extention in due date for filing ROC forms 22A Active, DIR3KYC, MSME as well as BEN forms relating to significant beneficial ownership. Also, we have given valuable suggestions therein as to the unification of forms and reporting under Quasi/ Annual Form itself instead of individual forms in line with the 'Ease of Business'. The detailed text may be found herein the newsletter later and also under the Resources tab on our webpage www.kscaa.com.

We are happy to inform you that at the backdrop of timely representation, Form22A Active and DPT3 were given reasonable time extensions. We seek you valuation suggestion points for us in future too to write to the appropriate authorities and serve you better.

New Roundup

- Recently, the Indian government has notified new tax return forms for FY2018-19 (assessment year 2019-20) applicable for individuals, corporates and other category of taxpayers. The new forms contain several additional disclosure requirements vis-a-vis the previous year's forms. The changes take into account the amendments made by the Union Budget 2018 in the Income-tax Act, 1961. The additional information being sought in the revised tax return forms will not only facilitate automatic cross-validation of data by the tax department but is also expected to quicken the process of tax refund and assessments. All the taxpayers are mandatorily required to file their tax returns electronically except individuals over the age of 80 years who have the option of filing the tax return in paper format as well. This article focuses on some of the key points to be taken note of by individual taxpayers while filing their tax returns this year.

Identifying the suitable form and key changes

ITR-1 (SAHAJ): resident and ordinarily resident (ROR) individuals having total income of up to ₹50 lakh, having income from salaries, one house property, income from other sources and agricultural income up to ₹5,000. Non-residents cannot file ITR-1, irrespective of their source or quantum of income.

- The significant change in form ITR-1 is the restriction on its applicability for the following resident individuals:
- A person who is a director in any company;
- A person who has held any unlisted equity shares at any time during the year;
- A person who has claimed a deduction towards expenses incurred for earning income from 'other sources' other than deduction for family pension; and
- A person who is assessable for any income on which tax has been deducted at source in the hands of any other person. This would be applicable in cases where the income earned by the taxpayer's spouse or any other person is required to be clubbed in the taxpayer's hands and there was a tax deduction at source on such income.

ITR-2: Individuals not having income from profits and gains of business or profession (who cannot use ITR-1).

Significant changes have been brought in the new form ITR-2 which is likely to impact a wide section of taxpayers. Detailed disclosure has been introduced with respect to taxpayer's residential status in India. Apart from specifying the status as 'resident', 'resident but not-ordinary resident' or 'non-resident', taxpayers are also required to select the condition based on which the residential status has been determined, ie as per the number of stay days in India in the relevant tax year and previous years.

Non-resident individuals are now required to mention their country of residence, along with their taxpayer identification number in such jurisdiction. Non-residents who are Indian citizens or person of Indian origin are also required to mention the total period of stay in India for the year and in the preceding four years.

Individuals who are directors in any company are required to provide the name of the company, its permanent account number (PAN), director identification number (DIN) and information on whether the company's shares are listed or unlisted. Individuals holding unlisted equity shares at any time during the year are required to disclose the name of the company whose shares are held, company's PAN, number of shares held, shares acquired/sold during the year along with their cost of acquisition/sale consideration.

The scope of reporting foreign assets has been expanded to include details of foreign depository and custodial accounts, foreign equity and debt interest held at any time during the relevant period.

There are additional disclosure requirements to specify long-term capital gains from sale of equity shares or units of equity-oriented funds. In case of capital gain from transfer of immovable property, additional details regarding the buyer and the property are required to be disclosed. In case of agriculture income, the location of agricultural land, its measurement, etc are now required to be disclosed.

ITR-3: Individuals having income from profits and gains of business or profession.

The additional disclosures discussed for form ITR-2 pertaining to residential status, directorship in companies, investment in unlisted equity shares, income from house property and other sources, foreign assets, etc. have also been incorporated in Form ITR-3.

Other changes introduced in form ITR-3 include disclosure of name and PAN of partnership firms in which the individual taxpayer was a partner during the year, details of audit under any other statutory law. The new form ITR-3 bifurcates the existing profit and loss account into trading account, manufacturing account and profit and loss account which will be applicable for taxpayers who have income from business or profession, etc. The form also seeks details of annual value of outward supplies as per the goods and services tax (GST) returns filed.

ITR-4 (SUGAM): Individuals, and firms (other than LLPs), being a resident, having total income up to ₹50 lakh and having income from business and profession computed under the presumptive taxation scheme.

This form is applicable for taxpayers who have presumptive income under the tax laws. The changes introduced in the other forms have also been suitably incorporated in ITR-4. As per the new form, individual taxpayers who have presumptive income and also hold directorship in companies or hold shares of unlisted company will not be eligible to file form ITR-4. Such taxpayers will need to file form ITR-3. The new tax disclosure norms are in line with government's resolve to bring in more transparency and increase the tax base. It is imperative that taxpayers should carefully evaluate the information required to be furnished and provide complete details to avoid any unnecessary disputes and litigation at a later stage.

Upcoming Events and programs

We are organizing Two Days Residential Leadership Program specifically targeting and addressing the concerns of Small and medium practitioners on Friday 31stMay 2019 and Saturday 1st June 2019 at Kolavara Heritage Thirtahalli, Shivamogga.

KSCAA is organizing its first ever program on 'GST Annual Return & Audit' on 24th of May 2019 at Whitefield, Bengaluru.

I wish to conclude my current months message with a Basavanna Vachangalu

"ಸುಖ ಬಂದರೆ ಪುಣ್ಯದ ಫಲವೆನ್ನೆನು, ದುಃಖ ಬಂದರೆ ಪಾಪದ ಫಲವೆನ್ನೆನು,
ನೀ ಮಾಡಿದಡಾಯಿತ್ತೆನ್ನೆನು, ಕರ್ಮಕ್ಕೆ ಕರ್ತೃವೇ ಕಡೆಯೆನ್ನೆನು,
ಉದಾಸೀನವಿಡಿದು ಶರಣೆನ್ನೆನು ಕೂಡಲಸಂಗಮದೇವ.
ನೀ ಮಾಡಿದುಪದೇಶವು ಎನಗೀ ಪರಿಯಲಿ! ಸಂಸಾರವ ಸವೆಯ ಬಳಸುವೆನು."

Sincerely,

CA. Raghavendra Shetty
President

KSCAA

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Disclaimer

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

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BASAVANAGUDI CPE STUDY CIRCLE

Topics:

1. **GST – Latest Notification on real estate, it's impact and guidance to clients**
2. **RERA – Latest Developments and Annual Compliance under RERA**

Speakers: **CA. Venugopal Gella**
CA. Vinay Thyagaraja

Spot Registrations Only

on **Friday, 24th May 2019** at **4:00 PM to 8:00 PM**

CPE 4 Hrs.

Fees: **Rs. 100/-** Per Participant

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

Convenor: **CA. Savitha Nui** Dy. Convenor: **CA. Sachendra KSL**

Co-Cordinators: **CA. Raghavendra Puranik** - +91 96322 45475
CA. Maddanaswamy B V - +91 93412 14962

Participation limited to 75 Members on First Come First Serve Basis

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION ®

VISION

- 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.

MISSION

- 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.

MOTTO: KNOWLEDGE IS STRENGTH

Shell Companies

India is intensifying its crackdown on dubious companies after it unearthed over $1 billion in suspicious cash deposits around 20,000 companies during the cash ban last year.

CA. S. Krishnaswamy

I have dealt with in an earlier article (January 2018) on shell companies giving some examples. The question what constitutesshellcompanies came up for adjudication in a recent High Court case **M/s. Assam Co. India Ltd. and another vs. Union of India and others (2019) 213 Comp Cas 420 (Gauhati).** The court examined in detail legal implication of a shell company. The Court held at page 429-

Definition

"The expression shell company has not been defined under any law in India. Therefore, there is no statutory definition of shell Company, be it in fiscal statues or in penal statues. Neither the Companies Act, 2013 defines the expression shell company. In the interim order passed on July 12, 2018 this Court observed that in the *Concise Oxford English Dictionary*, 11th Revised Edition, shell company has been defined as a non-trading company used as a vehicle for various financial manoeuvres."

In popular parlance, a shell company is understood as having only a nominal existence; it exists only on paper without having any office and employee. Just like a shell which has a thick outer covering but is hollow inside, a shell company is a corporate entity without having active business operations or significant assets. It may be used as a deliberate financial arrangement providing service as a tool or vehicle of others without itself having any significant assets or operations i.e., acting as a front. Popularly shell companies are identified as companies which are used for tax evasion or money laundering, i.e., channelling crime tainted money or proceeds of crime into the formal economy.

But just being a paper company and not having any assets or business operations *perse* is no offence. A corporate entity may be set up in such a fashion with the objective of carrying out corporate activities in future. That would not make it an illegal entity.The maximum, Registrar of Companies can do is to strike off the name of such company from the register of companies. But if the shell company is involved inmoney-laundering or tax evasion or for other illegal purposes, then relevant provisions of laws under the Prevention of Money-Laundering Act,2002, Prohibition of Benami Transactions Act, 2016, Income-tax Act, 1961and the Companies Act, 2013 would be attracted.

