KSCAA

Karnataka State Chartered Accountants Association ®

NEWS BULLETIN

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CONVERGENCE
- Creating Impact Together

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Financial Reporting and Assurance

Accounting Profession: A View of Tomorrow

Sports & Talent Meet 2019

Saturday, 9th November 2019
BEL Ground, Bengaluru

Sunday, 10th November 2019
KGS Club, Cubbon Park, Bengaluru

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From the President

Dear Professional friends,

I'm happy to write this month message to my professional friends. The month October marks season of festival with mark of grand Diwali and my happy wishes to all the professional friends for a happy and prosperous Diwali ahead. With extension coming right in time, it allows members to rejoice the time at the festival. The grandeur of Diwali is not just lights but the symbolic principles which lie before us are the positive vibrant of light over darkness. Darkness symbolises an uninformed mind while light, an informed mind. These festive asserts the journey towards knowledge, and from there emanates a strength to avail a bigger challenge.

News Roundup

Goods and Service Tax

Due date for filing Annual return and Reconciliation Statement for FY 17-18 has been extended from 30th September 2019 to November 2019. Renting of Motor vehicles by registered taxpayers other than body corporates to body corporates is brought under RCM. Also transfer of copyright rights by authors of original literary works to publishers is brought under RCM.

GST Council in its 37th meeting held at Goa on 20th September 2019 has taken few key decisions, they are:

- Filing of Annual return by composition dealers in form GSTR9A has been exempted for FY 17-18 & 18-19.
- Filing of Annual return by normal dealers in form GSTR9 with aggregate turnover up to Rs. 2 Crores has been made optional for FY 17-18 & 18-19. For others dealers with aggregate turnover of Rs. 2 Crores onwards, it is mandatory to file both GSTR9 and Reconciliation statement in GSTR9C by 30th November 2019 for FY 17-18.
- Implementation of New return filing is further deferred from October 2019 to April 2020.

Corporate and Business Law

In a recent circular, MCA extended the due date for filing form BEN-2 to 31 Dec 2019. The extension was provided on account of certain new aspects which require further examination and clarification. Further, on account of various representations the due date for filing DIR-3 KYC was also extended to 14 October 2019.

Keeping in mind the above due date extensions the MCA has clearly sent out a message to all the corporates to plan their annual filings in MCA21 portal in the month of October and November. To avoid last minute rush and system congestion on the portal MCA requested the stakeholders not to postpone the filings to last days. Also, it is to be appreciated that during this period Corporate Seva Kendra/ Help desks would give priority to e-filing/answering queries of companies for filing financial statements and annual returns. This kind of approach from the Government would help the professionals complete the required compliances in time and reduce the instances of due date extensions.

MCA, through a notification dated 5th September, 2019, issued NFRA (Amendment) Rules, 2019. Through this Amendment Rules:

- The last date for filling Annual Return by the auditor (as covered under NFRA Rules, 2018) has been extended from 30th April every year to 30th November every year.
- Form NFRA-2 which is the format for filling Annual Return by the auditor has been newly introduced, which was not specified under the NFRA Rules, 2018.

Income Tax

- CBDT has extended the due date for filing the income tax return and audit reports to 31st October 2019 for the returns which were due to be filed on or before 30th September 2019.
- E-assessment Scheme 2019 has been notified by the Central Government on 12th September 2019 for facesless and paperless assessments.
- Corporate tax rates for domestic companies reduced to 25.17% for Financial Year 2019-20, subject to the condition that such companies do not avail any specified incentives or exemptions.
- Manufacturing companies set up after 1st October 2019 to get an option to pay tax at the rate of 15% [effective rate 17.17%]. Such companies are exempt from MAT.
- CBDT has provided relief on applicability enhanced surcharge [introduced by Finance Act 2019 (2)] for certain specified capital gains/tax payers.

Representation

We have represented to the GST council through a representation regarding manner of taxability of services provided by an office of an organisation in one State to the office of that organisation in another State.

Upcoming Programs

We have planned following programs in the month of October 2019

- Workshop on Income Tax E-Assessment
- Workshop on Basics of Transfer Pricing

Our program, eloquent professional is running successfully and has received accolades from members participating in it. We have stalwarts from our profession, who are guiding the participants in various dimensions and magnitude. I request members to take benefit of such programs and come out with improvements and suggestion, if any.

"Darkness cannot drive out darkness: only light can do that"

This quote from Martin Luther King drew my attention because it is that knowledge which we consider light that can eradicate darkness of ignorance and especially for a profession like ours, whose responsibility towards society is measured with the knowledge we prowess and possess. It is only these times that we become vulnerable to disruptions, and eminence of knowledge eradicates such darkness.

Yours Sincerely,

CA. Chandrashekara Shetty,
President

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KSCAA Office shifted to New Premises at below address:

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Survey under Income Tax Act, 1961

CA. S. Krishnaswamy

- *Survey powers conferred and without a notice.*
- *Survey is limited in scope as to Place and Time.*
- *Survey applies only to businesses.*
- *Survey is intended to collect information and to verify records are kept on a day to day business.*
- *A statement obtained during survey is subject to modification or retraction at the time of assessment.*
- *A survey information may lead to reassessment or search.*

1. Personal privacy whether at a business place or home is generally protected under law. Exceptions however are made, in particular in tax laws with sufficient safeguards for exercising such power. The Income Tax Act, 1961 makes a provision for survey of a business premises without notice-with an element of surprise.

   Section 133A confers power of survey for tax authorities subject to certain conditions laid down in the section. The power encompasses the authority to survey -

a) any place within the limits of the area assigned to him, or

b) any place occupied by any person in respect of whom he exercises jurisdiction, or

c) any place in respect of which he is authorized for the purposes of the Sec.133A by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place.

   Sub-section (2) to Section 133A restricts a survey; which reads –

   "(2) An income-tax authority may enter any place of business or profession referred to in sub-section (1) only ***during the hours at which such place is open for the conduct of business or profession*** *and, in the case of any other place,* ***only after sunrise and before sunset****."*

2. Issues that are come up for judicial adjudication:

1. Recording a statement during a survey:

   The statement on oath made by an assesse to the authority during the survey proceedings under Section 133A is not conclusive. The assesse could explain or withdraw the admission, if any, made by him in such statement. The assessment of tax could not be made solely on the basis of such sworn statement made by the assesse but such statement could be used to corroborate other materials before the assessing authority, including the contents of any document.

   Paul Mathews and Sons vs CIT (2003) 263 ITR 101 (Ker), CIT vs. Hotel Samrat (2010) 323 ITR 353 (Ker) and Travancore Diagnostics (P) Ltd vs. ACIT (2017) 390 ITR 167 (Ker) followed.

2.1 C K Abdul Azeez vs. CIT (2019) 417 ITR 363 (Ker)

"Section 133A(3)(iii) of the income-tax Act 1961 provides that an authority acting under section 133A may record the statement of any person during the survey proceedings which may be useful for, or relevant to, any proceeding under the Act. The expression "any person" in the provision includes on assesse. Section 133A, unlike section 132(4) **does not specifically empower the authority to examine a person on oath**.

Section 133A does not also prohibit the authority to administer oath to a person. As in the case of an accused in criminal proceedings, there is no specific prohibition as contained in section 4(2) of the Oaths Act, 1969 against administering an oath to an assesse in the proceedings under section 133A of the 1961 Act. The status of an assesse in proceedings under section 133A of the 1961 Act cannot be equated to the status of an accused in a criminal case. Therefore, merely by reason of the fact that the income tax authority has administered an oath to an assesse and recorded his sworn statement during the survey proceedings under section 133A of the 1961 Act, it does not mean that such statement has no evidentiary value at all and that it cannot be used in any manner against the assesse in any proceedings under 1961 Act."

2.2 Retracting statement:

A statement recorded u/s 133A of the Act in the course of survey is different and distinct from a statement recorded u/s 132(4) in the course of search and seizure and the evidentiary value ascribed to the two is not the same. Where u/s 132(4), the statement recorded by the searching officer is specifically permitted to be used as evidence in any proceedings under either the 1922 or the present Act, there is no such sanctity conferred on a statement recorded in the course of survey is limited

to the extent to which it is useful or relevant to any proceeding under the Act. Thus, a statement recorded in the course of survey can, at best support a proceeding for reassessment. It cannot be the sole basis for reassessment.

Held accordingly-

a. CIT vs. Kelvinator of India Ltd (2010) 320 ITR 561 (SC) (para 17)
b. CIT vs. Khader Khan Son (2013) 352 ITR 480 (SC) (para 22)
c. CIT vs. Thippa Setty (Dr) (N) (2010) 322 ITR 525 (Karn) (para 15)
d. GKN Drivesshafts (India) Ltd vs. ITO (2003) 259 ITR 19 (SC) (para 8,9)
e. ITO vs. Lakhmani Mewal Das (1976) 103 ITR 437 (SC) (para 17)

3. Difference between survey and a search:

A survey is to be distinguished from a search operation. A survey is limited to the business premises. Only if record are kept elsewhere then the scope is expanded. Below is the differences-

1. A survey is covered under Sec.133A of the Income Tax Act 1961 whereas a Search is governed by Sec.132 of the Income Tax Act, 1961.
2. Survey can take place only during working hours on business days. It can continue even after working hours. But, a **search** can take place on any day after sunrise and continue until the procedures are completed.
3. In a **survey**, the income tax authorities have a right to enter only those places which are deemed to be the place of business or profession, whereas in a **search** operation, they can search any place including residential premises, vehicle, or any other place, without any restrictions of whatsoever nature, which they believe is required to be searched.
4. During a **survey**, the authorities can only impound your books of accounts whereas in a **search** operation, the power of seizure can be exercised to seize not only the books of accounts but also money, bullion, jewellery or other valuable articles.
5. A person cannot be physically searched during the course of a **survey** although physical inspection of all the members present at the premises, including the ones who are about to leave or about to enter, is permitted in a **search.**
6. The right of recording the statements made by the assessee is given to the officers in a **survey.** In both the operations, the officers are authorized to record the statement of an assessee or any other relevant person; however, in the case of a **search** operation a statement made by the assessee can also be taken on oath which has severe implications.

