

KSCAA

October 2020

Vol. 8, Issue 2


₹ 25/-



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English Monthly
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NEWS BULLETIN



- GSTR - 9 & 9C FAQs
- IPR - Types of Trademarks
- Charitable institutions - Uncharitable Legislation
- Financial Reporting & Assurance
- FCRA
- Nutrition for Life



Dear Professional friends,

The month of October marks a month filled with festivity and joy. Dussera which is also known as 'Nada Habba' (near translating to 'State Festival') signifies victory of good over evil. The significance of this festival has been a historical and traditional one. Especially to the state of Karnataka, the sheer vibrance and cheerfulness through which it is celebrated has got its share of

world attention. Interestingly, this festival is celebrated across India, in various ways, fashion, tradition and style, stressing on the diversity of a similar belief, which the country shares in spite of varying beliefs and traditions. However, this year would be a little different from the rest that we are more inclined to spend this joy amongst ourselves and family due to COVID pandemic.

With market opening in many fronts, there has been sign of positivity in activity amongst the businessmen. Many credit agencies have provided varying degree of contraction to the economy. Latest being RBI, Shaktikanta Das - RBI governor, said GDP growth rate may break out of contraction and turn positive during January-March 2021 due to recovery seen across sectors. He also said that the Indian economy will contract to 9.5% in fiscal year 2021 due to disruptions caused by the Covid-19 pandemic that has hit economic activities.

Direct Taxes

- (1) Various relaxations provided via Ordinance 2020 in terms of extension of statutory timelines, reduction of TDS and interest rates, waiver of penalty, etc. have now been incorporated in the Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) Act, 2020.
- (2) The CBDT has now notified (Notification: 25.09.2020) the Faceless Appeal Scheme with 3 centers.
- (3) The FA 2020 has introduced two new provisions for TDS and TCS under Sections 194-O and 206C(1H) respectively.
- (4) CBDT extends the due date for filing returns for AY 2019-20 to 30.11.2020 and notified changes (Notification: 01.10.2020) in ITR 6, Form 3CD, Form 3CEB for AY 2020-21.
- (5) The CBDT issued a Press Release on 26.09.2020 clarifying that while furnishing the tax returns for FY 2019-20, scrip wise details shall be furnished only with respect to long term capital gains as eligible for grandfathering benefit.

Indirect Taxes

GST journey so far is marked with umpteen changes all along. While this could be seen as a good sign of the Government's responsiveness to the need of the day, the flip side of it, these points fingers at the level of preparedness in approaching the Biggest Tax Reforms.

Professionals and businessmen had a tough time with GST portal for filing of returns, now it's the turn of E-invoicing portal to test the patience. It was a commitment to start with 10 websites dedicated for E-Invoicing to ensure a hassle-free transition to the new invoicing system, out of which only one is currently operational. As expected, the Government comes with a conditional relaxation for one month to comply with E-Invoicing. Dynamic QR code for B2C transaction is deferred till December 2020.

On the other side, GST council has come up with a big relief to help the cash flows of small taxpayers with turnover less than Rs. 5Cr, allowing payment of tax and filing of GSTR 3B on a quarterly basis

from January 2021. Let us wait for the notification to witness how this is implemented, with a hope that there is no twist in the tale by way of added conditions!

Corporate Laws

The Ministry of Corporate Affairs has extended the Companies Fresh Start Scheme (CFSS), LLP Settlement Scheme and Charge related filings under the Companies Act, 2013 till 31st December 2020.

The Companies (Amendment) Act, 2020 got the assent of the Hon'ble President as on 28th September, 2020 and has been effective since then.

There are amendments in 61 sections in the Act and 4 sections have been newly inserted which includes the provisions for Producer Companies.

The key amendments are focused on:

- Decriminalization of certain offences and imposition of penalties instead of fines, omission of imprisonment provisions, reduction in quantum of penalty
- Amendment in CSR provisions leading to shift from 'Comply or Explain' to 'Comply or Pay' Penalty
- Minimum remuneration to Independent Directors and Non-executive directors even during inadequacy of profits and excluding sitting fees
- Introduction of new section 129A of CA, 2013 for preparation of periodical financial results by unlisted Companies
- Certain relaxations to NBFCs, HFCs and start-ups
- Introduction of New chapters for Producer companies
- Other amendments relating to Rights issue, Public issue, Additional fees for repeated defaults etc.

Representations

We along with other professional associations have made various representations. One, to ICAI to extend the due date for making payment of membership fees. Second, was along with other professional associations to the Hon'ble Minister of Finance, Smt. Nirmala Sitaraman with regards to certain measures which needs to be taken against impeding issues in income tax due to COVID outbreak. Third, was also along other professional associations with regards to new TCS provisions under Income Tax Act, 1961. And fourth one was to Ministry of Corporate Affairs to extend CFSS 2020 and LLP Settlement Scheme 2020. Many of the above representations has received a favourable outcome.

I thought to end this month's message with a positive quote of the Father of our Nation, Mahatma Gandhi, "If I have the belief that I can do it, I shall surely acquire the capacity to do it even if I may not have it at the beginning." The overall meaning has been conveyed by many famous personalities but this has put an important question of belief ahead of destiny and the process of that turning to reality as a natural process. The willingness to believe in self and knowing that the destiny would conspire naturally is a hidden secret of many successful people. So, the opportunity is the belief itself and not its outcome of result. Hence, let's stay positive with belief during these times of ambiguity.

On the auspicious days in October, I wish all the readers a very happy Dussera.

Happy reading!

Yours Sincerely,

CA. Kumar S Jigajinni
President



KSCAA

NEWS BULLETIN

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KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION®

VISION

- KSCAA shall be the trusted and value based knowledge organisation providing leadership and timely influence to support the functional breadth and technical depth of every member of CA profession;
- KSCAA shall be the nucleus of activity, amity and unity among members aimed at enhancing the CA profession's social relevance, attractiveness and pre-eminence;
- KSCAA shall in the public interest, be a proactive catalyst, offering a reliable and respected source of public statement and comments to induce effective laws and good governance;
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- The KSCAA serves the interests of the members of CA profession by providing new generation skills, amity, unity, networking and leadership to strengthen the professional capabilities, integrity, objectivity, social relevance, standards and pre-eminence of India's Chartered Accountants nationally and internationally through; becoming gateway of knowledge for Chartered Accountants, students and public; helping members add value to their customers/employers by enhancing their professional excellence and services; offering a reliable and respected source of public policy advice and comments to bring about more effective laws and policies and transparent administration and governance.

MOTTO: KNOWLEDGE IS STRENGTH

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TCS UNDER SECTION 206C (1H)



■ Adv. K.K. Chythanya and Adv. Sharath Sachidanand

A. Introduction

1. The intention of the legislature to collect tax at source is to ensure timely recovery of tax and to curb tax evasion. TCS provisions go hand in hand with TDS provisions.
2. Section 190 reads as follows;

(1) Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction or collection at source or by advance payment or by payment under sub-section (1A) of section 192, as the case may be, in accordance with the provisions of this Chapter.

(2) Nothing in this section shall prejudice the charge of tax on such income under the provisions of sub-section (1) of section 4.
3. Section 190(2) provides that nothing contained in section 190 shall prejudice the charge of tax on such income under section 4(1). This provision could also be understood as it being sub-ordinate to section 4(1) in as much as it cannot either reduce or enhance the charge under section 4(1).
4. Section 4(2) reads as follows:

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.
5. It is noteworthy that while section 4(2) facilitates advance tax and TDS, it is silent on TCS raising doubts as to very validity of TCS provisions.
6. Be that as it may, TCS provisions are engrafted as Part BB in Chapter XVII-B. The following table gives a summary of TCS provisions:

Section	Summary
206C(1)	Applicable with respect to sale of goods i.e., Alcoholic Liquor for human consumption, Tendu leaves, Timber obtained under a forest lease, Timber obtained by any mode other, Any other forest produce not being, Scrap, Minerals, being coal or lignite or iron ore.

206C(1C)	Applicable to grant of a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry, to another person, other than a public sector company (hereafter in this section referred to as "licensee or lessee") for the use of such parking lot or toll plaza or mine or quarry for the purpose of business.
206C(1F)	Applicable for sale of a motor vehicle of the value exceeding ten lakh rupees.
206C(1G)	Applicable in respect of remittance under Liberalised Remittance Scheme and overseas package tour program package.
206C(1H)	Applicable in respect of receipt of consideration for sale of goods

7. The transactions added by Finance Act, 2020 (w.e.f. 01.10.2020) under section 206C are with respect to collection of tax at source under sub-section (1G) in respect of remittance under Liberalised Remittance Scheme and overseas package tour program package and under sub-section (1H) in respect of *sale of goods*. These transactions are added in order to widen and deepen the tax net. The benefit of lower TCS as provided in section 206C(9) is not applicable to the aforesaid two sections.
8. While no Notifications have been issued in the matter of aforesaid two provisions, the CBDT issued Circular 17/2020 dated 29.09.2020 and a Press Release dated 30.09.2020.
9. In this article, an attempt is made to highlight certain issues arising from section 206C(1H) which applies only in respect of sale of goods and not in respect of provision of services. Considering the space restriction, only some issues are highlighted.

B. Section 206C(1H) in gist:

- a) It applies to a seller, who receives any amount as consideration for sale of any goods of the value or



- aggregate of such value exceeding Rs.50 lakh in any previous year
- b) Goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) are not covered.
 - c) Seller, at the time of receipt of such amount, shall collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding Rs.50 lakh as income-tax
 - d) “seller” means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein. In this regard, the Central Government has not issued any notification as of date.
 - e) In case non-PAN/ Aadhaar the rate of TCS shall be @ 1%;
 - f) The provision of section 206C(1H) shall not apply if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.
 - g) The term *buyer* means a person who purchases any goods **but does not include**:
 - the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or
 - a local authority as defined in the Explanation to clause (20) of section 10; or
 - a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein. In this regard, the Central Government has not issued any notification as of date.

C. Important issues arising from Section 206C(1H):

1. Receipt or debit:

- 1.1. While sections 206C(1), (1C) and (1G) provide for TCS at the earlier instance of debit or receipt, this provision provides for TCS only at the time of receipt.
- 1.2. This provision is similar to section 206C(1F) which provides that a seller who receives any amount as

consideration for sale of a motor vehicle of the value exceeding Rs.10 lakh, shall, at the time or receipt of such amount, collect from the buyer, a sum equal to 1% of the sale consideration as income-tax.

- 1.3. Therefore, mere debiting the account of buyer does not entail TCS. TCS can take place only at the time of receipt. If there is no receipt, there is no TCS.

2. Limit of Rs.50 lakh:

- 2.1. TCS is required only when a seller receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year.
- 2.2. The aforesaid limit is to be determined with reference to a particular buyer.
- 2.3. While determining the aforesaid limit, goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) shall be excluded.
- 2.4. A literal reading of the aforesaid limit could mean that if the amount exceeds Rs.50L even by a rupee, entire amount requires TCS. However, it is reasonable construe that Rs.50L is a standard deduction on the basis of Circular 17/2020, wording of 1st proviso to section 194N and the decision of Delhi High Court Rajan Bhatia vs. CBDT, [2019] 261 Taxman 255 (Delhi) in the context of section 115BBDA.
- 2.5. Needless to say that while determining the limit of Rs.50 lakh per buyer, only the consideration for sale of goods is included whereas while determining the limit of Rs.10 Crore for the seller, his total sales, gross receipts or turnover [from goods as well as services] are required to be considered.

3. Seller and subject matter of TCS:

- 3.1. Seller is defined to a person whose total sales, gross receipts or turnover from the business carried on by him exceed Rs.10 crore during the financial year immediately preceding the financial year in which the sale of goods is carried out. Therefore, in order to be a seller, he ought to have sold goods both in the preceding year as well as current year.
- 3.2. The words '*preceding the financial year in which the sale of goods is carried out*' clearly convey that the TCS applies only in respect of sales made in the financial year. The further requirement is that the seller should receive any amount as consideration

for sale of any goods of the value or aggregate of such value exceeding Rs.50L *in any previous year*. A combined reading of the above would convey that three conditions are required to be satisfied for TCS to apply, viz

- a) The sale is carried out in the financial year, i.e. previous year
- b) Seller receives consideration in respect of such sale
- c) The value or aggregate of value of amount of such sale consideration exceeds Rs.50L

3.3. In the Press Release dated 30.08.2020, it was clarified as follows;

the seller in most of the cases maintains running account of the buyer in which payments are generally not linked with a particular sale invoice. Therefore, in order to simplify and ease the compliance of the collector, it may be noted that this TCS provision shall be applicable on the amount of all sale consideration received on or after 1st October, 2020 without making any adjustment for the amount received in respect of sales made before 1st October, 2020. Mandating the collector to identify and exclude the amount in respect of sales made up to 30th September, 2020 from the amount received on or after the 1st of October, 2020 would have resulted into undue compliance burden for the collector and also litigation.

3.4. The aforesaid clarification, if read as mandating TCS even in respect of current receipts of sales effected prior to the relevant previous year [current receipts in respect of past years' sales] would be contrary to statutory provisions. However, as TCS is a vicarious liability, applying the maxim *ex abundant cautela*, the sellers are advised to be collect TCS on all receipts post 01.10.2020 irrespective of whether sales were effected in the current financial year or preceding financial years.

4. **Whether total sales, gross receipts or turnover include GST?**

4.1. Circular No 17 of 2020 in paragraph 4.6 clarifies that no adjustment is required to be made for indirect tax including GST for the purpose of collection tax under section 206C(1H). As per Guidance Note on Terms Used in Financial Statements issued by ICAI – Turnover is *the aggregate amount for which sales are effected or services rendered by an enterprise*. As per Explanation 1 to section 145A the value of

purchase or sale of goods or services includes tax, duty, cess or fee. The Guidance Note on section 44AB issued by ICAI clarifies that the term 'turnover' for the purposes of this clause may be interpreted to mean the aggregate amount for which sales are effected or services rendered by an enterprise and if sales tax and excise duty are included in the sale price, no adjustment in respect thereof should be made for considering the quantum of turnover. In *Chowringhee Sales Bureau P Ltd. vs. CIT*, (1973) 87 ITR 542 (SC), the Apex Court held that sales would include sales tax. Section 15(2) of CGST Act states that the value of supply to include “**any taxes**, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier”.

4.2. In Circulars 4/2008 of 28.04.2008, 1/2014 of 13.01.2014 and Circular 23/2017 of 19.07.2017, the CBDT has clarified that for the purpose of deducting tax at source under section 194-I and section 194J on the amount paid or payable on the services shall not include the GST component, if GST is indicated separately in the invoice. In the following cases, it was held that taxes are to be excluded for determining turnover:

- DIT vs. Mitchell Drilling International Pvt. Ltd, [2016] 380 ITR 130 (Del-HC)
- CIT vs. Reliance Life Insurance Co. Ltd. [2019] 414 ITR 551 (Bom)
- CIT vs. Noble and Hewitt (I) P. Ltd. [2008] 305 ITR 324 (Del-HC)
- Harvansh & Sons vs. Union of India, [2004] 266 ITR 364 (MP);
- CIT vs. Lakshmi Machine Works (2007) 290 ITR 667 (SC)

4.3. Whatever understanding obtained above would also apply for the purpose of determining limits of Rs. 50 lakh and Rs.10 Crore.

4.4. The CBIC clarified in Circular No.76/50/2018-GST that the taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS. A corrigendum issued on 7.3.2019



reversed the aforesaid position and clarified that as TCS is only an interim levy not having the character of tax, the same is not included for the purpose of GST.

5. Adjustment for sale return and discount:

- 5.1. In circular 17/2020 [supra], it is clarified in paragraph 4.6 that no adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax under sub-section (1H) of section 206C since the collection is made with reference to receipt of amount of sale consideration.
- 5.2. If sales return and discount are already credited to the customer's account and what is received is the net sale consideration after discount and sales return, there is no question of TCS on the amount of such discount and sales return. If the clarification in the circular is understood to mean contrary to this position, the same is ultra virus the statutory provisions.
- 5.3. If the amount is received before crediting sales return and discount, the TCS is required on the

entire amount of receipt. Any subsequent credit of sales return and discount to the account of the buyer would be of no consequence.

