

# KSCAA

Karnataka State Chartered Accountants Association ®

## NEWS BULLETIN

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**Dear Professional friends,**

The month of May, which otherwise was one of the busiest months for Chartered Accountants has been a challenge for the whole humanity. Particularly, the dynamics of the challenges which lie ahead of us is extremely ambiguous. They say lockdown had got everyone so much time that, spending time with loved ones and improving the skills and knowledge which

otherwise was not possible is the best positive outcome of lockdown. In this journey, this association had conducted series of webinar to update the knowledge of members and the same was well attended by majority of members.

During this lockdown, we have represented to government with list of challenges/feedbacks which the fraternity and the business community require for betterment of economy. Honourable Prime Minister of India, Shri Narendra Modi announced mammoth sized stimulus to help the bleeding business with liquidity and easier compliance. The sheer amount of stimulus is a positive step in the right direction, however the allocation to the needy and the peripheral view of the schemes are yet to be analysed. At the first outlook, Rs. 20 Lakh crore of stimulus 2.0 looks at kickstarting the economy by providing major liquidity to MSME, reducing the compliance burden, early dispersion of refund, reducing TDS etc. Heartening to note that definition of MSME has gone for major change and banks have significant role in the government's effort of normalising the shock.

KSCAA's initially pledge to serve around 7,500 meals to underprivileged and stranded workers in Bengaluru was overwhelming responded by the donors. On members demand, we had to rise our charity by naming it #mission10K meals and we were oversubscribed even in this mission. We concluded our service with more than 23,800 meals during the first and second lockdown and the experience of this gesture was humble and great.

## News Roundup

### Goods and Service Tax

Government in its on-going efforts to neutralize the situation as impacted by Covid pandemic has released following additional reliefs measures to ensure there is ease in compliance of GST law:

- The long awaited Form PMT-09 is finally rolled out on the GSTN Portal to enable taxpayers to shift/transfer their Cash ledger balances between different major and minor heads.
- Taxpayers who are companies may use EVC instead of mandatory requirement of DSC for their filings of GSTR3B returns until 30th June 2020.
- Filing of SMS based NIL GSTR3B returns is now incorporated and given recognition under CGST rules. However necessary modus operandi in this regard is still awaited.
- Taxpayers under IBC who have filed all their GSTR1 statements and GSTR3B returns for periods prior to the appointment of IRP/RP, such taxpayers have been shielded from the requirement of adhering to the special procedure framed under notification 11/2017-CT dated 21-03-2020.
- Other taxpayers under IBC who are subject matter of special procedure to be followed in terms of notification 11/2017-CT dated 21-03-2020 have been given extended time for taking New GST registration until 30th June 2020, if the time limit is ending before that date.

- Validity of E-way bills expiring between 20-03-2020 and 15-04-2020 has been further extended from existing date 30-04-2020 to new date 31-05-2020.
- The last date for filing GSTR9 and GSTR9C for FY 2018-19 where aggregate turnover of FY 2018-19 exceeds Rs. 5 Crores has been further extended from existing date 30th June 2020 to new date 30th September 2020.

### Direct Tax

- Government issues clarification regarding short deduction of TDS / TCS due to increase in rates of Surcharge by Finance Act 2019. The Act provided for increase in the rate of surcharge applicable from 1<sup>st</sup> April, 2019 for previous year 2019-20 relevant to assessment year 2020-21.
- Clarification regarding selection of option under section 115BAC related to concessional rate of tax subject to the condition that income shall be computed without specified exemption or deduction, set off of loss and additional depreciation.
- Government issued a notification for extension of all TDS /TCS returns filing dates which fall during the period March 20, 2020 to June 29, 2020.
- CBDT issued a notification for deferment of requirements under clause 30C and clause 44 of form 3CD related to GST and GAAR reporting.
- Order has been passed to extend the validity of Form 15G & 15H for the financial 2019-20 to 30.06.2020 to mitigate hardships to small taxpayers.

### Corporate and Business Law

MCA has issued an FAQ on COVID 19 and CSR clarifying various issues including that the contributions made to PM Cares and State Disaster Management Authority shall qualify as CSR expenditure whereas contributions made to CM's Relief Fund or State Relief fund for COVID 19 shall not qualify as CSR Expenditure.

MCA has extended the time limits for Name Reservations and resubmissions of certain forms for companies and LLPs. Additional time has been provided for such forms due between 15<sup>th</sup> March to 17<sup>th</sup> May 2020.

MCA has extended the due date for filing of Form NFRA -2 by auditors. The form for the reporting period 2018-19 shall be now required to file within 210 days from the deployment of the form.

### Conclusion

I read this quote, "That which does not kill us makes us stronger" by Friedrich Nietzsche. Meaning, Simply surviving a calamity doesn't make you superior, it is how you recover from it that decides whether you are strengthened or weakened by your experience. You can feed your essential fiber of character and strengthen it—as Stephen Covey would say, you "sharpen the saw". For most people, this includes reading, learning, and practicing the intellectual arts; but some are strong enough to go beyond—to convert even trauma into wisdom, and use it to feed that essential fiber of character. Others, however, cannot, and fall victim to such maladies as demoralization and addiction. Even in that, some people are able to cycle through several seasons of strife before they can learn to rise above; whereas the rest spiral down in disaster and die in misery. Really, it can be seen as a commentary on the human process of learning; trial and error.

Yours Sincerely,

**CA. Chandrashekara Shetty**  
President

# KSCAA

## News Bulletin

May 2020

Vol. 7 Issue 9

No. of Pages : 28

### CONTENTS

Rule 43 - GST Credit on Capital Goods – Few Issues	4
CA. Madhukar N Hiregange & CA. Mahadev R	
MAP 2.0 – A Sharpened Blade to cut Tax Woes?	6
CA. Sandeep Jhunjhunwala & CA. Arshita Khetan	
Will it be Business as usual Post Pandemic	8
CA. V. Pattabhi Ram & CA. Geetha Ranganathan	
GST on Remuneration Paid to Director - Recent Advance Rulings	9
CA. G B Srikanth Acharya	
Financial Reporting and Assurance	12
CA. Vinayak Pai V	
Environmental Ethics	15
Adv. M G Kodandaram	

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## RULE 43 - GST CREDIT ON CAPITAL GOODS – FEW ISSUES

CA. Madhukar N Hiregange & CA. Mahadev R



It's been nearly two years since the implementation of GST replacing all major indirect taxes in India. For many, it was a roller coaster ride. There have been many challenges which have been addressed and few still continuing. The government has been trying to clarify many of the aspects through tweets on twitter account press releases, circulars (which cannot be said to be legal clarification) & various notifications/ amendments to law. etc., However, there are many few issues which need to be addressed. In this article, we have analysed provisions related to GST input tax credit on capital goods and issues associated with it.

### **Provision in GST for ITC on capital goods**

In GST, capital goods defined to mean goods whose value has been capitalized in books of accounts of the person claiming the input tax credit. Such goods should be intended to be used in the course or furtherance of business. The assets are to be capitalised in books of account when it is apparent that the future economic benefits from such assets would flow to the business and cost could be reliably measured. It is important that where applicable Ind AS-16 would be applicable for such capitalisation. Due to simplified definition, it would be very easy for tax payers to classify the goods as inputs or capital goods for taking credit of GST paid on goods. GST law provides for full ITC on purchase of goods in the month of receipt of goods itself as against the instalment scheme in erstwhile laws such as Central Excise or VAT laws. This is one of the positives of GST.

In terms of section 16(3) of CGST Act, ITC would not be eligible in respect to the tax component of capital goods/ plant and machinery, if the depreciation on the same has been claimed as per Income Tax Act 1961. It would be beneficial to avail ITC, on tax portion rather than adding to cost of asset & claim depreciation on the same as it would facilitate cash flow to the organisation. This would hold good only when substantial portion of credit is available for utilisation. If the goods are used for exempted clearances substantially, then cost benefit analysis may be made between the options.

A question arises if the credit is already availed, can it be paid back to claim income tax depreciation instead or vice versa. The Gujarat high court in case of *Genus Electrotech Ltd 2013(296) ELT 175 (Guj)* had held that the CENVAT credit availed can be reversed before utilisation if the tax payer wishes to claim income tax depreciation instead. Similar option should be possible even in opposite case but before claiming the benefit from the income tax depreciation.

### **Proportionate credit on capital goods**

Earlier, full CENVAT credit of excise duty /CVD was available for a manufacturer / service provider even though capital goods were partially put for non-taxable activities. One of the drawbacks in GST as compared to CENVAT credit scheme is non-availability of full credit on capital goods even when goods are put only partially for taxable activities. This is in line with the erstwhile VAT provisions of few States.

### **Interest liability on ITC amount adds the burden**

Though provision for payment of credit on common capital goods is similar to inputs, there is an interest liability which arises on capital goods in GST. Rule 43 provides for availing full credit on common capital goods. Later on, the proportionate credit based on ratio of exempted supplies over total turnover be added to the output liability of every tax period. This addition of tax and interest amount is to be done for a period of 60 months. Though this looks reasonable, the issue is requirement of interest payment.

Rule 43 (h) requires the tax payer to add even interest amount along with proportionate credit every month. There is no clarity on methodology of computing the interest. Following procedure may be followed:

1. Such ITC would be credited to electronic ledger & the useful life would be considered as 5 years from the date of purchase
2. The total ITC in electronic credit ledger of such common capital goods shall be distributed over its



total useful life i.e 60 months from the date of purchase (12\*5=60months) It needs to be calculated for every tax period i.e every month

Credit for the tax period =

$$\frac{\text{ITC in electronic credit ledger}}{60\text{months}}$$

3. Amount of credit to be added to output liability which is attributable to exempted supplies would =

$$\frac{\text{Value of exempted supplies} \times \text{credit for the tax period month}}{\text{Total Turnover}}$$

4. Amount of credit computed in point no.3 to be with interest. For example, if the proportionate credit to be reversed in first month is Rs.5,000/-, the interest to be paid for one month. If Rs.5,000/- is being reversed in tenth month, then interest to be paid for ten months as this amount of credit is allowed in first month itself. It is also interesting to note that rate of interest is not specified. Since, the reference made to add to output liability, in terms of Section 50 (1), rate may be considered as 18%.

It may be noted that when the usage of capital goods changes from exclusive use for non-business purpose/ exempted supplies to common use, then the common ITC in relation to the said goods would be calculated by reducing 5% of ITC per quarter/ part thereof. Such reduced amount would be credit to the electronic ledger. Thereafter, the regular procedure of credit reversal would be required based on the turnover.

### **Exempted supplies for Rule 43**

Exempt supply means supply of any goods or services or both which attracts nil rate of tax or wholly exempt including non-taxable supplies. A question which could arise is whether the transactions/ activities covered in schedule III to CGST Act 2017 such as high-sea sale transactions, merchanting trade, sale of land/ building or other non-operating income such as interest income, dividend income should be considered as exempt supplies for the purpose of Rule 43.

In term of explanation to Section 17(3) of CGST Act 2017, all supplies covered in schedule III (except sale of land/ building) would not be treated as exempt supplies for Rule 42 or Rule 43. Further, as per explanation 1 to Rule 43(5), value of services by way of accepting deposits, extending loans or

advances in so far as the consideration is represented by way of interest or discount and the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India would not be considered as exempt supplies. Therefore, Rule 43 need not be followed in such circumstances.

