

# KSCAA®

Karnataka State Chartered Accountants Association (R)

## NEWS BULLETIN

- ▶ CARO ▶ RERA ▶ Financial Reporting
- ▶ IPR ▶ IoT And Its Security ▶ MSME

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# INTEREST ON COMPENSATION OF AGRICULTURAL LAND





Dear Reader,

I presume majority of Cas in practice are all very busy in the month of filing returns and closing the financials, living through very tough times in profession and practice with frequent deadlines. It can get monotonous at times but the profession is surely geared to take this challenge.

8th December 2021 was a sad day for the whole country, with the loss of a person with the highest post in defense due an unforeseen incident - CDS Bipin Rawat and his fellow officers on duty. The whole country mourned for the loss and demise of one of the highest ranked officers of our country.

The Pandemic has taken a new turn with a new variant in virus, Omicron. India has already received cases with Omicron and Government is also briefing up the ecosystem to cause lesser damage. Although it has mutated several times faster than the earlier viruses, the world of science has also cautioned against excess panicking and travel bans. We also hear the news that the results against the same being more risker and thus encouraging to see the light at the end of the tunnel.

KSCAA after a break of one year due to pandemic is now back with its most awaited Sports day and talent day, which is scheduled and planned on 11th and 12th of Dec 2021. The event historically has a participation of a more than 400 to 500 CAs and their family members, who would join to participate and display highest amount of sportsmanship. This time, we also have live relay of the cricket event with the hope that those could not participate can enjoy the same back in home.

Our mega event, Annual conference will be in March 2021 and we are still contemplating whether to conduct the same through virtual or physical mode. Our hearts still stay physically to welcome you all, network, introspect on what we do, contemplate new ideas, and reaffirm our paths.

## News Roundup

### Direct Tax

#### Judicial developments:

- ✓ Delhi HC: No deemed dividend arises if sum is advanced to shareholder against sale of property.
- ✓ Gujarat HC: AO to allow TDS credit to employee even if TDS isn't deposited by employer. Where TDS has been deducted by employer of assessee, it will always be open for department to recover same from said employer and credit of same could not have been denied to assessee.
- ✓ ITAT Jaipur : Sum received from husband with no intention to repay isn't loan no violation of Sec. 269SS.
- ✓ ITAT Delhi: Amendment disallowing employee's contribution to ESI/PF has no retro-effect. FA 2021 amendment to section 36(1)(va) does not apply to any AY prior to AY 2021-22.

#### Executive developments:

- ✓ CBDT issues more clarifications on deduction & collection of tax at source u/s 194-O, 194Q & 206C(1H) circular no. 20 of 2021 [f.no.30142/56/2021-tpl], dated 25-11-2021.
- ✓ Fin Min :India and USA agree on transitional approach on equalization levy on e-commerce operators.

### Indirect Tax

"The GST Collections are reaching newer levels each passing month and the month of November is no exception, it has reached a gross collection of Rs. 1,31,526 crore and it has been the second-highest collection since the introduction of GST. GST Portal is also undergoing constant update and

this month the portal has incorporated enhancements, some of the important enhancements include enabling the functionality of EVC for all taxpayers and many more. I also want to inform our members that November has been an eventful month for KSCAA – IDT Committee, we have launched our short videos discussing topics that are the need of the hour, the videos have received tremendous support from the viewers. We request all members to make use of this opportunity."

### Corporate and Allied Laws

Companies Act, 2013 – Verification of DINs to be de-flagged on expiry of disqualification

The Ministry of Corporate Affairs recently issued a public notice posted on its portal in which it had flagged the DINs of Directors found to be disqualified under sub-section 2(a) of section 164 of the Companies Act, 2013 w.e.f. 1st November 2016 for a period of five years. This is for the information of all the concerned that DINs eligible to be de-flagged on expiry of the period of disqualification are in the process of verification. Necessary action shall be taken shortly.

### Reserve Bank of India

#### i. Re-appointment of RBI Governor for a period of three years

The Ministry of Finance through Department of Financial services vide Notification S.O.4597(E) dated 29.10.2021 exercises the powers conferred by clause (a) of sub-section (1) r/w sub-section (4) of Section 8 of the Reserve Bank of India, Act 1934, wherein the Central Government hereby re-appoints Shri Shaktikanta Das, as the Governor of RBI, for a period of three years.