- 5.4. However, such subsequent credit of sales return and discount may reduce the net amount of receipt in respect of subsequent sale transactions. In such case, the question is whether TCS is required on the gross amount of such subsequent sales or net amount after reducing the sales return and discount of previous sales.
- 5.5. In so far as both the concerned original sales and sales return and discount relate to same financial year, as the limit of Rs.50L per buyer is not with reference to a particular sale transaction but to aggregate value of consideration for the entire previous year, it is permissible to take the receipt of net consideration for all sales during the previous year. The clarification in the above circular contrary to this understanding is ultra virus the statutory provision.

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KSCAA WELCOMES NEW MEMBERS - October 2020

S.No.	Name	Place
1	Kapeel Bhandarkar	Hubli
2	Preksha S Bhandari	Bengaluru
3	Nikhilesh Cacarla	Bengaluru
4	Bhagappa S. Lokhande	Vijayapura
5	Vijayakumar Shetty	Mangalore
6	Sheela S Reddy	Sindhanur
7	Rajesh Kumar	Mangalore
8	Radhika	Bengaluru
9	Nishith Bhandary	Mangalore
10	Janardhana Gouda G	Bellary
11	Devika S	Kerala
12	Archana R Maiya	Udupi
13	Kishor Kumar E	Bellary
14	CA Shrinidhi Rao	Udupi
15	Bharath M G	Raichur
16	Dhanush D Bolar	Mangalore
17	Akshatha Dhoka	Bellary

S.No.	Name	Place
18	Ravindra R	Bengaluru
19	P Uma Mahesh	Bengaluru
20	Vandana P Rao	Bengaluru
21	Mohanadasa	Bengaluru
22	C D Vinay Karthik	Bengaluru
23	Nagappa K	Kundapura
24	N Shantharam Nayak	Udupi
25	Kiran Vinay Raikar	Bengaluru
26	Krishna C	Mysore
27	Pavan S Shetty	Udupi
28	Amruta Chowdhari	Hubli
29	Sripada Appemane Nagesh Rao	Bengaluru
30	Sandeep Hande P	Mangalore
31	Vachan M D	Bengaluru
32	Dinakara C P	Bengaluru
33	CA. Mahindra Shenoy P	Udupi

ERRATA

September 2020 News Bulletin inadvertently carried Mr. Abhishek Tarale, Belagavi admitted as member of KSCAA under sl. no. 27 in the list of new members to the association. Please note that Mr. Abhishek Tarale, Belagavi has not been admitted as a member of KSCAA. We regret the error.

TCS - EVOLUTION AND THE RECENT AMENDMENTS



■ CA. C.N. Mohan

Many times, in our life, we have experienced that an action is initiated with a particular purpose, but with the passage of time, the purpose changes or is lost. This is so often witnessed under the Income-tax Act, 1961 ('Act'). A particular section is inserted with a particular object, but slowly the section gets amended and the purpose seems to fade away. One particular section which exemplifies this trend is section 206C of the Act dealing with 'tax collected at source' ('TCS').

Let us quickly revisit the history and shall put to test the recent amendments based on the original purpose with which the provisions were introduced.

Legislative History

1. Finance Act, 1988 introduced Section 44AC along with Section 206C.
2. Finance Act, 1992 substituted the old provisions of section 206C with a new provision.
3. By Finance Act, 1996, the rate of tax of 15% in the Table for alcoholic liquor for human consumption was reduced to 10%.
4. Finance Act, 2003, Tax Laws Amendment Act, 2003 and Finance Act, 2004 brought major changes, both in the rate of TCS and its applicability.

Object of Introduction:

1. The object of TCS is to counter tax-evasion by liquor contractors, scrap dealers, sellers of forest produce etc.,
2. To obtain such contracts, Firms or AOP, are specifically constituted and very often no trace is left regarding them or their members, after the contract has been executed.
3. Sometimes, it was found, that contracts are taken in benami names.
4. Tax is payable in the assessment year in respect of the income of the PY, the time by which the income from such sources becomes assessable, such persons are not traceable.

This section was inserted as a corollary to section 44AC. Section 44AC, as then introduced, taxed a trader, obtaining in any sale by way of auction, tender or any other mode, conducted by any other person the following goods:

- a. Alcoholic liquor for human consumption
- b. Timber obtained under a forest lease
- c. Timber obtained by any mode other than under a forest lease
- d. Any other forest produce not being timber.

Such tax was levied on an adhoc basis in the year of purchase itself at a specified percentage of the purchase price. Further, section 206C required the seller of such goods to collect tax from the trader at the time of sale itself at specified rate, the credit of which was given to the trader in the same year.

Thus, circumventing the basic principles of taxation, section 44AC levied tax at the time of purchase of goods, without waiting for such goods to be sold and income to accrue and such tax was levied at an ad-hoc percentage of the purchase price. The Explanatory Memorandum to Finance Bill, 1988, gave the rationale behind such insertion, citing the difficulty in assessing income of persons who take contracts for sale of liquor, forest produce, etc. These people constitute a separate entity or a benami entity for getting the contract. Once the contract was entered, these entities became untraceable and the assessment of income in the year of sale of such goods was getting difficult thereby leading to large scale tax evasion. Further, section 206C was introduced to mere facilitate collection of taxes in advance.

Thus, TCS and income tax was going hand in hand – i.e. section 44AC taxed such income in the hands of the buyer in the year of entering into contract and in the same year, TCS was happening.

The constitutional validity of both the sections were upheld by the Apex Court in case of **UOI v. A. Sanyasi Rao [219 ITR 330 (SC)]**. **Court held that in order to prevent evasion of tax legitimately due on such 'income', section 44AC and section 206C were enacted.** Section 206C was only to



facilitate the collection of tax on income which is bound to arise or accrue, at the very inception itself or at an anterior stage. The Court even drew analogy between the advance tax provision and section 206C of the Act.

Interesting it is to note that section 44AC of the Act was obliterated in 3 years' time by Finance Act, 1992 on the ground of administrative difficulty, though section 206C continued in the Statute book.

Section 206C was expanded to include even sale of scrap (Finance Act, 2003) and sale of minerals (Finance Act, 2012). The explanatory memorandum to Finance Act, 2012 again spelt out the same logic that trading of minerals remained largely unregulated resulting in non-reporting or under-reporting for taxation purpose.

Presently, Rule 37-I(2) provides that credit of TCS shall be allowed in the year in which the income is offered to tax. This rule is amended to insert a new sub-rule 2A to provide that credit of TCS u/s 206C(1F)/(1G) and (1H) shall be allowed in the year in which tax collection is made.

Subsequent amendments

There were three subsequent amendments which expanded the scope of the TCS provisions. The same are discussed hereunder: Vide Finance (No. 2) Act, 2004, TCS provision was made applicable to grant of lease, licence or right in respect of any parking lot or toll plaza or a mine or a quarry for use of such places for the purposes of business by inserting sub-section (1C).

It can be deduced that the purpose took a minor diversion. Earlier, the purpose was to prevent evasion of tax; the Apex Court had upheld that constitutional validity of TCS provisions only on the ground that the same is in the nature of collection of tax in advance in cases where the income was going untaxed. But, vide this amendment; the purpose of TCS was diverted to widening of tax base. Though, thankfully, the collection of tax was still related to income which was to accrue in future, as the TCS provision was to apply only where such places like parking lot etc. was for the purpose of business.

The second amendment was made by Finance Act, 2012 by inserting sub-section (1D). By this amendment, cash consideration received on sale of bullion or jewellery was subjected to TCS provisions. It also stated that the action was to reduce the quantum of cash transaction and for curbing the flow of unaccounted money in the trading system of bullion and jewellery.

Pertinent to note, the Explanatory Memorandum stated that "This would be irrespective of the fact whether buyer

is a manufacturer, trader or purchase is for personal use." Further, the term buyer, was defined separately for the purpose of this sub-section to include all buyers.

Thus, even if one agrees that the purpose behind this insertion was to prevent tax evasion, how does one justify applying this provision to purchase of goods for personal use. If the purchase is for personal use, how does one justify linking of TCS to the income that may accrue or arise in future, which is fundamental principle based on which the validity of the provision is upheld.

If this was not enough, the Finance Act, 2016 expanded the scope of sub-section (1D), to include cash consideration received on sale of all types of goods or provision of all types of services where such consideration exceeded Rs. 2 lakhs. Again, there was no exemption for purchase of goods for personal consumption and again same logic was provided by Explanatory Memorandum to Finance Bill 2016. Vide same Finance Act, sub-section (1F) was introduced which required a seller of motor car to collect TCS on sale of motor cars for a consideration more than Rs. 10 lakhs. This insertion was to widen the base by bringing high value transactions within the tax net. Again, no exemption was provided for purchase of goods for personal consumption.

Interestingly, sub-section (1D) dealing with cash consideration on sale of goods etc. was removed from the statute book on insertion of section 269ST by Finance Act, 2017, which was the right way to deal with cash transactions.

Amendment by Finance Act, 2020

The onslaught of the Legislature is yet to be subdued. Vide Finance Act, 2020, the Legislature has covered the following transactions within the TCS net:

- i. Receipt of an amount, or an aggregate of amounts, of Rs. 7 lakh or more in a financial year by an authorised dealer for remittance out of India from a buyer under the LRS of RBI [Sub-section (1G)]
- ii. Receipt of an amount from a buyer from a seller of an overseas tour program package [Sub-section (1G)]
- iii. Receipt by a seller of any amount as consideration for sale of any goods of the value or aggregate of such value exceeding Rs. 50 lakhs in any previous year.

The Memorandum in this regard is maintaining a stoic silence in as much as the only **reason** given behind this insertion is **widening and deepening of tax base**. Thus, the move for introducing TCS on these transactions is bereft of any reason.

In so far as the first case is concerned, there is absolutely no link between the tax collected and income which the remitter may earn. Say a person wants to transfer a sum of money from his account in India to his account outside India or where the person wants to transfer a sum of money to his son studying abroad. Such payment has no rational connection with the income of the remitter rather it's an expense. Even where a person makes payment for overseas tour package which is likely to be a personal expense, such payment is not likely to lead to any income. In fact, the remittance may be out of the tax paid income of the person. Thus, in such case, imposing TCS is absurd and illogical.

Further, how can anybody claim credit of TCS although no income is linked to such TCS either in the same year or in any other subsequent assessment years. It is evident that the Income Tax statute intends to collect tax on such transactions that do not result in earning any income to such person. If the money used for these transactions are out of income already offered for tax then this a fit case of "undue enrichment" to the government.

The third insertion may also lead to complication in the sense that, the goods may be purchased by a person for personal consumption or something which may not lead to income in future.

Thus, the principles based on which the section was original inserted and the constitutional validity has been upheld are not adhered to while expanding the section. This section was originally enacted for prevention of tax evasion, however then the section was used for widening of tax base and for curbing cash transaction. Further, the section was for advance collection of tax in respect of a transaction which had a link with some income or an income which would have arisen in future. However, subsequently, the section was amended to cover transaction having no nexus with income chargeable to tax. Though the purpose may be laudable, but the means to achieve such purpose are not correct or apt. The later amendments are a completely misfit and that there are other ways to deal with such issues. As a result, the later amendments, which are miles away from the main purpose behind enacting the TCS provisions and which are undoubtedly misfit here, are in my opinion, vulnerable and stand at the peril of being unconstitutional.

Finance Act, 2020 has inserted two sub-section to section 206C to provide for TCS to widen and deepen the scope of existing provisions of TCS. New provisions introduced from FY 2020-21 are follows: -

1. On remittance under Liberalised Remittance Scheme

(LRS) of Reserve Bank of India (RBI) exceeding seven lakh rupees in a year, and

2. On sale of the overseas tour package.
3. On the sale of goods in excess of Rs. 50 lakhs in a year by a seller whose turnover is more than Rs. 10 crores.

Sub-Section (1G) to section 206C has two clauses. One clause is related to remittance of amount out of India under the LRS of the RBI and the other clause is related to payments made for overseas tour programme package.

TCS on remittance of amount out of India under the LRS of the RBI

Under the LRS, Authorised Dealers may freely allow remittances by resident individuals up to USD 2,50,000 per FY (April-March) for any permitted current or capital account transaction or a combination of both. The Scheme is not available to corporates, partnership firms, HUF, Trusts, etc.

All other transactions which are otherwise not permissible under FEMA and those in the nature of remittance for margins or margin calls to overseas exchanges/ overseas counterparty are not allowed under the LRS.

A new sub-section (1G) is inserted in section 206C of the Income-tax Act which requires the collection of tax by an authorised dealer who receives an amount or aggregate amount of Rs. 7 lakh or more during the financial year from a person for remitting such amount out of India under LRS. The tax shall be required to be collected at the rate of 5% of such amount.

The Finance Act, 2020 amends sub-section (1G) to provide for a lower rate of 0.5% for collection of tax by an authorised dealer on the amount or aggregate of the amounts in excess of Rs. 7 Lakh where the amount being remitted out of India is a loan, which is obtained from any financial institution as defined in section 80E, for the purpose of pursuing any education. The threshold limit of Rs. 7 Lakh is also applicable for such remittance.

TCS on payments made for overseas tour programme package

Threshold Limit: There is no change in the threshold limit in the Finance Act, 2020 in case of TCS on overseas tour programme package from the proposed provision in the Finance Bill, 2020. In other words, there is no threshold limit provided for applicability of TCS in case of TCS on overseas tour programme package.

The threshold limit of Rs 7 lakh and applicability of TCS in excess of Rs. 7,00,000 is applicable for TCS on remittance



of amount out of India under the LRS (LRS) - whether for educational loan or for otherwise but does not apply for payments made for overseas tour programme package. Thus the rate of TCS of 5 per cent shall apply for overseas tour program package irrespective of the amount received from the buyer for such package.

A buyer of an overseas tour package can make payment to the seller directly or may remit the money to the seller through authorized dealer, there may be a case where both the seller and authorized dealer may collect TCS from the same buyer for the same payment which may result in double levy of TCS. To mitigate this ambiguity, a proviso has been inserted to sub-section (1G) by the Finance Act, 2020 to provide that the authorised dealer shall not collect TCS on an amount in respect of which the tax has already been collected by the seller

There is one more TCS provision introduced in the statute is section 206(1H). This deals with TCS on sale of any goods in certain cases.

Export of goods excluded from TCS- Finance Act, 2020 has amended the said sub-section (1H) to provide that no tax shall be required to be collected in respect of goods exported out of India.

Applicability date deferred- The Finance Act, 2020 has deferred the applicability of such amendments. Now, these provisions will be effective from 01-10-2020.

Penalty for not furnishing PAN (or Aadhaar):As per section 206CC, if the buyer does not furnish his PAN (or Aadhaar No.) to the seller, then the rate of TCS shall be higher of-

- (a) twice the prescribed rate, or(b) 5 per cent

Power to remove difficulty- Finance Act, 2020 has empowered the CBDT to issue guidelines, with the approval of central government, if any difficulty arises in giving effect to the provisions of subsection (1G) or sub-section (1H). It is also provided that such guidelines so issued shall be laid before the Parliament and shall be binding on the Income-tax authorities and on the person liable to collect the sum. [Section 206C(1-I) and section 206C(1J)]

8. TCS Exemptions

Tax collection at source is exempted in the following cases:

1. When the eligible goods, covered under section 206C(1), are used for personal consumption.
2. The purchaser buys the goods, covered under section 206C(1), for manufacturing, processing or production and not for the purpose of trading of those goods.
3. if the buyer is liable to deduct tax at source (TDS) under any other provision of this ACT on the goods purchased by him, covered under section 206C(1H) , from the seller and has deducted such amount.