The other non-operating incomes such as dividend, sale of duty scrips such as MEIS/ SEIS could be there which would be considered as exempt supplies. However, in such cases, the registered person should ascertain if there are any capital goods which are commonly used to earn such income. If, no, then rule 43 reversal would not be required.

### **ITC reversal on capital goods based on Rule 42**

Very commonly it is being observed that many of the tax payers have been reversing credit on capital goods in accordance with Rule 42 as against Rule 43. The advantage which is being seen by the tax payers is that there is no need to pay interest for 60 months and entire reversal is being made in first year itself due to which tax department may not question.

This practice could complicate the issue further. As Rule 43 is very specific, the credit reversal under Rule 42 may not be agreed by the tax department. One is loss of interest. Another is possible change in ratio of exempted turnover. Suppose the exempted turnover ratio is 30% in the year of capital goods purchase, under Rule 42 also 30% of credit would have been reversed. If the ratio is 40% in subsequent year, then due to following Rule 42 instead of Rule 43, it results in short reversal of credit. There could be a demand for re-computation of credit and reversal with interest. Therefore, rule 43 to be followed strictly for capital goods. This could advantageous also sometimes. In the example, assume the ratio is 20% instead of 40% from second year onwards which results lesser reversal of credits.

### **Useful life of capital goods and loophole in rule**

In terms of Rule 43(1) (c), for the purpose of credit reversal the validity of the useful life of such goods would extend up to five years (or 60 months) from the date of the invoice for such goods. Following are two issues in this provision:

- a. Tax payer needs to maintain track of all the capital goods along with invoice date to ascertain the useful life which can be complicated if numbers are high.

*(Contd. on page 20)*



## MAP 2.0 – A SHARPENED BLADE TO CUT TAX WOES?

CA. Sandeep Jhunjhunwala & CA. Arshita Khetan



Ease of doing business in India has been a key propaganda to give the economy a much-needed boost and attract foreign investments to country. 2019 saw India moving 14 notches up to the 63<sup>rd</sup> position on the World Bank's Ease of Doing Business (EDB) index that ranks countries based on various factors such as simplicity of regulations, protection of rights, credit mechanism, resolving disputes etc. Although there has been an impressive improvement in India's rankings, there still exists an immense scope to further improve India's position on the EDB index. A key improvement area that has been brought up time and again is tax as it provides fertile grounds for international differences. India is at times known for having a complex taxation framework that requires expert knowledge, an in-depth analysis and is subject to divergent interpretations. Traditionally an issue that is picked up by the Revenue during tax audit may take 10-12 years to reach finality. Prolonged litigation brings with itself the burden of additional time and cost which when quantified is often larger than the quantum of the issue being litigated. Businesses are increasingly looking at alternative dispute resolution mechanisms that could ensure transparency, quick disposal and a one-time settlement of ongoing issues.

While tax treaties are meticulously drafted to address issues arising due to presence of organizations in multiple countries, it is often observed that countries interpret the provisions differently and take divergent views on a said issue. This results in prolonged litigation, uncertainty and additional time and effort in resolving disputes. In order to ease the burden on taxpayer, jurisdictions have adopted various alternative dispute resolution mechanisms. Advance Pricing Agreements (APA) and Mutual Agreement Procedures (MAP) are the most sought-after and commonly implemented global mechanisms to solve cross-border disputes. APA programs aim to provide certainty to multinational corporations by ensuring that tax authorities accept the future profitability of a company as reasonable. Currently in its 7<sup>th</sup> year, the APA program in India has seen 300 agreements penned and signed by taxpayers and the taxmen. APAs help resolve transfer

pricing issues that may arise from a proposed transaction and can be unilateral, bilateral or multilateral depending on the number of jurisdictions and associated enterprises of a taxpayer involved. APAs offer better assurance on transfer pricing methods and are conducive in providing certainty and unanimity of approach and also minimize prospective audit threats. On the other hand, MAP is a framework instituted by the Organisation for Economic Co-operation and Development (OECD) under Article 25 of tax treaties to ensure that tax implications of transaction are as per the provisions laid down in the treaty. MAP is a more supple and non-litigious mechanism for competent authorities (tax authorities or representatives of the finance ministry or equivalent) to discuss cross-border taxation of specific transactions or situations with a view to coordinate their approach for the benefits of taxpayers involved. MAP can be invoked by a taxpayer but is resolved by a mutual agreement entered into by the competent authorities of the countries involved. MAP, being closed-door proceedings, is a process of consultation between competent authorities of two countries. Issues such as transfer pricing adjustments, existence of permanent establishment, characterisation of income, attribution of profits to permanent establishment are matters usually settled by a MAP. Few countries such as the US and UK have also entered into Memorandum of Understanding (MOU) to suspend the collection of disputed tax until MAP is disposed.

OECD under its much talked about BEPS project had issued "Action 14 - Making Dispute Resolution Mechanisms More Effective" which lays down best practices that can be adopted and requires countries to assess its dispute resolution framework in four areas - preventing disputes, availability and access to MAP, resolution of MAP cases and implementation of MAP agreements. Along with adopting the minimum standard, the members of BEPS inclusive framework agreed on a peer review process to evaluate the implementation of this standard and to report their MAP statistics. As per the 2018 OECD MAP statistics, India has around 841 cases pending as on December 31, 2018 out of which 710 cases relate to transfer pricing. In 2019, OECD

had released “MAP Peer Review Report, India (Stage 1)”. It was observed that India meets most of Action 14 Minimum Standards and has also put in place a bilateral APA programme which enables taxpayers to request rollbacks of bilateral APAs which are in-fact granted in practice. However, it was also observed that even where requirements for initiating MAP are met, India limits such access to only cases where there is double taxation. For cases concerning the application of domestic anti-abuse provision access to MAP is given, but discussions only focus on eliminating double taxation arising from such application. India had not issued guidance on the availability of MAP and how it applies this procedure in practice. There were no rules and specific timelines in place for requesting additional information by the competent authorities and for the taxpayer to provide such information. Moreover, under the Indian tax conventions entered into with other countries, there is no specified timeline for disposal of application under MAP and the proceedings often failed to involve the taxpayer in the negotiations.

Recent endeavour by the Central Board of Direct Taxes (CBDT) for greater alignment with OECD’s internationally acceptance standards stated in the BEPS Action 14, by way of amendments to domestic tax rules governing MAP [Rule 44G and 44H of Indian Income-tax Rules, 1962] reaffirms the intentions of the Indian Government to bring around a more business oriented tax system in the country. Rule 44H (dealing with action by the competent authority of India and procedure for giving effect to the decision under the agreement) has now been merged with Rule 44G (invoking MAP by resident assessee). Hence, separate MAP rules for resident and non-residents would not exist any further. The revised rules provide that the competent authorities shall endeavour to resolve the issues under MAP within 24 months. The extent of the wording “ shall endeavour to arrive at a mutually agreeable resolution” could be viewed as mandatory settlement, sinking the scenarios of a possible arbitration in cases where competent authorities could not reach consensus. The competent authorities can call for additional information and also discuss the case with the taxpayer or the representative of the taxpayer to understand the actions taken by the tax authorities in India or outside India that are not in accordance with the tax treaty. A specific inclusion has been made that in case MAP is invoked on account of action taken by any tax authorities in India, the resolution arrived at, shall not result in decreasing the taxpayer’s income or increasing the

loss reported in the return of income. The 90 day period for acceptance of resolution by the taxpayer or withdrawal of appeals and payment of taxes has been reduced to 30 days for acceptance or withdrawal and another 30 days from the end of the month in which communication is received by the tax officer to give effect to the resolution. Additionally, Form 34F (form of application for an assessee, resident in India, seeking to invoke mutual agreement procedure provided for in agreements with other countries or specified territories) has been amended to provide for details of remedy sought in the other country or specified territory, if any, with documentary evidence.

While the APA program overall has been fairly successful, taxpayers often questioned the effectiveness of MAP due to factors like lack of transparency and long timelines for resolution. With India relaxing its position on acceptance of MAP cases, prescribing an average timeline for resolution and allowing the taxpayers to be a part of the process, it is likely that multinational organizations would enthusiastically use MAP as an alternate dispute resolution mechanism to resolve pending income tax litigation. The amendment also highlights the intent of the Indian Government to build a benign framework of taxation in the country. It is certain that MAP process would become more effective gradually as competent authorities would interact firmly as a result of BEPS initiatives. All in all, Rome was not built in a day, but they were laying bricks every hour. In the Indian context also, these developmental reforms are only the beginning - substantial distance must still be covered in ameliorating the tax system.

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## KSCAA WELCOMES NEW MEMBERS - APRIL 2020

S.No.	Name	Place
1	<b>Sudhindra D S</b>	Doddaballapur
2	<b>Manjunath B G</b>	Bengaluru
3	<b>Srinivasan Viswanathan</b>	Bengaluru
4	<b>Punith H</b>	Hassan



## WILL IT BE BUSINESS AS USUAL POST PANDEMIC

**CA. V. Pattabhi Ram & CA. Geetha Ranganathan**



An invisible virus, COVID-19, has sent the global population of 9 billion packing to their homes. When mankind eventually wins the battle against this faceless enemy, the way we interact and do business would change forever.

For now, here is its impact on five industries.

### **Aviation**

In India, the aviation sector is planning to lay-off over 29 lac people. IATA estimates revenue from passenger kilometers in the domestic and global aviation business to drop by 48%.

There are two reasons people fly; one to carry out business, and two for pleasure. Both will now go for a toss. Here's why.

The last 60 days have proved that videoconferencing can be seamless. Why should we fly for the people-to-people meeting, transport our self from Place A to Place B, when it can be done effortlessly from within our home or office? Why wake up in the morning, pass through security, fly out, drive down the city road, finish the meeting, drive back to the airport, pass through security, and fly back the same night. Wasn't that an inefficient way of doing things? We sense that both domestic and international travel will change forever.

Of course, there are plus points for air travel. It's faster compared to rail or road and to that extent less of a virus carrier. Technology will upgrade to help contactless screening. But why take the chance? The next 1-2 years will hit the aviation sector hard, although its original bugbear, ATF price, is down.

### **Travel and Tourism**

The next big casualty will be travel and tourism. As per the UNWTO report of March 2020, global tourist arrivals fell by 57 percent leading to a loss of 80 billion dollars in revenue. We could stare at a 1.2 trillion-dollar loss in export revenue from tourism and 120 million jobs at risk. The hotel industry is downsizing like crazy. In the US, 40 percent of jobs in the hospitality sector have gone up in smoke. The Indian counterpart is expecting a revenue loss of 1.10 lakh

crores, and in India, tour operators are staring at a revenue loss of 60,000 crores.

All of that is because nobody and their uncle would want to now travel for pleasure. Yes, over time, people will forget the pandemic, and life might come back to how it was pre-COVID, but if my sense is right, people will be more careful about the places they travel to, the frequency of the travel, and the mode of travel. Hotels will have to lie low, and some of them, if they cannot stand the pressure, may have to go belly-up.

### **Banquet Management**

If we have learned the right lessons from this pandemic, we expect people to be more careful about social events. Huge weddings, crowded seminars, people-thronged felicitations are likely to be a thing of the past. Again, thanks to streaming. Weddings can, and are already, streamed live. Online seminars are already a rage. Felicitations, too, can go on the Internet. Of course, we will miss people to people live-contact is the shrunk weddings and felicitations, but that is likely to be a new reality. Ditto for seminars, but if your interest was in the workshop's meat, namely the content, you wouldn't bother.