U.S

In the United States of America, a shell company is defined as aregistrant with no or nominal operations and either no or nominal assets,assets consisting solely of cash and cash equivalents or assets consisting ofany amount of cash and cash equivalents and nominal other assets.

OECD Definition

The Organisation for Economic Co-operation and Development (OECD) has prepared a glossary of foreign direct investment terms anddefinitions.In the said glossary, shell company has beendefined as a company which is formally registered, incorporated or otherwise legally organized in an economy but which does not conduct anyoperations in that economy other than in a pass-through capacity. Shellstend to be conduits or holding companies and are generally included in thedescription of special purpose entities.

- **Special Purpose Entities to be distinguished**

Special purpose entities have been described aslegal entities with little or no employment or operations or physical presence in the jurisdiction in which they are created by their parent enterprises which are typically located in other jurisdictions (economies). Theyare often used as devices to raise capital or to hold assets and liabilities andusually do not undertake significant production,for example a company to takeover bad debts of banks(asset reconstruction company) or to purchase book debts(securitisation). An enterprise is usuallyconsidered as a special purpose entity if it meets the following criteria:

(1) The enterprise is a legal entity –

   a. formally registered with a national authority ; and

   b. subject to fiscal and other legal obligations of the economy inwhich it is resident ;

(2) The enterprise is ultimately controlled by a non-resident parent, directly or indirectly ;

(3) The enterprise has no or few employees, little or no production inthe host economy and little or no physical presence ;

(4) Almost all the assets and liabilities of the enterprise are the investments in or from other countries;

(5) The core business of the enterprise consists of group financing orholding activities, i. e., channelling of funds from non-residents to othernon-residents.

- **GOI measures task force:**

GOI set up a Task Force on Shell Companies to take pro-active and coordinated steps to check the menace of shell companies in February 2017 to check in a systematic way, through a coordinated multi-agency approach, the menace of companies indulging in illegal activities including facilitation of tax evasion and commonly referred to as 'Shell Companies'.

In a drive carried out under the supervision of the Ministry of Corporate Affairs in the Financial Year 2017-18 the Registrars of Companies (ROCs) identified and removed from the register of companies under Section 248 of the Companies Act, 2013 the names of 2,26,166 companies, which had not filed their Financial Statements or Annual Returns for a continuous period of two or more financial years. As many as 3,09,619 directors were also disqualified u/s.164(2)(a) read with Section 167(1) of the Companies Act, 2013 for non-filing of Financial Statements or Annual Returns for a continuous period of immediately preceding 3 financial years (2013-14, 2014-15 & 2015-16).

For the 2nd drive to be launched during the current Financial Year 2018-19 a total of 2,25,910 companies have been further identified for being struck-off under section 248 of the Companies Act, 2013 along with 7191 LLPs for action under section 75 of the LLP Act, 2008 due to non-filing of financial statements for the years 2015-16 and 2016-17.

Mechanism for sharing of information between various law enforcement agencies under the Regional Economic Intelligence Council (REIC) and Central Economic Intelligence Bureau (CEIB) forums. Further, with a view to streamline and strengthen the information sharing mechanism, a new Standard Operating Procedure (SOP) on sharing of information between various law enforcement agencies has been setup under the aegis of the Task Force.

Defaulting Companies

The Government had requested the Reserve Bank of India (RBI) for freezing of accounts of the defaulting companies who have long exceeded the stipulated time limit, for filing of Financials Statements and returns, under the Companies Act. The RBI has informed that, at present, it has no powers to freeze such accounts. Moreover, freezing orders issued by the Government as per the provisions of the relevant statutes such as Unlawful Activities Prevention Act or Foreign Contribution Regulation Act, are communicated by the RBI to the banks.

Financial Action Task Force (FATF) that shell companiesmay be used for financing terrorism. The FATF is an inter-Governmentalpolicy making body established in the year 1989 to set standards and promote effective implementation of legal, regulatory and operational measures for combating money-laundering, terrorist financing and other relatedthreats to the integrity of the international financial system.

Parliamentary Standing Committee on Finance has suggested thatshell companies be defined under the Companies Act, 2013. The Committee was of the view that all shell companies may not have fraudulentintention. Therefore, the expression shell company needs to be defined ashaving fraudulent intent as one of the characteristic features of such a company.

AII Technology

Authorities developing a state-of-the-art early warning system using artificial intelligence that will throw up red flags and provide information in case a company's financial health deteriorates or if its transactions are suspect.In the absence of technology we can be reactive but not proactive; to be proactive it is necessary that we develop artificial intelligence.

CBDT:

The CBDT has issued directions to Income Tax offices across the country to probe financial transactions of about 3 lakh firms, de-registered by the government for their dubious financial credentials, for tax evasion and money laundering, especially during demonetisation.

"To check possible misuse of such companies for money laundering activities, the board desires that the field authorities may verify deposits/withdrawals from the bank accounts of such companies during the process of striking down and just before that especially during the period of demonetisation," the CBDT said in a communication.

The CBDT asked the taxman to collect the information about these firms from the public section of the MCA

website and subsequently scan their I-T returns and check their financial transactions history from the banks where they had accounts.

National Sample Survey:

"The NSSO [National Sample Survey Organization] in the survey that was completed has found 35% of companies in the MCA data base do not exist. They are not traceable. They are either closed down or not found at the addresses they have given.

Supreme Court on Shell Companies:

The Supreme Court has dealt a blow to companies which cut dubious deals with shell firms to launder money and escape tax. Over decades, businesses have perfected the art of transferring cash to paper firms which invest or lend the funds back into the companies to legitimise the latter's 'black', or undisclosed, money. According to a recent ruling by SC, if the taxman can back up its claim with sufficient investigation and the company receiving funds as share capital fails to prove the genuineness of the deal and creditworthiness of the investor, the company will have to pay tax on the amount. The ruling relates to a dispute between the income tax (I-T) department and NRA Iron & Steel Pvt Ltd, a Delhi-based company that had issued shares to 19 entities which either gave incorrect address, or failed to justify their investments, or did not respond to the tax department's queries.

Conclusion:

The message is loud and clear , in the case of audit of shell companies the Auditors must be diligent in tracking the objectives and purpose for which the shell company is formed or used ,in the context of h provisions of Income Tax Act and The prevention of Money laundering Act.

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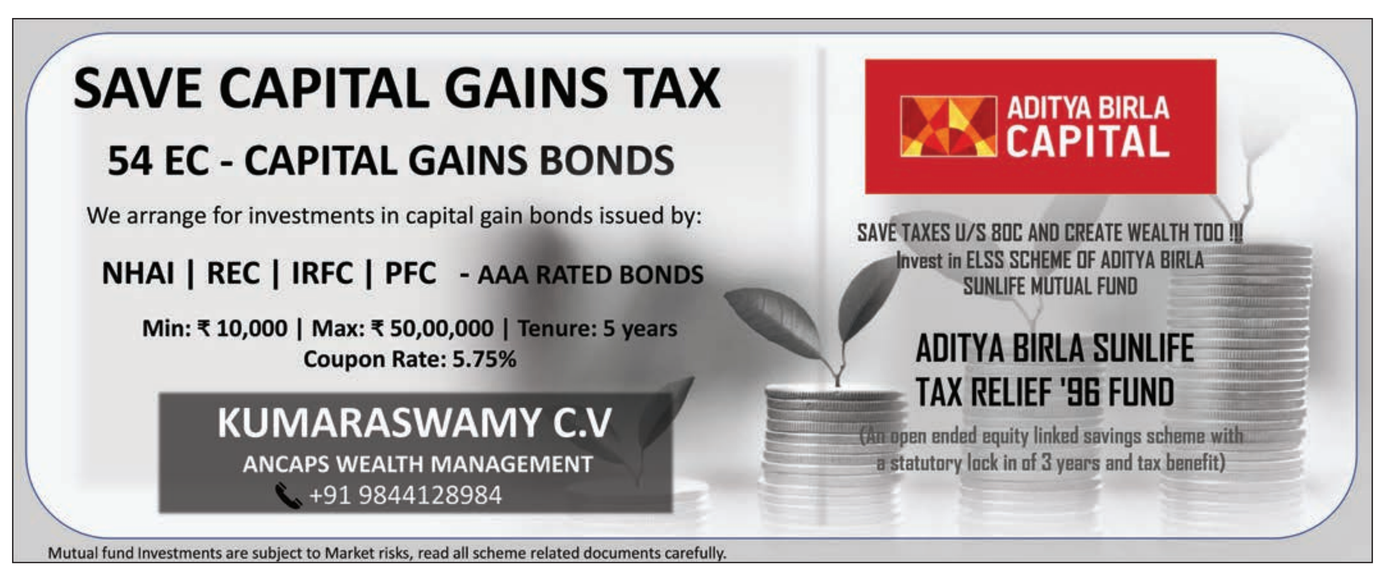

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Ethics and Governance in Vedas

CA. K Suresh

M.Com, CA, CWA, CS, PGDFTM, DHA-Astrology and Learning Vedas

'Governance' basically refers to the process of decision making, framing rules, and implementation of those decisions, such that a society, a country, or an organization is sustained and taken forward towards progress. The concept of good governance is qualitative in nature and is intimately connected with the concept of the welfare state.