On receiving various representations from the trade bodies and assesseees with respect to the proposed sub-section 206C(1H), the CBDT has, with the approval of the Central Government has issued guidelines for removing difficulties. The same are tabulated below for quick reference:

Issues	CBDT guidelines
Applicability on Shares and securities, electricity, etc.:	Provisions of section 206C(1H) shall not be applicable in relation to- <ol style="list-style-type: none"> 1. Transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation 2. Transactions in electricity 3. Transactions in renewable energy certificates and energy saving certificates traded through registered power exchanges
Calculation of threshold limit for the financial year 2020-21	
For section 206C(1H)	1. Since sub-section (1H) of section 206C of the Act applies on receipt of sale consideration, the provision of this sub-section <u>shall apply on all sale considerations (including advance received for sale) received on or after 1st October 2020 even if the sale was carried out before 1st October 2020</u> Consequently, it would not apply on any sale consideration received before 1st October 2020.

Issues	CBDT guidelines
	<p>2. Since the threshold of Rs. 50 Lakh is with respect to the previous year, calculation of receipt of sale consideration for triggering TCS under section 206C(1H) shall be computed from 1st April, 2020.</p> <p>Hence, if a person being seller has already received Rs. 50 Lakh or more up to 30th September 2020 from a buyer, the TCS under section 206C(1H) shall apply on all receipt of sale consideration during the previous year, on or after 1st October 2020, from such buyer.</p>
Applicability of TCS u/s 206C(1H) to sale of motor vehicle	<p>Receipt of sale consideration from a dealer would be subjected to TCS under section 206C(1H) if such sales are not subjected to TCS under section 206C(1F).</p> <p>In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value of Rs. 10 Lakh or less to a buyer would be subjected to TCS under section 206C(1H), if the receipt of sale consideration for such vehicles during the previous year exceeds Rs. 50 Lakh.</p>
Adjustment for sale return, discount or indirect taxes	No adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax under section 206C(1H) of the Act since the collection is made with reference to receipt of amount of sale consideration.
Fuel supplied to non-resident airlines	Provisions of section 206C(1H) of the Act shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.
Applicability of TCS on GST	In the case of GST, it is clarified that TCS shall be collected on the amount of sales consideration inclusive of GST for the purpose of collection of TCS u/s 206C(1H) .

The insertion of sub-section 206C(1H) has indeed thrown up lot of confusion and challenges to the assesseees. We need to find solutions to all the problems that we come across through hard ways. It is not going to be easy. Yes, this amendment will keep all of us busy and occupied for some more years for sure.

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Congratulations



We Congratulate
CA. K. Ravi
on being nominated as the
Chairman of the International Business Committee of
Bangalore Chambers of Industry & Commerce (BCIC)
for the year 2020-21.



We Congratulate
CA. Ganesh Shandage
on being nominated as the
Member (Expert from Allied Area) on the
Board of Studies in Commerce by the Academic Council
of KLE Society's Lingaraj College, Belagavi



CHARITABLE INSTITUTIONS - UNCHARITABLE LEGISLATION

■ CA. S. Krishnaswamy

1. Year after year when the annual central budget is presented, we witness changes to the tax law relating to charitable institutions. This has become an annual ritual and law has remained fragile. This year is no exception. The amendments proposed are regressive, Budget 2020 made drastic changes in the Income Tax Act upsetting many a concluded position in respect of registration of Charitable Trusts, exemption granted to notified Charitable institutions under section 10(23C) of the Act, exemption for donations under section 80G of the Act, like demonetizing suddenly all registration, exemption granted will become invalid after the Cut-off date, if not changed, for a fresh registration certificate or an exemption notification. The law relating to Trusts is no longer Trust worthy. Let me explain, the amended law by a stroke of legislative pen cancels all registrations and exemption notifications, it now calls for fresh applications for registration, notification for exemption, or exemption for donations.
2. It now provides time limits in all those cases subject to renewals on fresh application now with effect from the extended date of 1st April 2021, all the exemptions will lapse and fresh application must be made de novo. How the Department officers will deal with renewal / fresh applications - will it be automatic or otherwise needs to be awaited. There are many cases where registration of a trust was cancelled in the wake of amendment to definition of Charitable purpose in appeal it was restored, and the Department is in appeal before the High Court or the Supreme Court the new mandated exercise needless to say is tremendous waste of time and repetitive work.

Let us look at the explanation for the amendment.

Rationalisation of provisions relating to Trusts, Institutions and Funds.

Amendment of sub-section (7) of section 11 to allow entities holding registration under section 12A/12AA to apply for notification under clause (46) of Section 10

Section 11 of the Act, provides for grant of exemption

in respect of income derived from property held under Trust for Charitable or Religious purposes to the extent to which such income is applied or accumulated during the previous year for such purposes in accordance with the provisions contained in Sections 11, 12, 12A, 12AA and 13 of the Act.

Sub-section (7) of section 11 of the Act, inserted by the Finance (No. 2) Act, 2014 with effect from 1st April, 2015, provides that where a Trust or an Institution has obtained Registration under section 12AA [as it stood immediately before its proposed amendment] or under section 12A [as it stood immediately before its amendment by the Finance (No 2) Act, 1996] and said registration is in force for any previous year, then, exemption under section 10 [except under clauses (1) and (23C)] shall not be allowed.

This sub-section was inserted on the basis that the provisions contained in sections 11, 12, 12A, 12AA and 13 of the Act constitute a complete code and that once any Trust or Institution has voluntarily opted for it by obtaining registration required for exemption of income, it should comply with the conditions of such exemption and in case of violation of such condition, if its income or part thereof becomes ineligible for exemption, no other provisions of the Act should operate so as to exclude such income or part thereof from total income and that whether income which needs to be applied or accumulated under Section 11 of the Act should include income which is exempt under Section 10 of the Act.

It has been noticed that there is some anomaly by providing exclusion to Institutions or Fund registered under clause (23C) of section 10, but the same exclusion is not available to entities claiming exemption under clause (46) of section 10 which are established or constituted under a Central or State Act or by a Central or State Government. Such entities are, thus, not able to get notified under clause (46) of Section 10 if they are holding registration under section 12A / 12AA.

The anomaly pointed out above, needs to be addressed. However, as the provisions relating to charitable entities constitute a complete code and that once any Trust or Institution has voluntarily opted for it by obtaining the requisite Registration, it flows that the conditions in relation thereto should be complied with and the option of switching at convenience should not be available. Accordingly, while request for exclusion of Clause (46) may be acceded to for exemption thereunder even in those cases where registration under section 12AA or 12A remains in force, there should be only one mode of exemption available and also, that the switching may be allowed only once so that such switching is not done routinely and also it remains efficient to be administered.

Rationalising the process of registration of trusts, institutions, funds, university, hospital etc and approval in the case of association, university, college, institution or company etc

“The present process of registration of trusts, institutions, funds, university, hospital etc under section 12AA or under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10, and approval of association, university, college, institution or company etc need improvement with the advent of technology and keeping in mind the practical issue of difficulty in obtaining registration/ approval/ notification before actually starting the activities.

It is also felt that the approval or registration or notification for exemption should also be for a limited period, say for a period not exceeding five years at one time, which would act as check to ensure that the conditions of approval or registration or notification are adhered to for want of continuance of exemption. This would in fact also be a reason for having a non-adversarial regime and not conducting roving inquiry in the affairs of the exempt entities on day to day basis, in general, as in any case they would be revisiting the concerned authorities for new registration before expiry of the period of exemption. This new process needs to be provided for both existing and new exempt entities.”

Filing of statement of donation by donee to cross-check claim of donation by donor

“It may further be mentioned that certain provisions of the Act provide that an exempt entity may accept donations or certain sum for utilisation towards their objects or activities in respect of which the payer, being the donor, gets deduction in computation of his

income. At present, there is no reporting obligation by the exempt entity receiving donation/ any sum in respect of such donation/ sum. With the advancement in technology, it is now feasible to standardize the process through which one-to-one matching between what is received by the exempt entity and what is claimed as deduction by the assessee. This standardization may be similar to the provisions relating to the tax collection/ deduction at source, which already exist in the Act. Therefore, the entities receiving donation/ sum may be made to furnish a statement in respect thereof, and to issue a certificate to the donor/ payer and the claim for deduction to the donor/ payer may be allowed on that basis only. In order to ensure proper filing of the statement, levy of a fee and penalty may also be provided in cases where there is failure to furnish the statement.”

Hence, it is proposed to amend relevant provisions of the Act to provide that,-

- i. similar to exemptions under clauses (1) and (23C), exemption under clause (46) of section 10 shall be allowed to an entity even if it is registered under section 12AA subject to the condition that the registration shall become inoperative. If the entity wishes to make it operative in the future, it will have to file an application and then it would not be entitled for deduction under clause (46) from the date on which the registration becomes operative.
- ii. the registration under section 12AA would also become inoperative in case of an entity exempt under clause (23C) of section 10 as well, to have uniformity. The condition about making it operative again would also be similar to what is proposed for clause (46) of section 10.
- iii. an entity approved, registered or notified under clause (23C) of section 10, section 12AA or section 35 of the Act, as the case may be, shall be required to apply for approval or registration or intimate regarding it being approved, as the case may be, and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five previous years at one time calculated from 1st April, 2020.
- iv. an entity already approved under section 80G shall also be required to apply for approval and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five years at one time.



- v. application for approval under section 80G shall be made to Principal Commissioner or Commissioner.
- vi. an entity making fresh application for approval under clause (23C) of section 10, for registration under section 12AA, for approval under section 80G shall be provisionally approved or registered for three years on the basis of application without detailed enquiry even in the cases where activities of the entity are yet to begin and then it has to apply again for approval or registration which, if granted, shall be valid from the date of such provisional registration. The application of registration subsequent to provisional registration should be at least six months prior to expiry of provisional registration or within six months of start of activities, whichever is earlier.
- vii. the application pending for approval, registration, as the case may be, shall be treated as application in accordance with the new provisions, wherever they are being provided for.
- viii. deduction under section 80G/ 80GGA to a donor shall be allowed only if a statement is furnished by the donee who shall be required to furnish a statement in respect of donations received and in the event of failure to do so, fee and penalty shall be levied.
- ix. similar to section 80G of the Act, deduction of cash donation under section 80GGA shall be restricted to Rs 2,000/- only.

These amendments will take effect from 1st June, 2020. -[Clauses 7,9,11,12,17,33,34,61,94,96 & 99] Section 12AA (3) of the Act for cancellation of Registration.

Procedure. for fresh registration

a new section 12AB has been introduced replacing Section 12AA of the act It states that in the case of existing trusts enjoying registration if an application is made in proper form ,the Principal Commissioner pass an order in writing registering the trust or institution for a period of five years suggesting no enquiry but automatic grant of registration Similar amendment has been made in section 10(23c) stating that on an application being made an order will be passed by the Chief. commissioner. hence a plain reading of the relevant sections mean that the renewal will be without any enquiry. however, new Trusts or institutions will get exemption subject to inquiry.

A. Judicial View

“On careful reading of the order passed by the Director of Income Tax (Exemptions) as well

as the order passed by the Tribunal, n,if an application is freshly mwe do not find any error or infirmity in the view taken by the Tribunal. Insofar the view taken by the Director is concerned that respondent is directly hit by the proviso to Section 2(15) of the Act, we are of the view that such satisfaction may lead to denial of exemption to the respondent in the assessment proceeding for the relevant assessment year but certainly cannot be a ground for cancellation of registration under section 12AA (3). The competent authority under Section 12AA (3) must be satisfied that the activities of the Trust are not genuine or that the activities are not being carried out in accordance with the objects of the Trust or the Institution. Such satisfaction must be recorded as a matter of fact on the basis of specific materials on record. Merely saying that the activities of the respondent is hit by the proviso to section 2(15) of the Act, would not lead to automatic cancellation of registration as that is not a ground provided under se Rationalising the process of registration of trusts, institutions, funds, university, hospital etc and approval in the case of association, university, college, institution or company etc”

the amendments do not alter this legal position.

Comment

The explanation for fresh application for Registration is on the face of it not tenable various judicial decisions have pointed out that criteria for registration is to be distinguished from Compliance which should be looked into at time of assessment. if the object was only to introduce time limits the amendment should have said so in a simple amendment instead of recalling all registration/ notifications, which may now give room for a fresh review opening up rounds of litigation .although the new section 12 AB or amended section 10(23c) does not envisage a review or fresh application of mind, further the amendments to section 10(23c) does away with dual registration. the tax payer has to opt for 10(23c) or section 12AB A number of other amendments bridges the difference between these two sections.

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GST ANNUAL RETURN AND AUDIT FOR FINANCIAL YEAR 2018-2019

■ KSCAA Indirect Tax Committee

With the span of more than three years in implementation of GST, still there is gap in compliances due to frequent changes in the GST law. The format, disclosure of data and Reporting in Annual Return, Reconciliation statement and Audit Report are having divergent views by different Tax Professionals. There are certain relaxations provided in Notification no. 56/2019 – Central Tax dated 14/11/2019 for the Financial year 2018-2019 for the disclosure and Reporting in Form 9 and Form 9C. GSTR 9 is mandated if the aggregate turnover exceeds 2 crores for the financial year 2018-2019. It is optional if the aggregate turnover is less than 2 crores. However, it is advisable to file GSTR-9 if the monthly returns filed are not reconciling with the books of accounts / audited financial statements by making suitable amends to the auto-populated version. GSTR 9C is mandated only if the aggregate turnover exceeds 5 crores for the Financial year 2018-2019. The due date of filing GSTR 9 and GSTR 9C for Financial year 2018-2019 is extended till October 31, 2020. It is also clarified that the supplies and input tax credit pertaining to 2017-2018 will not form Part of GSTR 9 vide press release dated 9th October 2020. The following are the issues and views for filing Annual Return and Audit Report under the GST law.