For now, the banquet hall sector is facing a severe liquidity crunch, and this could become normal for at least the next couple of years.

### **Health Care**

There is a likelihood of increased telemedicine usage. The Aarogya Sethu, not a medicine, is an indicator of tracking practice for things to come. The health care industry is already talking about remote patient monitoring in the context of artificial intelligence and automation. This will get accelerated. With the technology, indications are that nurses can monitor 200-300 patients at a time. As per Cleveland Clinic records, 60,000 telemedicine visits were performed in March 2020 (Average: 3400), amounting to a 1,700% increase.

(Contd. on page 11)





## GST ON REMUNERATION PAID TO DIRECTOR - RECENT ADVANCE RULINGS

CA. G B Srikanth Acharya

Recently, there was a controversy as to whether remuneration paid to the Director of a company is taxable under Reverse Charge Mechanism (RCM) or not. To this, the decisions ruled by the Authority for Advance Ruling (AAR) of Rajasthan and Karnataka bench have created chaos among the companies and their management. The Author has made an attempt to analyse both the rulings.

### Analysis of the order passed by Rajasthan Advance Ruling Authority

In an application filed by *Clay Craft India Pvt. Ltd.* before the Rajasthan bench of the Authority for Advance Ruling (AAR), clarification was sought as to whether GST is payable under Reverse Charge Mechanism (RCM) on the salary paid to Director of the company who is paid salary as per contract. Also, whether the situation will change if the Director is also a part time Director in other company?

#### Applicant's point of view:

The company said that its Board of Directors consists of six directors who perform all the duties and responsibilities as required under the law. Along with these, the directors are also working as employees of the company at different levels of management, each one of them is holding charge of- procurement of raw material, production, quality checks, dispatch, accounting, etc. For this, they are being compensated by way of regular salary and other allowances as per the company's policy and employment contract. The company is deducting TDS and EPF from their salaries. By these means, the directors are treated at par with any other employee of the company besides being directors of the company. And hence there exists an employer-employee relationship between the Company and the whole-time Directors working as employees. Therefore, referring to clause (1) of Schedule III to the Central Goods and Services Tax (CGST) Act, 2017, such activity should be treated as a service by an employee to the employer in the course of or in relation to its employment and thus would not constitute as supply and would not be taxable under CGST Act provisions.

A similar Advance Ruling was sought in the case of *M/s Alcon Consulting Engineers Pvt. Ltd.* The company had sought that whether RCM is applicable on remuneration paid to the Director; wherein the Karnataka bench of AAR had ruled that in case of remuneration paid to the Directors, the services provided by them to the Company are not covered under clause (1) of the Schedule III to the CGST Act, 2017 as the Director is not an employee of the Company. The consideration paid to the Director is in relation to the services provided by the Director to the Company and the recipient of such service is the Company as per clause (93) of section 2 of the CGST Act and the supplier of such service is the Director. The remuneration paid to the Director of the applicant company is liable to tax under RCM under subsection (3) of section 9 in the hands of the applicant company as it is covered under entry no. 6 of Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017.

*M/s. Clay Craft India Pvt. Ltd.* cited that in the above decision of Karnataka AAR, it has not been differentiated or dealt with possibility of a person being director of the company and simultaneously working as an employee. Further, *M/s. Clay Craft India Pvt. Ltd.* is already paying GST under RCM on the commission paid to the Directors, as it relates to service provided by them in the capacity of a Director. The salary paid to the Directors in the capacity of an employee, is being booked under the head "Income from salary" in the personal Income tax returns of the Directors and that such amount should not be taxable under GST Laws.

The applicant also cited definitions of employee, director, manager, and managing director under various other Acts and said that the definition of director is an inclusive one, which includes being in employment of the company. Their directors are employees working as an individual in the company. It said that the whole time Directors of the company, who are appointed and given various responsibilities by the Board of Directors of the company, bring them in the definition of employee.

Concluding, that the salary and other allowances paid to the directors in the capacity of employment should not be liable to tax under CGST Act, 2017 consequently no liability shall arise on the company to pay tax on the same under RCM.

#### Comments of the Authority for Advance Ruling (AAR):

The AAR reiterated entry No. 6 of Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017 issued under Section 9(3) of the CGST Act, 2017, that reads as under-

Sl. No. (1)	Category of Supply of Services (2)	Supplier of Service (3)	Recipient of Service (4)
6	Services supplied by a Director of a company or a body corporate to the said company or the body corporate	A director of a company or a body Corporate	The company or a body corporate located in the taxable territory

The AAR stated that the applicant company is located in taxable territory. Citing the definition of consideration under CGST Act, 2017, it stated that the consideration paid to the Director for supply of services to the company is specifically covered under the above mentioned notification.

It is further stated that the consideration paid to the Directors is against supply of services by the directors to the applicant company and are not covered under clause (1) of the Schedule III to the CGST Act, 2017. The Director being the supplier of service and the Company being the recipient of service, it held that services rendered by the Director to the company for which consideration is paid to them under any head is liable to be taxed under RCM, under GST.

#### Held by AAR:

The consideration paid to the Directors by the applicant company will attract GST under reverse charge mechanism as it is covered under entry No. 6 of Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017 issued under Section 9(3) of the CGST Act, 2017. The Situation will remain the same as above and will attract GST under RCM even if the Director is also a part time Director in other company.

#### **Ruling from Karnataka AAR**

After the controversies that rose from Advance Ruling of Rajasthan AAR, the case of Mr. Anil Kumar Agrawal has provided some relief to the companies and at the same time created confusion also. Though the Advance Ruling was not

sought for clarifying as to whether GST is payable under RCM on Director's remuneration or not, it incorporated the matter of salary received as a Director from the company. The Advance Ruling was sought to clarify whether "Salary as director from Private Limited Company" shall be considered for computing aggregate turnover under GST for the purpose of registration. To which, the AAR held that remuneration received by the applicant as an Executive Director is not includable in the aggregate turnover under GST, as it is received for a service rendered by the applicant being an employee of the said company. And, that the services of the applicant as employee to the employer are neither treated as supply of service nor as supply of goods, in terms of clause (1) to Schedule III of the CGST Act, 2017.

However, the AAR further stated that, if the applicant has received salary as a Non-Executive Director from the company, then such service is supply under GST and is liable to be taxed under RCM under sub-section (3) of section 9 of the CGST Act, 2017 in the hands of the company, under Entry No. 6 of Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017

#### **Take from the Rulings**

The decision from Rajasthan AAR in case of Clay Craft India Pvt. Ltd. has distinguished director from an employee, both of whom could be performing exactly similar functions in the company. It has adopted the same decision as given in case of Karnataka AAR for M/s Alcon Consulting Engineers Pvt. Ltd. The reason for not treating the directors, who are performing in the capacity of an employee (under clause (1) to the schedule III of the CGST Act, 2017), as employees has not been explained in the Ruling. Also the reason for not considering the applicant's contention and evidences has not been elucidated in the Ruling.

While the levy of tax on commission paid to the Directors for rendering service in the capacity of a Director is justifiable, since it is specifically covered in Notification No. 13/2017- Central Tax (Rate), liable to RCM. Extending the justification of taxing director specific service to taxing service by director under employment contract is unreasonable.

On the other hand, the latest Karnataka AAR Ruling in the case of Mr. Anil Kumar Agrawal held that, GST is not applicable on services provided by an Executive Director of the company as he is in whole-time employment of the company, is justified.

## Conclusion

A close reading of the Entry No. 1 to the Schedule III of CGST Act, 2017 which exempt *employee service in the course of or in relation to his employment* and the entry no. 6 of Notification No. 13/2017, dated: 28/06/2017, which levy tax on *services supplied by a director* is required.

In order to analyse what is exempted and what is taxable, one should keep in mind that the “**kind of service or the nature of service**” is which is needed to be considered and not the nomenclature of the consideration paid or received. Therefore, payment of salary, remuneration, wages, commission, sitting fees etc., may not be the only criterion which decides that particular type of service is exempt or taxable.

The moot question that needs to be answered is whether director can be an employee of the company or not and all the laws made applicable to the employee (other than director) shall apply to the director (who employed as an employee) or not.

The word “employee” is not defined under GST Law. In the absence of such definition it is can be accepted principle that it can be resorted to court’s dictum. Hon’ble Karnataka High Court in the case of **Regional Director, ESI Corpn. V. Margarine & Refined Oils Co. (P) Ltd. 1984 Lab IC 844; (1983) 2 LLN 918 (Kant)** had an occasion to decide whether company can employee director or not. Accordingly, it was held that, *a company is a legal person and can employee one of its Directors as Managing Director, thus, the Managing Director of a Company shall fall under the definition of*

*“employee” under section 2(9) of the ESI Act, 1948 and the remuneration paid to the Director shall amount to wages under section 2(2) of the ESI Act, 1948.*

Further Hon’ble Apex Court in the case of **Employee’s State Insurance Corporation V. Venus Alloy Pvt. Ltd (Civil Appeal No. 1464 of 2019 arising out of SLP (Civil) No. 12812 of 2015)** held that *Directors of Company, who receive remuneration, shall come within the purview of “employee” under Section 2(9) of the Employee’s State Insurance Act, 1948 (Hereinafter referred to as ESI Act, 1948)*

Thus from the aforementioned discussion, it is understood that, director can also act in the capacity of an employee to the company. Entry No.1 to the Schedule III being specific and Entry No. 6 of Notification No. 13/2017, is general in nature. As per interpretation rules, specific should always prevail over general. Hence, services provided by the director of a company, as an employee, does not attract tax under GST.

Even when the Rulings are binding only to the applicants, they have cautioned all the companies in this matter. Apparently, the intention of GST Law is not to levy tax on salary and services under employer-employee relationship, which was not considered fairly in the Rajasthan Ruling. Author is of the view that there needs to be clarification from the Government, for the interest of the companies at large and also to avoid unnecessary confusions and disputes.

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## WILL IT BE BUSINESS AS USUAL POST PANDEMIC

(Contd. from page 8)

The world will find a cure for COVID. It will land up with a vaccine sometime by June 2021. There are talks that COVID 19 may hit 60 percent of the population in some form or the other. People will be more conscious of sanitation and hygiene. All of this will help the health care industry.

### Wellness

Companies engaged in personal hygiene; nutrition products will improve post-COVID 19.

As per a recent Forbes Research Report, 67% of Americans

have reported higher stress levels; 57% reported anxiety; 54% say they are emotionally exhausted; 53% reported for daily sadness; 42% report decline in overall mental health. Stressing the importance of psychological and physical wellbeing, online courses like yoga, work out, stress therapy have sprung. This will emerge as a cottage industry. People will be more conscious of what they eat, how they eat, where they eat. They will also walk that extra mile to stay fit. Monitoring vital parameters of health, being that much more health-conscious, will gain increased traction.

One thing is sure: life post-COVID will be different.