3.1 Judicial pronouncements:

i. It was held by the Hon'ble Gujarat High Court in the case of **PCIT Vs. Texraj Realty P. Ltd vide Appeal No. R/tax appeal no. 612 of 2018 judgement pronounced on 12/06/2018** that addition of undisclosed income cannot be made on the basis of (a) entries in dairy found during survey & (b) admission of director in s. 133A survey if assesse has filed a retraction and alleged that the entries/ statement were recorded under pressure. As Sec.133A statement is merely information simplicitor and not evidence per se. Addition cannot be sustained if the Department has not investigated the matter and find material to support the addition.
ii. Prior notice of survey is not required to be given as held in the case of **N.K. Mohnot v. Dy. CIT [1995] 215 ITR 275/83 Taxman 238 (Mad.)**.
iii. Income Tax officials cannot survey the business/ residential premises of third parties or residential premises of assesse subject to extension for limited purposes – clarified in CBDT in Circular: No. 7-D (LXII-7) of 1967, dated 3-5-1967.
iv. It was held in **ITO v. Jewells Emporium [1994] 48 ITD 16(IndoreBench)** that if a inspector records statements on oath or prepares cash or stock inventories, he acts beyond his powers.
v. It was held in the case of **Ambalal v. Union of India [1983] 13 ELT 1321 (SC)** that statements recorded under threat, coercion, inducement or promise are not valid but the person concerned should take care to retract such statement without delay.
vi. Premises cannot be sealed after or in course of survey. Section 133A or section 132 nowhere provides for sealing of the business premises before or subsequent to the survey or even if there is difficulty in making survey as held in the case of **Shyam Jewellers v. Chief Commissioner 1990 Tax LR 696 (All.).**
vii. It was held in the case of **Rameshwar Lal Mali v. CIT [2002] 256 ITR 536 (Raj.)** that there is no provision for permitting cross-examination of the person whose statement is recorded during the survey.
viii. It was held in the case of **Jt CIT vs Signature.[2004] 85 TTJ 117 (Del 'C')** that penalty under s 271(1)(c) cannot be imposable in respect of income surrendered during survey and shown in return, and about which no satisfaction as to concealment was recorded by AO in order of assessment.
ix. Survey is possible even to enquire about tax deducted at source as held in the case of **Reckitt and Colman of India Ltd vs. ACIT (2001) 251 ITR 306 (Cal).**

x. A person surveyed can be examined on Oath while recording a statement u/s 133A as held in **CIT vs. Khader Khan Son (2012) 25 taxmann.com 413(SC) and ACIT vs. Maya Trading Co. (2013) 34 taxmann.com 144 (ITAT-Agra).**

xi. Documents found during survey has no evidentiary value unless and until proved by some cogent material and the books of account as held in the case of **CIT vs. Diplast Plastics Limited (2010) 186 Taxmann 317/327 ITR 399 (P&H).**

xii. It was held in the case of **Chawla Brothers P Ltd vs. ACIT (2011) 43 SOT 651 (Mum)** that merely on the basis that at the time of survey, some differences were found in stock did not mean that there would be an automatic addition on account of differences. Such differences are always subject to explanation and reconciliation.

xiii. Addition made to assessee's income on the basis of admission during survey without any supportive material is not sustainable as held in the case of **B. Ramakrishnaiah vs. ITO (2010) 39 SOT 379 (HYD)/Ashok Manilal Thakkar vs. ACIT (2005) 97 ITD 361 (AHD).**

4. Duties of assesse in the case of survey:

The persons present in the premises surveyed must offer the following facilities to the Income-tax Authorities:

a. Facility to inspect the books of account and documents;

b. Facility to check or verify cash, stock or other valuable articles;

c. To furnish such information as may be required on any proceeding under the Act; and;

d. Offer clarifications that are necessary.

5. Powers of officials who are on Survey:

1. To inspect books of account and other documents and make a mark of identification on them.
2. To verify cash, stock or other valuables.
3. To make an inventory of cash or other valuable articles.
4. To obtain relevant information or record of statement.
5. To approach a higher authority for conversion of a survey into a search and seizure action.

6. Admission - if because of coercion CBDT issued warning to its officials:

CBDT, has issued an order to all Principal Chief Commissioners and heads of investigation and intelligence units of the Department as follows-

"...the board (CBDT) has emphasized upon the need to focus on gathering evidences during search/survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence,"

Further, CBDT in its directive to IT department said-

"Such actions defeat the very purpose of search/survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the department as a whole and officers concerned in poor light."

7. Conversion of survey into a search:

This is possible. If in course of survey information comes to the department that the conditions for authorizing search exist, the department can initiate search operation subject to fulfillment of procedure thereof subject to certain conditions.

It was held in the case of **Vinod Goel vs. UOI (2001) 252 ITR/Taxmann 690 (P&H)** that "…if during the survey operation, information comes to the department which leads to formation of a reasonable belief that the conditions authorizing action u/s 132(1) exist, the department has right to take action u/s 132."

However, if the survey is converted into search without fulfillment of conditions precedent for initiating search or without application of mind or satisfaction by the higher authority eligible to initiate search then the search will be illegal as held in **Dr Nalini Mahajan vs DIT(Inv) (2002) 257 ITR 123.**

8. Sec.133B - Power to collect certain information:

A separate Section for the purpose of collecting information only is inserted as Sec.133B in addition to the survey power u/s Sec133A.

The section enables an authority to enter any place of business and require attending in any manner to, or helping in, the carrying on of such business or profession to furnish such information in Form No.45D.

The section specifically declares that on no account anything can remove or cause to be removed from the building or place wherein he has entered, any books of account or other documents or any cash, stock or other valuable article or thing.

9. Conclusion:

In the case of businesses it is imperative that all the relevant records are maintained at the business place and queries regarding physical stock and cash balance are satisfactorily reconciled with records maintained. A survey is not a raid and it should not be allowed to be same as search, meaning, a person on premises cannot be searched.

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Accounting Profession: A View of Tomorrow

CA. V. Pattabhi Ram

I am acutely aware that men of great stature and standing have had egg on their face trying to make predictions. I will, with my limited experience, try to paint a broad canvas of the impending changes across the next 15 years: what I call the four Drivers of Changes and the three Major Shifts that would have severe ramifications across professions, including that of chartered accountancy.

The Curtain Raiser

The curtain raiser happened sometime in 2009-10. Around that time, the ICAI decided to add significantly to the membership. So in the next 10 years, we produced as many CAs as we had produced across the first 60 years. Suffice to say, the ramifications are being felt in the market place. Employment is no longer a given. The result: unlike earlier, when 90% of the new CAs went for jobs, today the number is falling.

DRIVERS OF CHANGE

I now move on to the four drivers of change.

The first driver of change is Globalization. The world today has become a lot more borderless than it was in 1989. Over time, the world became more interconnected with the collapse of geographical boundaries. Globalization has compressed both time and space. In the years ahead, this is going to get more accentuated, and the world will shrink in size, time, and distance.

You won't have to be a member of the ICAI to do audits in India. You won't have to be an American CPA Audits to audit US firms. Nor will the audits in England be restricted to by the members of the Institute of Chartered Accountants of England and Wales and the sundry other Institutes holding allegiance to the UK.

You will see an umbrella body into which all the public accounting institutes will be a member, and any member of an institution holding a membership in the Global Umbrella will be eligible to audit any firm anywhere in the world. While this will open up global professional opportunities, it will enhance worldwide quality and could knock the bottom out of our profession if we don't stay updated. Yes, those of you who plan to be around by 2030 have to be ready for this global competition and to survive, you need to be state-of-the-art.

The second driver is Society. In our generation, we have seen an eclectic shift from a joint-family to a nuclear family. In the coming years, as we get more aspirational, you will see a splurge of broken families if I could call it that. Both the husband and the wife, keen on their respective corporate careers, will place a career ahead of family. It could be quite possible for one of them to work in one part of the country or one part of the world and the other to work in another part of the country or another part of the world and possibly meet only over the weekend or the quarter-end.

The result: children will possibly grow on the lap of the grandparents than in the lap of parents. This will spawn a generation of young boys and girls, growing outside the periphery of the immediate family, who would swear by I-Me-My-Mine. The self would come first ahead of the firm, ahead of the Society. You will see intense job-hopping at every level, including in professional accounting firms, including at the senior-most level. To retain the talent you will have to meet their aspirations head-on. Those of you who plan to be running the organizations of tomorrow will have to keep this in mind.

The third driver is Technology. The Internet has been the most significant 10X change of our time. Technology will continue to lead the drive of our profession in the coming years. It will also be the killer application of the 21st century. With the cloud becoming ubiquitous, gadgets becoming smaller and savvier, audits will be taken over by Technology; fully. With the population expected to touch 9 billion by 2015, about 6 billion and counting are going to be sitting on the Internet.

With documents flying thick and fast across mails, audits will happen from remote locations with the client seated many miles away. Just like the spreadsheet killed the 13 columnar-sheet and the calculator, Technology will kill paper audits. Frauds will increasingly turn white-collar; the new fraudster would be the boy-next-door, well dressed, well articulated and well educated. The challenge will lie in auditing processes, not outcomes. Most companies will

have compulsory forensic audits. Quality in everything we do will become the norm.

The fourth driver is Demography. The remarkable advancements in modern medicine mean that people are going to live longer. Higher health consciousness implies that people are going to live fitter. Yes, people are growing to work well into their 70s even if they don't own the company or the firm. 70 will be the new 50. Retirement at 58 will not be the norm. The workforce, therefore, will have people spawning different generations; the twenties, the thirties, the 40-50s, the 60 plus, and the 70 plus. To that extent, the workforce will be more experience. Worse still, if current indications are anything to go by, we will have an army of accountants by 2025.

If you plan to run accounting firms in the twenties, the challenge for you will lie in ensuring that these different generations work cohesively. In a world where societal changes will be like what I talked of earlier, this is not going to be easy. There will have to be a lot of giving and a lot of taking.

MAJOR SHIFTS

I now move on to the three major shifts.

These will drive professions in general and ours in particular. They are Intelligence, Societal, and Emotional.

Shift 1: Intelligence Quotient

We will see a shift from broad generalists to quick-fire continuum specialists. Today, if you are the CEO of a company or the Country Partner of an Accounting firm, you don't have to have an in-depth understanding of any specific function. In the years ahead to make the cut, you need to be a specialist in a chosen area. If you specialize in those competencies that people value, it would be great; but that alone won't do. These competencies could fast lose value; once that happens, you need to specialize in another area.

You need to know why some competencies are more valuable than others. Some areas become valuable because they are rare, or they are plain fashionable. While it is good to specialize in what is the flavor of the day, it would be finer still to go with where your heart is. It is quite possible that what you choose to specialize may not be the red-hot thing, but if you want to make a mark, you need to follow your passion.

Shift 2: Social Quotient

As Technology spreads its tentacles far and wide, as we increasingly become a fragmented society, as an entire generation grows up outside the broad spectrum of a social family, we would look increasingly a lonely community. Even as you specialize in a chosen field and even as you tread a lonely furrow, it would be necessary to build bridges. Like, 6 billion people are sitting on the Internet, connected to the rest of the world 24x7. Yes you will have to connect to the world and be a networked individual to survive. You may or may not have met the other person, but you will do business through and with him.

Shift 3: Emotional Quotient

Despite an I-Me-My-Mine society, people may not be chasing money. As people will be working into their 70s, many would want to retire in their 40s to pursue passions that are dear to them. Even when they work, conspicuous consumption, which is the trademark today, may not be what will drive them. People will opt for lower emoluments in so far as they can get satisfaction and enrichment in their work profile. If you are someone who would be running a profession in the 2020s, beware: you cannot get and retain people purely through what you offer in terms of money; you also need to provide enrichment in work experience.

Tomorrow's generation will look beyond money; it will look at fame, at fortune, at speed, at learning, and at a value system. You need to pack them all in.