Sl. No.	Table Reference	Issues	Views
1	Table 4G/10 of GSTR-9	<p>Disclosure of Reverse charge Mechanism (RCM) liability was discharged</p> <ul style="list-style-type: none"> In same financial year By September subsequent Financial year And after September of Financial Year or not discharged till date. <p>RCM liability of Financial Year 17-18 disclosed in GSTR-3B of 18-19.</p>	<ul style="list-style-type: none"> Any liability paid in the same year it will be disclosed in Table -4 of GSTR 9 if paid in the subsequent year by September it should be disclosed in Table 10 of GSTR 9 Any RCM liability declared in returns post September of subsequent year must be disclosed in GSTR-9C If liability Is not discharged, then the same will be quantified in GSTR-9C by the auditor if GSTR-9C is applicable The assessee may opt to declare the same in Table 10 of GSTR-9 where GSTR -9C is not filed In cases where GSTR-9C is not applicable the assessee may remit the appropriate taxes with interest through DRC-03.
2	Table 4E of GSTR-9	The Merchant Exporter enjoyed concessional rate in FY 17-18 and not fulfilled the conditions and accordingly taxes are paid in FY 2018-2019. How the additional taxes discharged to be disclosed.	The Debit note will be issued by the Supplier in 2018-2019 for the tax component. The additional taxes paid can be reconciled in Form GSTR-9C.
4	Table 4I/4N of GSTR-9	Negative Values in Output Tax on account of Excess Sales Return or adjustment of advance during the year. These negative values could not be reported in monthly return 3B.	Such amount should have been declared in GSTR-1 as it allows filing of negative values though GSTR 3B does not allow the same. The disclosure can be made in GSTR 9 based on disclosure in GSTR-1



Sl. No.	Table Reference	Issues	Views
5	Table 4I of GSTR-9	GST on credit notes declared in Input Tax credit of GSTR 3B. Can that be corrected in GSTR 9?	The Credit note should have been uploaded in GSTR-1 to support such adjustments. We believe that it can be corrected in GSTR 9 and GSTR 9C for disclosure purpose.
6	Table 5 of GSTR-9 and 9C	Should discount received be declared in GSTR 9?	In case there is no levy of GST on discount then it became reconciliation item while preparing GSTR-9C as compared to Financial statement...
7	Table 5 of GSTR-9	Can the non-GST supplies, Exempted, Nil rated Outward Supply relating to financial year 2018-19 not Shown in GSTR 1 and GSTR 3B be shown in GSTR 9 of FY 2018-19?	It should be adequately disclosed in GSTR-9. Such supplies can be summed and be disclosed as Exempt Supply.
8	Table 6K/6L of GSTR-9	In case TRANS-01 Credit is Auto Populated in GSTR-9 in F.Y 2018-19?	Auto populated transitional credit can be deleted. In case it is claimed wrongly then there will be penal consequences.
9	Table 7 of GSTR-9	Ineligible input tax credit which is availed in GSTR 3B for the Financial Year 2018-19 is not reversed in GSTR 3B. How to disclose the same	Either it can be disclosed as ineligible credit in Table 7 and report the difference in GSTR-9C or make a direct disclosure of additional liability in GSTR-9C as per the Auditors Recommendation. Such liability can be paid through DRC-03.
10	Table 7 & 12 of GSTR-9	Any reversals due to Rule 42 and 43 relating to FY 2017-18 shown in F.Y 18-19 be reported in GSTR-9 of F.Y 18-19 or 17-18.	Such reversals should have formed part of Table 12 of GSTR-9 of FY 2017-18 and must be disclosed again in Table 7 of GSTR-9 of FY 2018-19. There is clarification that 2017-2018 details not required to be disclosed in 2018-2019.
11	Table 8 of GSTR-9	Table 8C of GSTR9 does not captures input tax credit relating to 2017-18 which was availed after April 2018 and declared in table 8C of GSTR9 for 2017-18. Due to this Table 8D disclose excess ITC claimed in GSTR3B.	If GSTR-9C is applicable, then a Reconciliation statement can be prepared annexed with it. In case if assessee is filing only GSTR-9, then the assessee can reduce the credit to the extent pertaining to 2017-2018. The supporting annexures and working sheet should be drafted for reference and for departmental proceedings if any....
12	Payment	Can Credit be utilised to make payment in DRC-03 of the additional liability resulting from GSTR-9/9C.	Additional liability resulting on account of Annual Return or Reconciliation statement must be remitted through cash only.
13	Filing/ optional	GSTR-9 has been made optional for FY 17-18 & 18-19, it shall be deemed to be filed with the auto populated figures if the assessee opts not to file GSTR-9, What will be the consequences during assessments if the deemed figures do not match with the figures in financial statements?	GSTR-9 is auto-populated based on GSTR-1 and GSTR-3B and if there are any issues between those records and books of accounts, you have to prepare a Reconciliation and File GSTR-9. if such issues are not present and you are not mandated to file the same as it is the option of the Taxpayer to file it. It appears that deemed filing is provided for in the context of computation of limitation period, which is reckoned from the date of filing Annual Return.
14	Tables are optional	Many tables in GSTR-9 has been made optional, what will be the issues if the assessee opts not to provide details in such tables?	Even though majority of the tables have become optional it is advisable to the taxpayer to make a proper disclosure of the transactions wherever the correct information's are available.

Sl. No.	Table Reference	Issues	Views
15	Liabilities paid through DRC 3	Liabilities not reported in the GST Return paid through DRC 3. How to report in GSTR 9??	Everything related to a financial year must be disclosed in GSTR-9 and there would certainly be a difference and the reason for the same must be mentioned in GSTR-9C. If 9C is not applicable, it is advisable to maintain the annexures and working papers to substantiate the data as disclosed in GSTR 9
16	Responsibility	Whose responsibility it is to file GSTR-9C?	The Responsibility of preparing and uploading Form 9C is of the Auditor. Finally, the taxpayer has to acknowledge and upload it to the GSTN Portal.
17	Missed in Form 9	The credit of year 2017-18 taken in 2018-19 but missed to be shown in Part V of GSTR 9. Can it accordingly be declared in GSTR-9C? Does non declaration of these values in GSTR-9 means it's not eligible?	ITC of FY 2017-18 claimed in FY 2018-19 can be shown in table 12B of GSTR-9C, the auditor may choose to mention the above omission in GSTR-9 as an observation in his certificate issued in Part B to GSTR-9C. Further non declaration of these values in GSTR-9 shall not mean it is not eligible since credits flow through GSTR-3B and ITC Ledgers.
18	Reconciliation	Who is responsible to reconcile ITC with 2A?	It is the responsibility of the Taxpayer.
19	Export proceeds not realised	In cases of exports where proceeds have been realised beyond the time limit provided in Rule 96A or are not realised, should there be a comment in Audit Report or do we recommend a liability in GSTR-9C.	If exports proceeds are not realised, then the auditor may be required to recommend liability. The Auditor should validate the receipts of export proceeds.
20	Turnover Reconciliation	Turnover as per financial statement may be different compared with GST Turnover due to revenue recognition norms.	Table 5O is the residual entry in Table 5 of GSTR 9C. The consolidated difference can be disclosed but the supporting annexure should be prepared with the reasons of difference.
21	No Statutory Audit/Income Tax Audit	GST Audit is applicable, but no Audit under Income tax Law or other statutory law is required...	An Unaudited Financial Statement prepared by the assessee may be sufficient for GST Auditor to prepare GSTR-9C. However, part B of GSTR-9C has not provided for such a scenario hence there may be technical difficulties in filing the Audit Report. In such scenario, it is advisable for manual submissions.
22	GSTR 2A Reconciliation for input tax credit	Should the Auditor recommend liability in cases where assessee has claimed ITC on such inward supplies which are not reflecting in GSTR-2A?	The GST law has not envisaged GSTR-2A as a return. It is only a statement brought out by the GST Portal to enable the assessee to identify which of their inward supplies has been declared correctly by their vendors in their GST Returns. The burden of proof is on recipient and if the auditor is satisfied on the genuineness of the transaction then we believe that there is no requirement to reflect the additional liability even if such transactions are not reflected in GSTR-2A.

The above issues are illustrative and not exhaustive in relation to the Annual Filings under GST law. The views expressed in the above article is based on provisions of law and its interpretation and the KSCAA committee shall not be liable for any claims relating to our views and we do not assure the Statutory Authorities would concur with the views expressed herein.

Committee can be reached at : info@kscaa.com



INDIRECT TAX UPDATES

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

I. Notifications and Circulars

A. **Exemption from GST:** Exemption from GST on services by way of transportation of goods by an aircraft/vessel from customs station of clearance in India to a place outside India, was available till 30.09.2020, the said exemption has been extended till **30th September 2021**. [Notifications 04/2020-CT(R) & 04/2020-IT (R) dt.30.09.2020]

B. **E-invoicing:** Issue of E-invoicing has been made mandatory w.e.f. 01.10.2020, for a registered person having aggregate turnover of more than Rs. 500 crores. However, such requirement of e-invoicing is not applicable to:

- Banking company or similar registered persons as referred to in Rule 54(2)
- Goods transport agency as referred to in Rule 54(3)
- Passenger transport supplier as referred to in Rule 54(4)

Further, B2C invoice (invoice issued to unregistered persons) by such registered persons shall have dynamic Quick Response (QR) code. However, registered person engaged in the following supplies are not required to follow the above requirement:

- Banking company or similar registered persons as referred to in Rule 54(2)
- Goods transport agency as referred to in Rule 54(3)
- Passenger transport supplier as referred to in Rule 54(4)
- Service provider supplying services by way of admission to exhibition of cinematograph [Rule 54(4A)]
- Online Information Database Access and Retrieval (OIDAR) services [Sec. 14 of IGST Act]

Following amendments have been made vide notifications dated 30.06.2020 /01.10.2020 with reference to the above aspect:

- Instead of issue of e-invoice from 01.10.2020, the said persons shall obtain an Invoice Reference Number (IRN) for such invoice by uploading specified particulars in **FORM GST INV-01** on the Common Goods and Services Tax Electronic Portal, within thirty days from the date of such invoice. However, where there is a failure in following above procedure, the same shall not be treated as an invoice. [Notification No. 73/2020 CT dt. 01.10.2020]
 - Issue of B2C invoice having dynamic Quick Response (QR) code is mandatory from 1st December 2020, instead of earlier date of 01.10.2020. [Notification No. 71/2020-CT dt. 30.09.2020]
 - Aggregate turnover of Rs. 500 crores is to be computed based on turnover of any preceding Financial Year from 2017-18 onwards.
 - Requirement of issue of e-invoice was earlier applicable only to the supplies made to registered persons. Now, the same is also extended for supplies which qualify as exports.
 - Rule 46 has been amended by way of inserting sub-clause (r) to specify that Quick Response (QR) code, having embedded Invoice Reference Number (IRN) as one of the particulars to be mentioned on the face of invoice.
 - Rule 48 has been amended to empower Commissioner to exempt a person or a class of registered persons from issuance of e-invoice.
 - Rule 138A has been amended to provide that person in charge of conveyance may produce the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) in it, for verification by the proper officer in lieu of the physical copy of such tax invoice. [Notifications 70&71/2020-CT dt. 30.09.2020]
- C. **Filing of annual returns:** Due date of filing annual returns in terms of section 44 of the CGST Act, 2017 read with rule 80 of CGST Rules, 2017 (in forms-GSTR-9 series), for the Financial Year 2018-2019, is extended till 31st October 2020. [Notification No. 69/2020-CT dt. 30.09.2020]

D. Extension of time limit for compliance with various provisions under GST: In terms of the section 168A, Notification No. 35/2020-Central Tax, dated 03.04.2020 was issued, extending time limit for compliances as required under various provisions of GST Act till 30.06.2020 initially and thereafter the same was extended till 31st August 2020. The said notification has been further amended to extend the compliance date till 30th November 2020. [Notification No. 65/2020-CT dt. 01.09.2020]

E. Time limit for issue of invoice in case of goods sent on approval for sale: In term of section 31(7) of CGST Act, 2017 where goods being sent or taken on approval for sale or return are removed before the supply takes place, the tax invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

However, such time limit falls during the period from 20.03.2020 and 30.10.2020, the time limit for compliance of the same is extended till 31.10.2020. [Notification No. 66/2020-CT dt. 21.09.2020]

F. Waiver / reduction in late fee for not furnishing FORM GSTR-4 for years 2017-18 and 2018-19

Where GSTR-4, (to be filed by a composition dealer) for the years 2017-18, 2018-19 is filed between 22nd September,2020 to 31st October,2020, the late fee would be limited to Rs. 250 and in case of a Nil return entire late fee payable under section 47 would get waived. [Notification No. 67/2020-CT dt. 21.09.2020]

G. Waiver / reduction in late fee for not furnishing FORM GSTR-10, subject to the condition that the returns are filed between 22.09.2020 to 31.12.2020.

Where GSTR-10, (final return) which was not filed earlier, is filed between 22nd September,2020 to 31st December,2020, the late fee would be limited to Rs. 250 [Notification No. 68/2020-CT dt. 21.09.2020]

II. Important decisions:

1. Validity of excluding input services from the scope of refund on account of inverted rate structure:

TVL. Transtonnelstroy Afcons Joint Venture vs UOI [2020] 119 taxmann.com 324 (Madras)

The provisions of Rule 89(5) of the CGST Rules,2017, which restricts refund only to the extent of credit on inputs in case of inverted duty structure, was challenged before the High Court on the ground that the same is ultravires the provisions of Section 54(3)

of CGST Act, 2017. The High Court taking contrary view to the decision of the High Court of Gujarat in the case of VKC Footsteps India Pvt Ltd Vs Union of India 2020-TIOL-1273-HC-AHM-GST, held that the rule is intra vires. The observations of the Court is as below:

- ✓ Use of phrase “where the rate of tax on inputs being higher than the rate of tax on output supplies” and the words “credit has accumulated on account of “ in sub-clause (ii) of section 54 is to identify the source from which - i.e. input goods and the rate of tax thereon, unutilized input tax credit should accumulate for entitlement to refund.
- ✓ Section 54(3)(ii) qualifies the enacting clause by limiting the source/type and, consequently, quantity of unutilized input tax credit in respect of which refund is permissible.

As regards the nature of refund and specifically in the context of refund of unutilized input tax credit, the following observations were made:

- ✓ As compared to the availing of input tax credit, a refund of unutilized input tax credit would form a related but distinct category.
- ✓ It cannot be equated with an exemption because it is not a provision that exempts a registered person from the payment of tax.
- ✓ Equally, it is not an incentive that is extended to a particular class of taxpayer, such as an exporter, or to investments in particular regions of the country, so as to encourage particular forms of productive economic activities which are of paramount importance to the overall economy.
- ✓ The claim of unutilized refund is in the nature of a benefit or concession and cannot be equated with a refund claim for excessive taxes that were paid inadvertently or any other claim for a debt due to the registered person from the tax authorities.
- ✓ This form of refund can also be compared and contrasted with a claim for refund of excess taxes paid on account of the erroneous interpretation of applicable law or the declaration of a provision as unconstitutional.

As regards the constitutional validity of Rule 89(5):

- ✓ Parliament has provided the right of refund only in respect of unutilized credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies.



- ✓ Goods and services have been treated differently from time immemorial, as reflected in the use of the expressions, *quantum valebant*, as regards the measure of payment for goods, and *quantum meruit*, as regards the measure of payment for services, supplied non-gratuitously and without a formal contract.

As regards the curtailment of entitlement to refund of input tax credit to credit accumulated from the procurement of input goods; the wide Parliamentary latitude as regards classification qua tax and economic legislations and the nature and character of refund as a creation of statute and subject to statutory eligibility conditions, it is difficult to countenance that the non-conferment of the right of refund to the unutilized input tax credit from the procurement of input services violates Article 14.

2. **GST on sale of goods by Duty Free Shops located in the international airports**

CIAL Duty Free & Retail Services Ltd. (CDRSL) vs UOI [2020] 119 taxmann.com 388 (Kerala)

Issue: Whether the CGST/KSGST Act, 2017 or IGST Act, 2017 and the rules thereunder apply to the supply of goods and services effected by the Duty Free Shops (DFS) in the arrival and departure DFS at the International Airports?

Held: DFSs are situated at international airports which are beyond the customs frontiers of India and the transaction is said to have taken place outside India. Therefore, supply of goods by DFSs to outgoing passengers is export of goods under IGST Act and are zero-rated supply.

The Court further observed that no liability under section 12 read with section 3(12) of the Customs Tariff Act would get triggered by mere filing bill of entry for warehousing. The customs duty and IGST is leviable only on removal of warehoused goods from the customs area, which happens when the arriving passengers leave the custom area. Since, the goods sold by DFS to arriving passengers do not leave the customs area, DFS is neither liable to pay customs duty, nor IGST.

3. **Applicability of rate of duty (customs duty) in case of rate change on account of issue of notification**

Union of India Vs GS Chatha Rice Mills 2020-TIOL-157-SC-CUS-LB:

Notification 5/2019-Cus dated 16.02.2019 was issued to impose duty of 200% on all goods originating in

or exported from Islamic Republic of Pakistan. The Notification was uploaded on the e-Gazette at 20:46:58 hours. However, the importer presented bills of entry for clearance of goods on self- assessment basis, much prior to publication of the notification, as per which the rate of duty was lesser than the amended rate. The Customs department sought re-assessment of the duty. Hon'ble Supreme Court on holding that no re-assessment could be undertaken by the customs department observed as below:

- ✓ Section 8A of the Tariff Act empowers the Central Government to increase the rate of import duty but the power to issue a notification under Section 8A, is not conferred to increase the rate of import duty with retrospective effect.
- ✓ It is only with the publication effected at 20:46:58 hrs. on 16.02.2019, the Notification issued under Section 8A for increasing the rate of import duty, came into force. It is the time at which it is made known.
- ✓ In terms of the statutory provisions, assessment and payment of duty is clearly fixed with reference to the particular point of time when the Bill of Entry is presented and bearing in mind the principle that Section 8A does not provide power for increase of rate of duty with retrospective effect, the rate of duty as applicable at the time of presentation of bill of entry shall be considered and not the amended rate.