Yogakshema– the goal of good governance:
In India, the concept of the welfare state and good governance is very old and an exposition of them can be found even in their oldest scriptures of the Vedas. A Prayer in Krishna Yajurveda (7.5.18) - wherein a ruler prays thus: "let my people who spread knowledge be satisfied, people who rule the country be satisfied, who fight for the country be satisfied, all women be satisfied, cattle and horses be satisfied, let my youth be brave and courageous, proper rain for crop, my people be satisfied, let not my people be needy.".

Ā Brahman Brāhmano Brahmavarchasī Jāyatāmāsmin ....
.... Pashyantām Yogashemo na : kalpatām.

Generally, "Corporate governance is about promoting corporate fairness, transparency and accountability". Few other says "Corporate Governance is the system by which companies are directed and controlled."

Specification of Relationship: Corporate governance specifies the relationships between, and the distribution of rights and responsibilities among, the main groups of participants:
-The board of directors
- The managers
- The workers
- The shareholders or owners
- The regulators
- The customers
- The community (people affected by the actions of the organisation)
- The suppliers

Benefits of Corporate Governance:

1. It provides proper inducement to the Owners and Managers in achieving objectives, that are in interests of the shareholders and the Organisation.
2. Good Corporate Governance ensures Corporate success and economic growth.
3. It helps in Brand Building and Development.
4. There will be a positive impact on the share price.
5. Strong Corporate Governance retains / maintains Investors Confidence. As a result, Company can raise capital efficiently, effectively and timely.
6. This ensures Organisation is managed in a manner, that fits the best interests of all.
7. Good Corporate Governance also minimises wastages, corruption, risk and mis-management.
8. This lowers the cost of capital of the Company.

Quality of governance primarily depends on following factors:

I. Integrity of the management.
II. Ability of the Board.
III. Adequacy of the processes.
IV. Commitment level of individual Board members.
V. Quality of corporate reporting.
VI. Participation of stakeholders in the management.

Vedas on Maximising Wealth:

The Veda repeatedly call upon everyone to earn and maximise wealth in proper way. The primary objective of Financial Management is Maximization of the shareholder's Wealth. Vedas advise everyone to acquire wealth and not to reject or condemn wealth. In Rig Veda 2.21.6, it says:

Indra śreṣṭhāni dravināni dhehi .... vācha : sudi natvamahnām.

Meaning: O, Indra, bestow on us the best of wealth, the spirit of ability and fortune; Increase of riches, safety of our bodies, charm of sweet speech, and many years of pleasant weather.

Also Upanishad says: *Annam na nindhyāt . Tat Vratam.*

He shall not condemn food (wealth) That shall be his vow.

Annam na parichakṣīta . Tat Vratam.

He shall not abandon food (Wealth). that is his vow.

Annam Bahu Kurvīta. Tat Vratam.
He shall make food (Wealth) Plentiful. That is his vow.
Tasmād yayā kayā cha vidhayā bahvannam prāpnuyāt.
Therefore, by every means, he should earn much food (wealth)

Rig Veda 1.96.6-8 stipulate that wealth has to be earned only through fair means and a person should put in his best efforts to acquire wealth through ethical and moral practices.)
Dravinodaa Dravinasasturasya .... Rāsate Dhīrgamāyu :

Meaning of this:
* Root of wealth and Highest knowledge gathered and united in this place. By our sacrifice, he grants our pleading wishes: Preserving him as our, own life immortal, let the God Agni, bestow us with high wealth.

* The Present and previously acquired wealth, was through good means. Let our wealth, to be acquired in future, be also be, by good means. Let the God Agni, protect us bestow us with high wealth.

* Let the Wealth-Giver grant us conquering riches; may the Wealth-Giver grant us wealth with heroes. Let the Wealth-Giver grant us food with offspring, and very long life.

Veda insists in good conduct.

There are so many places in Veda, that insists in good conduct and practice truthfulness in life.
Satyam Vada, Dharmam Chara
Means: Speak the Truth, Follow Dharma
In another place, it says:
śradhayā deyam aśradhayā deyam...... Samvidā deyam.
Meaning: Gifts to be made with respect. Never with dis-respect. With liberty the Gifts to be made. With modesty the Gifts to be made. With fear Gifts to be given. With pleasantness (friendliness) Gifts to be given.
Following that, Vedas says:
Mātrude Vo Bhava. Pitrude Vo Bhava. Ācharyade Vo Bhava. Atithide Vo Bhava.
Meaning: Treat your Mother as a God, Treat your Father as a God. Treat your Teacher as a God. Treat your Guests as God.

Knowledge Management:

Vedas gives more importance in acquiring knowledge and it always re-iterate that only knowledge liberates a person. In Sukla Yajur Veda 27.1 it says:
Āno Bhadrā kratavo yantu....... rakshitāro dive dive.

Meaning: Let all auspicious, unobstructed, favourable and victorious knowledge comes to us from all sides. Therefore, Gods may be with us forever, for our welfare. Everyday, let the Gods be our guardian, taking care of us continuously.
Further it says:
Bhadram Karnebhi : śrunuyāma Deva .... Devahitam yadāyu :

Meaning: O Gods, let us listen to good things through our ears, see good things through our eyes. With our limbs and strong body, we pray you, to live our full span of life, given by you.

The Indian Society always had Professional Ethics and Governance as an integral part of its system. To understand this, the concept of Dharma needs to be explored. The single word – "Dharma" engulfs the concepts of duties, rights, laws, conduct and virtues. In nutshell, it was all about the "right way of living". The Vedas discuss about Dharma in many places. In Upanishads the concept of Dharma continues as universal principle of law, order, harmony and truth. It acts as a regulatory model of the Universe. It is explained as law of righteousness and equated to Satya (Truth). In no other language in this world there is a word of equal meaning, importance and parlance.

In Hymn 1.4.14 of Brhadaranyaka Upanishad, it states the follows:
Dharma : Tasmād Dharmāt Param ...... Tadubhayam Bhavati.

Meaning: Nothing is higher than Dharma. The weak overcomes the stronger by Dharma, as over a king. Truly that dharma is the Truth. Therefore, when a man speaks the truth, they say, "He speaks the Dharma", and if he speaks Dharma, they say, "He speaks the truth", hence both are one.

The Indian philosophy revolves continuously around Dharma. Even our Ithihāsas Rāmāyana and Mahābhāratha revolved around Dharma and how it was to be upheld. There are extensive discussions of dharma at the individual level in the Ithihāsas, for example, free will versus destiny, when and why humans believe

either, ultimately concluding that the strong and prosperous naturally uphold free will, while those facing grief or frustration naturally lean towards destiny. Dharma gives equal importance towards rights as well as duties, which is what is required in today's context.

Poverty and prosperity also have a link with Dharma. It is stated in the Śatapatha Brāhmana that in a society which is prosperous, Dharma is followed by all and it flourishes. When the society is in poverty Dharma also suffers.

In Rājadharmaparvan, it is stated that A country with less moral and lawful life suffers distress, and as distress rises it causes more immoral and unlawful life, which further increases distress. Those in power must follow RājaDharma because this enables the society and the individual to follow dharma and achieve prosperity. When Society goes in the path of Dharma, Prosperity comes as a by-product of it. The concept of law is not new to this nation, since it had been here for ages in the form of Dharmashāstras.

Finally, even while constituting our nation, India decided to include the Ashoka Chakra, a depiction of Dharma Chakra (which is the wheel of Dharma), as the central motif on its flag. The Wheel also signifies that Dharma will never stop being followed in this country.

To conclude, Prosperity of our country can be achieved, when the Professionals responsible keep themselves self-disciplined, i.e, Self Regulated and and the Policy Makers of this nation take into consideration the Cost of Compliances and the required incentives for investors and the implications of their policies on the society. In total, when every stakeholder of this nation conducts themselves on the path of Dharma, the prosperity, law and order and ease of business will be the by-products of such conduct.

Author can be reached on e-mail: suresh@ghanapati.com

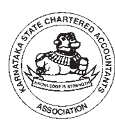
KSCAA Corporate Law and Allied Committee

requests all members to share the pain points being faced by them

in the area of compliances of Companies Act to the below email address.

KSCAA will do a consolidated representation to MCA for addressing the issues.

Email: kscaacorporatelawcommittee@gmail.com



Few challenges in GST Annual Return

CA. Madhukar N Hiregange & CA. Mahadev R

All GST registered persons other than composition dealers are required to file the annual return in form GSTR-9. Those with aggregate turnover exceeding Rs.2 crore need to file the audit reconciliation report in form GSTR-9C. The due date for both is 30th June 2019. The online utility including offline excel utilities of forms have also been made available for tax payers. Though there are instructions provided in the forms to enable filing of these forms, there are few issues wherein the tax payers could struggle due to lack of clarity. In this article, we have highlighted few issues in GST annual return with possible solutions which could be helpful to professionals in guiding the tax payers.