#### ii. Clarification on prudential norms on IRAC

The Reserve Bank of India, vide its circular dated 12th November 2021, has issued clarification on certain aspects of the extant regulatory guidelines to harmonize and to ensure uniformity in the implementation of Income Recognition, Asset Classification and Provisioning - IRACP norms across all lending institutions. For complete details, please refer to circular - RBI/2022-2022/125 DOR.STR.REC.68/21.04.048/2021-22 dated 12.11.2021.

#### iii. RBI cautions Co-operative Societies from using the word "Bank" in their names

The RBI in its press release dated 22.11.2021 has advised the members of public to exercise caution while dealing with Co-operative Societies as they cannot use the words "bank", "banker", or "banking" as part of their names, except as permitted under the provisions of Banking Regulation Act, 1949.

### Conclusion

I strongly feel that we are living in times of severe fear and the resultant distress isn't just appropriate to growth. Fear can only breed fear, the character with fear is being camouflaged as real. The fear prisms even the starkest of reality and pushes them more deeper to fear. The way to come out of this is to breathe new thought, start afresh, and then see fear slowly fading out. Helen Keller once said, "Avoiding danger is no safer in the long run than outright exposure. The fearful are caught as often as the bold". Let us explore to newer opportunities, newer things and see the world as colourful as it is.

Happy Reading!

Yours' faithfully,

**CA. Chandan Kumar Hegde A**  
President



# KSCAA<sup>®</sup>

## NEWS BULLETIN

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## KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)

### VISION

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

### MISSION

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

### MOTTO: KNOWLEDGE IS STRENGTH

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

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#### Disclaimer

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CA. Parthasarathy Sudarsanam  
CA. Udupi Vikram

# REPORTING REQUIREMENTS UNDER CARO, 2020 AND RECOMMENDED AUDIT PROCEDURES

(PART III OF CARO SERIES)

This article is in shared in parts, bringing out additional, modified requirements and a clause which has been dispensed with.

The current article covers the continuation from previous issue on **additional and new clauses under CARO 2020 up to clause ix**

Relevant Audit Considerations	Audit Procedures	Reporting and Documentation
<b>Short term funds</b> Whether funds raised on short term basis have been utilised for long term purposes, if yes, the nature and amount to be indicated <b>Paragraph 3(ix)(d)</b>		
<ul style="list-style-type: none"> <li>The principles of financial management suggest that the long-term assets of an entity should be financed from long term funds. The genesis of the principle is that if funds raised from short term sources are used for long-term purposes, the entity can face liquidity problems as soon as the short-term sources fall due for payment.</li> <li>However, an exception to the principle would be the situation where an entity is able to generate sufficient funds from long term sources either through its operations or other means to meet the working capital requirements arising from the event of short-term sources falling due for payment.</li> <li>Examples of use of funds raised on short term basis and used for long-term purposes would include investing money from overdraft facilities in long-term investments</li> </ul>	<ul style="list-style-type: none"> <li>Certain companies deploy funds based on their respective maturity pattern as a risk management technique. In case a company does so, it would be easier for the auditor to comment upon this clause since a comparison of sources of funds with their deployment based on their respective maturity patterns would be a significantly more sophisticated way of analysing whether short-term funds have been used to finance long-term assets of the company. To take a simple example, if an entity has a long-term debt that is to mature within the next 12 months and an equivalent amount in a long-term investment that would mature after 3 years, the maturity pattern analysis would indicate the potential inability to meet the liability on the debt on due date, but the traditional analysis such as reviewing a fund flow statement would not do so.</li> <li>This clause also requires the auditor to state the nature of application of funds if the company has financed long-term</li> </ul>	<ul style="list-style-type: none"> <li>An example of reporting under this clause is as follows: According to the information and explanations given to us, and the procedures performed by us, and on an overall examination of the financial statements of the company, we report that no funds raised on short-term basis have been used for long-term purposes by the company.</li> <li>An example of unfavourable reporting under this clause is as follows: According to the information and explanations given to us, and the procedures performed by us, and on an overall examination of the financial statements of the company, we report that the company has used funds raised on short- term basis aggregating to Rs. X crores for long-term purposes.</li> </ul>