4. **Validity of adjustment of refunds against interest on delayed payment of GST**

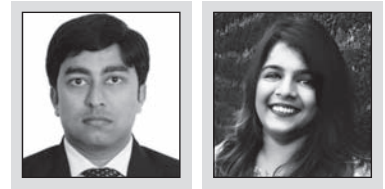
DPK Engineers Pvt Ltd Vs Union of India [2020] 119 taxmann.com 108 (Karnataka)

Question: Whether department could unilaterally appropriate a part of refund due to the assessee against the disputed interest liability from such an assessee?

Held: Hon'ble High Court held that such appropriation of money being a mode of recovery of dues under GST Act could not have been done without notice to assessee. Based on the above, the order which appropriated a portion of refundable amount was set aside and the matter was remanded to the Competent Authority for consideration afresh.

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THE FCRA AMENDMENT, 2020 – AN HONEST AND TRANSPARENT APPROACH TO FOREIGN CONTRIBUTIONS



■ CA. Sandeep Jhunjhunwala and CA. Arshita Khetan

FCRA

The Monsoon Season of the Parliament saw 25 bills being passed in a period of 10 days. Apart from the much-spoken amendment bills to the Taxation Law and Companies Act, a bill that took everyone by surprise was the bill amending the Foreign Contribution (Regulation) Act, 2010 (the Act). The Act regulates the flow of foreign funds to all charitable organizations in India and covers all donations received in currency as well as in kind (apart from personal gifts) to ensure national security. The Act is applicable to all NGOs, individuals and other associations receiving or intending to receive foreign contributions. Such persons are required to obtain a registration/prior permission before receiving overseas contributions. This Act also checks foreign influence on the social and political landscape in India.

The Act permitted transfer of foreign contributions between registered organizations, thereby aiding various national and international organizations to work together and move funds for various projects undertaken by them. Foreign nationals often made donations and contributions for projects in India to FCRA registered foreign organisations that in turn transferred such funds to the Indian arm of the foreign organisation. The Indian arm undertook the projects and ensured proper utilization of the funds received from global donors. NGOs and associations catering to the livelihood needs of society work in collaboration with larger and more renowned NGOs which helps the smaller and frontier organisations in attaining the donations from abroad. Better reach and networking with international organisations, trust and associations of donors are a forte for these larger NGOs which disburse the foreign contributions among the cluster of smaller NGOs in India. The recent amendment has restricted such transfer between registered persons and therefore, the funds received by one person needs to be utilised by the same person and cannot be transferred or used by any other individual, association or registered company. This amendment has pegged the interest of all stakeholders in the above model and will

require organisations to rework their modus operandi to ensure compliance with the new law.

Running a charitable organization also requires administrative support to ensure smooth functioning. The Act recognized this and permitted usage of upto 50 percent of the funds received towards meeting administrative costs. The new amendment has reduced this limit to a mere 20 percent. This tightened leash will reinforce that the funds received are utilized towards the intended purpose and check diversion of money. This change may have a deep bearing on organisation carrying out activities such as research, networking, advocacy, capacity building, model building for social innovations and alike where the major portion of their funds are guided towards the expenses on meetings, salaries and travel which are clubbed under administrative expenses. The introduction of this amendment would render these operating models for associations and groups unviable in the future. However, this move would retain the interest of the donors/ contributors to the organisations towards the purpose of their donation and would certainly encourage honest organisations catering to the livelihood needs of the society in the longer run. The amendment could also foresee the enhancement of restriction on concentrated misusing of the foreign funds against the sovereignty of the country.

Another significant amendment is that while the recipient can maintain FCRA accounts with numerous scheduled banks, foreign contribution is to be received in a single FCRA bank account maintained with New Delhi branch of SBI only. Aiming to centralise the receipt of foreign contribution and keeping a track on further disbursements, the amendment necessitates the maintenance of single FCRA bank account in the New Delhi branch of SBI bank for the receipt of such funds. This would provide the Government, investigating authorities as well the bankers, an opportunity to closely monitor these foreign fund receipts on a on a more real-time basis closing the loophole of numerous accounts-maintained pan India by plentiful individuals and organisations.



Multiple administrative changes were also made to the Act to ensure higher transparency and accountability. Every organization seeking a new registration or renewing a registration will now have to mandatorily provide the Aadhaar number of all officers, directors and key functionaries as proof of identify. This move is to expand the usage and coverage of Aadhaar and to bring in uniformity of documents submitted by various organizations. In case of foreign nationals, a copy of the passport or Overseas Citizen of India card must be furnished. These additional compliances will ensure that every officer and key managerial person is reported at the time of registration and a greater weight is placed on their shoulders to ensure protection of all stakeholders.

The FCRA license is valid for a period of 5 years and this new amendment now empowers the Government of India to conduct an enquiry before renewing the license provided to any organization and also to accept a suo moto surrender of the registration certificate. In case of default, the Government had the authority to suspend the license for a period not exceeding 180 days and the amendment provides for an additional 180 days period of suspension, wherever considered necessary by the Government. The Government now has the authority to restrict usage of unutilized foreign contribution by a person with prior permission to receive such funds if based on any inquiry, the Government believes that such person has contravened the provisions of the Act. 'Public Servants' have been prohibited to accept any foreign contribution and includes members of judiciary,

staff of universities and alike members of public body. This would ensure the independence of the individuals catering to the public of the country in their capacity as office bearers and thus bringing in transparency in a system otherwise considered opaque.

Interestingly, there are controversies surrounding the timing of introduction of the amendment bill by the Government in the Parliament amid an unprecedented time of health and economic havoc in the country. Retaining international faith in society and attracting more foreign contributions by the honest donors is crucial during these tough times of crisis. Civil society has played a stellar role in reaching out and supporting millions of poor Indians by providing food, clothing, shelter, transportation, and other necessities in this trouble time for many. Charitable organizations and individuals have often stepped in during times of utmost need and have selflessly filled in gaps left by government programs. Any change is certainly met with resistance in the short run, and this holds good for the amendments to FCRA as well. Nonetheless, these are the kind of reforms the country need, for revival of trust and reputation at an international stage, as well as to encourage honest and genuine social, environmental, cultural and educational activities in the country.

Views expressed are personal. With inputs from Tilak Agarwal.

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FINANCIAL REPORTING AND ASSURANCE - REFERENCER



■ CA. Vinayak Pai V

This *Feature* provides: snapshot of **key monthly practice updates** in the Financial Reporting and Assurance space; extracts from **Accounting and Auditing Literature**; **Case Study**; and extracts from **Published Financial Statements**.

1. UPDATES: *Monthly Roundup*¹

INDIA	
AS/ IND AS	<ul style="list-style-type: none"> ICAI Exposure Draft <ul style="list-style-type: none"> <i>Guidance Note on Accrual Basis of Accounting.</i>
ASSURANCE	<ul style="list-style-type: none"> ICAI Exposure Drafts – Forensic Accounting and Investigation Standards (FAIS) <ul style="list-style-type: none"> <i>Preface to the FAIS</i> <i>Framework Governing FAIS</i> <i>Basic Principles of Forensic Accounting and Investigations</i> FAIS No. 110, <i>Understanding the Nature of Engagement</i> FAIS No. 120, <i>Understanding Fraud Risk</i> FAIS No. 130, <i>Laws and Regulations</i> FAIS No. 140, <i>Applying Hypotheses</i> FAIS No. 220, <i>Engagement Acceptance and Appointment</i> FAIS No. 230, <i>Using the Work of an Expert.</i> ICAI Exposure Draft – SAE 3410, <i>Assurance Engagements on Greenhouse Gas Statements.</i>
COMPANY LAW/ SEBI	<ul style="list-style-type: none"> Companies (Amendment) Act, 2020 (operative from 28th September, 2020) <ul style="list-style-type: none"> New Section 129A – Specified classes of unlisted companies to prepare and file their periodical financial results at frequency to be notified. Section 143 (15) – Maximum liability for auditor reduced (Monetary penalty). SEBI Consultation Paper <ul style="list-style-type: none"> Review of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. MCA General Circular No. 29/2020 <ul style="list-style-type: none"> Relaxation of additional fees and extension of last date of filing of CRA-4 (Cost Audit Report) for FY 2019-20.
RBI	<ul style="list-style-type: none"> RBI Notifications <ul style="list-style-type: none"> SLR Holdings in HTM Category. Long Form Audit Report (LFAR) - Revised. Resolution Framework for Covid-19 Related Stress – Financial Parameters. Automation of Income Recognition, Asset Classification and Provisioning Processes in Banks.



INTERNATIONAL	
IFRS	<ul style="list-style-type: none"> IFRS Foundation <ul style="list-style-type: none"> Consultation Paper on Sustainability Reporting.
US GAAP	<ul style="list-style-type: none"> FASB <ul style="list-style-type: none"> Accounting Standards Update (ASU No. 2020-07) – Not-for Profit Entities (Topic 958) – <i>Presentation and Disclosures by Not-for-Profit Entities for Contributed Nonfinancial Assets.</i> Exposure Draft of proposed ASU– <i>Franchisors – Revenue from Contracts with Customers</i> (Subtopic 952-606) – <i>Practical Expedient.</i>

¹Updates for the month of September 2020.

2. AUDIT RELATED – Useful Extracts

2.1 Guidance Note on CARO, 2016

Matter to be included in the Auditor’s Report:

‘Whether these fixed assets have been physically verified by the management at reasonable intervals;...’

Audit Procedures and Reporting: ‘What constitutes “reasonable intervals” depends upon the circumstances of each case. The factors to be taken into consideration in this regard include the number of assets, the nature of assets, the relative value of assets, difficulty in verification, situation and geographical spread of the location of the assets, etc. The management may decide about the periodicity of physical verification of fixed assets considering the above factors. While an annual verification may be reasonable, it may be impracticable to carry out the same in some cases. Even in such cases, the verification programme should be such that all assets are verified at least once in every three years. Where verification of all assets is not made during the year, **it will be necessary for the auditor to report that fact, but if he is satisfied regarding the frequency of verification he should also make a suitable comment to that effect.**’

2.2 A Recent NFRAs Audit Quality Review Report (AQRR)

‘... the Audit Firm has argued that as per Para A2 of SA 510² the current auditor can place reliance on the closing balances contained in the financial statements for the preceding period’. As part of verification of opening balances, the Audit Firm has claimed, perusal of the annual report for the previous year indicated that the audit report was unmodified. However, Para A2 of SA 510 also states that **the current auditor can place reliance on the closing balances** contained in the financial statements for the preceding period, **except when during the performance of audit procedures for**

the current period the possibility of misstatements in opening balances is indicated. As stated above, unjustified valuation of the derivative asset (in the form of put option) of ₹ 184.3 crore appeared to be a calculated fraud and **the Audit Firm should have gathered sufficient appropriate audit evidence regarding opening balances of investments.**’ (Emphasis supplied)

²SA 510 – Initial Audit Engagements -Opening Balances.

3. CASE STUDY: Reporting on A Key Audit Matter (KAM) – Recoverability of Cost of Investment in Subsidiary and Intra-group Receivables

Background: Company A’s investment in its subsidiary, that acts as an intermediate holding company for the rest of the Company’s subsidiaries, represents 68% of the parent company’s assets. The carrying amount of the intra-group receivable balance comprises 31%. In the stand-alone financial statements of the parent, the investment in subsidiary is recorded at cost less provisions for impairment.

Assessment as a KAM: The recoverability of the investment and receivables is **not at a high risk of significant misstatement or subject to significant judgement.** However, **due to their materiality** in the context of the parent company financial statements, this was considered to be an area that had the greatest effect on the overall parent company audit.

Audit procedures applied to obtain sufficient appropriate audit evidence: The following audit procedures were applied, inter alia, by the auditors to obtain sufficient appropriate audit evidence:

- The auditors **compared** the carrying amount of parent company’s investment with the subsidiary’s draft balance sheet and whether its **net assets, being an approximation of their minimum recoverable**

amount, were in excess of their carrying amount and assessed whether the group headed by the subsidiary has **historically been profit-making**.

- The auditors **assessed a sample** of the highest value group receivables to identify, with reference to the relevant debtor's draft balance sheet, whether they have a positive net asset value and therefore coverage of the debt owed, as well as assessing whether those debtor companies have historically been profit making.
- The auditors **compared the carrying amount** of the investment in the subsidiary **to the group's market capitalization** as adjusted to exclude the liabilities of the parent company, being an approximation of the recoverable amount of the investment.

4. FINANCIAL STATEMENT EXTRACTS: Ind AS – Fair Valuation of Investment Property

Background Ind AS 40, *Investment Property* requires the **Cost Model** to be used for subsequent measurement of Investment Property (i.e. land or a building/both) held to earn rentals/capital appreciation rather than for use in business or for sale. Paragraph 32 of the standard requires an entity to measure the **fair value** of investment property **for the limited purpose of disclosure**. An entity is encouraged, but not required to measure the fair value on the basis of a valuation by an independent valuer.

Disclosures relating to fair valuation of investment property- Extracts from Notes of a listed entity (FY 2020):

The carrying amount of the Investment Property as at the balance sheet date amounted to Rs. 21 crore. The company, in accordance with Ind AS 40, has disclosed the fair value of the property as Rs. 133 crore. The relevant disclosures in this regard is extracted herein below.

The fair value of investment property has been determined by external independent property valuers, having appropriate recognized professional qualification and recent experience in the location and category of the property being valued.

*The fair value measurement for all of the investment property has been categorised as a **Level 3** fair value based on the inputs to the valuation techniques used.*

Description of valuation technique used: *The company obtains independent valuations of its investment property after every three years. The fair value of the investment property have been derived using the **Direct Comparison Method**. The Direct Comparison approach involves a comparison of the investment property to similar properties that have actually been sold in arms-length distance from investment property or are offered for sale in the same region. This approach demonstrates what buyers have historically been willing to pay (and sellers willing to accept) for similar properties in an open and competitive market, and is particularly useful in estimating the value of the land and properties that are typically traded on a unit basis. This approach leads to a reasonable estimation of the prevailing price. Given that the comparable instances are located in close proximity to the investment property; these instances have been assessed for their locational comparative advantages and disadvantages while arriving at the indicative price assessment for investment property.*

5. TRIVIA²

In the United States, audit tasks such as physical inspection of inventories and confirmation of receivables were optional until fraudulent activities were uncovered at *McKesson & Robbins* in **1939**. As a result, the American Institute of Certified Public Accountants (AICPA) issued **Statement on Auditing Procedure (SAP) No. 1** in 1939 and it required that auditors inspect inventories and confirm receivables. Consequently, auditors became responsible for auditing the business entity itself rather than simply relying upon management verification routines.

² Source: https://www.aicpa.org/interestareas/frc/assurance_advisoryservices/downloadabledocuments/whitepaper_evolution-of-auditing.pdf

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INTELLECTUAL PROPERTY RIGHTS AND PROTECTION IN INDIA

TYPES OF TRADEMARKS (PART-2 OF IPR SERIES)



■ Adv. M G Kodandaram, IRS, Assistant Director (Retd), NACIN

A general understanding and importance of IPRs in strengthening and expanding the business and commerce was narrated in the previous article. We learnt about the various IP rights granted under the Indian IP laws and their relevance in global trade. In this article I am going to deliberate on the types of trade mark. In the coming articles; the role of trademark, selection of a mark, registration process, infringements and protection mechanism in place are being planned. Similar analyses of each of the IP rights will be undertaken in the later parts.

Why to use a trademark?

As stated earlier, the rights relating to any mark, name or logos under which trade or business is conducted, by which the manufacturer or the trader or the service provider is identified are granted under 'The Trademark Act, 1999' (hereinafter 'act' for brevity). The trademarks act like a communication highway between the buyer and supplier, without any hindrance of the language or the media. These are the surest means to advertise, as the buyers, literate or illiterate, seeing the mark, get connected with the product /service and its quality. Any consumer who is satisfied with the goods / services of a particular mark will demand for the same from the dealer. It becomes the easiest way to gain the loyalty of the consumer. If businesses do not have trademark there is no scope to get a customer or retain him as the customer cannot identify the source in an easy way. Therefore, for continued business the trademarks are essential.