Disclosure of information as per books of accounts or returns

There is a confusion as to whether the disclosure of liabilities should be as per the financial statements or as per the GST returns filed by the assessee. Certain changes were made to the GSTR-9 form in December 2018 with an intention of allowing the assessees to discharge additional liabilities as well. There are instructions provided at the end of the form. Instruction no.3 states that the additional liability may be declared in the return even though the same is not part of GSTR-1 or GSTR-3B. Instruction no.4 states that the details in part II of the form shall have details of supplies for which payments are made through form GSTR-3B. Due to these two instructions, there is a doubt on declaration of additional liabilities, if any.

Considering the intention of the law makers, it would be wise for the tax payers to disclose the additional liabilities in part II itself. This could include schedule I transactions as well wherein GST not discharged earlier and RCM transactions not considered for discharging the taxes. As there could be differences between GSTR-3B disclosures and the figures as per the books of account, proper reconciliations to be prepared along with reasoning for the differences. This would be helpful even in filing of GSTR-9C audit report. Differential tax to be discharged through cash in form DRC-03 only. [This may not further the objective of avoiding cascading of taxes]

Disclosure of credit notes details

Subject to conditions of Section 34 of CGST Act 2017, credit notes could be issued and deduction can be claimed by the assessee from the GST liabilities. There could be possibility of non-disclosure of credit notes in the same financial year 2017-18 or by September 2018 which is the time limit. The question arises is whether deduction from GST could be claimed by the assessee through annual return or not.

The time limit for adjustment of liability against a supply made in a financial year is end of September of subsequent year. Therefore, there cannot be any doubt as to ineligibility of deduction in liability through credit note disclosure in annual return.

However, there could be instances wherein the assessee could not disclose and claim the deduction due to absence of liabilities till September of subsequent year. In such cases, the option of refund could be explored by the tax payer as per GST circular no.26/26/2017. Similar issues could be there in case of debit notes as well. If the debit notes are issued in respect of supplies made in FY 2017-18, then the details could be disclosed in part II or part V as applicable.

Discharge of additional liabilities through ITC before annual return

After understanding that additional liabilities can be discharged through annual return through cash/ bank only through DRC-03. There could be scenarios wherein there would be good amount of credit lying in electronic credit

register. The dilemma existing for the tax payers is whether the credit balance can be utilised for payment of additional liabilities before filing annual return to avoid payment in cash/ bank.

Section 39(9) of CGST Act 2017 allows assessees to rectify any errors in the returns filed before September of subsequent year. However, there is no restriction as to discharge of any additional liabilities after September. Therefore, the assessee should be allowed to pay the tax utilising the credit instead of waiting for annual return filing and payment through cash. This could be questioned by the department. Considering the amount involved and factors such as cashflow, increased interest for waiting till filing of annual return, litigation cost, the assessee needs to take a call for following this approach.

Lapse of ITC in case of imported goods

Part III of the annual return requires disclosure of total amount of IGST paid in case of import of goods including SEZ procurements in table 8G. Table after this i.e, table 8H requires disclosure of IGST credit claimed out of IGST paid as shown in table 8E. If amount in 8E is more, then the differential amount would be treated as un-availed ITC. It is interesting to note that the possibility of claim of such ITC in April to September of subsequent year is not being considering in the annual return form. Such differential amount is being considered as lapsed ITC in table 8K.

This seems to be an unintentional error in the annual return form. There is no time limit for claim of ITC in case of import of goods on the basis of bill of entries. The restriction is only on invoices and debit notes in Section 16. It is expected that this issue would be resolved soon. In case, it is not done, the option available for the assessee is to disclose the amount of equal to ITC claimed in FY 2017-18 in case of imported goods in table 8E which can be equal to 8F as well so that no amount is shown as 'lapsed' credit. This would ensure no loss of credit.

Claim of missed out ITC

The due date for claim of ITC on inward supply of goods and services for FY 2017-18 extended up to due date of filing GSTR-3B returns for the month of April 2019 subject to conditions that entries are found in GSTR-2A. The question which could arise is whether such credits can be disclosed in annual return and utilised for discharging any additional liability.

Instruction no.3 to annual return states that any unclaimed credit cannot be claimed through annual return. Therefore, the assessee are required to claim the credit only through GSTR-3Bs filed in FY 2018-19.

Conclusion

Being the first annual return, confusion bound to exist. The best method for the assessee could be to have a regular and thorough reconciliations between the books of account (GSTIN wise) and GSTR-3B & GSTR-1 returns filed for FY 2017-18. Reasons for differences should also be ascertained. Any genuine additional liabilities could be discharged through annual return rather waiting for payment through GSTR-9C audit report. This way number of observations and qualifications could also be reduced in the audit report. Professionals would have to play a key role in creating an awareness of the importance of filing accurate annual returns considering the amount of information which is expected from the assessees.

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KSCAA WELCOMES NEW MEMBERS - MAY 2019

S.No.	Name	Place
1	Sacheen kalagouda Patil	Belgaum
2	Shiva prasad S	Bengaluru
3	Naveen Kumar G	Bengaluru
4	Pushkar Avinash Ogale	Belgaum
5	Seema K	Bengaluru

S.No.	Name	Place
6	Krishna Kumar Raghupathy	Bengaluru
7	Ranjini K.R	Bengaluru
8	Ajith bhat Balli	Bengaluru
9	Vishnu Manikanth Kona	Bengaluru
10	Gyanchand Agarwal	Bengaluru

High Sea Sales Transaction under GST

CA. G B Srikanth Acharya

The global market has grown remarkably over the years. Integration of national economies into global economy has helped individual countries to grow faster, to add value to the economy, and to reduce poverty, both locally and globally.

At business level, one always looks for ways to minimize cost and maximize profits, to expand customer base, ease and multiply their business. One such way of transacting globally is the High Sea Sales transaction.

What is High Sea Sales?

High Sea Sales (HSS) is a sale carried out by the carrier document consignee to another buyer while the goods are yet on high seas, i.e., after their dispatch from the port/airport of origin and before their arrival at the port/airport of destination. In simple words, High Sea Sale is "Sale in course of import".

The concept of High Sea Sales can be understood with an Example- A of Gurgaon purchases goods from B of Singapore. B exports goods from Singapore, and while the goods are in transit, A enters into agreement with C of Chennai, and sells the goods to C before they reach the customs frontier of India. This sale of goods-in-transit by A of Gurgaon to C of Chennai, before they reach the customs frontier of India, is called High Sea Sales.

Consequences of HSS

The High Sea Sales agreement is made only after dispatch of goods from the port of origin and before the goods reach the port of destination. Once the HSS agreement is made, the seller should endorse the bill of Lading (B/L), invoice & other necessary documents in favour of Buyer. In the above example, A of Gurgaon is the Seller & C of Chennai is the buyer in said HSS transaction.

The goods can be sold multiple number of times on High Sea, before they reach the customs frontier of India. Accordingly, the B/L will be endorsed to the last HSS buyer and the amount charged to the last HSS buyer will be considered by the Customs to levy custom duty.

Now, when the title of goods is passed to the HSS buyer, the Bill of Entry (B/E) is also filed on the name of last HSS buyer and the last buyer clears the goods from customs on payment of import duty.

Also, the last buyer can claim the benefits, if any, of the importer, such as concessional rates or exemption from tax, on presenting the B/E while clearing the goods for home consumption. For example, if the last buyer is an EOU or SEZ, then it is exempted from paying Basic Customs Duty. On the other hand, if the goods would not have been sold to the EOU or SEZ on High Sea, but after the import, then in such case the importer would have to pay the duty and then later, if sold to EOU or SEZ, the buyer can claim refund of the duty paid.

The process of importing and selling would become time and cost consuming. And this is where; High Sea Sale would be beneficial.

Multiple HSS: last buyer's responsibility

In case of multiple High Sea Sales, the last buyer is required to present all the necessary documents such as the original invoice, charges or commission paid, HSS agreement containing details of all the previous HSS agreements and their copies, B/E, etc.

Import General Manifest (IGM)

Import General Manifest (IGM) contains details of the shipment arrived at the customs location. The details that form part of IGM are- serial number of shipment, details of the importer, details of the shipper, country of loading, quantity of goods, etc.

IGM is filed by the carrier of goods on arrival of the goods. It can also be filed before the arrival, but it should be made sure that IGM indicates correct details of actual arrival of goods at the destination port.

In case of HSS, the IGM has to be filed with the details of the last buyer. In case, when the IGM is aleady filed before the goods reach the customs frontier with the details of original

buyer, then it has to be amended with the details of last HSS buyer.

Taxability of High Sea Sale

Taxability of HSS can be understood with a combined reading of section 5 & 7(2) of the Integrated Goods and Services Tax (IGST) Act, 2017.

Section 7(2) of the IGST Act, 2017 deems "supply of goods imported into the territory of India, till they cross the customs frontiers of India to be a supply of goods in the course of inter-State trade or commerce.", as inter-state supply.