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# FINANCIAL REPORTING AND ASSURANCE

CA. Vinayak Pai V

## 1. UPDATES: Monthly Roundup<sup>1</sup>

AS/IND AS	<ul style="list-style-type: none"> <li>Exposure Draft <ul style="list-style-type: none"> <li><b>Guidance Note</b> on <i>Applicability of AS 25 and Measurement of Income Tax Expense for Interim Financial Results.</i></li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>Exposure Draft <ul style="list-style-type: none"> <li><b>Guidance Note</b> on <i>Accounting by E-commerce and Cloud Computing Companies.</i></li> </ul> </li> </ul>
IFRS	<ul style="list-style-type: none"> <li>IFRS Publication <ul style="list-style-type: none"> <li><b>Compilation of Agenda Decisions – Vol 2.</b></li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>IASB Document <ul style="list-style-type: none"> <li><b>IFRS 16 and Covid-19.</b></li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>IASB Exposure Draft <ul style="list-style-type: none"> <li><b>Covid-19 Related Rent Concessions</b> (Proposed Amendment to IFRS 16).</li> </ul> </li> </ul>
Assurance	<ul style="list-style-type: none"> <li>ICAI AASB Announcement <ul style="list-style-type: none"> <li>Use of <b>Electronic Signature</b> for <b>Signing Audit Reports and Certificates.</b></li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>ICAI Advisory <ul style="list-style-type: none"> <li><b>Mentioning Fees in Advertisements</b> issued by Members.</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>ICAI Decision <ul style="list-style-type: none"> <li><b>Communication</b> with the <b>Retiring Auditor</b> through E-Mail<sup>2</sup>.</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>IAASB <ul style="list-style-type: none"> <li><b>Guidance on Auditor Considerations</b> relating to <b>Going Concern</b> in light of changing environment due to the <b>Covid-19</b> pandemic.</li> </ul> </li> </ul>
Company Law/ SEBI	<ul style="list-style-type: none"> <li>MCA General Circular No.15/2020 dated April 10, 2020 <ul style="list-style-type: none"> <li><b>Covid-19 related FAQs on CSR.</b></li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>MCA General Circular No.19/2020 dated April 30, 2020 <ul style="list-style-type: none"> <li><b>Extension</b> of last date of Filing <b>Form NFRA-2</b> <ul style="list-style-type: none"> <li><b>210 days</b> from date of deployment of form on NFRA website -FY 2018-19.</li> </ul> </li> </ul> </li> </ul>
NFRA	<ul style="list-style-type: none"> <li><b>Invitation to Comment</b> from Regulated Entities <ul style="list-style-type: none"> <li>Draft Procedure for <b>Submission of Audit Files to NFRA.</b></li> </ul> </li> </ul>
RBI Notifications	<ul style="list-style-type: none"> <li><b>Export of Goods and Services – Realization and Repatriation of Export Proceeds – Relaxation.</b></li> </ul>
	<ul style="list-style-type: none"> <li>Risk Management and Inter-bank dealings – <b>Hedging of Foreign Exchange Risk.</b></li> </ul>
	<ul style="list-style-type: none"> <li><b>Prudential Norms</b> on Income Recognition, Asset Classification and Provisioning Pertaining to Advances – <b>Projects under Implementation.</b></li> </ul>
	<ul style="list-style-type: none"> <li>Declaration of <b>Dividends by Banks.</b></li> </ul>
	<ul style="list-style-type: none"> <li>Covid 19 – Regulatory Package – <b>Asset Classification and Provisioning.</b></li> </ul>



	<ul style="list-style-type: none"> <li>• Covid 19 – Regulatory Package – Review of <b>Resolution Timelines</b> under the <b>Prudential Framework on Resolution of Stressed Assets</b>.</li> </ul>
	<ul style="list-style-type: none"> <li>• <b>Provisioning on inter-bank exposure</b> of Primary (Urban) Co-operative Banks (UCBs) under <b>All Inclusive Directions</b>.</li> </ul>
	<ul style="list-style-type: none"> <li>• Submission of <b>Regulatory Returns – Extension of Timelines</b>.</li> </ul>
<b>US GAAP</b>	<ul style="list-style-type: none"> <li>• FASB Staff Q&amp;A <ul style="list-style-type: none"> <li>○ <b>Accounting for Lease Concessions</b> related to the effects of the <b>Covid-19</b> Pandemic. <ul style="list-style-type: none"> <li>▪ Topic 842 and Topic 840 of USGAAP.</li> </ul> </li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>• FASB Staff Q&amp;A <ul style="list-style-type: none"> <li>○ <b>Cash Flow Hedge Accounting</b> affected by the <b>Covid-19 Pandemic</b>.</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>• PCAOB Request for Comment <ul style="list-style-type: none"> <li>○ Seeks Stakeholder Input on <b>Critical Audit Matters (CAMs)</b>.</li> </ul> </li> </ul>

<sup>1</sup> Updates for the period Apr 1 to Apr 30, 2020.

<sup>2</sup> May 1, 2020

## 2. GETTING UP TO SPEED: Covid-19 Related Rent Concessions – Proposed Amendment to IFRS 16

On April 24, 2020, the IASB published an Exposure Draft (ED/2020/2) – **Covid-19 Related Rent Concessions, Proposed Amendment to IFRS 16**.

Rent concessions include rent holidays or rent reductions for a period of time, possibly followed by increased payments in future periods. The objective of the proposals in the ED is to provide lessees with practical relief during the Covid-19 pandemic.

The ED proposes amendment to the lease accounting standard to **permit lessees, as a practical expedient, not to assess whether particular Covid-19 related rent concessions are lease modifications. Instead, lessees that apply the practical expedient would account for those rent concessions as if they were not lease modifications.** The ED does not propose any changes for lessors.

The ED is open for comments till May 8, 2020.

## 3. FIN ST EXTRACTS: COVID-19 – Impact

Extracts from published financial statements of a global listed company operating in the Information Technology sector (related to Disclosure of **COVID-19 impact** in the Notes to the Financial Statements) is provided herein below.

*The company has evaluated the impact of COVID-19 resulting from*

- *the possibility of constraints to render services which may require revision of estimations of costs to*

*complete the contract because of additional efforts,*

- *onerous obligations,*
- *penalties relating to breaches of service level agreements, and*
- *termination or deferment of contracts by customers.*

*The company has concluded that the impact of COVID-19 is not material based on these estimates. Due to the nature of the pandemic, the company will continue to monitor developments to identify significant uncertainties relating to revenue in future periods.*

*The company has considered the possible effects that may result from the pandemic relating to COVID-19 on the carrying amounts of receivables, unbilled revenues and Investment in subsidiaries. In developing the assumptions relating to the possible future uncertainties in the global economic conditions because of this pandemic, the company, as at the date of approval of these financial statements has used internal and external sources of information including credit reports and related information and economic forecasts. The company has performed sensitivity analysis on the assumptions used and based on current estimates expects the carrying amount of these assets will be recovered. The impact of COVID-19 on the company's financial statements may differ from that estimated as at the date of approval of these condensed financial statements.*

*The company determines the allowance for credit losses based on historical loss experience adjusted to reflect current*

and estimated future economic conditions. The company considered current and anticipated future economic conditions relating to industries the company deals with and the countries where it operates. In calculating expected credit loss, the company has also considered credit reports and other related credit information for its customers to estimate the probability of default in future and has taken into account estimates of possible effect from the pandemic relating to COVID-19.

#### 4. CASE STUDY: Reporting On A Key Audit Matter (KAM) – Revenue Deferrals

##### Background

*The recognition of revenues requires significant judgement by the company to determine key assumptions, particularly regarding the level of revenue to defer in order to satisfy the company's obligations for future claims handling and non-recoverable costs.*

##### How the scope of the audit responded to the KAM

*The auditors **obtained an understanding** of the company's process and key controls around the revenue deferrals by undertaking a walk-through. Following identification of the key controls, the auditors evaluated the associated design and implementation of such controls. Specifically they assessed the implementation of controls that the Company has in place to manage the risk of inappropriate assumptions being used within the revenue deferrals.*

*The auditors **assessed the company's policy** for deferring revenue, including considering whether the policy is in accordance with current accounting standards.*

*The auditors **challenged and tested the methodology** used for calculating the claims handling revenue deferral by comparing the inputs and assumptions used by reference to policy agreements, industry data provided by the underwriter and costs incurred in satisfying claims in the current financial year.*

*Additionally the auditors assessed if the Company is consistent in implementing the calculations across the membership businesses worldwide and in line with Company policy.*

#### 5. BACK TO BASICS: Taxation (Ind AS)

The salient aspects of accounting for **Taxation** under Ind AS are discussed herein below.

The **tax charge** for a period comprises both current and deferred tax. Taxation is **recognized** in the **Statement of**

**Profit and Loss** except to the extent that it relates to **items recognized directly in equity**, in which case the related tax is also recognized in equity.

Current tax is the expected tax payable on the taxable income for the period and any adjustment to tax payable in respect of previous years.

Deferred tax is provided using the **balance sheet liability method** on any **temporary differences** between the carrying amounts for financial reporting purposes and those for taxation purposes.

Deferred tax liabilities are generally recognized for all taxable temporary differences and deferred tax assets are recognized to the extent that is probable that taxable profits will be available against which deductible temporary differences can be utilized. Such assets and liabilities are not recognized if the temporary differences arise from the initial recognition of goodwill.

Deferred tax liabilities are not recognized for temporary differences arising on **investments in subsidiaries** where the Group is able to control the reversal of the temporary difference and it is probable that the temporary difference will not reverse in the foreseeable future.

Deferred tax is calculated at the tax rates that are expected to apply in the period when the liability is settled or the asset is realized. Deferred tax assets and liabilities are offset when they relate to income taxes levied by the same taxation authority and the Group intends to settle its current tax assets and liabilities on a net basis.

#### 6. TRIVIA

The United States Securities and Exchange Commission (SEC) has **awarded** approximately **US\$ 425 million** to **79 individuals** since issuing its first award in 2012. All payments are made out of an investor protection fund that is financed entirely through monetary sanctions paid to the SEC by securities law violators. **Whistle blowers** may be eligible for an award when they **voluntarily provide the SEC** with original, timely and **credible information** that leads to a **successful enforcement action**. Whistle bower awards can range from **10% to 30% of the money collected** when the monetary sanctions exceed US\$ 1 million.

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# ENVIRONMENTAL ETHICS

**Adv. M G Kodandaram**

*IRS, Assistant Director (Retd), NACIN*

## Introduction

The commotion and turmoil that everyone on this earth experiencing at present due to the natural or manmade calamity, in the form of corona epidemics, is a clear indication of the health of our mother earth has diminished. The regular happenings of unnatural disasters obviously evidence the earth's ability to naturally balance and protect its creatures has been severely damaged. When we look into the reasons for these tragedies, it is factual and fair to conclude that there is something wrong on the part of the human being's way of living on this planet. To say in simple terms, it is the unethical and unprincipled approach of residents towards use of common resources, the root cause for the catastrophe. The pollution of common goods like air, water, soil and land together with over-exploitation of fauna and flora by the humans has paved way for destabilisation. The concerns for the welfare of all stake holders, being the ethical attitude essential at present and therefore an attempt is made to examine this critical principle to enable restoration of the health of our planet to some extent.

As we are aware the term 'ethics' has lost its impact in the present day societies, as these moral lessons unless codified, cannot be enforced. Further the present generations are not getting guidance on this aspect from their parents or elders as was the tradition. In the present age, the parents are too busy, with little time to attend to the needs of their children. But ethics is the essential aspect to be imbibed, for a safe and happy living of all beings on this earth.

It is also a matter of concern that morals, in their entirety cannot be brought into books of statutes and therefore the environmental crimes continue to be committed unabated. Therefore an attempt is made to bring out the core values of ethics to be followed for a holistic living. The inputs from our ancient wisdom and the recent judgments from the honorable Indian courts are cited to drive home the importance of environmental ethics.