This is one of the main reasons the MSMEs with no brand of their own, suffer in the business as they cannot gain the confidence or retain the faith of the consumer. It is more so if the products are for export. Therefore, it is essential to have a trademark, get it registered and granted under the act and to protect it, by not allowing anyone the usage, except with proper license, so that it becomes part of revenue source for the entity. But at the same time, it must be noted that without the quality in the market,

mere presence of trademark on inferior products may bring disrepute to the entity and disrupt the business. As these marks are ambassadors of goodwill, due care should be taken to provide quality products and services and also own an attractive mark. In this part we will learn about the types of trademarks used in the business.

Counterfeit goods

In the coming part we shall discuss the selection of a trade mark and procedure for registration. The trademark, after grant by the authorities, should be properly managed and protected by the owner without giving room for unauthorized use by others, to bring counterfeit goods into the market. The term 'counterfeit goods' is used to identify an unauthorised imitation of branded goods. At times the competitors may not use exact imitation of the mark, but under the act the imitation having a deceptive quality is sufficient to seek protection. In international forums Counterfeit goods shall mean any goods, including packaging, bearing without authorization, a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation. (Definition from TRIPS agreement) Even under Section 28 of the Indian Penal Code, "a person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced." But the owner of the registered mark has to seek legal remedy as prescribed under the act.

Types of trade mark

The act defines "mark" to includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof. [ref: Sec. 2 (m) act]. However, such



mark to be able to get registered must be capable of being represented graphically and of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours. [ref: Sec.2 (zb) act]. Both the ability to express in graphical terms on paper or in soft versions, such mark on which the rights are sought and should not have been put into use by any other person are important to seek ownership in the mark. Such marks must be of distinctive use on goods or services by the applicant. Some examples for types of marks are as follows:

- a) Logo as trade mark – for example: Mercedes Benz with three pointed stars, Adidas, Pyramid, “Hello Kitty” - a character owned by the Japanese company Sanrio, The Penguin Logo of Penguin Books Limited, NBC’s peacock style design;
- b) Device as trade mark – these are marks comprising pictorial representation or any combination of pictures and drawings - for example: Amul’s girl, McDonald’s, Pillsbury’s boy, logo of Apple brand;
- c) Picture as a trade mark – for example: Puma’s puma, Corning’s Pink Panther, Duke - the Java Mascot, Android;
- d) Brand as trade mark – for example: Mysore sandal soap, Nandini dairy products;
- e) Name as trade mark – for example: Raymond Weil, Christian Louboutin;
- f) Signature as trade mark – for example: Louis Philippe;
- g) Word as trade mark - the most common type of the mark or any combination or group of letters/ alphabets. – for example: Pepsi, Coca-Cola, Pepsodent, Reliance, Nike, Armani;
- h) Letter as trade mark – for example: BMW, IBM, HDFC, SVT;
- i) Numeral as trade mark – for example: 555, 501;
- j) Shapes as trade mark -The shape of a product or of the container that helps the consumers to identify the origin of goods are granted as a right. The shape of the product or container can also be registered as Design under the Designs Act, 2000. Even in cases where the shape of a product has attained the acquired distinctiveness over a prolonged span or

widespread usage, it can be registered as a trademark – for example: Coca-Cola Bottle;

- k) Packaging as trade mark – for example: CADBURY’S;
- l) Surname as trade mark – for example: TATA, BATA, BAJAJ;
- m) Colour schemes as trade mark - can qualify as a valid registered trademark if it is established that such colour or combination of colours has attained a unique identification such as the concerned brand could be associated with the colour. – for example: PIZZA HUT, DOMINOS;
- n) Sound as trade mark - These marks are the non-conventional trademarks. The sound can be registered as the valid trademark in India, if the functions of the concerned sound could let the consumers identify the origin or goods or services – for example: switching on sound of NOKIA’s devices and Windows, human voice of Yahoo, four note bell sounds of Britannia Industries, The MGM Lion, The NBC Chimes, The 20th Century Fox Fanfare, The Tarzan Yell, Sound of Harley Davidson;

Three Dimensional Marks can be registered in India based on strict standards of inherent distinctiveness of trademarks and its capability to identify the origin of goods and services.

Product marks, service marks

Depending upon the identification of a particular mark with goods or services, they are distinguished as product marks and service marks. The following marks are product marks: BATA, BAJAJ. The following marks are service marks: HOLIDAY INN, DHL, HILTON and INFOSYS.

However, there is no bar for using a mark to identify both the goods and services. We may name it as ‘hybrid mark’ for ease of reference. For example: TACO BELL for Restaurant business owned by Taco Bell Corporation is also used for related products like sweets. Trademark MARUTI being used for cars as well as identifiers of authorized service centers.

There are different usages of terms in the market, which we will understand with some examples so that it becomes easier for further learning. The type of application to be used depends upon many factors such as single or



multi-class, priority or not, etc. However if the goods and services fall under different classifications there is need of applying separately or in combination for registration. The details of classification and application procedure we shall deal in the next part.

Normal trademark – This is a normal trademark application to be filed for a word, device or any other combination thereof from (a) to (n) listed above. These could be product marks or service marks or for both.

BRANDING of business activity

One may confuse the concepts of “Trademark” and “Brand”. Brand name generally refers to the proprietary visual, emotional, rational and cultural image that customers associate with a company or a product. Brand has a much wider application than a trademark. The registered trademarks are a vital part of a brand, but a brand will usually also include other elements such as designs, trade dress, slogans, symbols and sounds, along with the concept, image and reputation that connect consumers with specified products.

Example: the registered popular trademark Nandini owned by KMF, Bangalore, as a mark for varieties of products and services. The trade name started for Milk is being used to get other products branded under the goodwill developed through the supply chain developed in Milk, to market variety of milk products. Similarly, the word and the logo of a girl in Amul owned by Gujarat Co-operative Milk Marketing Federation Ltd are being used for many products.

Remembering the Mysore sandal soap

The trade names expanded as a brand name enables a business entity to exist, grow, expand and survive the coming challenges on the way. Based on the popularity of the registered mark, the survival of a particular business could be extended beyond normal period by creating brands that may last for centuries. We shall take one example of our own fragrance heritage of Karnataka namely the Mysore sandal soap.

It all started over hundred years ago, in 1916, Krishna Raja Wadiyar IV, the then Maharaja of Mysore and Mokshagundam Visvesvaraya, the then Diwan of Mysore, set up the Government Sandalwood oil factory at Mysore for sandalwood oil extraction. The primary

goal of the project was to utilize the excess stocks of the fragrant sandalwood that had piled up in the then kingdom of Mysore. They also felt the need for industrial development in the state and started the Government Soap Factory. The picture of SHARABA, a historical animal and the words ‘Mysore sandal soap’ are the registered marks and in use till date. In addition to soaps, to market related products such as incense sticks, essential oils, hand washes, talcum powder etc. the above trademarks are used as part of brands. Even after over hundred years, the company has a sizable market. This clearly shows the importance of owning a registered trade mark, brand it and have continued presence and business.

Trade Dress

The term refers to the visual appearance of a product generally in the form of its packaging. This may include the features such as size, shape, colour or colour combinations, texture, graphics, or even particular sales techniques. In the case of architecture, it could be the design of a building. For example, the shape, design letters, logos and colour schemes of Colgate toothpaste is a trade dress. It serves the functions of a trademark and therefore, courts are extending the protection available to trademarks to trade dress too.

Domain names treated as registered trademark

Domain names are the human-friendly forms of Internet addresses, and are commonly used to find websites on the Internet. The advancement in technology has brought a radical change in the traditional process of selling and buying by using e-commerce. With the increase of commercial activity on the Internet, a domain name is also used as a business identifier. The functions of domain name as identifier are in a manner similar to the trademark and therefore courts have held them to be treated as the assets of the entity who owns trademarks. In the coming parts we shall have some case study on this issue.

Certification mark – a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified. This system could be used by specific product groups to enhance the common goodwill

for such products. The owner of a certification mark licenses it to others to identify their products that meet the defined standard, and the mark may be used by anyone whose product meets the established standard. The message conveyed by a certification mark is that the products have been examined, tested, inspected or in some way checked by a person who is not their producer, by methods determined by the certifier/owner. An important requirement for certification marks is that the entity which applies for registration is considered “competent to certify” the products concerned. Logically, the certifier/owner may not apply the certification mark to their own goods or services. [ref. Sec. 2 (e) act]. Example: WOOLMARK for wool products, Agmark for edible oils, Hall mark for gold, ISO 9000” quality standards etc.

Collective mark – As the name suggests, it is a mark distinguishing the goods or services of members of an association of persons which is the proprietor of the mark from those of others who are not members. It indicates the organization and its members to get connected among themselves and then with the market place. [ref. Sec. 2 (g) act]. The association generally establishes a set of criteria for using the collective mark (example-quality standards) and permits individual businesses to use it if they comply with such standards. Collective marks may be an effective way of jointly marketing the products of a group of enterprises that might find it more difficult for their individual trademarks to be recognized by consumers and/or handled by the main distributors. These marks cannot be sought by organization registered under Indian Partnership Act, 1932.

For example – CII (Confederation of Indian Industry), ‘CA’ used by ‘The Institute of Chartered Accountants of India’, ‘CS’ used by ‘The Institute of Companies Secretaries of India’.

Series mark – where the mark applied for, is with the primary objective that it might be used/intended to be used in several forms/ways by the proprietor and instead of filing separate applications for each, it is possible to file them as a series mark. For example: McDonald has series marks incorporating the term “Mc” like Mc chicken, Mc Café, Mc Donuts etc.

Well-known trademark

A mark that is popular and recognized easily by the public in a particular country or many countries could be termed as well-known trademarks. They may be in the category of goods or services or in combination and public must be identify the product or manufacturer or trader or origin by its presence. The mark after usage for many years with goods and services may attain this status.

Till the year 2017, well-known trademarks were determined by the Indian Courts and Tribunals. The Trademarks Act, 1999 has defined a well-known trademark in relation to any goods or services, as a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services. [ref: Sec. 2 (zg)]. Later with the introduction of Trademarks Rules 2017, now it is open to trademark holders to apply for well-known status provided they meet the prescribed criteria. More details are taken up while guiding for registration of a trade mark.

The following are the some of the examples for well know trademarks:

- 7 O’CLOCK for shaving razors owned by Gillette U.K. Ltd., England
- BISLERI owned by Acqua Minerals Ltd., where words are used as product mark.
- CARTIER for jewellery, watches, perfumes etc. owned by Cartier International,
- DR. REDDY In respect of pharmaceutical products owned by Dr. Reddy’s Laboratories
- ENFIELD BULLET owned by Enfield India Ltd

(to be continued in the next issue)

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NUTRITION FOR LIFE

■ Ms. Sanvi Khandelwal

In this fast-paced life journey, taking the right kind of food which is nutritious is vital for leading a healthy lifestyle. It is not surprising to know many diseases like diabetes, spondylitis, arthritis, obesity, cancer, infertility, heart attacks etc are quite common and accepted family members for more than 75% of the adult population.

Everyone understands that “Prevention is better than cure”. But not all have an answer as to “How?”

Pillars of Wellness

The wellness **pillars** are the guide to lead you towards optimal health and **wellness**.

The wellness pillars help you to lead a balanced and healthy life and thus keep your mind and body bubbling with energy.

Diet (Nutrition): ‘You are what you eat’. A balanced diet full of nutrition is the basic requirement for your body to function properly. A balanced diet contains macronutrients (protein, fats and carbohydrates) along with micronutrients (vitamins and minerals) in right proportions.

Exercise: Regular physical fitness is necessary to improve your muscle strength and boost your endurance. **Exercise** pumps oxygen and nutrients to your tissues and helps your cardiovascular system work more efficiently.

Sleep: A good night’s sound sleep is vital to regulate the hormones of our body. It’s the time when the body repairs itself. “Give your body its deserving time of rest”.

Stress: To make yourself happier, healthier, and more productive, stress management is very crucial. It helps you strike a balance between your work life, personal life, relationships, relaxation, and fun times.

Environment: You belong to the environment you live in. Physical and social pleasing environment can do more than just improving your mood, it can affect your immune system along with physical and mental health.

Lack of balance among these wellness pillars can ruin the steady working pattern of the body and mind leading to depression, anxiety, personality disorders, heart disease, high blood pressure, heart attacks, arthritis, obesity, menstrual problems, cancer and many more.

Nutrition is paramount

“You are what you eat” is indeed a true adage. Your body is like a machine which can run smoothly only when fed with the fuel of proper nutrition.

In South India, cereals and millets are the staple food. However, minerals, vitamins, fiber and proteins take a back seat.

Some of the Indian food and spices have amazing and powerful nutritional values if taken in right quantities, combination and patterns.

Whole Grains: It has the right combination of high nutritional value, low glycemic index (i.e., a relative ranking of carbohydrate in foods according to how they affect blood glucose levels) and high fiber content. It helps fight against **obesity, diabetes, hypertension** and also helps to improve the **immune system**. **Millets, oats, quinoa (ನವಣಿ ಅಕ್ಕಿ), brown rice, whole wheat flour** fall in this category.

Fruits and Vegetables: They are high in fiber and antioxidants, low in calories and glycemic index. The **antioxidants** in fruits and vegetables help in strengthening the body’s **immune system** and **metabolism**. **Fruits like orange, watermelon, papaya, kiwi, guava** are rich sources of **vitamin C**. **Vegetables like tomato, mushroom, cabbage, spinach** are rich sources of **beta-carotene** and **iron**.

Lentils: They are high in **protein** and soluble **fiber**. They can reduce the risk of **heart attack**, stabilize **sugar levels**, help in **weight loss** and a perfect food for **diabetics**. It improves **vitamin B** and **iron** levels.



Herbs: Herbs like **Garlic, Turmeric, Cinnamon, Cumin, Asafoetida** (ಇಂಠು - Heeng) are excellent sources of antioxidants, which helps to **fight cancer**. They reduce the risk of heart diseases by reducing triglycerides (i.e., a type of fat [lipid] found in your blood) and **cholesterol levels**. They also help in improving the **immune** system. **Turmeric** helps in **atherosclerosis** (i.e., a disease of the arteries characterized by the deposition of fatty material on their inner walls) and **neuro-degenerative** diseases. **Cinnamon** helps in controlling the blood sugar levels. **Cumin** promotes digestion, provides iron. **Asafoetida** (ಇಂಠು - Heeng) helps in indigestion, bloating, flatulence and intestinal gas.

Fats are also important for a healthy body along with **protein, vitamins and minerals**.

Omega 3 is a good fatty acid. It is an essential nutrient for optimal health. It helps in fighting depression and anxiety and also to maintain a healthy eye, strong bone and joint. It also assists in combating heart diseases, autoimmune diseases too. It prevents cancer, reduces fat storage in liver, menstrual pain, sound sleep and glowing skin. Walnut, flax seeds, chia seeds, sea food, avocado, canola oil are rich sources of Omega3.

What should be the first intake upon waking up?

If we start our day with tea/coffee, then it does more harm than good. The acidic nature of these beverages can give you bloating symptoms throughout the day. It not only hampers your metabolic rate but also dehydrates the body. However, they can be consumed after breakfast.

Alkaline drinks are the best way to start the day. It could be buttermilk, lukewarm water with a pinch of pink salt, fenugreek (methi) water or lime water to reboot your system after long hours of rest. A few drops of apple cider vinegar with water, coconut water and aloe vera juice are also good options.

What is the pass percentage of nutrition in your plate?

A balanced diet provides the required nutrients your body needs to work effectively and efficiently. A balanced plate must include the following components:

- Fruits and vegetables
- Whole grains
- Healthy proteins like nuts/fish/lean meat/eggs/dairy products

- Fats

An average human requires 50% carbs, 30% protein and 20% fat on a daily basis. Although the composition can be changed from one body type to another.

How much should be the daily intake protein?