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KSCAA proposes to own office with following criteria:

Space: 2000 to 4000 sq. ft. area within BBMP Limits, access to Metro Station with sufficient parking facility

Those interested can contact: info@kscaa.com, Ph: 080-2955 2155

Intricacies in E-way Bill under GST law

CA. Annapurna D Kabra

- E-way bill is an electronic document generated on the GST portal evidencing movement of goods. Electronic way Bill (E-Way Bill) is basically a compliance mechanism wherein by way of a digital interface the person causing the movement of goods uploads the relevant information prior to the commencement of movement of goods and generates e-way bill on the GST portal. The Provisions relating to E-way bill are introduced throughout the country from 1.04.2018 for inter-State movement of goods. The Provisions relating to E- way bill for the intra state transactions was introduced phase wise. There are series of notifications issued for the Implementation of E-way bill.
- Section 68 of CGST Act pertains to inspection of goods in movement. It states that the person in charge of a conveyance carrying any consignment of goods of value exceeding notified amount should carry with him such documents and such devices as may be prescribed. The details of documents as required to be carried is prescribed in the Rules. Wherever the conveyance is intercepted by the proper officer the person in charge should produce the documents and should allow the inspection of goods. Physical verification shall be done only once during the entire journey, unless specific information relating to evasion of tax is made available subsequently. Hence Rules relating to E- way bill, though promulgated in CGST Rules would apply with equal force to inter-state movement of goods.
- As per Rule 138(1), Every Registered Person who is causing movement of goods whose consignment value exceeds Rs.50,000/-, shall before commencement of such movement furnish information relating to such goods through Part A of Form GST EWB 01 when such movement is in relation to supply (like Sale or transfer to distinct person) **or** such movement is for reasons other than supply (like job work, goods sent on approval basis, exhibition purpose, demo, or testing, weighment, stock transfer within state, or to other own business unit within the state) **or** Such movement is due to inward supply from an un-registered person.
- The Registered person can authorize transporter or E commerce operator or a courier agency to furnish the information in Part A of Form GST EWB-01, on behalf of the Registered Person. The E way bill has to be raised even when consignment value is less than Rs.50,000/-) in the following cases like Intra-State movement of goods in case of job work u/s 143 **or** Intra-State movement of handicraft goods by a person who has been exempted from the requirement of obtaining casual taxable person registration.
- The consignment value means the value determined under section 15 of the CGST Act. Such value **shall include** CGST, SGST, UTGST, IGST and cess charged if any. The consignment value shall however **exclude** value of exempted goods where the invoice is issued in respect of both exempted and taxable supply of goods. The consignment value ought to exclude freight charges paid to transporter and shipping charges charged by E commerce operator, since they do not form part of assessable value u/s 15.
- Where the goods are transported by the registered person using his own conveyance or public conveyance by road then Part B of Form GST EWB-01 must also be filled in addition to part A of Form GST EWB 01. Where the goods are transported by railways or by air or vessel, the E-way bill shall be generated on the common portal in Part B of Form GST EWB-01. Where the goods are transported by railways the railways shall not deliver the goods unless the E-way bill required under this rule is produced at the time of delivery. The time period for filling details in Part B shall be furnished within fifteen days of furnishing details in Part A.
- The transporter can generate E-way bill even when the value of consignment is less than fifty thousand. If the goods are moved by unregistered person and handed over to transporter for transportation of goods, then either of them can generate the E way bill. The unregistered person can generate E-way bill by stating himself as unregistered person. The details of conveyance are not required if the distance between

the place of consignor and the place of transporter is less than ten Kms. It is not required even where the distance between the place of transporter and the place of consignee is less than Ten Kms. The E way shall not be valid unless the information in Part B of Form GST EWB-01 is furnished. After generation of E- way bill, the unique number shall be made available to the supplier, recipient and the transporter on the common portal.

- Where the goods are transported from one conveyance to another then the details of conveyance in the E-way bill in Part B should be updated. E-way bill number can be assigned to another Enrolled transporter for updating the information in Part B for further movement of goods. But if the details of conveyance are already updated by the transporter then it cannot be assigned to other transporter.
- Where multiple consignments are intended to be transported in one conveyance the transporter may generate the E-way bill in Form GST EWB-02. The transporter (by Road) can generate E-way bill in Form GST EWB-02 wherein the consignor or consignee has not generated the E-way bill and the aggregate of consignment value is more than fifty thousand rupees.
- The information furnished in Part A of Form GST EWB-01 shall be available and can be utilized for furnishing Form GSTR-01. The E-way bill can be cancelled if goods are not transported or not transported as per the details updated within twenty-four hours of generation of E-way bill. It cannot be cancelled if it is verified in transit.
- The validity period for distance of every 100 kms is one day and thereafter for every 100 kms the validity period is one additional day. For over dimensional cargo the validity period is one day for every 20 kms. The validity period can be extended in exceptional cases including transshipment by transporter after updating the details in Part B of FORM GST EWB-01.
- Each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill.
- The details of e-way bill generated shall be made available to supplier when the information is furnished by the recipient or the transporter. It will also be made available to recipient when the information is furnished by the supplier or the transporter. The supplier/ recipient respectively shall communicate their acceptance or rejection of the consignment within 72 hours or delivery of goods whichever is earlier.
- The E way bill generated shall be valid in every state and every Union territory. The Generation of E way bill not required in many cases like LPG for supply to household customers, Exempted goods other than de-oiled cake,….. etc
- The person in charge of the conveyance shall carry a copy of the tax Invoice or the bill of supply in the aforesaid cases where E- way Bill is not required to be generated (Rule 55A). The Commissioner may by notification require the person in charge of the conveyance to carry the documents like Invoice or bill of supply or bill of entry, delivery challan (Rule 138A(5)). The difference between Rule 55A and 138A(5) is that in the former cases, E- way bill is not required to be generated whereas in the latter case, E way bill is required to be generated but because of the specific circumstance, the person in charge is allowed to transport goods without E way bill.
- Where the transporter's godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer' additional place of business). Hence, e-way bill validity in such cases will not be required to be extended
- Section 129 of the CGST Act provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and penalty in cases where such goods are transported in contravention of the provisions of the CGST Act or the rules made thereunder. The below situations make distinction between Serious/Substantive violations and minor/ procedural violations in case of issuance of E-way bill and accordingly proceedings under section 129 of the CGST Act will not be initiated in the following situations (C.B.I. & C. Circular No. 64/38/2018-GST, dated 14-9-2018):

1. Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;
2. Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;

3. Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;
4. Error in one or two digits of the document number mentioned in the e-way bill;
5. Error in 4- or 6-digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct.
6. Error in one or two digits/characters of the vehicle number

- There were certain enhancements in E way bill system like Auto calculation of distance based on PIN Codes for generation of e-Way Bill, Knowing the distance between two PIN codes, Blocking the generation of multiple e-Way Bills on one Invoice/Document., Extension of e-Way Bill in case the consignment is in Transit/Movement and Reporting on list of e-Way Bills about to expire.
- As per Rule 138E of CGST Rules 2017, the person including a consignor, consignee, Transporter, E commerce operator or a Courier Agency shall not be allowed to furnish Part A of E way Bill in respect of a Registered person as supplier or Recipient if returns are not filed within the two consecutive tax periods. This Rule will be implemented from 21.11.2019.

- **Relevant Case laws:**
- ***Torque Pharmaceuticals Pvt ltd Vs State of U.P 2018 (12) G.S.T.L. 119 (All.)(HC)*** **(Writ Tax No. 610 of 2018, decided on 10-4-2018):** E-way bill was generated by the assessee with all the relevant details. The GST portal was not accepting two vehicle numbers for one transaction. The Assessee has mentioned the subsequent vehicle number by hand. The tax had been charged while issuing stock transfer invoices at prescribed rate. Therefore, it is held that there is no irregularity by Assessee or Transport company even though vehicle number is written by hand and it was directed to release seized goods and vehicle to the respective Jurisdictional Authority.
- **Bhumika Enterprises Vs State of State of U.P 2018 (12) G.S.T.L. 137 (All.) (Writ Tax No. 564 of 2018, decided on 3-4-2018):** There was wrong mention of consignee's GSTIN and mobile numbers in invoices. There is no dispute regarding quality and quantity of goods which were admittedly being transported under invoices indicating payment of tax. The goods were detained while on the way to consignee's place. Therefore, imposition of penalty is not sustainable.
- **N.V.K Mohammed Sultan Rawther and Sons Vs Union of India 2019 (20) GSTL 708 (Ker) (HC),** the Inspecting officer detaining goods on the ground of misclassification of goods resulting in payment of lesser tax. It is held that process of detention of goods cannot be resorted to when dispute was bona fide, especially, concerning exigibility of tax and, particularly rate of tax. Therefore, it is stated that order of detention is arbitrary and unsustainable.
- **VSL Alloys (India) Pvt. Ltd. Vs State of UP 2018 (17) G.S.T.L. 191 (All.)(HC),** It is held that there is no intention on Appellant part to evade payment of tax during course of intra-state sale of goods and all documents accompanying goods and details duly mentioned therein. Once all material and evidence with regard to Appellant claim is placed, the Respondent is under obligation to consider and pass appropriate reasoned order.
- **Hindon Machinery Tools Vs State of UP 2019 (22) G.S.T.L. 4 (All), (HC),** It is stated by the petitioner that E-way Bill requires only mentioning of document details and he had correctly mentioned that goods covered by nine tax invoices, however, authorities wrongly taken the number of tax invoices to be the tax invoice number though E-way Bill do not contain any tax invoice number. There seems no discrepancy in E-way Bill attracting seizure of goods. Goods directed to be released without payment of penalty under Section 129 of Central Goods and Services Tax Act, 2017.
- **Rajendrababu Ambika Vs Advance Ruling Authority Tamilnadu 2019 (27) G.S.T.L. 89 (A.A.R. - GST) :** The questions relating to applicability of E way bill procedure and details to be filled in GSTR-1 is being procedural and not covered under purview of Advance Ruling under section 97(2) of CGST Act 2017.
- **Shree Enterprises Vs Commercial Tax Officer Shivamogga 2019 (HC) (25) G.S.T.L. 3 (Kar.):** Notice under section 129 of CGST Act was issued by the Department for which objections was filed by the Applicant. And then the order of confiscation of goods and conveyance was passed by department Authority without considering the objections filed by Applicant and no opportunity given to owner/person in charge before issuing confiscation order. Therefore, issuance of confiscation order cannot be held to be justifiable

and accordingly order of confiscation is quashed and penalty notice issued under Section 129(1)(b) of CGST Act 2017 is restored.