Relevant Audit Considerations	Audit Procedures	Reporting and Documentation
<p>in shares of subsidiaries/associates/joint ventures or investing money raised from public deposits due for repayment in three years in a project whose pay-back period is ten years.</p> <ul style="list-style-type: none"> <li>The auditor should determine the long-term sources and the long-term application of funds by a company using the data combined in the financial statements. If the quantum of long-term funds of a company is not significantly different from the long-term application of funds, it is an indication that the long-term assets of the company are financed from the long-term sources. However, if the quantum of long-term funds is significantly less than the long-term application of funds, it is an indication that short-term funds have been used to finance the long-term assets of the company. The difference between figures of long-term funds and long-term assets of the company indicates the extent to which short term funds have been used to finance long-term assets of the company.</li> </ul>	<p>assets out of short-term funds. The nature of application of funds can be determined only if the funds raised can be directly identified with an asset. The determination of direct relationship between particular funds and an asset from the balance sheet may not be feasible. Further, such movement in funds should be supported by relevant documentation. A more practical approach would be to determine the overall <b>picture of the sources and application of funds of the company unless an evident trail is available that enables the auditor in establishing a direct relationship between sources and application of funds. Also, as money is fungible, the auditor may also review the cash flow statement to determine whether short term funds have been used for long term purposes.</b></p> <ul style="list-style-type: none"> <li>Typically, a current ratio of less than 1 will be an indicator that short-term funds have been used to finance long-term assets of the company. For the purpose of calculating current ratio, current maturities of long term borrowings should be considered as non-current liability.</li> </ul>	

#### Funds borrowed to meet the obligations of subsidiaries, associates, JV etc.

Whether the company has taken any funds from any entity or person on account of or to meet the obligations of its subsidiaries, associates or joint ventures, if so, details thereof with nature of such transactions and the amount in each case

#### Paragraph 3(ix)(e)

<ul style="list-style-type: none"> <li>For this clause, definitions of subsidiary, associate or joint venture will be as per provisions of the Companies Act 2013.</li> <li>The lender will include banks, financial institutions, LLPs, trust, government etc irrespective of legal forms.</li> <li>Funds will include both long term and short-term funds.</li> <li>The Act or the Order does not define the word "obligation". In normal parlance, obligation means a as a mortgage or corporate bond) or a commitment to pay debt</li> </ul>	<ul style="list-style-type: none"> <li>Reporting under this clause would normally be required when the company has taken any funds from any entity or any person and has also granted loans or advances in the nature of loans to its subsidiaries, associate companies or joint ventures or has made further investments in such subsidiaries, joint ventures, or associate companies.</li> <li>The auditor needs to consider new loans or advances given during the year and new investments (equity or debt investment) made during the year for the purpose of reporting under this clause. Therefore, if there are no such transactions during the year, the auditor may conclude that the company has</li> </ul>	<ul style="list-style-type: none"> <li>Based on the procedures performed, the auditor shall determine the amount of funds that the company has borrowed to grant loans or advances or to meet the obligations of its subsidiaries, joint ventures and associates.</li> <li>The auditor may also consider obtaining suitable management representation letter in this regard.</li> <li>An example of reporting under this clause is as follows: According to the information and explanations given to us and on an overall examination of the financial statements of the company, we report that the company has not taken any funds from any entity or</li> </ul>
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Relevant Audit Considerations	Audit Procedures	Reporting and Documentation
<p>security (such a particular sum of money. Therefore, obligation of subsidiary, joint venture or associate would mean the amounts that such subsidiaries, joint venture, or associate companies are required to pay themselves either to their vendors, lenders, employers, or statutory authorities. When a company pays these amounts on behalf of its subsidiaries, joint ventures or associate companies, the amount so paid is generally treated as an asset either as loan, advance, or other current/ non-current assets in the financial statements of the company</p> <ul style="list-style-type: none"> <li>Reporting under this clause will be required for all funds taken during the year even if these have been repaid before the year end. Further, reporting will be required where funds were taken in earlier years and were repaid during the year or are outstanding as at the year end.</li> <li>The auditor is expected to perform procedures to ensure compliance with AS 18, "Related Party Disclosures" or Ind AS 24, "Related Party Disclosures" (as the case may be) and SA 550, Related Parties.</li> </ul>	<p>not taken any funds from any entity or person on account of or to meet the obligations of its subsidiaries, associates or joint ventures.</p> <ul style="list-style-type: none"> <li>The auditor should obtain list of all subsidiaries, associates and joint ventures from the company. The auditor should also obtain details of all loans, advances including advances in the nature of loans granted to subsidiaries, associates and joint ventures and investments made in such companies.</li> <li>The auditor should also obtain schedule of related party transactions and verify the loans and advances including advances in the nature of loans granted to subsidiaries, associates and joint ventures or expenses incurred or paid on behalf of subsidiaries, joint ventures and associate companies.</li> <li>The auditor should obtain balance confirmations from subsidiaries, joint ventures, and associate companies.</li> <li>It is possible that the financial statements of subsidiaries, joint ventures, and associates are audited by another auditor. In such cases, the principal auditor may consider seeking specific information from the auditors of the components.</li> <li>The auditor should obtain schedule of all borrowings. In case of term loans, the auditor would have performed the procedures described for the purpose of reporting under clause 3(ix)(c) and would have identified diversion of funds for the purpose of granting loans or advances to subsidiaries, joint ventures and associates or to meet the obligations of these entities. However, since the requirement is to report on both long term and short term funds, the auditor will also need to verify the utilisation of borrowed funds other than term loans.</li> <li>A review of Cash flow statement will give enough evidence for the auditor regarding the source of investment/ loans etc made into related parties.</li> </ul>	<p>person on account of or to meet the obligations of its subsidiaries, associates or joint ventures.</p>