A normal person requires a minimum 1gm of protein per kg of his body weight. Eg: A person weighing 60 kg should consume 60 gms of protein.

Protein plays an important role in enzymes, hormones, and other body chemicals. It is also the building block of bones, muscles.

A lack of a protein rich diet can lead to sore joints, headache, heartburn, Insomnia, osteoporosis, hair loss, menstrual cramps, thyroid, diabetes or bleeding gums at later stages.

Can fats be considered as a part of healthy diet?

Fats are not optional but a necessity for the body. They help in cell growth, protect the organs (visceral fat), maintain body temperature, help in absorbing nutrients and hormone production.

Fats to avoid: Saturated and trans-fat. These fats tend to solidify at room temperature. They increase the bad cholesterol (LDL – [low-density lipoprotein]) in your body.

Fats to embrace: Monounsaturated and polyunsaturated fats. They help in reducing LDL and triglyceride level and increasing good cholesterol (HDL) in your body.

Cold pressed oil should be chosen over Hydrogenated oil.

Are carbs bad?

Carbs are a necessity for the body. Our body can absorb carbs faster than protein and fats. Carbs are of 2 types - simple and complex.

Simple: Simple Carbs get absorbed very quickly into our blood stream and spike the insulin level. Simple carbs are best before going for heavy body workouts as they provide instant energy. Large amount can lead to obesity and other health complications. Eg: Refined flour, Sugar, bread etc.

Complex: Complex carbs are slow to digest and makes us feel full for a longer duration. They are best to take on a daily basis. They keep us energetic for a longer duration. Eg: Finger millets, gram flour, barley, whole grains etc.



Cooking Methods/Utensils

Cooking methods and cookware also play an important role in keeping the nutrients of food intact.

- Food should not be cooked on high flame as it destroys 80% of nutrient content of the food.
- Food should not be pressure cooked as it results in loss of nutrients and fiber from the food.
- Food should not be cooked in Aluminum vessels. Though aluminum is a good conductor of heat, stirring of food in it causes leaching of aluminum, and “carcinogenic” aluminum mixes in the food which ultimately goes into our body leading to possibilities of hyper-acidity, peptic ulcer, indigestion, skin problems, reduces bone growth, etc.
- Food should not be prepared in non-stick cookware as it mixes the harmful “Teflon” into the food when used at high temperature.

- The hard anodized cookware also has non-stick Teflon coating, hence not a good choice.

Conclusion

Proper nutrition not only helps in preventing diseases in adults but also helps in proper growth in children. A balance between diet and meal timings is the key to healthy mind and body.

Nutrition is the broader term which is not limited to only developing healthy dietary habits but also healthy lifestyle patterns.

While the whole process looks difficult, it is worth the effort when long term benefits are guaranteed.

Disclaimer: The quantity of the nutrients may vary from person to person depending on the health condition. Consult an advisor for proper guidance.

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Income Tax Savings Schemes

54EC	Capital Gains Bonds AAA rated 5 year Lock in 5% Annual Interest payable on June 30 th . Capital Gains Bonds Min : ₹ 10,000/- Max : ₹ 50,00,000/-
80C	Save Money & Save Tax Invest in 3 years ELSS Equity Linked Saving Scheme Save up to ₹ 1.5 Lakh ELSS - 3 Yr Lock in
80CCD 1(B)	Invest in National Pension Scheme (NPS) Get an additional Tax benefit of ₹ 50 K pa. Save up to ₹ 50 K

For further information / clarification, please feel free to contact us:
 Kiran Boal: 98803 93743 080 2226 4742 wecare@wealthlab.co.in

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Karnataka State Chartered Accountants Association®

REPRESENTATION ON REQUEST FOR EXTENSION OF COMPANIES FRESH START SCHEME I.E. CFSS 2020 AND LLP SETTLEMENT SCHEME 2020

To,

Date: 17th September 2020

Smt. Nirmala Sitharaman

Hon'ble Minister of Finance & Minister of Corporate Affairs,

15, Safdarjung Road, New Delhi – 110001

Hon'ble Madam,

**Subject: Request for Extension of Companies Fresh Start Scheme
i.e. CFSS 2020 and LLP Settlement Scheme 2020**

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

We congratulate and applaud the efforts of Ministry of Corporate Affairs, Government of India for introducing CFSS 2020 with a view to bestow a chance to all the Companies to complete their pending compliances without the requirement of paying additional fees and penalty, and also to provide immunity from prosecution.

We draw your kind attention to General Circular No. 12/2020, dated 30-03-2020 whereby Ministry of Corporate Affairs has provided relaxation/special measures in view of the Covid-19 pandemic and permitted the affected Companies to complete their pending compliances without the payment of additional fees & penalty and provides immunity from prosecution, by the last date of 30-09-2020. The said CFSS 2020 is in operation from 01-04-2020 to 30-09-2020. This is a major step in the right direction from the Government which provides an excellent opportunity for all the Companies to regularize their pending compliances and to make a fresh beginning with a clean slate in the statutory compliances as required under Companies Act, 1956 and Companies Act, 2013.

However, as you may be aware that the Covid-19 pandemic situation continues to badly impact even today in the conduct of normal operations of the Companies and also Chartered Accountants in practice. As the Covid-19 infections are unabatedly spreading at a rapid rate, many of the Companies are still not doing their normal activities for running the core businesses due to the widespread fear among employees and staff members of contracting Covid-19 virus and in this unavoidable situation where normal functioning of Companies is disrupted, a very less can be expected from such Companies on completing statutory compliances in these trying times. As consequence of which, the task to complete pending compliances as espoused under CFSS 2020 has taken a back seat and priority is being given to run the business.

The above mentioned hardships are being mainly faced by mid segment and small category of Companies due to several practical difficulties in terms of infrastructure bottlenecks and availability of manpower to carry on the operations. The Chartered Accountants who provide professional services to Companies in these segments are also handicapped in running of their own operations coupled with restrictions on physical visits to Company offices due to pandemic. Therefore in these trying times as faced by Small & medium sized Companies and Chartered Accountants, insisting on making necessary compliances in our sincere view cannot be overemphasized by the Government.



In view of genuine hardships which have arisen due to Covid-19 pandemic, we from Karnataka State Chartered Accountants Association and also on behalf of Companies hereby request your good selves to kindly consider our request and extend the validity of the CFSS 2020 at least by 3months until 31st December, 2020.

We also request your good selves to please provide a similar relief to LLPs who are covered under LLP Settlement Scheme 2020 by General Circular 13/2020, dated 30-03-2020.

Yours sincerely,

For Karnataka State Chartered Accountants Association ®

CA. Kumar S Jigajinni
President

CA. Pramod Srihari
Secretary

CA. Ganesh V Shandage
Chairman, Representation Committee

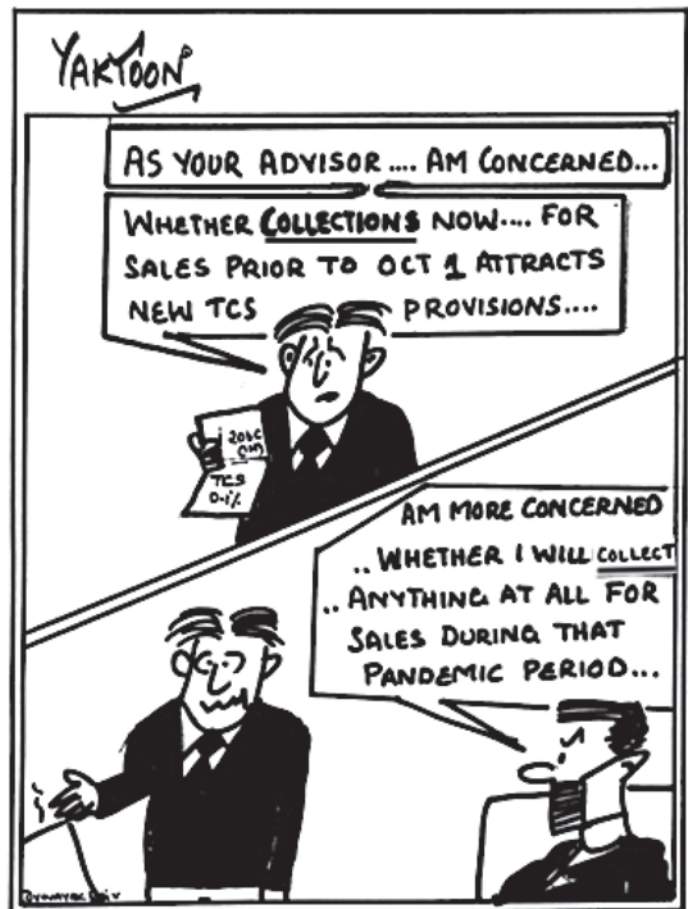
Cc to:

1. The Secretary, Ministry of Corporate Affairs, Government of India, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi – 110001
2. Registrar of Companies, E Wing, 2nd Floor, Kendriya Sadan, Kormangala, Bengaluru, Karnataka – 560034.

JOINT REPRESENTATIONS:

- 1) Representation on Request for taking up certain measures under Income Tax Act, 1961 in the backdrop of Covid-19 outbreak
- 2) Representation on Request for granting relief from provisions of Tax Collection at Source (TCS) under section 206C(1H) of the Income Tax Act, 1961

For above said representations,
please visit:
www.kscaa.com





Karnataka State Chartered Accountants Association®

REPRESENTATION SEEKING EXTENSION OF LAST DATE FOR PAYMENT OF MEMBERSHIP FEE FOR FY YEAR 2020-21

To,

Date: 21st September 2020

The President

Institute of Chartered Accountants of India

ICAI Bhawan, Indraprastha Marg,

Post Box No. 7100, New Delhi – 110 002.

Hon'ble Sir,

**SUBJECT: REPRESENTATION SEEKING EXTENSION OF LAST DATE FOR
PAYMENT OF MEMBERSHIP FEE FOR FY YEAR 2020-21**

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

At the outset, we congratulate and applaud ICAI for putting its sincere efforts and rolling out various relief measures and providing financial assistance for the benefit of membership at large as impacted by the outbreak of Covid-19 pandemic situation in the country. We would also wish to appreciate and convey our gratitude to ICAI for recently unveiling Senior member's care program with noble intention of providing much needed respite, panacea and relief to senior members of profession as affected by the Covid-19 pandemic. All these relief measures of ICAI are truly momentous and they would definitely go a long way in providing much needed respite and help in easing up lives of many of our members.

However despite all these efforts of ICAI, we still find that there is one genuine concern that many of our members especially members in the SME segment all of them have in common is on the the requirement of payment of Fees to ICAI for renewal of membership for FY 2020-21 and possible imposition of punitive measures in terms of removal of name from the register of members. The said fee as advised by ICAI is required to be paid by members on or before 30-09-2020 to avoid punitive measures.

We at KSCAA would wish to bring this legitimate concern of members to the fore of ICAI and humbly request your goods selves to provide resolution on the same.

As your good selves may be aware, due to the COVID-19 pandemic situation with number of COVID-19 cases spiking continuously, many of our members in practice are under mental stress. To add to it, many of them are also finding it difficult to manage the cash flows due to slack down in the economy and businesses of clients in general. While all of us are in the same boat and trying to recover from the disruption caused by the Covid-19 pandemic situation, there are many members who have been finding it difficult and really hard to meet even their fixed costs such as office rentals, staff salaries, stipends and other administrative costs. To such members, ICAI's current demand for payment of membership renewal fees for FY 2020-21 would be an additional whammy and it would definitely make further dent to the current disturbed situations they are in.

The story with CAs in service (industry) is not any better. Mass Lay-offs have left many qualified CAs jobless, while newly qualified members (Nov-2019 Qualified) are also finding it difficult to get suitable jobs. Also the condition and the



situation of newly qualified members who had set up professional practice for less than 5 years is also not much better and they are also under the plight of Covid-19 pandemic.

We at KSCAA profoundly appreciate the proactive steps taken by the ICAI for membership and in view of our above submissions, we request your good selves to please extend the last date for payment of membership renewal fee of FY 2020-21 by six more months i.e. until 31-03-2021. As a corollary, we also request your good selves to kindly avoid taking any punitive measures on members in terms of removal of names of the members from register of members until 31-03-2021. We strongly believe that this kind of a step by ICAI in these challenging and extraordinary times would surely demonstrate a lot of character and also it would boost the morale of our members.

Considering our above submissions and in view of mitigating the hardships faced by our own dear members, we request your good selves to kindly do the needful and set an example to others and the future generations to come.

Yours sincerely,

For Karnataka State Chartered Accountants Association ®

CA. Kumar S Jigajinni
President

CA. Pramod Srihari
Secretary

CA. Ganesh V Shandage
Chairman, Representation Committee

Cc to:

1. Vice President, ICAI. New Delhi.
2. Secretary, ICAI. New Delhi.
3. Chairman, SIRC, Chennai.
4. CA. Vijay Kumar M.P., CCM
5. CA. Sekar G., CCM
6. CA. Rajendra Kumar P., CCM
7. CA. Prasanna Kumar D., CCM
8. CA. Sharma Dayaniwas., CCM
9. CA. Babu Abraham Kallivayalil., CCM

Solution for Sudoku - 1 (September 2020)

6	2	4	9	8	5	7	3	1
7	1	9	4	2	3	6	8	5
8	3	5	7	6	1	2	9	4
3	5	7	2	1	9	8	4	6
1	4	8	3	7	6	5	2	9
2	9	6	8	5	4	3	1	7
5	6	3	1	4	8	9	7	2
4	8	2	5	9	7	1	6	3
9	7	1	6	3	2	4	5	8

Word of the month

Quotidian

What is this?

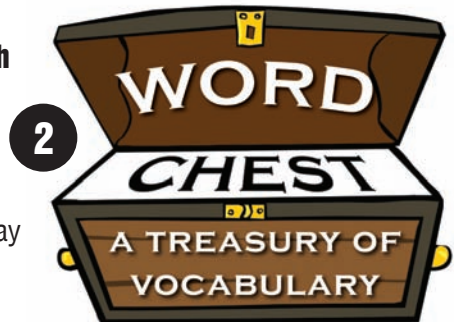
Recurring every day

Use instead of:

Regular or Ordinary

How can it be used?

- ✓ She hoped to not live a *quotidian* life, but one full of surprises and adventures.
- ✓ The man began his *quotidian* schedule by getting stuck in traffic on his way to work.





Karnataka State Chartered Accountants Association®

REPRESENTATION SEEKING EXTENSION OF DUE DATE FOR FURNISHING GSTR9 AND GSTR9C FOR FY 2018-19

To,

Date: 27th September 2020

Smt. Nirmala Sitharaman

Hon'ble Chairperson, GST Council

15, Safdarjung Road, New Delhi – 110001

Hon'ble Madam,

**SUBJECT: REPRESENTATION SEEKING EXTENSION OF DUE DATE
FOR FURNISHING GSTR9 AND GSTR9C FOR FY 2018-19**

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

We applaud the continuing sincere efforts of GST council in the pursuit of bringing ease in the GST compliance burden of taxpayers ever since COVID-19 Pandemic broke out in March 2020. Various relaxations provided to taxpayers include, *inter-alia*, extension in the due dates of regular compliances, waiver / reduced interest & late return filing fees, extension of time for appeal, etc. are well received and commended by the taxpayers. We convey our sincere gratitude to your good selves for taking such bold and proactive measures in addressing the plight of the taxpayers.

As per Notification 41/2020-Central Tax, dt. 05-05-2020 has extended the time limit for furnishing of the annual return specified under section 44 of the CGST Act, 2017 read with rule 80 of the CGST Rules, 2017 for financial year 2018-19 till the 30th September, 2020. The extension of time limit under section 44 of the said Act automatically results in the extension of time limit for furnishing of reconciliation statement under section 35(5) of the said Act for the same financial year.