- **MKC Traders Vs State of UP 2019 (22) G.S.T.L. 348 (All.):** Petitioner pleading that tax amount and equal penalty directed to be deposited for release of goods and vehicle, is too exorbitant as market value thereof wrongly mentioned in order. The Market value of seized goods cannot be determined by High Court in exercise of its writ jurisdiction under Article 226 of Constitution of India.
- **Sarvottam Rolling Mills Pvt ltd Vs State of UP 2019 (HC) (22) G.S.T.L. 24 (All.):** The goods have reached at destination in time but due to no entry, the vehicle could not enter the city. The goods were seized after one hour of expiry of E-way bill. It was directed to release the seized goods on furnishing of security of Bank Guarantee.
- **Jeyyam Global Foods (P) Ltd Vs Union of India: 2019 (21) G.S.T.L. 465 (Mad.):** The Inspecting officers is not required to detain goods or vehicles where there is bonafide dispute as regards exigibility of tax or rate of tax under the GST law.
- **Daily Express Vs Assistant State Tax officer, State GST department, Kollam 2019 (24) G.S.T.L. 26 (Ker.):** The Provisions of Sections 129 and 130 of CGST Act 2017 is attracted if conditions under Act or Rules made thereunder are not complied with. The non-obstante clause of Section 129 makes it clear that general penal provisions of Section 122 or 125 or 126 is not attracted on violation of Section 129 under the CGST Act 2017.
- **Kun Motor Co Pvt ltd Vs Assistant State Tax officer Kerela 2019 (21) G.S.T.L. 3 (Ker.)**

  The car was purchased by Kerala resident from Puthuchery and car was driven by logistic wing of dealer for transportation to Trivandrum. The E way bill was not generated for transport of car. It is held that detention of car is illegal as it was intra state sale and supply is terminated in the same state and accordingly had it come into possession of purchaser and used for some distance which indicated that it was used for personal effect and accordingly issue of E way bill is not required.
- **Mohd Sahil Jakir Vs State of Gujarat 2019-VIL-487-GUJ (HC) dated 19.09.2019:** The applicant has aggrieved by the detention order passed under section 129(1) of CGST Act 2017 on the ground of undervaluation of invoice. The Applicant has satisfied all the requirements of section 68 of CGST Act along with Rules 138 and it is held that undervaluation of Invoice cannot be ground for detention of goods under section 129 of CGST Act 2017. Therefore, it was directed to Respondent to release truck along with the goods contained therein.

  Apparently, the abolition of check posts has resulted in faster and smooth transportation of goods across the state borders, but mobile squads will continue to check for defaulters and violators under the GST law. E- way bill is a vital component of GST but has proved to be a painful and contentious issue for the business in many scenarios. Though issuance of E- way bill is only a procedural compliance, but non- compliance of such procedures leads the business to pay hefty taxes and penalty.

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Recent Amendments under GST

CA. C.R. Raghavendra & CA. Bhanu Murthy J. S.

A. **Amendment to Central Goods and Service Tax Rules, 2017 (CGST Rules)**

[Notification No. 49/2019 –Central Tax dt. 9th October 2019]

1. **Amendment to Rule 21A**: Rule 21A deals with suspension of registration during the period from date of making application for cancellation of registration till the date of actual cancellation. Sub-rule (3) of the said rule provides that during the registered person whose registration has been suspended shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section.

   Explanation has been inserted in sub-rule (3) to clarify expression 'shall not make any taxable supply" shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.

   In effect, a registered person viz., whose supplies are less than the taxable limit could apply for cancellation of registration and could continue his business, but such person is barred from issuing tax invoices and collection of taxes.

   Further, sub-rule (5) has been inserted to provide that in the event of revocation of suspension, such registered person shall within one month shall issue a revised invoice against the invoice already issued during the period beginning with the effective date of suspension till the date of revocation of suspension. Further, the said supplies shall have to be reported in the return filed immediately after the revocation.

2. **Amendment to Rule 36:** Rule 36 prescribes documentary requirements and conditions for claiming input tax credit. The said rule has been amended to provide that input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in GSTR-1 filed under section 37(1), shall not exceed 20% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers in GSTR-1.

3. **Amendment to Rule 61:** Rule 61 prescribes form and manner of submission of monthly return. The said rules has been amended retrospectively w.e.f 1.7.2017 to provide that GSTR-3B shall be the monthly return, where the time limit for furnishing of details in FORM GSTR-1 under section 37 or in FORM GSTR-2 under section 38 has been extended. Further, where return in GSTR-3B is filed, there is no requirement to file return in GSTR-3.

   The above amendment is to overcome the decision of the High Court of Gujarat in the case of AAP AND Co. Vs UOI 2019-TIOL-1422-HC-AHM-GST, in which the Court held that GSTR-3B is a stop gap arrangement till GSTR-3 is to be filed and GSTR-3B is not a return under section 39.

4. **Amendment to Rule 83A**: Rule 83A provides procedure for conduct of examination of Goods and Services Tax Practitioners. Rule 83 provided that Goods and Services Tax Practitioners who were enrolled as a sales tax practitioner or tax return preparer under the existing law for a period of not less than five years, has to clear the examination within 30 months whereas rule 83A provided for time limit of 2 years. The said rule has been amended to align the time limit within which the examination has to be passed by the Goods and Services Tax Practitioners.

5. **Amendment to Rule 91**: Rule 91 provides for grant of provisional refund, pending finalization, in case of refund on account of zero-rated supplies. On account of making online processing of refund, the rule has been amended to provide for disbursement of refund on the basis of a consolidated payment advice by Central Government.

6. **Amendment to Rule 97**: Where claim of refund of taxes, does not pass the test of unjust enrichment, such amounts would get credited to consumer welfare fund. Rule 97 provides for modalities of operation said fund. Rule 97(8) provided certain powers to the committee governing the fund to make recommendations for investment of the amounts in fund, making available

grants and to make available funds for publicity and consumer awareness on GST.

The said sub-rule(8) has been omitted and sub-rule 7A has been inserted which provides that committee governing the said fund shall make available to the Board 50% of the amount credited to the Fund each year, for publicity or consumer awareness on Goods and Services Tax, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than twenty-five crore rupees per annum.

7. **Amendment to Rule 117:** Rule 117 provides for procedure for filing GST transition returns. Sub-rule 1A was inserted to provide for additional time limit upto 31st March 2019 to file transitional returns in cases where the assessee (in respect of whom the council has made recommendation) who could not file transition returns due to technical glitches. The said due date has been extended from 31.03.2019 till 31.12.2019. similarly, due date for filing GST TRAN-2 in cases where GST Tran -1 was filed in terms of Sub-rule (1A) has been extended from 30.04.2019 to 31.01.2020.

   Rule 117(1A) covers only specific category of assessee and not applicable to all assessees. The High Court in the case of Siddharath Enterprises Vs The Nodal Officer 2019-TIOL-2068-HC-AHM-GST has held that Rule 117 is only a procedural and transitional credit cannot be denied based on the procedural lapses.

B. **Option to file annual return:**

   [Notification No. 48/2019 –Central Tax dt. 9th October 2019]

   Applicability: Registered persons whose aggregate turnover in a financial year does not exceed two crore rupees and who have not furnished the annual return before the due date.

   Option: Such class of persons have an option to file annual returns for the financial years 2017-18 and 2018-19.

   If opted not to file: Said return shall be deemed to be furnished on the due date if it has not been furnished before the due date.

C. **Place of supply for certain research and development (R&D) services supplied to a recipient located in non-taxable territory:**

   [Notification No. 04/2019-Integrate Tax dt. 30.09.2019]

   Place of supply has been notified as location of recipient for certain R&D services subject to the following conditions:

i) Services from the taxable territory;

ii) services so provided shall be as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory.

iii) Such supply of services fulfills all other conditions in the definition of export of services, except the condition of place of supply.

The list of R&D services covered under this notification:

Table B

Sl. No.	Nature of Supply	General Description of Supply
(1)	(2)	(3)
1.	Integrated discovery and development	This process involves discovery and development of molecules by pharmaceutical sector for medicinal use. The steps include designing of compound, evaluation of the drug metabolism, biological activity, manufacture of target compounds, stability study and long-term toxicology impact.
2.	Integrated development	
3.	Evaluation of the efficacy of new chemical/biological entities in animal models of disease	This is in vivo research (i.e. within the animal) and involves development of customized animal model diseases and administration of novel chemical in doses to animals to evaluate the gene and protein expression in response to disease. In nutshell, this process tries to discover if a novel chemical entity that can reduce or modify the severity of diseases. The novel chemical is supplied by the service recipient located in non-taxable territory.

Sl. No.	Nature of Supply	General Description of Supply
(1)	(2)	(3)
4.	Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays	This is in vitro research (i.e. outside the animal). An assay is first developed and then the novel chemical is supplied by the service recipient located in non-taxable territory and is evaluated in the assay under optimized conditions.
5.	Drug metabolism and pharmacokinetics of new chemical entities	This process involves investigation whether a new compound synthesized by supplier can be developed as new drug to treat human diseases in respect of solubility, stability in body fluids, stability in liver tissue and its toxic effect on body tissues. Promising compounds are further evaluated in animal experiments using rat and mice.
6.	Safety Assessment/ Toxicology	Safety assessment involves evaluation of new chemical entities in laboratory research animal models to support filing of investigational new drug and new drug application. Toxicology team analyses the potential toxicity of a drug to enable fast and effective drug development.
7.	Stability Studies	Stability studies are conducted to support formulation, development, safety and efficacy of a new drug. It is also done to ascertain the quality and shelf life of the drug in their intended packaging configuration.
8.	Bio-equivalence and Bio-availability Studies	Bio-equivalence is a term in pharmacokinetics used to assess the expected in vivo biological equivalence of two proprietary preparations of a drug. If two products are said to be bioequivalent it means that they would be expected to be, for all intents and purposes, the same. Bio-availability is a measurement of the rate and extent to which a therapeutically active chemical is absorbed from a drug product into the systemic circulation and becomes available at the site of action.
9.	Clinical trials	The drugs that are developed for human consumption would undergo human testing to confirm its utility and safety before being registered for marketing. The clinical trials help in collection of information related to drugs profile in human body such as absorption, distribution, metabolism, excretion and interaction. It allows choice of safe dosage.
10.	Bio analytical studies	Bio analysis is a sub-discipline of analytical chemistry covering the quantitative measurement of drugs and their metabolites, and biological molecules in unnatural locations or concentrations and macromolecules, proteins, DNA, large molecule drugs and metabolites in biological systems.

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Is there a need for the Authority for Advance Ruling under the CGST Act to be Bound to Dispose Off Ex Parte Applications on Merits?

Adv. Sandeep Huilgol & Adv. Abhishek Sharma P

Recently, the Authority for Advance Ruling, Tamil Nadu ('the AAR' for short), passed an order dated 25th July 2019 rejecting the application filed by M/s. Prism Fluids LLP [(2019) 108 taxmann.com 486]. The ground on which the AAR rejected the said application was that despite having given M/s. Prism Fluids LLP ('the Applicant' for short) opportunities to furnish certain documents that the AAR felt were necessary for pronouncing its advance ruling on the questions specified in the application, the Applicant did not furnish such documents and, therefore, the AAR was of the view that the ruling sought by the Applicant could not be furnished for want of necessary details. Thus, the AAR rejected the application *in limine* and, consequently, it did not pronounce its advance ruling in the matter.

The said order of rejection throws up an interesting question as to whether the AAR constituted under the provisions of the Goods and Services Tax laws ought to be permitted to reject an application *in limine* in cases where the Applicant does not appear before the AAR when an application is called on for hearing or if the Applicant does not otherwise diligently prosecute its application, or whether the AAR ought to be bound to dispose off applications on merits even in such cases.