Relevant Audit Considerations	Audit Procedures	Reporting and Documentation														
<ul style="list-style-type: none"><li>An example of un favourable reporting under this clause is as follows: According to the information and explanations given to us and on an overall examination of the financial statements of the company, we report that the company has taken funds from following entities and persons on account of or to meet the obligations of its subsidiaries, associates or joint ventures as per details below:</li></ul> <table><tr><th>Nature of fund taken</th><th>Name of lender</th><th>Amount involved</th><th>Name of subsidiary, JV, associate</th><th>Relation</th><th>Nature of transaction for which fund is utilised</th><th>Remarks, if any.</th></tr><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>			Nature of fund taken	Name of lender	Amount involved	Name of subsidiary, JV, associate	Relation	Nature of transaction for which fund is utilised	Remarks, if any.							
Nature of fund taken	Name of lender	Amount involved	Name of subsidiary, JV, associate	Relation	Nature of transaction for which fund is utilised	Remarks, if any.										
<p>Loans raised loans against the pledge of securities held in its subsidiaries, joint ventures or associate companies and reporting on default in repayment.</p> <p>Whether the company has raised loans during the year on the pledge of securities held in its subsidiaries, joint ventures or associate companies, if so, give details thereof and also report if the company has defaulted in repayment of such loans raised Paragraph 3(ix)(f)</p>																
<ul style="list-style-type: none"><li>Under this clause, the auditor is required to report:</li><li>Whether the company has raised loans during the year on the pledge of securities held in its subsidiaries, joint ventures or associate companies;</li><li>If yes, give details of such loans; and</li><li>Report if the company has defaulted in repayment of such loans raised.</li><li>Further, it is clarified that reporting under this clause would cover all loans taken during the year even if these have been repaid during the year. Further, reporting is required only in case of loans taken during the year, therefore loans taken in earlier years and outstanding as at the balance sheet date need not be reported.</li></ul>	<ul style="list-style-type: none"><li>The auditor should obtain schedule of all loans raised during the year. It is clarified that this clause does not specify the lender, and therefore the reporting under this clause will include loans taken during the year from any lender.</li><li>The auditor should verify the loan agreements or other documents such as term sheets to check the nature of security against such loans.</li><li>When a company obtains loans by pledging such investments, it will be required to create a charge under section 77 of the Act. The auditor should obtain and verify the documents related to charges created including any modification thereof. This together with procedures performed in paragraph 3(ix)((e) above will ensure that the auditor is able to identify whether loans have been obtained by way of pledge of securities held in its subsidiaries, joint ventures or associate companies.</li></ul>	<ul style="list-style-type: none"><li>The auditor may consider obtaining management representations.</li><li>Clause 3(ix)(a) of the Order requires the auditor to report whether the company has defaulted in repayment of loans or other borrowings or in the payment of interest thereon to any lender, and if yes, the period and the amount of default to be reported. Since the requirement of clause 3(ix)(a) is to report on defaults in case of all lenders, the auditor would have already performed necessary procedures even in respect of loans referred to in this clause.</li><li>An example of reporting under this clause is as follows: According to the information and explanations given to us and procedures performed by us, we report that the company has not raised loans during the year on the pledge of securities held in its subsidiaries, joint ventures or associate companies.</li></ul>														