Albeit six months have passed since Covid-19 pandemic broke out, your good selves may be well aware about the fact that the situation in India even today is not very good and not normal, with business operations of taxpayers having been completely disrupted in the wake of many restrictions and limitations that are there on travel & mobility, manpower supply, supply chain bottlenecks, health hazards, forced lockdowns, voluntary lockdowns by citizens, etc. In midst of all this, there is tremendous amount of mental and psychological fear that the citizens in general are carrying and living under the fear & risk of getting contracted with Covid-19 a contagious virus.

Covid-19 pandemic situation continues to badly impact even on today in the conduct of normal business operations of not only the taxpayers but also it continues to badly impact the normal functioning of offices of Chartered Accountants who are into practice & serve taxpayers on the compliances front. As Covid-19 infections are unabatedly spreading at a rapid rate, many of the taxpayers are still not doing their normal activities for running their core businesses due to the widespread fear among employees and staff members of contracting Covid-19 virus and thus in this unavoidable situation where normal functioning of both taxpayers and Chartered Accountants is severely disrupted, a much less can be expected from them in the timely completion of statutory annual compliance of filing Annual Return GSTR9 and Reconciliation Statement GSTR9C for the FY 2018-19 due for filing 30-09-2020. The need of the hour and the most critical aspect for both taxpayers and the Chartered Accountants which begs their attention in the present crisis situation is their own survival by ensuring at least minimal economic activities are being run unabatedly. The matter as regards



completing the annual GST compliances of filling GSTR9 or GSTR9C for FY 2018-19 could at least for now take a back seat for taxpayers in these hard and challenging times.

We also like to bring the following points to kind notice of your good selves in the backdrop of our above submissions:

1. GSTR-9 and GSTR-9C are crucial filings from the tax payer's perspective as it gives once-in-a-year an opportunity to review and rectify the mistakes (if any) in any of the monthly/quarterly returns already filed. Therefore, businesses must be given sufficient time and resources to analyse, understand and file these forms.
2. The mistakes/errors/omissions in relation to claim and accounting of ITC in terms of section 16(4) CGST Act, 2017 pertaining to FY 2019-20 have to be rectified in the GSTR3B return to be filed for September 2020 on or before 20-10-2020. Most of taxpayers at present are busy with reconciliation, follow up with vendors (to update GSTR-1) and so on, which is consuming lot of time and resources. So there is a shortage of bandwidth of staff support both with the taxpayers and Chartered accountant firms for completing filing of GSTR9 and GSTR9C for FY 2018-19 on or before 30-09-2020.
3. Many staff members of taxpayers, Chartered Accountants firms and Chartered Accountants have been tested COVID-19 and are therefore are either under quarantine and/or undergoing treatment.
4. Since GSTR9 and GSTR9C are merely summarised annual statements to be filed without any material adverse impact on revenues of the Government. Considering the gravity of present situation, the due date for filing these forms could be further extended.
5. As per the latest information that we have at our disposal, as on date only a minuscule 10% of the taxpayers have filed their forms GSTR9 and GSTR9C for FY 2018-19. Thus there is substantial percentage of taxpayers who are otherwise required to file these forms have not yet filed the same.
6. The Company fresh start scheme (CFSS) 2020 and LLP Settlement Scheme under the Companies Act, 2013 as issued by Ministry of Corporate Affairs is also coincidentally ending on 30-09-2020. Many of the taxpayers are engaged in completing compliances under this scheme.
7. Audit Report under Income Tax Act, 1961 for FY 2019-20 falls due on 30-10-2020 and every taxpayer need to invest good amount of time and effort in ensuring timely completion of this compliance.

In view of genuine hardships which have arisen due to the current Covid-19 pandemic, we from KSCAA and also on behalf of taxpayers hereby request your good selves to kindly give cognizance to our above submissions and extend the due date for filing Annual Return GSTR9 and Reconciliation Statement GSTR9C for FY 2018-19 by at least 3 more months i.e. until 31st December, 2020.

We are optimistic that, your good selves would definitely make an 'all out' effort to ensure that the necessary steps are taken in this regard to provide much needed relief to the taxpayers and Chartered Accountants.

Yours sincerely,

For Karnataka State Chartered Accountants Association ®

CA. Kumar S Jigajinni
President

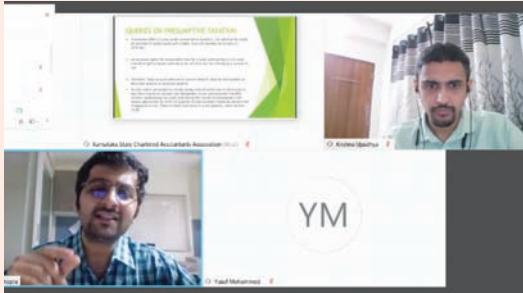
CA. Pramod Srihari
Secretary

CA. Ganesh V Shandage
Chairman, Representation Committee

Cc to:

1. Shri. Anuragar Singh Thakur, Hon'ble Member, GST Council, New Delhi
2. Shri Ajay Bhushan Pandey, Hon'ble Special Secretary, GST Council, New Delhi.

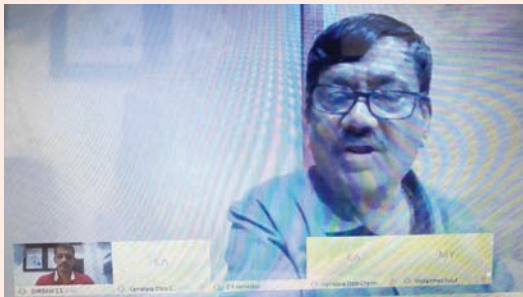
Photo Gallery



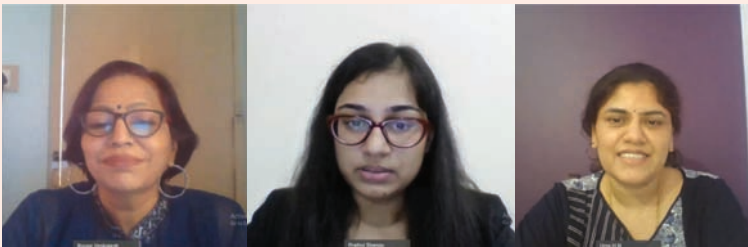
Webinar on Ask-an-Xpert@KSCAA Tax Audit Report, Changes in ITR, Presumptive and Tax audit Provisions by CA Deepak Chopra and CA Krishna Upadhyaya S held on 3 October, 2020



Bike rally and Swachh Bharath Abhiyan held on 3 October, 2020



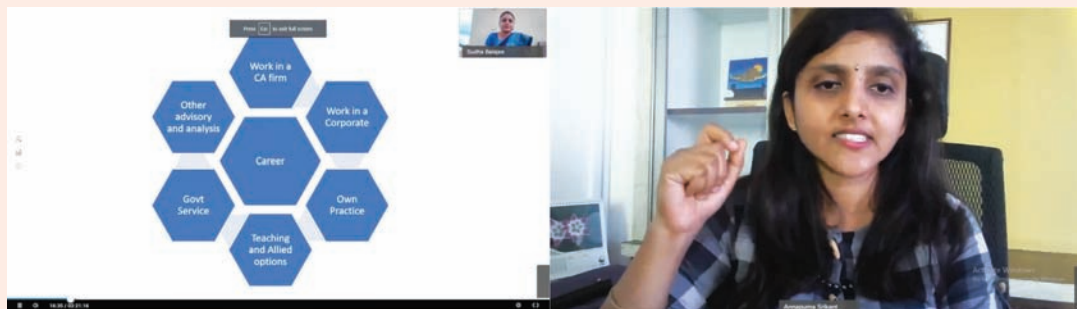
Webinar on Taxation of Co-Operatives and its recent developments by CA. D R Venkatesh held on 6 October, 2020



Webinar on Igniting Minds by CA. Roopa Venkatesh and Learning in Depth - Income Tax recent updates and practical Insights on tax audit by CA. Uma H N and CA. Prathvi Shenoy held on 7 October, 2020

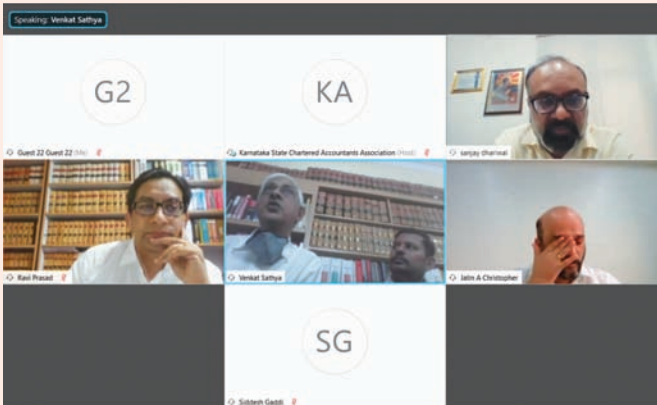


Webinar on Ask-an-Xpert@KSCAA-GSTR 9 by CA Hanish S held on 14 September, 2020

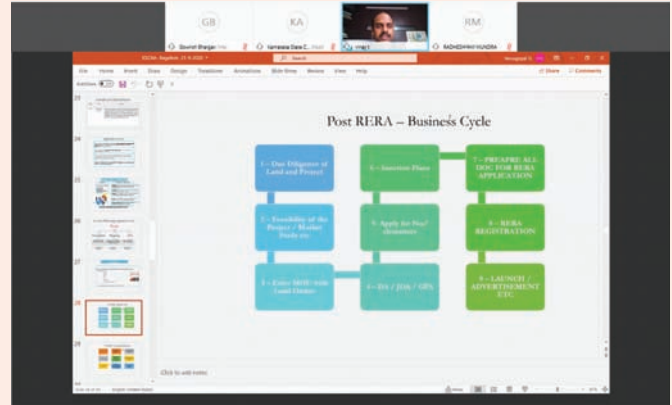


Webinar on Igniting Minds by CA. Sudha Balajee and Learning in Depth - Documentations and qualifications under GST audit held on 17 September, 2020

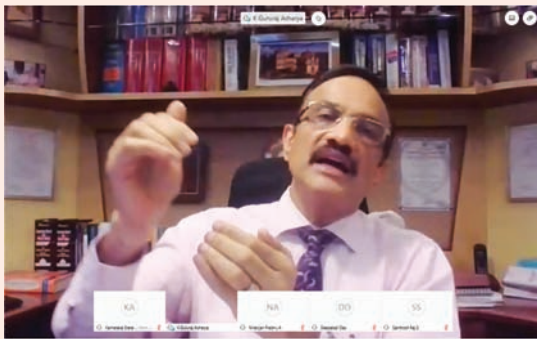
Photo Gallery



Webinar on Ask-an-Expert@KSCAA-GSTR 9C by moderator - CA Sanjay Dhariwal, and speakers - CA Venkataramani S, Rajeshkumar T R, CA. Jatin Christopher and CA. Ravi Prasad held on 15 September, 2020



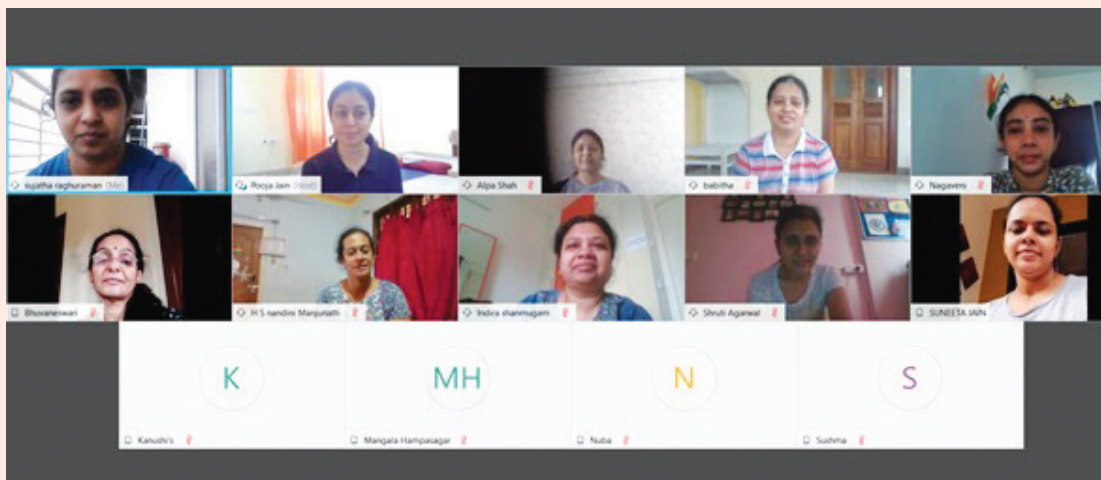
Webinar on Key Aspects of RERA by CA. Vinay Thyagaraj held on 21 September, 2020



Webinar on Companies Acceptance of Deposit Rules 2014, Related Party Transactions and MSME Form-1 by CA. Gururaj Acharya held on 22 September, 2020



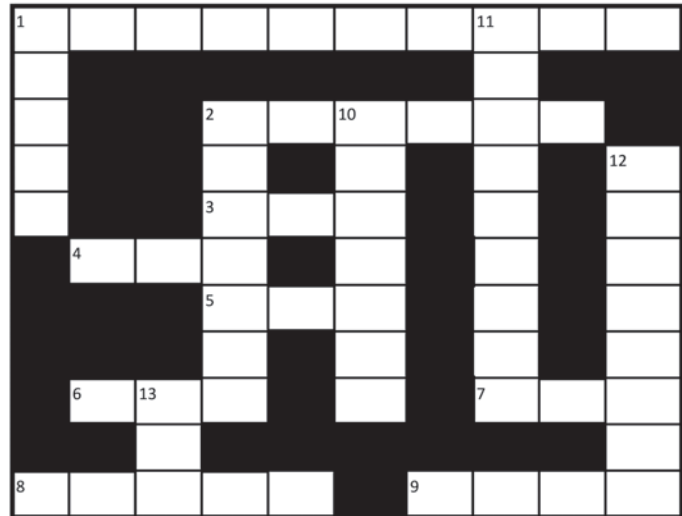
Webinar on Audit of Trust and NPOs in Reference to Standards on Auditing (SAs) by CA. Aniket S Talati held on 26 September, 2020



3 days workshop on Health is Wealth - Yoga for Women by CA. Pooja Jain

W
C R O S S S
R
D

2



ACROSS	
2	A new kind of currency without a central bank / admin, which is in a cryptographic digital form (7)
10	Method of combining or aggregating multiple financial obligations to arrive at a net obligation amount (7)
11	Supply comprising of two or more goods/services which is naturally bundled and supplied together in ordinary course of business one of which is a principal supply (9)
12	An accounting is an approximation of the amount of a business transaction for which there is no precise means of measurement (8)
13	This principle relates to assignment of various steps in a process to different people. It is one of the basic building block of internal controls for a business (Abbreviation)(3)

DOWN	
1	Procedures relating to evaluations of financial information through analysis of plausible relationships among both financial and non-financial data as per SA 520 (10)
2	The type of fraud which relates to buying of a property by one person in some other's name which is also an exception to Faceless assessments (6)
3	Service level agreements defines this metric which is associated with timeliness (Abbreviation)(3)
4	An office under the Indian Ministry of Corporate Affairs that deals with administration of LLP and Companies Act. (Abbreviation)(3)
5	The items comprised in this does not affect the net income (as provided by IND AS) (Abbreviation)(3)
6	A numeral /code used to classify goods for taxation purposes as provided by the world customs organisation (Abbreviation)(3)
7	This is used to measure the value a company generates from funds invested in it. Also known as economic profit of a company (Abbreviation)(3)
8	An investment that is made with the intention of reducing the risk of adverse price movements in an asset. The accounting model of this is provided in IND AS 109 (5)
9	Payment for service of employees at an hourly rate (4)

Answers will be published in next month's News Bulletin.

SUDOKU-2

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1	8	4	9					
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Answers to "Cross Word 1" (September 2020)

ACROSS:

1. Annuity, 2. LTCG, 3. Data, 4. Fraud, 5. ARN, 6. AI, 7. Debt, 8. Quality

DOWN:

1. Attest, 9. Yield, 10. Fair, 11. Index, 12. AUM, 13. Integrity, 14. Nil



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