Section 5 of the IGST Act, 2017 says that, IGST on goods imported to India shall be levied and collected in accordance with the Customs Act. Since Basic Customs Duty is not payable on High Sea Sales, IGST is also not payable on the same.

Further, the Central Goods and Services Tax (Amendment) Act, 2018 carries an amendment in the Schedule III- "Activities and Transactions which shall be treated neither as a supply of goods nor as a supply of services", which has been notified vide **Notification No. 02/2019- Central Tax, dated 29th January, 2019**, to include "Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption"

This means, High Sea Sales is neither treated as supply of goods nor supply of service, and accordingly, it will not attract GST.

Taking our first example into consideration, it implies that IGST is not required to be charged and paid by A of Gurgaon on the High Sea Sale made to C of Chennai.

Now, at the time of clearance of goods for home consumption, the importer, that is, the ultimate buyer shall pay the applicable IGST, as provided under section 5 of the IGST Act, which shall be in accordance with the Customs Act.

In this way, there is no double taxation and IGST has been levied and collected only once, that is, on the ultimate buyer, at the time of clearance from custom office.

To clarify taxation on High Sea Sales, **Circular No. 33/2017-Customs dated 1st August, 2017**, has been issued, which says **IGST on high sea sale transactions of imported goods, whether one or multiple sale, shall be levied and collected only at the time of importation** i.e., when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, in case of multiple sales, value addition accruing in each such HSS shall form part of the value on which IGST is collected at the time of clearance from customs.

IGST Computation in HSS Transaction

In our first Example, IGST will be levied and paid by C of Chennai at the time of Custom Clearance. Let us assume the following amount & rates for the computation purpose:

Sl. No.	Particulars	Amount/ Rate
1	Original Invoice Value (B to A)	Rs. 7,00,000
2	Last Invoice value (A to C)	Rs. 8,00,000
3	Basic Custom Duty	10% ad valorem
4	Education cess	3%
5	IGST	18%

In this Example, GST will not be charged by A to C on High Sea Sale. In fact, it will be paid by C directly, and the Amount is calculated as per Customs Act, which is as follows:

Sl. No.	Particulars	Amount
1	Last Invoice Value	8,00,000
2	(+) BCD: 8,00,000 * 10%	80,000
3	(+) Edu. Cess: 8,00,000 * 3%	24,000
4	Value for IGST	9,04,000
5	(+) IGST: 9,04,000 * 18%	1,62,720
6	**Total Cost of C (4+5)**	**10,66,720**
7	**Total Duty (2+3+5)**	**2,66,720**

Therefore, total duty of Rs. 2,66,720/- will be paid by C at the time of clearance from customs and GST will not be charged on High Sea Sales by A to C.

Input Tax Credits on Import & HSS

Clarification on whether Input Tax Credit can be claimed under High Sea Sales transaction is nowhere provided. Therefore, the treatment in case of HSS shall be in line with the treatment any other normal transaction. Let's analyse this as below:

(Contd. on page 24)

Introduction to International Taxation

CA. Cotha S Srinivas

International Taxation, denotes to the global tax rules that apply to transactions involving persons of different countries and cross border transactions. There are more than 190 countries in the world and most of them are Politically Independent but, Economically Dependent. No country, whether Developed, Developing or Under Developed, can confidently say they are economically independent.

What is International Taxation –

International taxation is the result of interplay of two or more tax jurisdictions arising on account of cross border economic transactions. It includes levy of taxes as per the domestic tax systems of countries, allocation of taxing rights between the countries based on residence as well as source jurisdiction, methods to eliminate or avoid double taxation, exchange of information for promoting economic relations between countries,

Why International Taxation – Trade between countries existed from several centuries. Now with the advent of technology and faster modes of transportation movement between countries, trade has become easier and swifter. The five main types of exchanges that happen between countries are –

a. Import and Export of Goods
b. Import and Export of Services
c. Movement of Human Resources
d. Investments in the form of Capital
e. Transfer of Technology.

Domestic taxation of the countries are not uniform, if all countries decide to tax only from their residents, then there won't be much confusion and no need for international taxation. But, countries would like to maximize their revenues through tax collections and hence, would also like to charge income sourced within its jurisdiction. Basis of taxation depends upon residence or source.

Residence Based and Source Based – Residence based taxation is one wherein the country will tax based on the residential status of the person, ie., Taxable Subject (Assessee). Source based taxation is one wherein the countries will see whether the source of a particular income arise from its jurisdiction and tax. The Taxable Object (Income) is the basis for taxation. If income arises from a particular country, irrespective of the residential status of the person, it would be taxable.

Residential Status of a person will be classified either as Resident or as Non-Resident in most of the domestic laws across the world. In Indian domestic law for resident we have two sub-classifications as R&OR and R&NOR.

Most of the countries follow both the above methods in taxation. In case of Residents' their world-wide income will be taxed and in case of Non-residents, income sourced in that country will be taxed.

Double Taxation Conflicts – In International Taxation, double taxation arises on account of the following situations:

1. Residence - Source Conflict
2. Residence – Residence Conflict
3. Source – Source Conflict
4. Income Characterization Conflict
5. Entity Conflict
6. Mismatching Tax Systems

Residence – Source Conflict: – Here the income of the assessee will be taxed twice, once by the source country from where it is earned/generated and then by the country of which he is resident as per the respective domestic tax laws of that country. This results in the double taxation of same income in the hands of the same assessee in more than one tax jurisdiction.

Residence – Residence Conflict: - Two countries claim that a particular person is resident of that country (state) based on their respective domestic tax laws. On account this both the countries will have right to tax worldwide income of the person. While taxing a person, he should be Resident of One Country and Non-Resident of other country/ies. A person can't be resident of two countries for tax purposes. To mitigate this conflict in the context of international taxation, the Double Taxation Avoidance Treaties have specific Tie-breaker rules.

Source – Source Conflict: - This situation arises when two or more countries claim the source of a particular income to be within their jurisdiction. Now with e-commerce, this conflict is increasing.

Income Characterization Conflict: - Two countries classify the same income differently. For eg. Indian Income Tax may consider an Income taxable under Capital Gains, whereas the same income may be taxed as Business Income as per the domestic tax law of other country.

Entity Conflict: - This is the case of an entity characterized differently under domestic laws of two countries. For eg: In India we tax partners and partnership firm as separate assessees. This may not be the situation in all the countries as per their domestic laws.

Mismatching Tax Systems: - Differing rules for assessment, definitions of taxable income, computation methods, tax rates, exemptions, assessment years, etc., are found in tax systems of different countries.

Invariably in the above mentioned circumstances, there is always the levy of tax by both the countries thereby resulting in double taxation. To mitigate the impact of double taxation, Countries enter into Double Tax Avoidance Treaties which focus on providing relief from Double Taxation in the form of Tax Credits or Tax exemptions, generally known as Methods for elimination or avoidance of Double Taxation.

Juridical and Economic Double Taxation – When we discuss about double taxation, there are two types of double taxation, one is called Juridical Double Taxation and the other one is called Economic Double Taxation.

Juridical Double Taxation means a Taxable Subject (Assessee) is taxed on the same income in more than one tax jurisdictions based on Source Rule and Residence Rule in different countries.

Economic Double Taxation is a case where the Taxable Object (Income) is taxed in different countries in the hands of different persons. Example for this may be Dividend where the company pays dividend distribution tax and the shareholder pays tax on dividend received.

Countries enter into Double Tax Avoidance Treaties to address these issues by providing relief from double taxation in the form of various methods. These relief methods are either Unilateral Relief or Bilateral Relief.

Objective of International Taxation –

National Wealth Maximization – National wealth maximization means that a country tries to protect its domestic tax base to ensure that it gets its fair share of revenue from cross-border transactions to enhance the well being of its citizens.-

Tax Equity or fairness – Tax equity or fairness is all about imposing equal taxes on taxpayers with equal income. A country can tax worldwide income of a resident, but in the case of non-resident it can't impose tax on income that arises outside the country.

Economic Efficiency – Economic efficiency means developing the competitiveness of a country's domestic economy. The tax structure of a Country should be clear and unbiased, so that the tax payer has clarity on the quantum of tax they need to pay on their income. Compliance and administration costs should be minimal in the tax structure.

Balance Capital Import Neutrality – Capital import neutrality is designed to achieve neutrality between the way that income derived from imported capital from foreign investors is taxed and the way that income derived from capital invested by local investors is taxed. All the investments in a given country must pay the same amount of tax regardless of the residential status factor

Balance Capital Export Neutrality – Capital export neutrality means that those investors face the same effective domestic tax rate whether they invest at home or abroad. The tax regime must be neutral to tax income derived from exported capital vis-à-vis income derived from capital invested domestically.

Fundamentally, it is necessary to ensure that business and investment decisions must not be only based on the tax implications and must be based purely on commercial consideration.

Legislation of International Taxation –

No Separate Codified Law – No Separate Tax – No Separate Court: - As explained earlier, we don't have a separate International Tax Act and accordingly no separate tax or separate court for International Taxation.

When no separate provisions exists, the domestic laws of respective countries will take care of international taxation.