Relevant Audit Considerations	Audit Procedures	Reporting and Documentation
<ul style="list-style-type: none"> <li>Default will include both repayment of principal and payment of interest. It may happen that the lender has invoked the security for repayment of loan. A security is generally invoked where there has been a default. Accordingly, such cases will need to be reported under this clause.</li> <li>As per Indian Contract Act, 1872, pledge is a contract where a person deposits an article or good with a lender of money as security for the repayment of a loan or performance of a promise.</li> </ul>		

Relevant Audit Considerations	Audit Procedures	Reporting and Documentation
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An example of un favourable reporting under this clause is as follows:

According to the information and explanations given to us and procedures performed by us, we report that the company has raised loans during the year on the pledge of securities held in its subsidiaries, joint ventures or associate companies as per details below. Further, the company has not defaulted in repayment of such loans raised.

Nature of loan taken	Name of lender	Amount involved	Name of subsidiary, JV, associate	Relation	Details of security pledged	Remarks, if any.

According to the information and explanations given to us and procedures performed by us, we report that the company has raised loans during the year on the pledge of securities held in its subsidiaries, joint ventures or associate companies and has defaulted in repayment of such loans as per details below.

Nature of loan taken	Name of lender	Amount involved	Name of subsidiary, JV, associate	Relation	Details of security pledged	Whether there is default in repayment of loan.

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# INDIRECT TAX UPDATES

Indirect Tax

## Important decisions:

### 1. UoI vs. Bharti Airtel Ltd., 2021] 131 taxmann.com 319 (SC)

**Background:** The assessee initially assessed tax liability and remitted the output tax in cash and also filed GSTR-3B. However, upon updation of GSTR-2A, wherein an additional amount of input tax credit was available, the assessee sought for rectification of the GSTR-3B to claim the credit. On rejection of the claim, the matter was carried to the High Court wherein Circular No. 26/26/2017 GST dated 29-12-2017 was challenged. The High Court allowed for rectification of the returns and read down the clarifications issued in terms of the said circular.

The said order of the High Court was challenged before the Supreme Court by the revenue.

**Held:** The Supreme Court allowing the appeal of the revenue observed as below:

- The express provision in the form of section 39(9) clearly posits that omission or incorrect particulars furnished in the return in Form GSTR-3B can be corrected in the return to be furnished in the month or quarter during which such omission or incorrect particulars are noticed. As this very position has been restated in the impugned Circular, it is not contrary to the statutory provisions.
- Form GSTR-2A is only a facilitator for making an informed decision while doing such self-assessment. Non-performance or non-operability of Form GSTR-2A or for that matter, other forms, will be of no avail because the dispensation stipulated at the relevant time obliged the registered person to submit returns on the basis of

such self-assessment in Form GSTR-3B manually on the electronic platform.

Therefore, Supreme Court held that as any errors in the returns could be rectified in the returns for the period when such errors are noticed, there is no requirement of allowing rectification of the earlier GSTR-3B.

### 2. CEAT Ltd Vs UoI 2021-TIOL-2231-HC-PATNA-GST

**Background:** Show cause notice was issued to the assessee on 14.02.2021 and the reply was filed by the assessee on 24.02.2021, which provided 15 days time to file a reply. However, without waiting for the reply, the assessing authority passed the order on 23.02.2021

**Held:** Considering the provisions of rule 100 of CGST Rules, 2017, the Court, while quashing the impugned order observed that the order is not sustainable in as much as the order has been passed without waiting for the reply which was filed by the assessee within the time limits as provided in the show cause notice.

### 3. Kusum Healthcare Pvt Ltd Vs CCE & ST, 2021-TIOL-713-CESTAT-DEL

The issue before the CESTAT was whether remittances of foreign exchange to their foreign branch office for maintenance of the said branch would attract the levy of service tax as import of services.

The Tribunal considering the provisions of section 65B(44) of Finance Act 1994, which defines the phrase 'service', observed that there is no provision of any taxable service by the branch towards the transfer of funds by the head office and hence no service tax could be demanded.

### 4. Tirupati Balaji Furnaces (P.) Ltd. vs Commissioner,

## Central Goods and Service Tax, [2021] 132 taxmann.com 264 (New Delhi – CESTAT)

The issue before the tribunal was whether forfeiture of earnest money deposit by the assessee for the reason of non-delivery of goods could be termed as consideration towards services of toleration of the defaulting act of the other person.