This article attempts to answer the said question by examining the provisions of the Central Goods and Services Tax Act, 2017 ('the CGST Act' for short), as well as by comparing the powers conferred upon the AAR constituted under the CGST Act with the powers conferred upon the Authorities for Advance Rulings constituted under the Income-tax Act, 1961 ('the IT Act' for short), and the Central Excise Act, 1944 ('the CE Act' for short).

Facts of the case:

The Applicant filed an application before the AAR seeking an advance ruling on the following questions:

(i) What is the rate of tax on "Oil Lubrication Systems"?; and

(ii) What is the HSN code?

Together with the application, the Applicant filed the following documents: (i) List of components used for manufacturing the commodity; (ii) Drawing of the oil lubrications systems; (iii) Sample invoices for supplying the said commodity; and (iv) List of customers to whom the supplies are made by the Applicant.

After the application was filed, it was posted for hearing before the AAR on 9th April 2019 when the Applicant made its submissions in the matter. From the order of rejection subsequently passed by the AAR, it appears that the Applicant undertook to provide the purchase orders placed on it by its customers as well as invoices (although sample invoices seem to have been previously filed by it together with its application) within a period of two weeks. Further, it appears that the Applicant stated that it would provide the technical writeup of the oil lubricating system together with certain technical details relating to the said system.

Thereafter, although the Applicant did not furnish the aforesaid documents within the said period of two weeks, the AAR extended to it another opportunity on 19th June 2019. However, no hearing took place on the said date at the request of the Applicant and, consequently, the application was adjourned to 24th July 2019. However, on the said date, the Applicant neither appeared nor did it furnish the documents that it had stated it would. Significantly, in the meantime, the jurisdictional authority had filed its comments on the application in which it had stated that the oil lubrication system is covered under Chapter 8413 and thus attracts tax at the rate of 28%.

Subsequently, the AAR passed its order dated 25th July 2019 rejecting the application filed by the Applicant *in limine* on the ground that since the necessary details required for it to pronounce its ruling on the questions specified in the application had not been produced before it, it could not pronounce its ruling in the matter.

Relevant legal provisions:

The procedure to be followed by the AAR on receipt of

an application is specified in Section 98 of the CGST Act. Section 98(2) is relevant in this regard and it reads as follows:

> "*The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:*
>
> ***Provided** that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:*
>
> ***Provided further** that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:*
>
> ***Provided also** that where the application is rejected, the reasons for such rejection shall be specified in the order.*"

Further, subsection (4) of Section 98 provides as follows:

> *"Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.*"

Analysis of the provisions relating to AAR under the CGST Act:

On examining Section 98(2) of the CGST Act, it emerges that the AAR is clearly vested with the power to either admit or reject an application but such power can be exercised only after examining the application and the records called for and only after hearing the Applicant as well as the concerned officer. "*Application*" is defined in Section 95(d) to mean an application made to the AAR under Section 97 which, in turn, provides that the form and manner in which the application is to be made shall be prescribed. The form and manner for an application is set out in Rule 104 of the Central Goods and Services Tax Rules, 2017 ('the CGST Rules' for short), which merely provides that all the relevant documents accompanying the application must be signed in a particular manner. Therefore, neither the CGST Act nor the CGST Rules specify as to what documents must be filed in support of an application. Significantly, there is no provision stating that in the absence of filing a required number of documents, an application would be liable to be rejected *in limine*.

The rationale appears to be that since the AAR is a mechanism provided for under the CGST Act for the benefit of taxpayers, it is in their interests to file all the documents that they feel are necessary together with the applications so as to ensure that the AAR is able to pronounce its ruling in the matter. In short, the onus has been placed on the applicant to put its best foot forward by filing all the documents it feels are relevant.

Further, what must be noted is that Section 98(2) provides that the AAR may pass an order admitting or rejecting an application only after hearing the applicant and the other side. In the case at hand, since the AAR had examined the application, and heard the Applicant on 9th April 2019 and the concerned jurisdictional officer, it appears that the AAR was well within its power to reject the application. The order as such, in our opinion, cannot be said to be incorrect in law.

However, it is important to view the order from the perspective of the object of the Advance Rulings scheme, which is undoubtedly to ensure that there is certainty and clarity in the applicant's tax liability for a particular transaction or activity. When the said admirable object is borne in mind, orders rejecting applications seeking advance rulings *in limine*, i.e. without disposing off such applications on merits, would not, in our opinion, fulfil the avowed object behind the Advance Rulings scheme. No doubt, it is trite law to say that a litigant or an applicant must be diligent in prosecuting his matter and that the onus is cast upon him to make his best case, and that failure to do so would be to his prejudice. However, in our opinion, perhaps the said principle ought not to be stretched or applied in a straitjacket manner to the otherwise beneficial and positive Advance Rulings scheme. After all, it must be borne in mind that this mechanism has been set up ultimately only to ensure that there is a clear exposition of law in respect of a matter and that the onerous and time-consuming adversarial nature of litigation is thereby avoided.

Analysis of the procedure to be followed by Authorities for Advance Rulings under the IT and CE Acts:

Having examined the provisions of the CGST Act, it is interesting to note the procedure to be followed by Authorities for Advance Rulings constituted under the IT Act and CE Act. Section 245R of the IT Act specifies the procedure to be followed by the Authority for Advance Rulings constituted under the IT Act ('ITAAR' for short). Similarly, Section 23D of the CE Act specifies the procedure to be followed by the Authority for Advance Rulings under the CE Act ('CEAAR' for short). What is vital to note is that Regulations have been framed by the ITAAR and CEAAR pursuant to the power conferred on them under the relevant Acts specifying the procedure to be followed by the said Authorities.

Crucially, Regulation 17 of the Authority for Advance

Rulings (Procedure) Rules, 1996 ('the IT Rules' for short), and Regulation 16 of the Authority for Advance Rulings (Central Excise, Customs and Service Tax) Procedure Regulations, 2005 ('the CE Rules' for short), provide for the procedure to be followed by the ITAAR and CEAAR for hearing an application *ex parte*. The provisions in the IT Rules and the CE Rules are identical and provide that even if the applicant or the Commissioner does not appear in person or through his authorised representative when the application is called for hearing, the authority may dispose off the application *ex parte* **on merits**. No doubt, the word "*may*" has been used but, in our opinion, given the context in which the said word has been employed, the same enjoins upon the ITAAR and the CEAAR to dispose off applications on merits notwithstanding the fact that the applicant or the Commissioner does not appear on the assigned date of hearing. In short, vide the said Regulations, the ITAAR and CEAAR are required to dispose off applications on merits regardless of whether the applicant or the Commissioner is present for the hearing

Further, the aforesaid Regulations grant liberty to the applicant or the Commissioner to apply to the ITAAR and CEAAR within a specified period seeking setting aside of the *ex parte* order and restoration of the application for fresh hearing (so long as the ITAAR or CEAAR is satisfied that there was sufficient cause for the non-appearance when it was called for hearing).

In our opinion, framing of Regulations 17 and 16 in the IT and CE Rules respectively is praiseworthy since the said Regulations evidently fulfil the object behind devising the Advance Rulings scheme. Moreover, if the applicant or the Commissioner is dissatisfied with the ruling pronounced on merits by the ITAAR or CEAAR, they are in any case entitled to challenge the same before a higher forum. That apart, as stated earlier, they are also permitted to seek setting aside of the *ex parte* order and seek restoration of the application. Thus, by way of these provisions, not only is leniency to the applicant or the Commissioner who may not have been diligent provided for, but also the object behind the scheme, i.e. clarity in matters of tax, is achieved.

Conclusion:

In our opinion, a similar provision ought to be adopted for the AAR constituted under the CGST Act and State GST Acts as well. At the very least, even if a similar provision requiring the AAR to dispose off *ex parte* applications on merits is not framed, a provision permitting the applicant or the Commissioner to seek setting aside of the rejection order and restoration of the application ought to be inserted so as to ensure that substantive justice is not defeated due to mere procedural lapses. Section 106 of the CGST Act which grants the AAR the power to regulate its own procedure should, in our opinion, be employed by the AAR so that regulations similar to the IT Rules or CE Rules are framed by it forthwith. Even apart from the aforesaid issue of dealing with *ex parte* applications, all the other procedural regulations that must be framed would thereby be provided for.

Furthermore, it is interesting to note that in the case at hand, documents had been filed by the Applicant before the AAR in support of its application. Such documents included sample invoices as well as certain other technical details relating to the oil lubricating systems. What is more, since the AAR is vested with the powers of a civil court under the Code of Civil Procedure, 1908, to compel production of books of accounts and other records, discovery and inspection, and other similar powers, surely the AAR could have exercised such powers and called for /directed production of such documents which it felt were necessary for pronouncing its advance ruling in the matter.

That apart, even from the perspective of the Revenue, it is significant to note that the jurisdictional officer had admittedly provided his comments on the application whereby he had opined that supply of the oil lubricating systems would attract the levy of GST at 28%. That being the case, in our opinion, the AAR ought to have at the very least dealt with the comments submitted by the officer. That is to say, the AAR ought to have either accepted the officer's contentions or rejected the same. Either way, the AAR ought to have deliberated upon the officer's submissions and pronounced its ruling in the matter after assigning its reasons for the same. It could, therefore, be said that not just the applicant, but the Revenue is also adversely affected by such orders of rejection passed *in limine*, especially in cases such as the present one where it had made its submissions in the matter.

To sum up, the aforesaid case, in our opinion, highlights the lacuna in the law relating to the procedure to be followed by the AAR under the CGST Act. This is an issue which ought to be addressed at the earliest so as to ensure that similar orders of rejection are not passed by the AAR which would, as stated above, merely result in the laudable and commendable scheme of Advance Rulings being rendered futile and otiose in such scenarios.

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Beware of Bitcoin Bites

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Introduction

About the Bitcoin, (also known as Cryptocurrency), we can affirm that it is purely an online currency, not backed by physical commodities nor through sovereign obligation. It relies on a combination of cryptographic protection and a peer-to peer protocol for witnessing settlements. Consequently, the Bitcoin has been an un-intuitive property, as the ownership of money remains anonymous, but the transactions are visible throughout its network. The 'Bitcoin' is a popular form of digital currency created in 2009 on the ideas set out in a white paper by the mysterious person Mr. Satoshi Nakamoto, whose true identity has yet to be verified. It offers the promise for a faster, barrier free exchange with lower transaction fees than the traditional online payment mechanisms.

The word 'Bitcoin' refers to two things viz., (i) The Bitcoin digital asset /coins (BTC) - These are the actual digital coins extracted by an activity known as mining. It is stated that there is possibility of generation of only 21 million Bitcoin. Each of these coins can be collected, traded and spent like money. And (ii) The Bitcoin network - the blockchain that powers the Bitcoin, and gives its value and practical applications. When one spends a Bitcoin, it is being carried to the recipient through this network. It keeps a record of all Bitcoin transactions ever made in a digital ledger [Distributed Ledger Technology (DLT)] of which no one is in charge, no one can control, no one can stop from carrying out the transactions and meticulously recording of all transactions. Therefore we can infer that it is a decentralized Cryptocurrency, without a bank or a single administrator and can be sent from user to user on the Cryptocurrency / Bitcoin network without the need for intermediaries.