## Environmental ethics

'Ethics' are understood to be a branch of philosophy, dealing mainly with morals and values of its subjects.

Traditionally, the term "philosophy" is referred to be a body of knowledge, may be relating to religion, mathematics, natural science, education and politics etc., which mainly deals with study of goodness, right and wrong, justice and virtue. Therefore we can conclude that philosophy is associated with wisdom, intellectual culture and a search for knowledge. The discipline concerned with questions of how one should live may be termed as ethics. It indicates the approach or practice to be followed by the members of a society towards their existence. Environmental ethics is the moral relationship between humans and the natural resources. A person by being ethical exhibits right conduct and life that is worth living. Environmental ethics is the guiding force that should make every human care for their surroundings. Mahatma Gandhi once wrote, "The greatness of a nation and its moral progress can be judged by the way its animals are treated." "We already have – thanks to technology, development, skills, the efficiency of our work – enough resources to satisfy all human needs. But we don't have enough resources, and we are unlikely ever to have, to satisfy human greed" says Mr. Zygmunt Bauman, the British sociologist and philosopher.

There are two major Philosophical approaches noticed around the Globe for deciding the environmental protocols to be followed by a human being, popularly known as anthropocentric approach and eco-centric approach, which are elucidated.

## The human centered anthropocentric approach

In this school of thought, it is believed that the humans are the dominant and important species on the planet earth. With its origin in western philosophies and religions, they believe that human beings are superior to the nature around. This gives them the power to manipulate and use nature for their own benefits. They think that the welfare of the human beings is to be promoted at all expenses and sacrifices, of other species and entities. People who hold this view acknowledge themselves as being the only most significant entities in the universe while disregarding animals and plants unless they provide life necessities such as nutrition,

clothing, shelter and medical benefits. This approach is un-ethical and may lead to more chaotic situations on the earth. Consequently, human exploitation and abuse of the natural environment has been observed on a global scale. This approach has brought us to the present day concerns of environment we are facing. I brand this as the criminal approach, as this will exhaust all resources as well as destroy the ecological equilibrium of the earth.

### The eco-centric approach

In this the followers believe that the humans have the ethical responsibility towards future generations of human beings and therefore are the 'stewards or caring managers' who must leave the earth in a good condition. This non-anthropocentric approach takes ethical responsibility towards protection of other species, a bio-centric school we can call. According to this view point, it becomes compulsory to save the planet. The basic fact is that humans cannot erode the planet completely, but it can destroy us in entirety. It is our basic necessity to protect the environment so that we can ensure our survival, and prevent ourselves from perishing. If mankind has to survive, the environment in its natural form needs to be protected.

### Observations of the Apex court

The honorable Supreme Court, in the case of Centre For Environment Law v. Union of India & Others, [Writ Petition (Civil) No. 337 of 1995, decided on 15 April 2013], while giving effect to various provisions of the Wildlife Protection Act, held that re-introduction of the Asiatic lion in 'Kuno' was a priority that cannot be delayed if we want to protect this species from extinction. The court requested the Ministry concerned to issue an order to re-introduce the Asiatic lion in Kuno. In the said judgement the court laid down the principle that environmental policy should be eco-centric and not anthropocentric. At Para 39, the hon. Judge observed as follows:

*"Para 39. Sustainable development, it has been argued by various eminent environmentalists, clearly postulates an anthropocentric bias, least concerned with the rights of other species which live on this earth. Anthropocentrism is always human interest focused thinking that non-human has only instrumental value to humans, in other words, humans take precedence and human responsibilities to non-human are based benefits to humans. Eco-centrism is nature-centered, where humans are part of the nature and non-humans have intrinsic value. In other words, human interest does not take*

*automatic precedence and humans have obligations to non-humans independently of human interest. Eco-centrism is, therefore, more nature-centered, that includes both humans and non-humans."*

The other observations of the Hon court in the cited decision deliberate the ethics to be followed for an eco-centric living on this planet. Relevant parts are reiterated for appreciation of the environment concerns we have formed in the name of economic developments.

*"Para 40. We reiterate that while examining the necessity of a second home for the Asiatic lions, our approach should be eco-centric and not anthropocentric and we must apply the "species best interest standard", that is the best interest of the Asiatic lions. We must focus our attention to safeguard the interest of species, **as species has equal rights to exist on this earth.** Asiatic Lion has become critically endangered because of human intervention. ... Today the only living representatives of the lions once found throughout much of South-West Asia occur in India's Gir Forest. Asiatic lion currently exists as a single sub-population and is thus vulnerable to extinction from **unpredictable events, such as an epidemic or large forest fire** etc. and we are committed to safeguard this endangered species because this **species has a right to live on this earth, just like human beings.**"*

*"Para 41. Article 21 of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a specie becoming extinct, conservation and protection of environment is an inseparable part of right to life. In M.C. Mehta v. Kamal Nath and Others (1997) 1 SCC 388, this Court enunciated the **doctrine of "public trust"**, the thrust of that theory is that certain common properties such as **rivers, seashores, forests and the air are held by the Government in trusteeship** for the free and unimpeded use of the general public. The resources like air, sea, waters and the forests have such a great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The State, as a custodian of the natural resources, has a duty to maintain them not merely for the benefit of the public, but for the best interest of flora and fauna, wildlife and so on. The doctrine of 'public trust' has to be addressed in that perspective."*

*"Para 49. ... We are, however, concerned with a fundamental issue whether the Asiatic lions should have a second home. The cardinal issue is not whether the Asiatic lion is a "family member" or is part of the "Indian culture and civilization",*



*or the pride of a State but the preservation of an endangered species for which we have to apply the “species best interest standard”.* **Our approach should not be human-centric or family-centric but eco-centric.** “Scientific reasoning” for its re-location has to supersede the family bond or pride of the people and we have to look at the species best interest especially in a situation where the specie is found to be a critically endangered one and the necessity of a second home has been keenly felt...”

So we can conclude that among the above two approaches the second one is fairer enough to be followed. But is it sufficient to protect the earth is the larger point that needs to be considered.

### Deep ecology

It is true that unless a fair equilibrium is maintained in natural ecosystems on the earth between different components through various processes including assimilation and recycling, the natural resources get polluted and perish. The over-exploitation of natural resources by growing human population has upset the natural balance in the eco-system on the earth. The uses of technology and economic growth have led to ecological problems. The economic progress has been achieved at an enormous cost to the environment as manifested by growing pollution, loss of biodiversity and critical shortage of basic resources. There are many better ethical decisions that humans need to make with respect to the environment. Whether the human being is capable of or has equipped himself with complete knowledge about species of fauna and flora on this earth and the role played by them in maintaining equilibrium of the mother earth, so that he can decide what is good and what is bad for the earth? The answer is always in the negative and therefore the author feels it better to be left to the natural ecology to exist as it is and the wants of human beings should take a back seat.

The damages that continue to occur clearly indicate that we have to go for a **holistic environmental approach** as being followed by our ancient civilizations. The deep ecology approach which is based on the equality to all living beings, by modern environmentalists, is more akin to the ancient wisdom. I find ancient wisdom to be more appropriate to bring back the glory of the earth.

This is the best approach, since it unites the thinking, feeling, spirituality and action together to restore the health of the earth. We all depend on one biosphere for sustaining

our lives. Yet each community, each country, strives for survival and prosperity with little regard for its impact on others. It is our fundamental duty to make this planet earth a decent habitable place to everyone. The challenge of living in harmony with the earth is as old as human society itself. Environmental ethics relates to our obligations and responsibilities towards nature. For an equitable share we must have equal responsibilities. In this approach all elements of nature are stated to be having equal rights like a human cherishes, to remain in their natural form without being harmed.

### Harmonious living with nature

The Indian philosophy aims at not only the well being of all humans but also of all beings by providing rights for all such persons on this earth. The Sanskrit verse heralds the primary theme of these ethics by stating, “**Sarve Bhavantu Sukhinah, Sarve Santu Nirmayah.** Not mere words, but the day to day living and practices of our ancestors have been environment friendly. Rivers, mountains, sky and land are respected on par with the Creator. There was no scope for polluting them by any human interference, as they termed it as grave crimes against the society. As per the Rigveda, “the sky is like a father, the earth like a mother and space like their son”. The universe is a family of three. If any damage occurs to one, the universe goes off balance. In support of my arguments the decisions of the Delhi high court as detailed in the latter part of this article may be referred.

The philosophy of deep ecology, promoting the inherent worth of living beings regardless of their instrumental utility to human needs, plus a restructuring of modern human societies in accordance with such ideas is the best path to be treaded. It states that the natural world is a subtle balance of complex inter-relationships in which the existence of organisms is dependent on the existence of others within ecosystems. Human interference with or destruction of the natural world poses a threat therefore not only to humans but to all organisms constituting the natural order.

The supporters of deep ecology mainly claim:

- (i) The well-being and flourishing of human and nonhuman life on Earth have value in themselves. These values are independent of the usefulness of the nonhuman world for human purposes.
- (ii) Richness and diversity of life forms contribute to the realization of these values and are also values

in themselves. Humans have no right to reduce this richness and diversity except to satisfy vital human needs.

- (iii) The ideological change is mainly that of appreciating life quality (dwelling in situations of inherent value) rather than adhering to an increasingly higher standard of living.

In short we can summarise that (i) Wilderness and biodiversity preservation, (ii) Human population control and (iii) Simple living (or treading lightly on the planet) are the principles to be practiced for a happy life on this earth.

### Developments on legal front

In the case of Narayan Dutt Bhatt Versus Union of India & others, the High Court of Uttarakhand at Nainital [Writ Petition (PIL) No. 43 of 2014] relied upon Indian scriptures and religious movements to herald the requirement of this deep ecology approach. The above facts are clearly brought out in Para 87 of the said judgment, relevant parts are reproduced for proper appreciation.