The Tribunal observed that neither the appellant is carrying out any activity for the purpose of receiving compensation, nor the parties have agreed to breach or violate the contract and suffer losses. The purpose of compensation is to ensure that the default is not undertaken again or repeated, and retention of earnest money cannot be said to be an act of receiving consideration towards parties. Therefore, the question of retention amounts being treated as consideration towards tolerating an act does not arise.

### 5. IDP Education India (P.) Ltd. v. Additional Director General of Central Excise Intelligence, New Delhi, [2021] 132 taxmann.com 16 (New Delhi - CESTAT)

The assessee entered into an agreement with their parent company, IDP Australia to act as a subcontractor of the parent company, for the purpose of recruitment of students for various Australian universities. These services of the assessee were treated as intermediary services and service tax was demanded.

In this background, the Tribunal setting aside the service tax demand observed that there is nothing on record to show that the assessee is liaisoning or acting as an intermediary between the foreign universities and IDP Australia. All that is evident from the records is that the assessee is providing the services which have been sub-contracted to it by M/s IDP Australia. As a subcontractor, it is receiving commission from the main contractor for its services. Therefore, the services do not fall under the ambit of intermediary services.

### 6. Indian Additives Ltd.v. Commissioner of GST & Central Excise, [2021] 131 taxmann.com 111 (Chennai - CESTAT)

The issue before the Tribunal was whether the service tax on royalty payable to the foreign company under reverse charge mechanism has to be computed on the amount paid to the foreign company or on the amount of royalty paid and income tax (TDS) on

such royalty paid by the assessee company.

The Tribunal referring to the provisions of section 67 of Finance Act, 1994 and Rule 7 of valuation rules observed that for the purpose of discharge of Service Tax for the services provided from outside India, the value is equal to the actual consideration charged for the services so provided. The Tribunal observed that in the present case based on the invoice/bill raised by the service provider it is clear that the assessee had discharged the consideration as raised in the said invoice/bill. There is nothing on record that indicates that the assessee had recovered that amount of Income-tax paid by them on such amount paid to the service provider from outside India and any other material to hold that this amount is paid as consideration for services received from the service provider. Therefore, the amount of tax (TDS) incurred by the assessee need not be added to the value.

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#### KSCAA REPRESENTATION:

- 1) Memorandum seeking clarification on Section 194A of Income Tax Act, 1961 on TDS Obligations OF Co-Operative Banks / Societies dated 3rd December, 2021 to Shri. J B Mohapatra. the Chairman of Central Board of Direct Taxes.

*For full text of above representation,  
please visit: [www.kscaa.com](http://www.kscaa.com)*





CA. G. B. Srikanth Acharya  
Adv. Vasanth Kumar J

# LATEST AMENDMENTS UNDER GST

## Circular No. 165/21/2021-GST for Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020 -Reg.

**Issue:** Relaxation has been provided in respect of issuance of Invoice without the Dynamic QR Code for the supply of service in a case, where the recipient is located outside India, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in foreign currency, through RBI approved medium.

But whether the relaxation from the requirement of dynamic QR code on the invoices would be available to such supplier, who receives payments from the recipient located outside India through RBI approved modes of payment, but not in foreign exchange.

**Substitution** – The Entry at S. No. 4 of the Circular No. 156/12/2021-GST dated 21st June, 2021 is substituted as below:

4	"In cases, where the receiver of services is located outside India, and payment is being received by the supplier of services, through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?"	No. Wherever an invoice is issued to a recipient located outside India, for the supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier."
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**Comment:** Earlier relaxation was made applicable only when payments were received from the recipient located outside India through RBI approved modes of payment, in foreign exchange.

With this amendment in the case of the supply of services mentioned in the above table, an Invoice may be issued by the supplier without the Dynamic QR Code even if payment is not received in Foreign Exchange.

## Circular No. 166/22/2021-GST for Clarification on certain refund-related issues- reg.

There are certain refund-related issues for which clarification was issued vide Circular No. 166/22/2021-GST as under;

S. No.	Issue	Clarification
1	Whether the provisions of subsection (1) of section 54 of the CGST Act regarding the time period, within which an application for refund can be filed, would be applicable in cases of refund of excess balance in electronic cash ledger?	No, the provisions of sub-section (1) of section 54 of the CGST Act regarding the time period, within which an application for refund can be filed, would not be applicable in cases of refund of excess balance in electronic cash ledger.
	Comment: The true object of giving a refund without specifying the time limit is a welcome move.	