Advantages in use of digital currencies

Despite of having no recognition by the Government as a legal tender, the transactions in Bitcoin / Cryptocurrency are becoming popular mainly for the following reasons:

1. Speculation – The seller / buyer of such currencies and the persons using it as a payment mode in a transaction, always feel that the price will go up and tend to sell it for a profit at a later date. The belief is that there will be limited number of BTC, and the exchange rates are bound to be higher. Therefore one feels that is a good collectible asset.
2. As a mode of Payment – the stake holders always desire to use it for payments as such transaction are cheaper, faster. Making of international payments do not pose any geographical or forex barriers and limitations. And moreover such transaction could be easily hidden from the eyes of the taxing administrators, regulators and government.
3. As an Economic diversification – the owners of Bitcoins think that the design of the network is more secure than government currencies. They are worried more about the government fiscal policy, the economic factors / elements such as national debt and inflation that may cause fall in the value of government money, whereas the Bitcoins remain unaffected. Some investors believe that it is a worthwhile addition to their portfolios, because other markets, such as the stock market, forex markets and commodities are all closely interconnected, and at the risk of falling together at once.

Challenges in use of digital currencies

But the use of such a Cryptocurrencies causes certain major challenges, say, through loss to income of a person as well as loss of revenue to the exchequer, thereby damaging the economy of the country. In such a situation, compensation or reliefs through a legal means are not available as they are not mandated transactions. Some of the negative implications are as under:

1. The Cryptocurrency are accepted by a very small group of online traders and not widely by the public in general. Therefore it is unfeasible to rely on them as a currency. The Governments may anytime ban the use of such virtual currency.
2. As it is a currency in a digital mode, in case of crash of hard drive or a virus corrupting the data, or by crimes committed in cyber space, such Wallets Could be Lost forever, without any chance to recover as there are no mechanism or regulation in place for this purpose.

3. The values of Cryptocurrencies are always subjected to huge fluctuations, depending upon the demand. This constant fluctuation will cause currency accepting sites to continually change prices and thereby cause a lot of confusion, especially when a refund is due. Since the total numbers of Bitcoin are capped, it may cause deflation, thereby rewards only the early adopters. This might cause spending surges that makes the dependent economy to fluctuate rapidly and unpredictably.
4. When goods are purchased by use of Cryptocurrency, and the supplier doesn't send the promised goods, nothing can be done to reverse the transaction. No reliefs are available to the Consumers.
5. The Bitcoin system could contain unexploited flaws that may result in tremendous gain in wealth to the exploiter at the expense of the victim and the economy.
6. The decentralized nature of Cryptocurrency is both a blessing and a curse. As there are no authorities governing them, no one can guarantee its minimum valuation. If a large group of dealers or traders decide to "dump" the Bitcoins / Cryptocurrency and leave the system, its valuation will decrease greatly. This will immensely hurt users who have a large amount of wealth invested in such currencies.

Alarming increase in cyber crimes by use of Cryptocurrency

The uses of the Cryptocurrencies have been exploited by the criminal to commit varied crimes in cyber space. The anonymous nature of Cryptocurrency has evolved to be the currency of the illegal hackers. On the dark web, a person can even avail hacking services and also buy drugs and weapons etc., by paying through Bitcoins without leaving any trace. There are 'ransomwares incidents demanding payoffs through Bitcoins. This in effect is leading to a large number of unauthorized transactions, hurting the economical situation, tearing the social fabric and raising the security concerns in the country.

As the crypto-assets are not regulated by banks, financial market authorities, etc., it is difficult to obtain any accurate information on the number of frauds taking place. The lack of regulation increases the risks to a normal genuine user. Scammers usually offer quick and substantial profits to investors and the transactions in such currency may be from the start, scams with little transparency. It is reported that 700 individuals have stolen more than 31 million Euros since the beginning of this year and the Financial Markets all over the world warns savers against such asset related scams.

There are innumerable numbers of fake Cryptocurrency trading platforms, who are similar to fly by night operators of the smuggling world. After a while, these sites disappear and no longer accessible, and the gullible investors are made to permanently lose their funds. In 2017, a scam using the Wallet 'Bitcoin Gold' has lost the equivalent of three million dollars to users it is reported. "The Bitcoins are turning out to be coins by the Criminals, of the Criminals and for the Criminals. Bitcoin are turning out to be a "Perfect Black Money" because it is anonymous and transferable across the globe at the click of a button. Just as an e-mail flies across, lakhs of rupees can fly across from India to another country either to one's own account or to somebody else's account," avers Mr. Na.Vijayashankar[1],(popularly known as Naavi), who is an Information Assurance Consultant in Bangalore. "All the ill gotten wealth can be held in the "benami numbered account" called Bitcoin addresses or wallets and these networks are turning out to be the perfect den for the fraudsters and criminals.

The regulations of Cryptocurrency in India

The Virtual currency-related crimes have been on the rise in India ever since such coins gaining popularity. Looking at the developments relating to certain electronic records claimed to be "Decentralised Digital Currency" or "Virtual Currency" (VCs), such as, Bitcoins, litecoins, bbqcoins, dogecoins etc., their usage or trading in the country, the Reserve Bank of India(RBI), through a press release dated 24.12. 2013 cautioned the user such as the holders and traders of Virtual Currencies, including Bitcoins, about the potential financial, operational, legal, customer protection and security related risks that they are exposing themselves. The extract of the relevant part of the release are as follows:

1. *"VCs being in digital form are stored in digital/electronic media that are called electronic wallets. Therefore, they are prone to losses arising out of hacking, loss of password, compromise of access credentials, malware attack etc. Since they are not created by or traded through any authorised central registry or agency, the loss of the e-wallet could result in the permanent loss of the VCs held in them.*
2. *Payments by VCs, such as Bitcoins, take place on a peer-to-peer basis without an authorised central agency which regulates such payments. As such, there is no established framework for recourse to customer problems / disputes / charge backs etc.*
3. *There is no underlying or backing of any asset for VCs. As such, their value seems to be a matter of speculation.*

1 https://www.naavi.org/wp/about_us/

Huge volatility in the value of VCs has been noticed in the recent past. Thus, the users are exposed to potential losses on account of such volatility in value.

4. *It is reported that VCs, such as Bitcoins, are being traded on exchange platforms set up in various jurisdictions whose legal status is also unclear. Hence, the traders of VCs on such platforms are exposed to legal as well as financial risks.*
5. *There have been several media reports of the usage of VCs, including Bitcoins, for illicit and illegal activities in several jurisdictions. The absence of information of counterparties in such peer-to-peer anonymous/ pseudonymous systems could subject the users to unintentional breaches of anti-money laundering and combating the financing of terrorism (AML/CFT) laws."*

Again by issue of communications dated 01.02.2017, 05.12.2017 the RBI reiterated that it has not given any licence / authorisation to any entity / company to operate such schemes or deal with Bitcoin or any virtual currency and cautioned all the users, holders, investors, traders, etc. dealing with Virtual Currencies that they will be doing so at their own risk.

Prohibition on dealing in Virtual Currencies (VCs)

The RBI, by issue of Instruction no RBI/2017-18/154 - DBR.No.BP.BC.104 /08.13.102/2017-18 dated 06.04. 2018 imposed a Prohibition on dealing in Virtual Currencies. The relevant parts of the instructions are as follows:

"*2. In view of the associated risks, it has been decided that, with immediate effect, entities regulated by the Reserve Bank shall not deal in VCs or provide services for facilitating any person or entity in dealing with or settling VCs. Such services include maintaining accounts, registering, trading, settling, clearing, giving loans against virtual tokens, accepting them as collateral, opening accounts of exchanges dealing with them and transfer / receipt of money in accounts relating to purchase/ sale of VCs.*

3. Regulated entities which already provide such services shall exit the relationship within three months from the date of this circular."

This was being challenged in the honorable Supreme Court by certain interested parties as this result in violation of fundamental rights of a citizen. The hearings are reported to be completed and decision of the Court is awaited.

Proposed legislation to regulate Cryptocurrency

In the meanwhile, before the above instructions by the RBI, a high level Inter-ministerial Committee was constituted in November 2017 to study the issues related to virtual currencies and examine the policy and legal framework for regulation of the same with proposal on the actions to be taken. The Committee in its Report [submitted on 28.02. 2019 released to public on 22.07.2019] has made some important observations and recommendations, in short, are as follows:

1. Virtual currency is a digitally tradable form of value that can be used as a medium of exchange or acts as a store of value or a unit of account and not a legal tender as it is not guaranteed by the central government. It does not offer any advantage as a currency;
2. The Cryptocurrency are decentralised, which implies that there is no central authority where records of transactions are maintained and therefore difficult to regulate. Further these are subjected to huge market fluctuations;
3. The Cryptocurrency designs have several vulnerabilities which leave consumers open to risk of phishing cyber-attacks and PONZI schemes. These further require large amount of storage and processing power, which can have unfavourable consequences on country's energy resources;
4. These provide greater anonymity making them more vulnerable to money-laundering and terrorist funding activities.

The Draft bill proposed by the Committee, called 'the Banning of Cryptocurrency and Regulation of Official Digital Currency Bill, 2019' has requisite provisions to ban the Cryptocurrencies. It further Criminalises the activities associated with virtual currencies in India, and provides for regulation of official digital currency.

Some of the important features of the Bill in brief are as follows:

1. The Bill defines Cryptocurrency as any information, code, number or token which has a digital representation of value and has utility in a business activity, or acts as a store of value or a unit of account. It defines 'mining' as an activity aimed at creating a Cryptocurrency and/ or validating a Cryptocurrency transaction between a buyer and seller.
2. The Bill provides that Cryptocurrency should not be used as legal tender or currency in India. It prohibits mining, buying, holding, selling, dealing in, issuance, disposal or use of Cryptocurrency in the country. In

particular, the Bill prohibits the use of Cryptocurrency for: (i) use as a medium of exchange, store of value or unit of account, (ii) use as a payment system, (iii) providing services such as registering, trading, selling or clearing of Cryptocurrency to individuals, (iv) trading it with other currencies, (v) issuing financial products related to it, (vi) using it as a basis of credit, (vii) issuing it as a means of raising funds and (viii) issuing it as a means for investment.

3. The Bill provides for the following offences and penalties:

Offence	Punishment
Mining, holding, selling, issuing or using Cryptocurrency	Fine or imprisonment up to 10 years, or both
Issuing any advertisement, soliciting, assisting or inducing participation in use	Fine or imprisonment up to seven years, or both
Acquiring, storing or disposing of Cryptocurrency with intent to use	Fine

4. The Bill provides that the maximum amount of fine levied will be the higher of: (a) three times the loss caused and (b) three times the gain made by the person. The bill will make Cryptocurrencies completely illegal and make holding them a non-bailable offence.