International Tax Principles - While taxing international transactions, one needs to follow the accepted international tax practices, global tax rules and accepted conventions while taxing the non-residents. Non-residents global income need not be taxed in line with taxing global income of its residents. One country can't enforce tax on other jurisdictions.

Model Conventions and Model Commentaries - In order to have uniformity in understanding the concepts, defining the various types of income and defining the tax rights, we have Model Conventions and Model Commentaries. Any DTAA {Double Taxation Avoidance Agreement} entered into between countries have followed these conventions.

Model Conventions: - We have different model conventions like OECD Model Convention, UN Model Convention and US Model Convention.

DTAA - Double Taxation Avoidance Agreement is a formally concluded and ratified agreement entered into between two independent nations {Bilateral Agreements} or more than two nations {Multilateral Agreements} on matters concerning taxation in written form.

Coverage of DTAA's – Bilateral or Multilateral.

Bilateral Agreements – When DTAA is entered into between two independent nations, it is considered as bilateral agreements.

Multilateral Agreements – When two or more independent nations enter into an agreement, then it is considered as multilateral agreements.

India has entered into only Bilateral Agreements and it doesn't have any Multilateral Agreements.

Type of DTAAs – Comprehensive or Limited Agreement

Comprehensive Agreements – Comprehensive agreements are those which covers all types of income and many other aspects in the agreements entered into between countries.

Limited Agreements – Limited agreements are those agreements that, covers only a few types of income and transactions.

Relief – Countries provide relief for double taxation in the form of tax credit or exemptions. The relief can be either Unilateral or Bilateral. Unilateral relief is a relief provided to a resident of a country through its domestic law irrespective of whether the country has entered into an agreement with other country or not. Bilateral relief is a relief provided through DTAA. Where countries have entered into DTAA, the tax relief methods and quantum will be agreed upon and accordingly relief will be provided by both the countries to its residents.

Conclusion - After understanding some of the basics of international taxation, we need to know the provisions under domestic law that has relevance from the point of view of international taxation. Some of the Sections under Income Tax Act, 1961 which are relevant in the context of international taxation are Section 5, 6, 9, 44D, 90, 91, 115A, 195, 206AA.

As the businesses are growing and complexities are increasing the world has become a Global Village and Globalisation is showing its impact worldwide. Tax reforms are happening day in and day out to address the new complexities arising in international taxation. Now BEPS {Base Erosion and Profit Shifting} Action plans are talked about and MLI's {Multi Lateral Instruments} will be future of international taxation. Scope for international tax practice is increasing and it will be further increased over next decade. Lets' be prepared to face the Challenges and to convert the same into Opportunity.

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Workshop on GST Annual Return and Audit Guidance on Filing and Reporting

Proposed Rules are far from FAR

CA. Guruprasad Kasaravalli

Foreign Tax and Tax Research Division of Central Board of Direct Taxes (CBDT) has sought feedback from public regarding new rules proposed for attribution of profits to Indian Permanent Establishments (PEs). A Committee was formed to examine existing scheme of profit attribution to PE under Art 7 of the DTAAs and recommend changes in the rule 10 of the Income Tax rules. Specifically, views are sought on the recommendations of the committee as contained in section 11 of the report.

The relevant document/ notification is published on the official income tax website and dated 18th of April, 2019 which can be accessed in the following link: https://www.incometaxindia.gov.in/news/public_consultation_notice_18_4_19.pdf

The proposal, contained in a CBDT committee report, states that the post-2010 OECD model tax convention's method of attributing profits, which places reliance upon functions, assets, and risks (popularly referred to as FAR) for profit attribution to a Permanent Establishment (PE), neglects the demand or sales side of activity and represents only the supply side.

The proposal rejects the authorized OECD approach (AOA) and concludes, "one of the primary implications of the 2010 revision of Art 7 by the OECD was that in cases where business profits could not be readily determined on the basis of accounts, the same were required to be determined by taking into account functions, assets and risk completely ignoring the sales receipts derived from that tax jurisdiction. This amounts to a major deviation, not only from the rules universally accepted till then, but also from the generally applicable accounting standards for determining business profits, where business profits cannot be determined without taking sales into account."

The report goes on to say that a purview of academic literature and views suggests a wide acceptance in theory that demand, as represented by sales can be a valid ground for attribution of profits. There also exists a diversity of views among academicians and experts on the validity of the revised OECD approach for profit attribution contained in the AOA. A number of international authors disagree with it, and many have been critical of this approach.

The report observes that the OECD approach can have significant adverse consequences for developing economies like India, which are primarily importers of capital and technology. It restricts the taxing rights of the jurisdiction that contributes to business profits by facilitating demand, and thereby has the potential to break the virtuous cycle of taxation that benefits all stakeholders. Instead, it can set a vicious cycle in place that can harm all stakeholders

The report notes that broadly, possible approaches for profit attribution can be summed in three categories– (i) supply approach allocates profits exclusively to the jurisdiction where supply chain and activities are located; (ii) demand approach allocates profits exclusively to the market jurisdiction where sales take place; (iii) mixed approach allocates profits partly to the jurisdiction where the consumers are located and partly to the jurisdiction where supply activities are undertaken.

The mixed approach appears to have been most commonly adopted in international practices, though in some cases, demand approach has also been favored. In contrast, supply side does not appear to have been adopted anywhere, except in 2010 revision of Article 7 of the OECD model convention, which requires determination of profits without taking sales into account. As a consequence, the contribution of demand to profits is completely ignored.

The Committee considered some options based on the mixed or balanced approach that allocates profits between the jurisdiction where sales take place and the jurisdiction where supply is undertaken. The Committee did not find the option of formulary apportionment method apportioning consolidated global profits feasible, in view of the practical constraints in obtaining information related to jurisdictions outside India. Thus, Committee considers that it may

be preferable to adopt a method that focuses on Indian operations primarily and derives profits applying the global profitability, with necessary safeguards to prevent excessive attribution on one hand and protect the interests of Indian revenue on the other.

The committee makes the following recommendations, which are subject to public consultation:

For regular businesses, the approach recommended by the report entails the following steps:

First Step: Determine the profits derived from Indian operations of the enterprise being the higher of:

> (i) Global operational profit percentage on India sales; or (ii) 2% of the revenue or turnover derived from India.

Second Step: Apportion the profits to the activities of the PE by assigning weights to sales, assets, and employees as follows:

Factors	Weight
Sales: Proportion of PE sales in India / global sales of PE	0.33
Assets: Assets employed by PE for sales in India / assets employed globally for sales in India	0.33
Number of employees: Number of employees employed for Indian operations in India to total number of employees employed for Indian operations	0.16
Wages paid: Wages paid for Indian operations in India to total wages incurred in relation for Indian operations	0.16

Additional Factor for Digital businesses:

Under the domestic laws, a digital business would be considered to have a 'Significant Economic Presence' (SEP) that constitutes a 'business connection in India' if there exists certain specified conditions – such as existence of users beyond a threshold (threshold yet to be prescribed) For digital business, the committee has taken the view that the role of the user has blurred the traditional demand and supply functions.

In this regard, for digital business, apportioning the profits derived from India is based on four factors of sales, employees (manpower & wages), assets and users. The users are assigned a 10% weight in cases of low and medium user intensity, while each of the other three factors is assigned a weight of 30%. For digital models with high user intensity, users are assigned a weight of 20%, while the share of assets and employees is reduced to 25% each and keeping the weight of sales at 30%

The report expressly states that in all the above cases where the PE is constituted on account of activities of the associated enterprise in India, in view of the principle laid down by the India Supreme Court in the case of DIT Vs Morgan Stanley, as well as the need to avoid double taxation of such profits in the hands of a PE, the committee concluded that profits derived from Indian operations that have already been subjected to tax in India should be deducted from the apportioned profits.

The committee observed that in a case where no sales take place in India or sales is less than INR 1 million (approx. USD 14,300) during the year, and the profits that can be apportioned to the supply activities have already been taxed in the hands of an Indian subsidiary, no further taxes would need to be paid by the PE.

Few thoughts:

It is commendable that CBDT has placed Committee's recommendation in public domain and sought feedback from the public. Although a consultative approach has been adopted, a window of 30 days from the date of publication seems rather a short time frame to go through, digest and provide feedback on an 84 page report.

In view of this update, multi-national enterprises may have to evaluate and recalibrate their group strategy for profit attribution to PEs and in particular existence of PE in India and its profit attribution. This also could be harbinger of future litigation as it seeks to disturb the OECD approach and consistency achieved so far, in the taxation of profits derived by MNEs from its Indian PE.