*"Para 87. It would be pertinent at this stage to make reference of book, "Sacred Animals of India", written by Nanditha Krishna. She has introduced every animal with the myths and legends that establish its religious status, followed by a short note on the ecological or social role of the animal, which made it important in people's lives. Learned author has also discussed the Ahimsa and Non violence preached by Lord Mahavira, Lord Gautama Buddha as under:-*

#### **"Ahimsa or Non-violence**

*The concept of ahimsa – non-violence in thought and deed – is India's unique contribution to world culture. The Vedas and Upanishads were the first to speak of ahimsa....*

*The Rig Veda (10.87.16), condemns all forms of killing, even for food, preferring vegans to drinkers of milk:*

*The yatudhana who fills himself with the flesh of man,*

*He who fills himself with the flesh of horses or of other animals,*

*And he who steals the milk of the cow:*

*Lord, cut off their heads with your flame.*

*The Yajur Veda says that service to animals leads to heaven: 'No person should kill animals helpful to all and persons serving them should obtain heaven.' According to the Atharva Veda, the earth was created for the enjoyment of not only human beings but also for bipeds and quadrupeds,*

*birds, animals and all others creatures... These ideas led to the concept of ahimsa or non-violence.*

*Much later, the Manusmriti says, 'He who injures innocent beings with a desire to give himself pleasure never finds happiness, neither in life nor in death.'*

*The Shrimad Bhagavatam says that a cruel person who kills others for his existence deserves to be killed, and cannot be happy, either in life or in death. The consequences, according to the Yajunavalkya Smriti are that 'the wicked person who kills animals which are protected has to live in hellfire for the days equal to the number of hairs on the body of that animal.'*

*In the later Puranas, killing animals and eating meat were considered to be such heinous sins that neither prayers nor pilgrimages or bathing in holy rivers would absolve of it.*

*Around the sixth century BCE, two great religious preachers were born, who took the Upanishadic philosophy of good conduct and non-killing to the people in the common language:*

**Mahavira the Jina (Victor), and Gautama the Budha (wise).**

*The name traditionally used for Hinduism. Both emphasized that ahimsa or non-violence was essential for a good life.*

*As the images of all the Tirthankaras are identical, their pedestals contain the animal emblem of each, which is the sole means of identification. They include; Rishabhanath (Adinatha)- Bull; Ajitanatha- Elephant; Sambhavananatha- Horse; Abhinandanatha- Monkey; Sumatinatha- Curlew or red goose; Padmaprabha- Lotus; Suparashvanatha- Swastika; Chandraprabha- Moon or crescent; Suvidhinatha (Pushpadanta)- Crocodile; Shitalanatha- Pipal tree and the list goes on...*

#### **Gautama Buddha (563-483 BCE)**

*The eightfold path taught by the Buddha emphasized the importance of abstaining from activities that bring harm to other living beings and non-killing. The Bodhisattva is one who is full of maitri (friendship) towards all animals, for he aspires to achieve Buddha-hood. Said the Buddha, 'As a mother would be very good towards her only child, her well-beloved son' so too you should be very good towards all creatures everywhere and to everyone' (Dwivedi, 1989) The Buddha himself sought refuge from his bickering disciples by living among the animals who revered him devotedly. The Jataka tales hold up the noble qualities of various animals as examples to emulate.*

*The Dhyani Buddhas and their vehicles are; Amitabha-peacock; Akshobhya-Elephant; Raktayamari-Buffalo; Vairochana- Lion or Dragon; Amoghasiddhi- Eagle; Ratnasambhava- Lion and the list goes on... The following **animals are sacred to Hindus**: ‘ Blackbuck and Blue bull are considered as sacred; The antelope is also the vehicle of Soma. The antelope first appears as the vehicle of Vayu, the Wind, and the steed of the Maruts, the storm deities and the sons of Rudra and Diti.; Jambavan the bear appears in the Ramayana.; The boar is associated with rain and is believed to dig the earth before the onset of the monsoon; In the Rig Veda, the bull was the symbol of strength and power.; The cow occupies a special place in Hindu culture. She symbolizes dharma, the Law of Righteousness; the crane is a symbol of long life. And the list goes on... The **state of emblem of contemporary India** is adopted from the famous lion capital of Ashoka’s Pillar at Sarnath. Mouse is the vehicle or vahana of Lord Ganesha. Peacock is the vehicle of Lord Kartikeya. And the list goes on”*

The Uttarakhand High Court in the cited judgement declared that the “**entire animal kingdom including avian and aquatic**” as legal entities with a distinct persona and corresponding rights, duties and liabilities of a living person. The Bench comprising Justice Rajiv Sharma and Justice Lok Pal Singh observed, “*The Corporations, Hindu idols, holy scriptures, rivers have been declared legal entities and thus, in order to protect and promote greater welfare of animals including avian and aquatic, animals are required to be conferred with the status of legal entity/ legal person. The animals should be healthy, comfortable, well- nourished, safe, able to express innate behaviour without pain, fear and distress. They are entitled to justice.*” Further the Court then issued the following directions to the effect that the entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens throughout the State of Uttarakhand are hereby declared persons in loco parentis as the human face for the welfare/ protection of animals.

The Supreme Court in the case of M C Mehta v Kamal Nath [ (1997) 1 SCC 388] has upheld the applicability of the public trust doctrine to communal natural resources. The Court held that: “The State, as a custodian of the natural resources, has a duty to maintain them not merely for the benefit of the public, but for the best interest of the flora and fauna, wildlife and so on”. The Court held that the doctrine

of public trust has to be addressed from an eco-centric perspective.

However the Nature has not been accorded rights under existing laws in India. A few constitutions and statutes expressly recognize the rights of nature. The Constitution of the Republic of Ecuador 2008 (Articles 71-74) and the Bolivian Law of the Rights of Mother Earth 2010 are two well-known examples. The Legislation in New Zealand has expressly recognised certain rivers as legal entities under the law.

But the honorable Supreme Court has recently turned down the plea to grant legal status to Ganga and Yamuna rivers, which is against the ongoing holistic approach to save mother earth. This case needs reconsideration by the judicial forum as pollution of these rivers are continuing, which may become detrimental to health of all beings in the coming days. Designating rights for nature is a potentially a powerful way to open up the dialogue on nature conservation and provide some enforcement power to the time tested environmental ethical approach. Now Indian courts should take further lead to protect the natural ecosystem intact.

### Corporate environmental ethics

Environmental Ethics are equally important to be followed by the corporate world in their business planning and management. One of the important factors is that the economy and environment are dependent on each other. The clean environment is now basic social responsibilities of the corporate world. Generally an industry produces a large amount of waste products and disposal of waste or lowering of pollution levels has a cost. The cost of controlling waste determines a company’s profit margins. To make it cheaper, they resort to dump wastes into river than to install a waste water treatment facility. Similarly they find it easier and cost efficient to release waste in the air than to trap them in filters. But they must note that such unethical decisions are based on short term profitability and are detrimental for human beings survival on the earth. However it is pertinent to mention that recent environmental uprisings have moved the business houses towards following the environmental ethics. Industrial houses are evincing interest in efficient, green and clean technology, products and services such as the use of solar cars, generation of solar power, rainwater harvesting and developing and maintaining green patches and “gardens” to act as the “lungs” of the city. Environmental



ethics must form an integral part of all planning for India's healthy growth and development.

### Conclusions

Humans are dependent on other organisms for survival; hence they have a responsibility towards them. The earth is our home and home for all other living beings too. We need to remember the age old adage "live and let live". We are duty bound to defend our planet from any harm and if it is wounded we have to assist in its recovery. But believe me, the Government alone cannot take up the burden of creating awareness for ensuring a clean environment. There is a need for public participation at every stage. The Silent Valley project in the Western Ghats was abandoned due to protests by environmental activists and public representation. It

helped to save the rain forests of that area which is one of the hot spot of biodiversity in the world. We are aware that the Bishnois of Rajasthan had once upon a time laid down their lives to protect the local Khejdi trees. If the common man is aware of what is going on at the local and national level, then alone decision making by the authorities can be influenced. For this we have to resort to reach the citizens with our traditional belief system with scientific reasoning, so as to create awareness on environmental ethics to be practiced. Unless we act now to restore these values, the earth may further deteriorate, making it uninhabitable.

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## RULE 43 - GST CREDIT ON CAPITAL GOODS – FEW ISSUES

(Contd. from page 5)

- b. The useful life is 5 years from invoice date. However, the reversal of credit can be started from month of availment of credit. If there is a delay in claim of credit, say, one year, then credit reversal would be required only for 4 years. This is because the useful life would be only 4 years from month of credit claim which may not be the intention of the law. The rule in present form gives advantage to the person who intentionally can delay the credit claim. The rule may need a change to give effect to the useful life from credit claim month rather than invoice date which could solve the issue.

**Conclusion:** It is no wonder that the new law would take its own time to get settled. The tax payer need to be aware that the provisions in GST have been changed when compared to earlier laws. Any assumption or error could lead to payment of tax with interest. In case of construction services, new procedure has been prescribed for compliance with Rule 43 which needs to be followed. This also has few issues to be addressed. Certain issues discussed in earlier paragraphs could be considered by the professionals when guiding the tax payers for rule 43 compliance.

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## List 2 of Generous Donors towards KSCAA's Pledge a Meal Initiative

Name	Place	Amount (Rs.)	Name	Place	Amount (Rs.)
Kumar Kolin	Bengaluru	35,000	Vijaykumar M Patel	Bengaluru	35,000
GPSV and Co	Bengaluru	14,000	K S Aiyar & Co	Bengaluru	14,700
Sudhakar Shetty V K	Bengaluru	10,500	Suresh Kumar	Bengaluru	12,600
Vinod Krishan Puri	Bengaluru	10,500	Sudha Janardhan	Bengaluru	10,500
Beejadi Janardan	Bengaluru	10,500	Sudheendra Satyanarayana	Bengaluru	10,500
Pratap Shetty	UAE	10,500	KMS Consultancy	Bengaluru	10,150
Sateesha Kalkur	Bengaluru	8,750	Dr. Prasad	Bengaluru	10,000
Sanjay Kumar V	Bengaluru	7,000	Chandan Hegde & Associates	Bengaluru	7,000
Kumar S. Jigajinni	Bagalkot	7,000	Chandrashekara Shetty	Bengaluru	7,000
Raviraj S Shetty	Bengaluru	5,250	Raghavendra Shetty	Bengaluru	5,250
Raghuvanshi Home Mart	Bengaluru	5,250	Narayana R R	Bengaluru	5,250
Vijaya Sastry	Bengaluru	5,250	Nagappa B. Nesur	Bagalkot	5,250
K N Ramadas	Bengaluru	5,250	Manjunatha K N	Bengaluru	5,250
Arun R	Bengaluru	5,250	Sharath	Bengaluru	5,250
Mahesh Bhat	Bengaluru	5,000	S Gopalakrishnan	Chennai	5,250
Abhiram	Bengaluru	4,900	Sarathy	Bengaluru	3,500
Latha Prabhu	Mysore	3,500	Sanjana Hegde	Bengaluru	3,500
Babitha G	Bengaluru	3,500	Naias Beauty Treasures Pvt Ltd	Bengaluru	3,500
Geetha Chandrakant & Co	Bengaluru	3,500	Chitra A	Bengaluru	3,500
Umesh Shetty	Bengaluru	3,500	Reform Studio	Bengaluru	3,500
S S Javali & Associates	Bengaluru	3,500	Karthik P V	Bengaluru	3,500
Narendra K V	Shivamogga	3,500	Mamta Agrawal	Bengaluru	3,500
Sunil Patel	Bengaluru	3,500	Siddeshwar Yelamali	Bengaluru	3,500
Manu M	Bengaluru	3,500	Annapurna	Mysuru	3,500
P.Shankar	Bengaluru	3,500	Kumaraswamy	Bengaluru	3,500
Anusha Kurudi	Bengaluru	3,500	Sreemannarayana	Bengaluru	3,500
Raaj Woodtek Pvt. Ltd	Bengaluru	3,500	Lakshmi Rajesh	Bengaluru	3,500
Raghavendra	Bengaluru	3,500	Gundal Business Data Solutions	Davangere	3,500
Venkatesh	Bengaluru	3,500	Sindhu D Mahenderkar	Bengaluru	3,150
V.Kiranmayi	Bengaluru	3,150	Navratan Verma	Bengaluru	2,800
Umesh Hegde	Bengaluru	2,450	Abhijith Singh	Bengaluru	2,450
Yuvanandareddy	Bengaluru	2,100	D G Mathad	Ganagvathi	2,100
Vinay	Bengaluru	2,100	Satish Prasad	Bengaluru	2,100
Krishnan	Bengaluru	2,100	Bhavana	Sunnyvale	1,750
Ajaykumar	Bengaluru	2,000	Bhavana	Sunnyvale	1,750
Vijay Gowrisanker	Bengaluru	1,750	Rashmi	Bengaluru	1,750
Gowri B M	Bengaluru	1,750	Anantha	Bengaluru	1,750
M A K G & Co	Bengaluru	1,750	Shyam S	Bengaluru	1,750
Venkatesh	Bengaluru	1,750	Sridhar R Iyengar	Bengaluru	1,750
Rekha Darshan	Bengaluru	1,750	Sivaguru Prasada Rao K	Bengaluru	1,750