5. The Bill provides that the central government may, in consultation with the central board of RBI, (i) approve a digital form of currency to be legal tender (ii) notify a foreign digital currency as a foreign currency [means a digital currency recognised as legal tender in a foreign jurisdiction] in India to be governed by the Foreign Exchange Management Act, 1999.

The way ahead

The bill is under active consideration by all the departments concerned and by gauging the speed at which our central government is legislating, it is most likely to be introduced in the coming session of the parliament. For the persons holding such currencies, the bill may provide a window for transition. As per the recommended Bill, it provides for a transition period of 90 days from the commencement of the Act, during which a person may dispose of any Cryptocurrency /Bitcoins in their possession, as per the rules notified by the central government. Therefore, the dear users of Bitcoins, take care and be ready to keep away from expected bites of the Bitcoin.

Whether we get a new Cryptocurrency regime or not? Let us wait and watch.

And what are the implications of these Cryptocurrency under GST and Income tax laws, we leave it to the reader to do homework for the time being.

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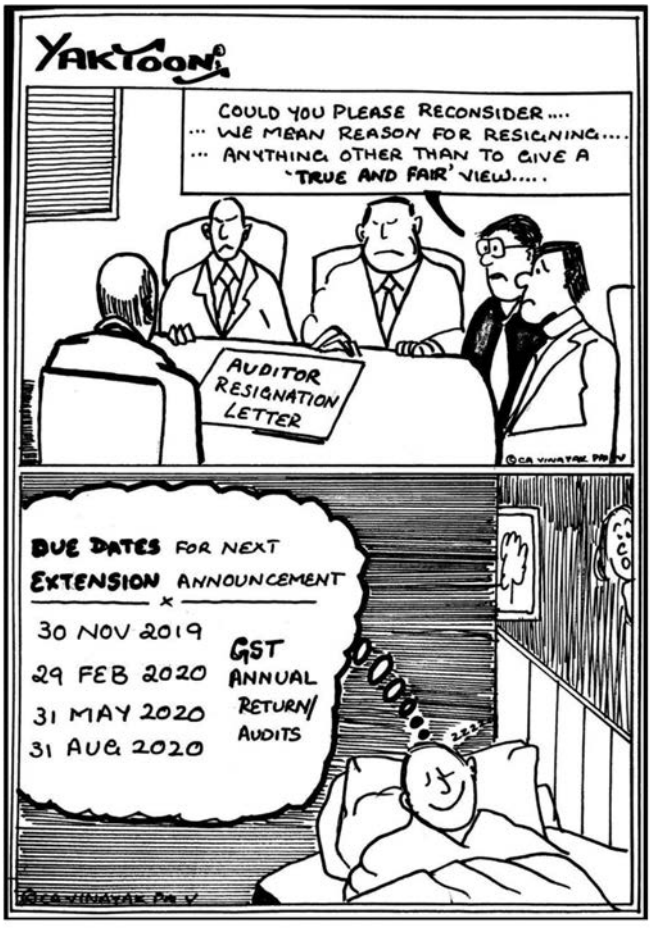
mgkodandaram@gmail.com

KSCAA WELCOMES NEW MEMBERS - OCTOBER 2019

S.No.	Name	Place
1	**Sumit Ramesh Bharadia**	Kalaburagi
2	**Ramya Manjunath**	Chitradurga
3	**Sathish M**	Bengaluru
4	**Nagarjuna Nalagangu**	Bengaluru



Financial Reporting and Assurance

CA. Vinayak Pai V

1. **CHANGES:** *Monthly Roundup*[1]

Direct Tax: AS and Ind AS	• The Taxation Laws (Amendment) Ordinance, 2019 - Sep 20, 2019 o Impact of reduction in corporate tax rates on **Current Tax, Deferred Tax, MAT Credit** Entitlement and related account balances for the Q/HY ending Sep 30, 2019 and FY 2019/20.
Ind AS	• **ITFG** Clarification **Bulletin No. 21** o Recognition **exemption for short-term leases** (Ind AS 116). o Accounting treatment of **rent equalization liability** at date of initial application (Ind AS 116). o Treatment of **lease of land** under Ind AS 116 that was classified as finance lease under Ind AS 17. o Amortization of leasehold land. o Leases acquired in a **Business Combination**. o **Foreign exchange differences** relating to lease liability.
	• ICAI **FAQ** o Presentation of **Dividend and Dividend Distribution Tax**.
IFRS	• IFRIC **Tentative Agenda Decisions** o Training **Costs To Fulfill A Contract** (IFRS 15, *Revenue From Contracts With Customers*). o **Definition Of A Lease** – Shipping Contracts (IFRS 16, *Leases*). o Translating A **Hyperinflationary Foreign Operation**- Presenting Exchange Differences, **Cumulative Exchange Differences** before a Foreign Operation becomes Hyperinflationary, and **Presenting Comparative Amounts** when a Foreign Operation first becomes hyperinflationary (**IAS 21**, *The Effects of Changes in Foreign Exchange Rates* and **IAS 29**, *Financial Reporting in Hyperinflationary Economies*).
	• **Amendments** to Hedge Accounting o **IFRS 9**, *Financial Instruments* and **IFRS 7,** *Financial Instruments: Disclosures* amended effective January 1, 2020 modifying specific **hedge accounting requirements** to provide relief from potential effects of uncertainty caused by Interbank Offered Rates (**IBORs**) reform.
Assurance	• **IFAC** Assessment Tool o **Evaluating the Finance Function** – *An Assessment Tool To Guide Finance Function Transformation.*
	• **IFAC** Report o **Audit Quality in a Multidisciplinary Firm –** What the Evidence Shows.
	• **ICAI Advisory** o **Auditor's Reporting on Section 197(16) of CA 2013** –reporting requirement for auditors of public companies needs to be covered in auditor's report under the section **"Report on Other Legal and Regulatory Requirements"**.

Company Law/ SEBI	• MCA Notification G.S.R. 636(E) dated Sep 5, 2019 o **National Financial Reporting Authority** (Amendment) Rules, 2019. o Form **NFRA 2** – Annual Return to be filed by Auditor with NFRA.
	• MCA General Circular No. 10/2019 o **BEN-2,** time limit for filing the e-form extended up to December 31, 2019.
	• **SEBI Circulars** o **Valuation** of **Money Market** And **Debt Instruments** (MFs/AMCs) o **Risk Management Framework** for liquid and overnight funds and norms governing investment in short-term deposits (MFs/AMCs)
RBI Notifications	• **External Benchmark** Based Lending.
	• **Risk Weight** for Consumer Credit except Credit Card Receivables.
	• **Large Exposures** Framework – Banks Exposure to a single NBFC.
	• **Concurrent Audit** System.
	• **Priority Sector** Lending – Classification of Exports under Priority Sector.
	• **Priority Sector** Targets – Lending to non-corporate farmers.
US GAAP	• Proposed Accounting Standards Updates issued by FASB: o **Topic 470 – *Debt***, Simplifying the **Classification of Debt** in a Classified Balance Sheet (Current versus noncurrent). o **Topic 848 – *Reference Rate Reform*,** Facilitation of the Effects of Reference Rate Reform on Financial Reporting.
	• FASB September 30, 2019 Invitation to Comment o Identifiable Intangible Assets and **Subsequent Accounting for Goodwill**

[1]*Updates for the period Sep 1 to Sep 30, 2019*

2. **CASE STUDY:** *Reporting On A Key Audit Matter (KAM)* – Recoverability of Parent Company's Investment In and Amounts Due From Subsidiaries

a) ***Background***

The carrying amount of a Parent Company ABC Limited's investments in, and amounts due from, subsidiaries represent a material portion of the parent company's total assets. Their recoverability, in the opinion of the statutory auditors is not at a high risk of significant misstatement or subject to significant judgment. However, due to their materiality in the context of the parent company stand-alone financial statements, it is considered to be an area that had the greatest effect on the overall parent company audit.

b) ***How The Audit Addressed The KAM***

- The auditors carried out **Tests of Detail** comparing the carrying amount of 100% of investments and amounts due from subsidiaries, with the relevant subsidiaries draft balance sheet to identify whether their net assets, being an approximation of the minimum recoverable amount of the related investments and amounts owed by subsidiary undertakings, were in excess of their carrying amount, and assessing whether those subsidiaries have historically been profit-making.
- With respect to those subsidiaries where the carrying amount of the investments and amounts due exceeded the net asset value, the auditors applied their **sector experience** comparing the carrying amount with the expected value of the business.
- The auditors approach included **benchmarking assumptions** comparing the relevant subsidiary investment's forecast cash flow assumptions to externally derived data in relation to key inputs such as projected long-term growth and discount rates.

3. **GETTING UP TO SPEED:** *Presentation and Disclosure of Income and Expenses* – Revised IFRS Conceptual Framework

The IASB has issued a revised *Conceptual Framework for Financial Reporting.* The revised conceptual framework inter alia deals with concepts related to presentation and disclosure of income and expenses in net profit and OCI. Salient aspects of the same are summarized herein below.

- All **income and expenses** are classified and included in the measure **"Net Profit after Tax"** in **principle.**
- The IASB in its standard settings may in **exceptional circumstances** decide to exclude from "Net profit" income/ expenses **arising from changes in current value** (as defined in the chapter on "*measurement*") of an asset or liability and include the same in the measure - "Other Comprehensive Income".
- Such decisions mentioned above would be taken when doing so would result in the income statement providing more **relevant information** or a more **faithful representation** to users of financial statements.
- Income and expenses that are included in the OCI layer in one financial reporting period **would be recycled to the income statement** in a future financial reporting period when doing so results in the income statement providing **more relevant information** or a **more faithful representation.**

4. **FIN ST EXTRACTS:** *Ind AS 116*

Extracts from a financial statement for the year ended **March 31, 2019**:

- The company will adopt Ind AS 116 using the **modified retrospective approach** and the right of use asset on transition will equal the lease liability. The cumulative effect of initially adopting the new standard will be recognized as an **adjustment to retained earnings** at April 1, 2019 with **no restatement of comparative information**.
- The company plans to apply **the practical expedient** to **grandfather the definition of a lease** on transition. This means that it will apply Ind AS 116 to all contracts entered into before April 1, 2019 and identified as leases in accordance with Ind AS 17.
- The company intends to avail itself of the **exemptions for short-term leases and leases of low-value items**.
- The company will recognize new assets and liabilities, primarily with regard to its operating leases of **property and motor vehicles**.
- In addition the company will no longer recognize accruals relating to straight lining of rent expenses for leases, which include a rent-free period.
- The company has **designed** a new lease accounting process and has implemented a new lease accounting software solution.
- Based on the information currently available, the company estimates that it will recognize additional lease assets and liabilities of Rs. 1,015 crore and Rs. 1,155 crore.

5. **BACK TO BASICS:** *Research and Development Costs (Ind AS)*

The accounting guidance for **Research and Development Costs** is contained in Ind AS 38, *Intangible Assets,* the salient aspects of which are discussed herein below.