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Financial Reporting and Assurance

CA. Vinayak Pai V

1. **Changes To Financial Reporting And Assurance – Monthly Roundup**

AS (Accounting Standards)	
1	Exposure Draft • **Revised Guidance Note** on Division I – Non IND-AS **Schedule III**
2	Exposure Draft • **AS 34 – *Interim Financial Reporting*** to replace AS-25 – *Interim Financial Reporting*
IND-AS (Indian Accounting Standards)	
1	Exposure Draft • **Revised Guidance Note** on Division II – IND-AS **Schedule III**
2	**ITFG** has invited suggestions regarding possible responses to **23 accounting and reporting issues** with respect to *IND-AS applicability and implementation issues.*
IFRS (International Financial Reporting Standards)	
1	Exposure Draft • **Interest Rate Benchmark Reform** (Proposed amendments to **IFRS 9** – *Financial Instruments* and **IAS 39** – *Financial Instruments: Recognition and Measurement*)
2	Proposed Amendments • IFRS Foundation **Due Process Handbook**
3	The IASB has commenced its **2019 Comprehensive Review** of the ***IFRS for SMEs*** standard
Assurance	
1	ICAI publication • Frequently Asked Questions **(FAQs) on Valuation**
2	**FAQs** on **UDIN for *GST and Tax Audit*** – ICAI Publication
Company Law/SEBI – Accounts and Audit Related	
1	SEBI revised Guidelines • **System Audit framework** for Mutual Funds/ Asset Management Companies (AMCs)
Certain Reserve Bank of India Notifications	
1	**Large Exposures** Framework (LEF)
2	**Disclosures in the Notes to Accounts** to the financial statements – *Divergence in the Asset Classification and Provisions*
3	Basel III **Framework on Liquidity Standards** – *Liquidity Coverage Ratio (LCR), Liquidity Risk Monitoring Tools and LCR Disclosure Standards*
4	Minimum standards for a **Currency Chest**
5	SCBs/All India FIs - **Disclosure in Notes to Account**s on **exposure to one particular *NBFC*** and *its group entities*
USGAAP (United States Generally Accepted Accounting Principles)	
1	Narrow **scope improvements** to the **Financial Instruments standard** • Codification improvements to *Financial Instruments – Credit Losses*, *Derivatives and Hedging* and *Financial Instruments* accounting topics.

2. **New lease standard proposed under AS framework**

Our Institute has issued an Exposure Draft of **AS 17 – *Leases*** to replace extant AS 19 – *Leases* applicable under the Non IND-AS framework. Salient aspects of differences between the proposed and existing standard is provided herein below.

- New leases standard has **specific provisions** dealing with **accounting of leases for land** and building. The extant standard scoped out lease arrangements to use land.
- AS 17 requires the lessee to **recognize finance leases** as assets and liabilities in the balance sheet **at the commencement of the lease term** whereas AS 19 required recognition at the inception of the lease.
- AS 17 requires that in case of **operating lease**, where **payments** to the lessor are **structured to increase in line with expected general inflation** so as to compensate the lessor for expected inflationary cost increases shall not be straight lined. AS 19 did not provide for the same.
- The term **'initial direct costs'** has been specifically defined in AS 17 and the definition of the term **'interest rate implicit in the lease'** has been modified in AS 17.
- There is difference in **treatment of initial direct costs** incurred by a **non-manufacturer/non-dealer lessor** in respect of a finance lease. Per AS 19, it can either be recognized as expense immediately or allocated against the finance income over the lease term. Under AS 17 no such provisions are there as interest rate implicit in the lease is defined so as to include such initial direct costs automatically in the finance lease receivable.

3. **Case Studies Section (Case 1) - IND-AS Impact – NBFC**

In this section, a case study summarizing the impact of IND-AS transition for a NBFC is provided. It may be noted that NBFCs transition to IND-AS in 2 phases (FY2018-19 and 2019-20). The analysis provided herein below is based on index numbers with the net worth as per previously reported AS GAAP considered as the base figure.

		INDEX
Opening Net Worth as per AS		**100.0**
Transition impact drivers		
Effective Interest Rate method for financial assets recognized at amortized cost • Impact of amortization of up-front fees and interest subsidy net of loan acquisition costs	(8.4)	
Effective Interest Rate method for financial liabilities recognized at amortized cost • Impact of amortization of costs incured on borrowings and deposits portfolio	0.8	
Expected Credit Losses (ECL) Impact • Impact of increase in ECL provisioning on standard assets	(2.8)	
Gains on **fair valuation of financial assets** at fair value through profit and loss • Impact of unrecognized gains on Mark to Market of Investments	0.5	
Total pre-tax Transition impact	***(9.9)***	
Deferred tax impact on above • IND-AS 12 *Income Taxes* impact on transition adjustments	3.5	
Net impact on opening net worth		***6.4***
Opening Net Worth as per IND-AS		**93.6**

4. **Transition to new IND-AS lease standard: The approaches available**

IND-AS 116- *Leases* is effective under the IND-AS framework from **April 1, 2019**. The new standard has introduced a **single lessee accounting model** and mandates recognition of assets and liabilities for all leases with a term of more than twelve months, unless the underlying asset is of low value.

IND-AS 116 is based on IFRS 16 – *Leases* that became effective from January 1, 2019 replacing the following extant lease standards:

a. IAS 17 – *Leases,*

b. SIC 15 – *Operating Leases- Incentives*,

c. IFRIC 4 – *Determining whether an arrangement contains a lease*, and

d. SIC – 27 – *Evaluating the substance of transactions involving the legal form of a lease.*

For the purpose of transitioning from IND-AS 17 to IND-AS 116, two transition options are available as summarized in the table herein below.

Full retrospective method	Modified retrospective method.
• Apply IND-AS 116 retrospectively to each prior period presented applying the principles of **IND-AS 8** – *Accounting Policies, Changes in Accounting Estimates and Errors.*	• Retrospectively, with the cumulative effect of initially applying the new standard recognized at the **date of initial application.** • Under the modified retrospective approach, the lessee records the **lease liability** as the present value of the remaining lease payments discounted at the incremental borrowing rate at the date of initial application and the right of use asset either as its carrying amount as if the standard had been applied since the commencement date but discounted at lessee's incremental borrowing rate at the date of initial application or an amount equal to the lease liability.

It may be noted that certain practical expedients are available under both methods.

5. **Case Studies Section (Case 2) – Reporting On A Key Audit Matter (KAM) – Inventory Valuation**

a) **KAM – Inventory Valuation:**

- The valuation of inventories of finished goods and work-in-progress for the company is a KAM as considerations include **management estimates and judgments** that include inherently **subjective judgments** about forecast demand and estimated market sales prices at the time the goods are expected to be sold as there is considerable holding period involved.
- Management uses valuation models including fluctuations in demand and supply and other factors that impacts output. These **factors influence the determination** of the most likely market conditions at the estimated date of sale.
- A key indicator for at-risk inventory values including finished goods and work in progress in the holding period is the identification of current slow moving and obsolete inventories. These can signal changes in consumer demand patterns or potential over supply issues that may in turn impact forecast prices.

b) **How the audit addressed the KAM and is reported in the Audit Report:**

- The auditors **tested key controls** designed by management **to identify slow moving and obsolete inventories** including inventories held by third party distributors, which if existing, may indicate valuation issues with work in progress and finished goods.
- The auditors **tested year-end inventory valuation models,** in particular the identification and valuation of inventories considered to be 'at risk" i.e. where the costs may potentially exceed the estimated net realizable value at the time of sale. The auditors used their knowledge from the company's identification of slow moving and obsolete inventories and underlying documentation such as forecast sales plans, inventory holding reports and committed future supply contracts.
- For a sample of at-risk inventory, the auditors **evaluated the proposed inventory value against the trends** from the underlying documentation for consistency.

- The auditors **assessed the reasonableness of management's action plans** in place to mitigate the risk and enable sale of potential at risk inventory above cost.
- The auditors **attended cycle counts/year-end stock takes in significant locations** which included observing the process of identifying slow moving and potentially obsolete inventory.
- The auditors **compared** the estimated net realizable value of slow moving inventories identified in **prior periods to actual sales outcomes** subsequently achieved, to assess the historical accuracy of the company's forecasting process.
- The auditors **assessed the company's inventory valuation methodologies** and the **company's disclosures** in respect of inventory valuation against the **requirements of the relevant accounting standards**.

6. **Back to Basics Section: IND-AS Accounting For Borrowings – A High Level Overview**

Herein below are discussed the salient aspects of IND-AS accounting for **Borrowings**.

- Borrowings are initially recognized at fair value, net of transaction costs incurred.
- Borrowings are subsequently measured at amortized cost using the effective interest rate method.
- Interest costs are calculated using the effective interest rate method. The effective interest rate is the rate that exactly discounts estimated future cash payments or receipts through the expected life of the financial instrument irrespective of whether interest is paid periodically or at maturity.
- Borrowings are classified as current liabilities unless the company has an unconditional right to defer settlement of the liability for at least twelve months after the reporting date.
- Borrowings are de-recognized from the balance sheet when the obligation specified in the contract is discharged, cancelled or expired.

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High Sea Sales Transaction under GST

(Contd. from page 15)

Under the CGST Act, 2017, "Input Tax" is defined to include CGST, SGST/UTGST, IGST and compensation cess under GST. Thus, Input Tax Credit (ITC) of IGST and any compensation cess, if paid any, on import of goods can be claimed. However, compensation cess can be used only against payment of compensation cess.

Accordingly, in our Example, C can claim ITC of IGST Rs. 1,62,720/- paid by him. Further, ITC of BCD & Education Cess is not available under GST Law.