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Name	Place	Amount (Rs.)	Name	Place	Amount (Rs.)
Sri Vedalakshmi Charitable Trust	Mysore	1,750	Lakshmi Rajesh	Bengaluru	1,750
Prasanna S G	Bengaluru	1,750	Naias Beauty Treasures Pvt Ltd	Bengaluru	1,750
Arvind	Pune	1,400	Deepti Rajesh	Bengaluru	1,400
Dinesh Patel	Bengaluru	1,400	Panchapakesan AV	Bengaluru	1,400
Lt Cdr Avinash Sabarad	Harugeri	1,400	Lakshmi Devananda	Bengaluru	1,050
Ashwin Shetty	Bengaluru	1,050	Govind Sarda	Bengaluru	1,050
Amar	Bengaluru	1,050	Karthik Pv	Bengaluru	1,050
Hariprasad P	Bengaluru	1,050	Yogeesh	Bengaluru	1,050
Karthick S S	Bengaluru	1,050	Mahantesh	Bengaluru	1,050
Sandeep Jhunjhunwala	Bengaluru	1,050	Poornakar Shetty	Bengaluru	1,050
Venkata Subramanyam A R	Bengaluru	1,050	Ganesh Shetty	Bengaluru	1,050
Darshan	Bengaluru	1,050	Pradeep Jogi & Co	Udupi	1,050
Sujay Naidu	Bengaluru	1,050	Krishnan	Bengaluru	1,050
Nandish	Bengaluru	1,050	Karthik M	Bengaluru	1,050
Rajkumar Jayanth	Bengaluru	1,050	Subba Rao Sv	Proddatur	1,050
Shamala	Bengaluru	1,050	Manikantan V	Bengaluru	1,050
Raveendra Bhat	Bengaluru	1,050	S R Bhandiwad	Hubli	1,050
Sanjay D Shirguppe	Belgaum	1,050	Vinod B Goley	Bengaluru	1,050
Aparna	Bengaluru	1,050	Annapurna Kabra	Bengaluru	1,050
K Sree Vidya Lakshmi	Bengaluru	1,050	Hemanth Kumar M K	Bengaluru	1,050
Sathish M & Co	Bengaluru	1,050	Radhakrishna L	Bengaluru	700
Archana	Bengaluru	700	Roopesh Naik S	Bengaluru	700
Varun Gore	Bengaluru	700	A B Chidananda	Bengaluru	700
Priyanka	Bengaluru	700	Manish Kumar Joshi	Bengaluru	700
Charmi S.M	Bengaluru	700	Jayna J Nagda	Bengaluru	700
Ananya S.M	Bengaluru	700	Vaishali Desai	Bengaluru	700
Shashikala S	Bengaluru	700	Ganesh Shetty	Bengaluru	700
Rohit Mallikarjuna	Mysore	700	Chethan S D	Bengaluru	350
Santosh Prabhu	Sagar	350	Arun Kumar S	Bengaluru	350
Veena S J	Bengaluru	350	Pawan Jajodia	Bengaluru	350
Jagadeesha B M	Bengaluru	350	Subashini	Bengaluru	350
Mohan	Bengaluru	350	Anup	Bengaluru	350
Ajith Kumar K	Bengaluru	350	Supreeth Yashodhar	Bengaluru	350
Sree Suman	Bengaluru	350	Pawan Jajodia	Bengaluru	350
M G Hegde & Co	Bengaluru	350	Manasa	Bengaluru	350
Deeksha Aravatagi	Shivamogga	350	Hariharan	Bengaluru	350
Shivakumar Hillemane	Bengaluru	350	Pratiksha M Pai	Bengaluru	350
Sunil Bharadwaj	Bengaluru	350	Naveen	Bengaluru	350
Satvinder Kaur	Bengaluru	350	N Naveen	Bengaluru	350
Raghavendra	Bengaluru	350	Ashish Gupta	Lucknow	350
Dhanvin Dev Shetty	Bengaluru	350	Nagaraja Gundi	Hospet	350
Pampapathi	Bengaluru	350			



To Hon'ble Finance Minister,  
Ministry of Finance,  
North-Block, New Delhi.

27<sup>th</sup> April 2020

Dear Madam,

We are enclosing herewith our representation for deferment for applicability of provision of expanded scope of Equalisation Levy ('EL') on 'E-commerce Supply or Services' ('ESS') made applicable to Non-residents.

The said provisions have been made applicable from 1st April 2020 and the payment of EL for the first quarter is due on 7th July 2020.

The severity of the circumstances arising on account of COVID-19 pandemic all over the world has caused serious disruptions across the world, including India. Total lockdown, all across India, of about one and half month has resulted in complete halt of economic activities and sever cash flow crunch. This has resulted in a slowing down of economy, which some believe is showing recessionary trends.

Accordingly, it is represented that the ESS EL be deferred till 1 April 2021 consistent with the amendments adopted for TDS on Domestic E-Commerce operator at enactment stage.

We hope this will get due consideration and suitable amendments will be made through ordinance.

Manish Sampat  
President,  
Bombay Chartered Accountants' Society

Anand Sharma  
President,  
Chartered Accountants Association, Ahmedabad

Rasesh Shah  
President,  
Chartered Accountants Association, Surat

Chandrashekara Shetty  
President,  
Karnataka State Chartered Accountants' Association

Anshul Agarwal  
President,  
Lucknow Chartered Accountants' Society

## REPRESENTATION FOR DEFERMENT AND CLARIFICATION OF AMENDMENTS TO THE EQUALISATION LEVY BY THE FINANCE, ACT 2020

### Deferment on applicability of Equalisation levy (EL) on 'E-commerce Supply or Services' (ESS EL)

#### a. Background and Issue

- i. To expand the scope of Business Connection and income attributable to operations in India in the hands of non-resident, Finance Bill proposed to introduce Explanation 3A to Section 9(1)(i) of the Income Tax Act. In addition to the above, the Finance Act 2020 EL by amending Chapter VIII of Finance Act, 2016 w.e.f 1st April 2020 to bring within the tax net, the transactions covered under Explanation 3A to Section 9(1)(i) of the Act and also other e-commerce transactions. Since the ESS EL was not at all proposed in the Finance Bill 2020, but was directly introduced in the Finance Act 2020 which was passed by the Parliament on 27 March 2020 and was immediately made effective from 1st April 2020, it was not open for the public to debate and discuss the ESS EL provisions.
- ii. The outbreak of Novel Corona Virus (COVID-19) across many countries of the world has caused immense loss to the lives of people, and accordingly, it has been termed as pandemic by the World Health Organisation and various Governments including Government of India. The COVID-19 pandemic has caused disruptions across the world, including India. This has resulted in a rapidly slowing economy, which some believe is showing recessionary trends. Social distancing has been unequivocally accepted to be the best way to contain its spread, leading to announcement of complete lockdown in the country and difficulty faced by the taxpayers in complying with statutory and regulatory requirements. Amidst such situation when the global economy is in lockdown condition, compliance of amended EL is cast on non-residents EOP who are dealing with Indians will be very difficult and it will get complied only by defaults.
- iii. Rightfully acknowledging such challenging time and difficulties faced by the people at large including taxpayers, Government of India including the Finance Ministry has, announced various measures to defer applicability of various statutory provisions and compliance burden. The relaxation measures also included extension of various due dates and applicability dates under Income Tax Act like TDS applicability in respect of domestic E-commerce traders, "The Direct Tax Vivad Se Vishwas Act, 2020" VSV and filing of Return of Income etc. Amidst such a situation, going ahead with the implementation of expanded EL immediately from 1st April 2020 is a shock to stakeholders in the world.



- iv. Further, considering the new levy there will be a lot of rejig required in business models, operations in case of such non-resident e-commerce operators to track the e-commerce transactions and to comply with the new provisions.
- v. As there are so many issues and complications and ambiguities including whether such a levy could be extended to physical delivery of goods when it is done through e-commerce platforms or done through telecommunication channels. It is also not clear whether it will amount to extra territorial applicability of the provisions and whether it satisfies the international conventions of trade and commerce. Therefore, it would not be fair and appropriate on the part of Government to hurriedly implement these provisions.

The Government before implementing these provisions should ensure that sufficient clarifications, discussion notes should be available to all those concerned. As mentioned above there was no explanatory memorandum, no notes on clauses, no clarifications, when these provisions were introduced therefore, it would be appropriate for Government of India to issue sufficient clarifications, FAQ's, clarify the doubts, and should be made available to all those concerned including Non-Residents to whom these provisions will be applicable.

- vi. Even, UK Digital Service Tax which was introduced in July 2019, was made effective from 1st April 2020 which has provided convenient time to those who are concerned and public at large to study and understand the provisions. Further the scope of levy of UK Digital Service Tax is not as large as the scope of ESS EL. Even specific safeguards and exceptions are provided in order to avoid double taxation.
- vii. There are no safeguards being provided in the regime to avoid double taxation. e.g. when there is an overlap between the provisions of Income Tax Act more so when explanation 3A is inserted in Section 9(1)(i) by Finance Act 2020 and the same transaction is also subject to levy under ESS EL. So also, whether it would get covered by customs duty as well as EL.
- viii. In absence of Explanatory Memorandum and object and purpose of the amendment it is difficult to understand the intention of legislature. For e.g. The expansive language used in the charging provision and definition of ESS could potentially cover all sorts of digital transactions into India, including transactions between two non-resident entities. Thus, in such a case, the constitutional validity can be challenged on the ground that there is no territorial nexus in India. Thus, there is no clarity on the intention of the legislature to introduce such levy

## **b. Recommendations**

### **i. Defer the new provisions of EL till 1st April 2021**

Keeping in mind its applicability to all those Non-Residents doing business with India and keeping in mind that the intended objective and its scope needed to be communicated to all those concerned it is necessary that implementation or applicability of these provisions to be deferred at least till 1st April 2021. Incidentally it may be noted that applicability of Section 194-O- TDS provisions to domestic e-commerce traders has been postponed for till 1st April 2021.

### **ii. Give time for consultation and discussion**

Further, India is wedded to the consultative and transparent process of formulating its tax policy. This has been widely appreciated. It would, therefore, be desirable that the levy is introduced after proper consultation and after ensuring that taxpayers are ready with the understanding and implementation of the levy. Without prejudice, to begin with, the text of the levy may be restricted to avoid those items which are perceived to be highly controversial.

### **iii. Cover only highly digitised transactions**

It should be clarified in no ambiguous manner that it is applicable to highly digitised transactions and not to all transactions merely because it has been done with use of telecommunication or internet facility.

### **iv. Boost confidence of all stakeholders**

Such step will help all stakeholders to comply with the newly introduced provisions once the global economy will be on the path of revival and also boost confidence of non-residents digital players to operate and undertake business with India elevating Indian economy as well after having faced the impact of pandemic.