- **Research expenditure**, undertaken with the prospect of gaining new scientific or technical knowledge and understanding, is **charged** to the Statement of Profit and Loss in the year in which the same **is incurred**.
- **Internal development expenditure**, whereby research findings are applied to a plan for the production of new or substantially improved products or processes, is charged to the Statement of Profit and Loss in the year in which it is incurred **unless it meets the recognition criteria** of Ind AS 38.
- Development uncertainties typically mean that such criteria are not met, most commonly if a Company can only demonstrate the existence of a market at a late stage in the product development cycle, at which point the material element of project spend has already been incurred and charged to the Statement of Profit and Loss. Where, however, the **recognition criteria are met**, intangible assets are **capitalized and amortized** over their useful lives from product launch.

- Intangible assets and intangible assets relating to products in development are subject to **impairment testing** at each balance sheet date or earlier upon indication of impairment. Any impairment loss is written off to the Statement of Profit and Loss.

6. **DISCLOSURE REQUIREMENTS:** *Trade Receivables Credit Risk (Ind AS)*

Ind AS prescribes qualitative and quantitative **disclosures principles** for disclosure requirements related to **trade receivables credit risk.** Credit risk is defined under the Ind AS framework as "*the risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation*".

Qualitative Disclosures	
1	Exposure to trade receivables credit risk and how they arise.
2	Entity's objectives, policies and processes for managing the credit risk and methods used to measure the credit risk.
3	Changes in above from previous period.
Quantitative Disclosures	
1	Summary quantitative data about exposure to credit risk at the end of the reporting period. The disclosure shall be based on information provided internally to **KMP** of the entity.
2	Concentration of risk.

A disclosure extracted from notes to financial statements of a listed entity with respect to **Trade Receivables Credit Risk** is provided herein below.

"The company has an established credit policy applied by each business under which the credit status of each new customer is reviewed before credit is advanced. This includes external credit evaluations where possible and external references in some cases. Credit limits are established for all significant or high-risk customers, which represents the maximum amount permitted to be outstanding without requiring additional approval from the appropriate level of management. Credit limits are reviewed on a regular basis, and at least annually. Customers that fail to meet the company's benchmark creditworthiness are permitted to only transact with the company on a prepayment basis.

The company does not typically require collateral in respect of trade and other receivables. The company provides for impairment of financial assets including trade and other receivables based on known events and makes provision for expected credit losses."

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KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION®

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Congratulations

We Congratulate
our Past President
CA. H.B.M. Murugesh
on being conferred
"Vishwa Chetana Award"
by Akhila Karnataka Kuvempu Samskrutika Vedike
at Kannada Saahithya Parishath,
Bengaluru

Congratulations

We Congratulate
CA. Vinay Mruthyunjaya
on being elected as
Treasurer of
Karnataka State Cricket Association (KSCA)

REPRESENTATION REGARDING MANNER OF TAXABILITY OF SERVICES PROVIDED BY AN OFFICE OF AN ORGANISATION IN ONE STATE TO THE OFFICE OF THAT ORGANISATION IN ANOTHER STATE

Date: 18th September 2019

To,

Smt. Nirmala Sitharaman
Hon. Union Minister of Finance
Government of India
North Block
New Delhi

Hon'ble Madam,

Sub: Representation regarding manner of taxability of services provided by an office of an organisation in one State to the office of that organisation in another State

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 concerns faced by chartered accountants and business community.

We have written to your good selves many a times populating issues and possible solutions. We have also proactively involved in suggesting means and practical methodologies on the adoption and implementation of the policies.

We are aware that GST Council is considering to provide clarification on the taxability of services provided by an office of an organisation in one State to the office of that organisation in another State. We presume it apt at this juncture, to submit the following representation of points for your approbation and appraisal:

I. <u>Whether its mandatory to distribute credit by following ISD procedure</u>

1. Schedule I of Section 7 provides supply of goods or services or both, between related persons or between distinct persons, as specified in Section 25, when made in the course or furtherance of business, is considered a taxable supply, even when without consideration. Accordingly, a charge is created for supply of goods or services between branches of the same organisation. In this regard, similar to invoices being raised for stock transfer of goods, the supplier will be required to raise an invoice for stock transfer of services rendered by one branch to another.

2. However, Section 20 provides mechanism of distribution of credit by following the input service distribution procedure. In this regard, input service distribution should be considered as an option and not mandatory procedure to distribute the credit. So long as the credit is either distributed or transferred by raising invoice for services rendered by one branch to another, it should be considered as sufficient compliance.

II. <u>Whether services rendered by head office would include internal services such as its common management cost including employee time cost</u>

3. While Schedule I of Section 7 provides supply of goods or services or both, between related persons or between distinct persons, as specified in Section 25, when made in the course or furtherance of business, to be considered as a taxable supply, it should not be presumed that all expenses at the head office including common management cost, be considered in a manner that the said office is rendering services to other branches of that organisation.

4. To illustrate, the board of directors have oversight on the entire organisation. Merely because they operate from the corporate office or head office, it does not mean that the said corporate/ head office renders services to their respective branches. Every organisation maintains cost centre and such common costs, are ordinarily accounted in the respective cost centre. In this regard, their salary or common costs, while they are incurred, are accounted in the relevant cost centre, attached to the branch they pertain. Given that the costs incurred are accounted at respective branches, it cannot be said as if the corporate office or head office would render services to branches. To illustrate in other words, let us consider an event organised by Bangalore Branch in held in a hotel in Goa. The event cost can be accounted in Bangalore cost centre in the same manner, where the cost of employees sitting in head office would be accounted as such. However, this benefit will be available only for internal costs and not for external costs such as legal, accounting, etc.

5. Accordingly, it be clarified that so long as the internal costs attributed to a particular branch are accounted based on allocated costs centre, it should not be considered that one branch renders services to another branch, for such common costs.

6. Further, on the valuation, given that Rule 28 provides for acceptance of value declared on the invoice, to be open market value, the valuation should not be questioned, whether on reasonableness or otherwise, so long as the recipient location is entitled to full credit. In the absence, the purpose of Rule 28 would be defeated as the said Rule has been provided to reduce the regressive nature of valuation of services for inter-branch services.

7. Alternatively, an optional scheme may be provided to assessees having multiple registrations that 2% of the credit taken by one branch, be considered as common credits and the said Branch, should allocate this credit to other branches, either by way of an invoice under Section 31 or be distributed in the manner prescribed in Section 20, as input service distributor. This benefit would be available only for common credits and not for credits pertaining to one branch, availed in another location. Adoption of this option would mean sufficient compliance to the need to distribute credit for common

We request you to consider the above, while making a clarification on inter-branch service. We consider that this would provide a purposive meaning to taxability of inter-branch services and go a long way to reduce potential litigations.

Yours sincerely,

For Karnataka State Chartered Accountants Association ®

CA. Chandrashekara Shetty
President

CA. Chandan K Hegde
Secretary

CA. Sateesha Kalkur
Chairman
Representation Committee

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GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
OFFICE OF REGISTRR OF COMPANIES, KARNATAKA
KENDRIYA SADAN, IIND FLOOR 'E' WING, KORAMANGALA,
BANGALORE – 560034

No. ROCB/ICAI.EDB/ 2019-20 **Date: 27/09/2019**

The President,
The Karnataka ~~Association of~~ State Chartered Accountants of India Association,
BENGALURU.

Sir,

Sub: Awareness on Progressive Reforms undertaken by MCA for Ease of Doing Business in India for the year 2019-Regarding.

With reference to the above, it is to state that you are aware the Ministry of Corporate Affairs has taken number of measures for ease of doing business in our country and to attract many foreign investors to do business in India. Some of the reforms undertaken by the Ministry this year are worth to mention hereunder

1. Zero fee is charged for incorporating of a company having an authorized capital upto Rs. 15 lakh, vide notification G.S.R. No. 180(E) dated 06.03.2019.

2. Integration of MCA21 system with EPFO & ESIC System for issuance of EPFO registration & ESIC registration at the time of incorporation in Form SPICe form, vide notification G.S.R. No. 275(E) dated 29.03.2019. Hence no separate application to be made for EPFO & ESIC registration.

3. Companies (Authorized to Register) Second Amendment Rules, 2018 come into force w.e.f. 15.08.2018, enabling_

   c) Conversion of society, trust into a section 8 company.
   d) The restriction of minimum number of members reduced from 7 to 2 for a private limited company and LLP with less than 7 members can convert themselves into a private limited company.

Contd....2.

: 2 :

4. Name Availability Rules have been simplified through Companies (Incorporation) Fifth Amendment Rules, 2019, consequently, name approval has been reduced to 1-3 days.

5. Many e-forms have been made as STP.

6. The prescribed time limit for Filing of CHG-4 for satisfaction of charge is modified as 300 days in lieu of 30 days and approaching R.Ds for condonation of delay.

7. Companies (Amendment) Ordinance, 2018 notified w.e.f. 02.11.2018, provided great opportunity to the companies to file the documents for creation or modification of charge who have not filed in time.

8. Adjudication of Penalties has been extended to many sections to reduce the procedure for making application for compounding of offence to RD/NCLT.

9. The companies are able to upload KYC of companies in e-Form INC-22A through mca21 portal.

10. The time limit for filing of Form Ben-1 & Ben2 is extended upto 31.12.2019 without payment of additional fee.

In view of the massive measures undertaken by this Ministry for ease of doing business, you are requested to give wide publicity among professionals/stakeholders about the same and also requested to publish the same in your monthly Journal.

A line of confirmation at an early date is much obliged.

Yours faithfully,

(C.V. SAJEEVAN)
REGISTRAR OF COMPANIES
KARNATAKA

Workshop on Demystifying issues in 44AB,AD,AE & clause to clause analysis of form 3CD , 3CA & 3CB at VVN Basavanagudi


Workshop on Demystifying issues in 44AB,AD,AE & clause to clause analysis of form 3CD , 3CA & 3CB at KLE College Rajajinagar


One Day Workshop on GST and Career Counselling Program - CA as a Career Path at KLE Society's Lingaraj College, Belagavi




Workshop on Proposed Changes in Audit Report Applicable to Charitable or Religious Trust or Institution




Elqouent Professionals Programme - Sept-Oct 2019



Birthday Celebration of our Past President CA P R Suresh

Flood Material Distribution @ Kamatagi, Bagalkot District

Flood Material Distribution @ Alnavar, Dharwad District

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION

Organises

SPORTS AND TALENT MEET 2019

FOR ICAI MEMBERS & FAMILY

DATE: 9th November 2019, Saturday from 8 am to 6 pm
at BEL SPORTS GROUND, BENGALURU

- ★ CRICKET - CA's
- ★ VOLLEY BALL - CA's
- ★ TUG OF WAR - CA's & Family
- ★ ATHLETICS - CA's & Family

DATE: 10th November 2019, Sunday from 8 am to 6 pm
at KGS CLUB CUBBON PARK, Opp. MS Building, BENGALURU

- ★ Shuttle Badminton - CA's & Family
- ★ Lawn Tennis - CA's
- ★ Table Tennis - CA's
- ★ Chess - CA's & Family
- ★ Carrom - CA's & Family

FAMILY EVENTS

- ★ Dance
- ★ Singing
- ★ Rangoli
- ★ Musical Chair
- ★ Drawing Junior & Senior
- ★ Flower Decoration
- ★ Pick & Act

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