Further, High Sea Sale made by A to C, being covered under Schedule III of the CGST Act, is an 'Exempt Supply'. As per sec 17(2) of the CGST Act, 2017, ITC is restricted to be claimed only up to taxable supplies including zero-rated supplies, and cannot be claimed for that portion of supply used for making exempt supply.

Therefore, the credit of tax paid by A on any goods or services used to make the High Sea Sale to C, cannot be claimed as Input Tax credit and shall be reversed accordingly.

Conclusion

"High Sea Sales" is a terminology used in common parlance for "Sales in the course of import". The Sale taking place by transfer of documents of title to goods before goods are cleared from customs is a sale in the course of import i.e. high sea sales and not liable to GST as it has been specifically included in Schedule III of the CGST Act, treated as a transaction neither supply of goods nor service under GST.

In the High Sea Sale Transaction, IGST will be charged only once, on the Import of goods in to India on the ultimate buyer, which is computed as provided under the Customs Act.

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REPRESENTATION ON EXTENSION OF DUE DATE FOR FILING ROC FORM INC22A ACTIVE AND UNIFICATION OF FORMS TO REPORT ALL TRANSACTIONS RELATING MSME, LOAN, ACTIVE, BENEFICIAL OWNERSHIP UNDER ONE MULTI-PURPOSE FORM

Date: 20th April 2019

To,

Shri. Arun Jaitleyji
Hon. Union Minister of Finance and
Corporate Affairs, Government of India
North Block, New Delhi - 110001

Hon'ble Sir,

SUBJECT: REPRESENTATION ON EXTENSION OF DUE DATE FOR FILING ROC FORM INC22A ACTIVE AND UNIFICATION OF FORMS TO REPORT ALL TRANSACTIONS RELATING MSME, LOAN, ACTIVE, BENEFICIAL OWNERSHIP UNDER ONE MULTI-PURPOSE FORM

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, primarily formed for the welfare of Chartered Accountants, represents before various regulatory authorities to resolve the professional problems faced by chartered accountants and business community.

We have written to your good selves many a times populating issues and possible solutions. Herein, we are presenting before your good selves the difficulties and hardship faced by the trade, consultants and companies at large due to incessant changes and NEW FORM INTRODUCTIONS and NON-TIMELY RELEASE OF FORMS in adherence of the due dates prescribed. The ongoing election schedule and general holidays is also having bearing on the hardships caused by delay in supply of the compliance information.

This Government has the primary vision and motto of **"Minimum Government and Maximum Governance"** while the recent spate of rules and ROC forms released and requirements of compliance of the below stated ROC Forms is running

contrary to the spirit, intent and course of the set motto and vision.

1. Changes in Companies (Significant Beneficial Owners) Rules 2018 to identify individuals and entities having significant control over affairs of a company requires filing of BEN-1, BEN-2, BEN-3 and BEN-4 forms.
2. Companies (Incorporation) Rules 2014 mandating all companies incorporated prior to 31st December 2017 to update particulars of registered office in Form 22A Active; with due date of 25th April 2019.
3. Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order 2019, mandating all the companies who receives goods or services from MSME and non-payment of such dues beyond 45 days, to report such transactions in MSME Form1.
4. Changes in Companies (Acceptance of Deposits) Rules 2014 mandating all companies to file a return of deposits in Form DPT3 furnishing details of transactions and certified from the statutory auditor (requiring certain procedures consistent with audit) within certain short deadline.

The fact of the matter is that these forms individually have to be complied within a specific deadline and certainly is dependent and is parallelly connected to matters like finalisation of accounts, timely release of forms, timing of compliance interfering with elections; GST audit of FY 2017-18 notified to be filed before 30th June 2019; ongoing tax and statutory audit deadlines which have due date of 30th September; lack luster support from companies against the backdrop of this deadline to supply consistent information for filing of forms.

Another issue on hand is the penalty of sizeable amount for non-compliance or delayed compliance, which could partly be for myriad of reasons like the election/ audit deadlines under any of the parallel statutes/ availability of consistent information/ uniform need of compliance by all entities disregarding the set-up whether be it for micro/medium/small scale of enterprise having its own set of challenges. These have an ample forbearing in hindsight.

SUGGESTIVE STEPS:

While taking these implements constructively, we do understand the need to have these forms selectively as against the wide diaspora of the corporates, which are having a nascent set-up. It would be helpful to consider the below suggestions:

1. Beneficial Ownership can be detailed in Annual Form itself and there are sufficient ways of including this in the annual return, by seeking additional drop-down list of beneficial owners in members who are corporates or partnership firm etc.
2. ROC Form 22A Active: The due date may be suitable extended for a reasonable time span, with a reduced penalty as anyhow non-compliance would hamper their other form filing prospects. Then why impose huge penalty.
3. ROC Form MSME can be made an annual form with reporting for half yearly time span under one single annual form, due date of which can be congruent with Annual Form filings like AOC4 and MGT7.
4. Deposit and loan transactions can be reported in the annual return/ separate form filing congruent with the annual filing's deadline would do good.
5. Unified Multipurpose ROC Form having disclosure for these matters, namely: Beneficial Ownership; Loans and Deposits; MSME transactions would definitely do a world of good for the corporates.
6. Small Companies have to be encouraged by providing simple get away from these recurring and elaborate compliances.

7. Penalty must be reasonable keeping in view the elementary hardships considering the general economic and business set-up of the country laced with the actual Ease of Business necessary to boost the economy without drawing any parallels to the improvements underway already to this date.

There is sufficient cause and need for the extension of filing of Active Form 22A and unified reporting of other matters with a due date deadline congruent with the Annual Forms filing and nascent penalty provisions for small companies to foster friendly regime.

This write-up is on the back of representation received from trade bodies and practitioners who are in the thick of things and their request for seeking redressal to issues faced.

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

Thanking you,

Yours sincerely,

For **Karnataka State Chartered Accountants Association ®**

CA. Raghavendra Shetty
President

CA. Kumar Jigajinni
Secretary

CA. Vijay Sagar Shenoy
Chairman, Representation Committee

CA. Deepabali Das
Chairperson, Accounting, Auditing, Corporate & Allied Law Committee

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

Karnataka State Chartered Accountants Association®

REPRESENTATION ON REVISION OF AUDIT FEES FIXED FOR STATUTORY AUDIT OF CO-OPERATIVE SOCIETIES & CO-OPERATIVE BANKS IN KARNATAKA

Date: 16th April 2019

To,

The Principal Secretary
Department of Co-operation, Govt. of Karnataka
M.S. Buildings, Bangalore

Dear sir,

Subject: Request for revision of Audit fees fixed for Statutory Audit of Co-operative Societies & Co-operative Banks in Karnataka

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.

Herein, we are presenting before your good selves the genuine need for revision of Audit fees prescribed for Statutory Audit in view of facilitating good quality of audit.

To provide a backdrop, The Karnataka Co-operative Societies Act, 1959 was amended and Statutory Audit of Co-operative Societies was made open to Chartered Accountants. Before the amendment, the audit of societies was conducted by Department of Co-operative Audit and the fees was fixed for such audits was at 20 paise for every Rs.100 working Capital up-to Rs.10 Crores of turnover of the concerned Society. However, the said fees was reduced to Rs. 10 paise when the audit was thrown open to Chartered Accountants in the year 2013.

Even after elapsing of 6 years, the same audit fee structure is being continued and with the rise in inflation and cost of quality manpower, the existing fee structure is unsustainable. Similarly, the audit fees of co-operative banks fixed in the year 2010 has not undergone any revision. Further, the above audit fees is inclusive of all expenses and no separate TA/DA is being reimbursed, which is not as per commercial practice and needs.

We herein humbly request your good selves to please intervene and revise the audit fee structure to meet the current trends. We are of a view that your positive directive will help CA fraternity to enhance their service offerings and the quality of audit.

Eagerly awaiting positive response!

For **Karnataka State Chartered Accountants Association ®**

CA. Raghavendra Shetty
President

CA. Kumar Jigajinni
Secretary

CA. Vijay Sagar Shenoy
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Karnataka State Chartered Accountants Association (R)

Two days Residential Leadership Program

for Chartered Accountants

By

Santosh Kumar P and **Nibu K John**

National Level Corporate Trainers

About the Venue:

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1. **Training will be held inside the Nature of Maland**
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For further details contact:
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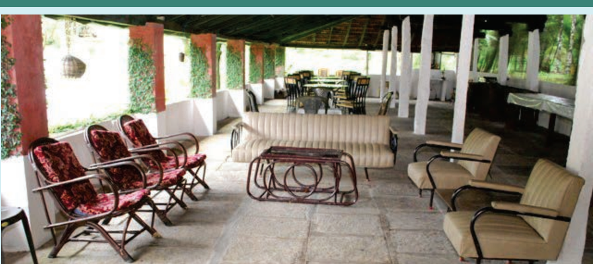

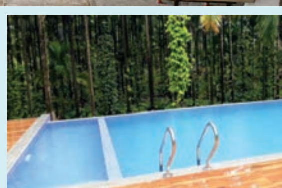

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