Thanking you

CC to:

1. Shri Narendra Modi – Prime Minister of India,
2. Shri Piyush Goyal - Minister of Commerce and Industry, Government of India
3. Shri Anurag Thakur - MOS, Finance,
4. Shri Pramod Chandra Mody - Chairman, CBDT
5. Shri Kamlesh Varshney - Joint Secretary, TPL





## Representation on Dealing with COVID-19 impact on working capital and cash flows of consulting and professional firms - soliciting immediate intervention

**Shri Pramod Chandra Mody**

May 1, 2020

Chairman, Central Board of Direct Taxes  
Ministry of Finance, Government of India  
North Block, New Delhi – 110 001.

Respected Sir,

At the outset, we appreciate the efforts being taken by the government in dealing with the economic crisis through various policy interventions. We jointly represent thousands of Chartered Accountants across India and, through them, we also speak for various professionals in the country. While several representations have been made to provide impetus to the industries and various sectors, it is equally crucial to take into consideration the significant adverse impact of COVID-19 on the consulting and professional firms, which are primarily service-driven entities and therefore, may be missed while providing impetus to various industries.

Consulting and professional firms are largely dependent on client service revenue and owing to the flailing economic conditions, their revenue for the next couple of years will be severely impacted. Moreover, since the costs are bound to remain the same, the profit margins of these firms will be significantly squeezed. In light of this, the important issue to be dealt with is that significant cash flows of these firms will be clogged on account of tax deducted at source (TDS) @ 10%, thereby impacting working capital movement in these testing times.

Given the dire economic conditions, majority of the consulting and professional firms are likely to incur losses during the next couple of years or will have a very low profitability. As a result, these entities are bound to have nil or minimal tax liability for these years and therefore, the taxes deducted at source from the receipts of such entities will be unduly accumulated throughout the year, without being utilised eventually.

The impact of the above can be better understood based on a high-level working provided below, after considering a range of profitability for these entities (assumed to be partnership firm/ LLP):

Particulars	20% PBT	25% PBT	30% PBT
Gross receipts	100	100	100
Taxable Profit	20	25	30
Tax liability (@ 35%)	7	8.75	10.50
TDS (@ 10%)	10	10	10
(Refund)/ tax payable	(3)	(1.25)	0.50

As can be comprehended from the above table, even if it is assumed that the consulting and professional firms will be profitable, it is only at a margin of 30% that the entire TDS will be utilised. Realistically, as already mentioned above, majority of the firms will be struggling to make any profit in the next couple of years and even if they do, profitability may be much below 20%-25%. Further, these firms will continue to bear high salary costs, which is likely to reduce the profits even further. In any case, these entities continue to be in the purview of the tax department and will continue to meet their tax liability by way of advance tax through the year and therefore, in case of

a possibility of profits, there will anyway be no loss or delay for the revenue department in collecting the taxes.

In view of the above, we have provided below some recommendations to deal with the above situation and provide support to the consulting and professional firms in these times.

### 1. Reduction of TDS rate under section 194J of the Income-tax Act, 1961 ('Act')

Keeping in mind the serious issues that businesses are going to face, the challenges of managing the business with high people costs and other fixed overheads, and the need for all available funds, it is recommended that the TDS on professional fees should be completely removed for a period of one year at least. Without prejudice, in any case, the current rate of 10% under section 194J of the Act should be reduced to 2.5%.

### 2. Prioritise issue of lower/ nil withholding tax certificates under section 197 of the Act

Without prejudice to the above recommendation, section 197 of the Act facilitates application for certificate for lower/ nil withholding tax from tax officers. However, considering the urgency of the matter, it is recommended that directives be issued to the tax officers to consider applications for lower/ nil withholding tax certificates under section 197 read with section 194J of the Act on priority and to process such applications (on an automatic basis) and issue the certificates in a compressed time frame (maximum period of 1 month).

Further, given the nature of services provided by the consulting and professional firms, it may be difficult to identify the deductors at the time of make an application under section 197 of the Act. While proviso to Rule 28AA(4) permits the issue of the certificate to the person making the application, it is applicable only in cases where the number of persons responsible for deducting tax is likely to exceed 100. In view of the current situation, it is recommended that this requirement be eased and certificates be issued in favour of the applicant where the details of persons liable to deduct tax is not available, irrespective of the numbers of such person.

We humbly request you to resolve the above issues at the earliest in order to avoid unnecessary hardship being caused to the multitude of consulting and professional firms.

Thanking you,

Yours sincerely,

Manish Sampat  
President,  
Bombay Chartered Accountants' Society

Anand Sharma  
President,  
Chartered Accountants Association, Ahmedabad

Anshul Agarwal  
President,  
Lucknow Chartered Accountants' Society

Rasesh Shah  
President,  
Chartered Accountants Association, Surat

Chandrashekara Shetty  
President,  
Karnataka State Chartered Accountants' Association

CC to:

1. Shri Narendra Modi – Prime Minister of India,
2. Smt. Nirmala Sitharaman – Union Finance Minister.
3. Shri Anurag Thakur - MOS, Finance,
4. Shri Kamlesh Varshney - Joint Secretary, TPL



# The Karnataka State Chartered Accountants Association (R)



Date: 1<sup>st</sup> May 2020

To,

**Shri. B S Yediyurappa,**  
**The Honourable Chief Minister of Karnataka,**  
Bengaluru 560 001.

Hon'ble Sir,

**Subject: Representation to classify services provided by Chartered Accountants and their firms as essential service**

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

The State of Karnataka under your able leadership has taken preemptive measures in containing the spread of virus and has succeeded in preventing the fatal results to a very large extent. We place our appreciation to you and your entire team in this regard. We also realise the challenges faced by the State in the days ahead and we firmly believe that this representation would bring in to ease the burden of economic challenge.

Sir, you must be aware that Chartered Accountants play a prominent role in the economic progress of any State, by extending a lifeline support to the whole gamut of finance, taxation and accounting to any business. We have been an indispensable figure in the whole formula for economic progression and success.

We strongly believe that the lives of people and safety of citizens are paramount to the State. At this juncture however, when the state is contemplating on relaxing the norms of lockdown, we would wish that you liberalise the restriction on Chartered accountants and their firms considering the following points -

1. Chartered Accountants (CA's) have been involved in the work of GST, Income Tax, Professional Tax etc and as such have been instrumental in mediating the government efforts of collecting the taxes. Clients rely on CA's in their tax compliance and taxes are a major source of revenue to the State and Central Government. The professionals have also been providing assistance to businesses in their work with various regulators, banks or governmental agencies. CA's shoulder the work of preparation of financials of SME/MSME for the purpose of submitting it to the financial institutions and banks. During this part of the period, CA's conduct branch and statutory audit of the banks and these audits require us to commute and travel to banks to conduct the audit. The relaxation to CA's then would augur well with the point that all the businesses which would wish to pay tax, submit returns or avail any finances from banks can do without any hiccups with the assistance of our members.
2. We draw your attention to the point that our members are back-end offices to many businesses with very little physical public interaction at office level. The very nature of such presence would not be deterrent to the safety of public health. Rather would help the state and business man to comply and reduce the burden. Further, the majority of CA offices are constituted between two or three CA's but the value addition can be significantly high.

In this background, CA fraternity can constructively help the governments in collecting the revenue in time (Goods and service tax, Income Tax & Professional Tax), conducting audit, preparation of financials and thereby help the state in reducing the economic burden due to lockdown. Hence, considering the substantial economic benefit, we request you to appropriately classify CA's and their service as **essential** while liberalising the lockdown and allow them to work in the betterment of the Country.

Yours sincerely,

**For Karnataka State Chartered Accountants Association ®**

**CA. Chandrashekara Shetty**  
President

**CA. Chandan K Hegde**  
Secretary

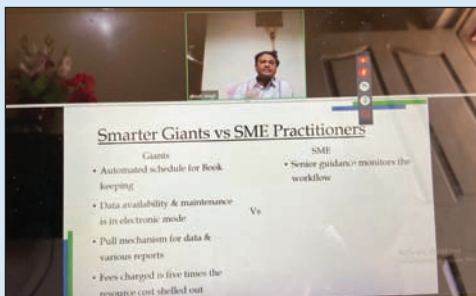
**CA. Sateesha Kalkur**  
Chairman - Representation Committee

CC to

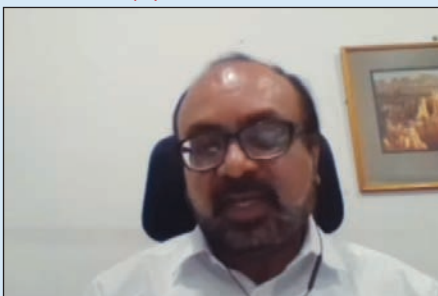
1. The Chief Secretary, Government of Karnataka



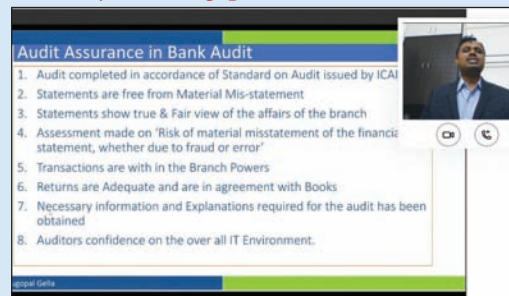
**Webinar on New Age Digital Accounting for Chartered Accountants by CA Praveen Kumar Gella and Mr. Venkat Raman - 21.04.2020**



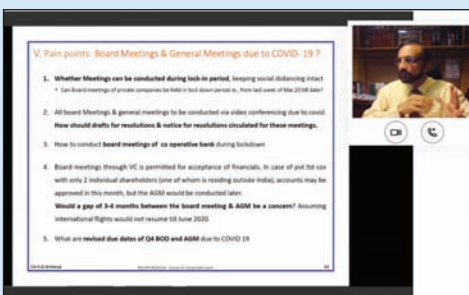
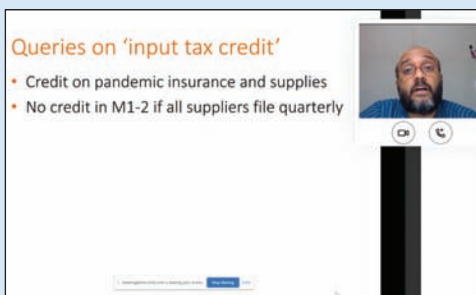
**Webinar on Introspection of Self – Lockdown Times by CA Sanjay Dhariwal - 23.04.2020**



**Webinar on How to conduct Bank Branch Statutory Audit from Home by CA Venugopal Gella - 30.04.2020**



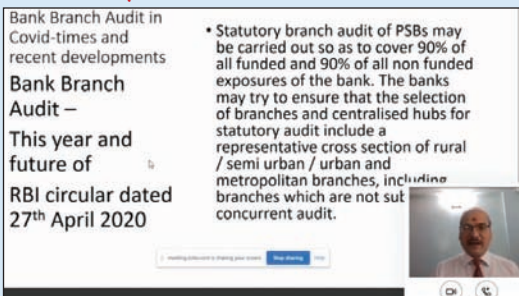
**Panel Discussion on Impact of Lockdown in Corporate Law, Direct Tax & Indirect Tax Laws - 24.04.2020**



**GST-Issues unresolved in Supply, Valuation and ITC by CA Jatin Christopher - 25.04.2020**



**Bank Branch Audit in COVID times and Recent Developments by CA P R Suresh - 01.05.2020**



**Webinar on GST Intricacies and Controversies in Works Contract by CA. (Adv) Bimal Jain - 02.05.2020**



**KSCAA Food Distribution during Lockdown - April & May 2020**







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