S. No.	Issue	Clarification
2	Whether certification/ declaration under Rule 89(2)(l) or 89(2) (m) of CGST Rules, 2017 is required to be furnished along with the application for refund of excess balance in electronic cash ledger?	No, furnishing of certification/ declaration under Rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases.
	<b>Comment:</b> There is no situation that arises passing incidence of tax to others in case of excess balance in electronic cash ledger. Clarity is provided properly for the non-requirement of certificate/ declaration.	
3	Whether refund of TDS/TCS deposited in the electronic cash ledger under the provisions of section 51 /52 of the CGST Act can be refunded as excess balance in the cash ledger?	The amount deducted/ collected as TDS/TCS by TDS/ TCS deductors under the provisions of section 51 /52 of the CGST Act, as the case may be, and credited to the electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose of discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per his choice and availability of balance in the said ledgers.

S. No.	Issue	Clarification
3		Any amount, which remains unutilized in the electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in the electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of CGST Act.
4	Whether relevant date for the refund of tax paid on supplies regarded as deemed export by the recipient is to be determined as per clause (b) of Explanation (2) under section 54 of CGST Act and if so, whether the date of return filed by the supplier or date of return filed by the recipient will be relevant for the purpose of determining relevant date for such refunds?	Clause (b) of Explanation (2) under Section 54 of CGST Act reads as under: “(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;” On perusal of the above, it is clear that clause (b) of Explanation (2) under section 54 of the CGST Act is applicable for determining relevant date in respect of a refund of the amount of tax paid on the supply of goods regarded as deemed exports, irrespective of the fact whether the refund claim is filed by the supplier or by the recipient.

S. No.	Issue	Clarification
		Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of the return, related to such supplies, by the supplier.
	<b>Comment:</b> From the above clarification it can be understood that the relevant date for claiming refund of deemed export transaction even for recipient also the relevant date is the date of filing of return by the supplier and not the due date of furnishing the return.	

#### **Taxable Goods - Notification No.13/2021-CT (Rate) dated 27<sup>th</sup> October 2021.**

**Omission** of entry Sl. No. 243 in Schedule II of the Not.01/2017-CT(rate) dated 28-06-2017 “Permanent transfer of Intellectual Property (IP) right in respect of goods other than Information Technology software”

**Deletion** of words and expression in Sl. No. 452P in Schedule III of the Not.01/2017-CT(rate) dated 28-06-2017 “Permanent transfer of Intellectual Property (IP) right in respect of Information Technology software”

**Comment:** GST law recognises temporary transfer or permitting the use or enjoyment of any intellectual property right as a supply of service and Permanent transfer of Intellectual Property right as a supply of goods.

Permanent transfer of Intellectual Property rights was classified as a supply of goods under entry Sl. No. 243 of Schedule II relating to goods taxable at 12%. Whereas permanent transfer of Intellectual Property (IP) right in respect of Information Technology software classified under Sl. No. 452P of Schedule III taxable at the rate of 18%.

With this amendment Permanent transfer of Intellectual Property right both goods as well as Information Technology software is classified under one entry at Sl. No. 452P of Schedule III taxable at 18%.

#### **Taxable Services- Notification No.15/2021-Central Tax (Rate) Dated 18/11/2021 amends the Notification No. 11/2017, Dt 28/06/2017, which deals with taxable service.**

**Deletion** of words and expression “a Governmental Authority or a Government Entity” in Sl. No. 3 of item No. III, VI, VII, IX & X of Notification No.11/2021 dated 28-06-2017.

**Comment:** The above entries specify Composite supply of works contract services to a Governmental Authority or a Government Entity at concessional rate of tax.

With this amendment supply of works contract services to a Governmental Authority or a Government Entity is now at the rate of 18%.

**Insertion** - serial number 26, in column (3), in the heading “Description of Services” item (i), in clause (b) the word “except services by way of dyeing or printing of the said textile and textile products”.

**Comment:** The said entry specifies job work service provided by way of certain goods are liable at 5%. With this amendment Job work services relating to textiles and textile products i.e. dyeing or printing is liable to tax at 12% under entry No. 26(id) under residual class.

**Exempted Services-** Notification No.16/2021-Central Tax (Rate) Dated 18/11/2021 amends the Notification No. 12/2017, Dt 28/06/2017, which deals with exemption of services.

**Deletion** of words and expression “a Governmental Authority or a Government Entity” in Sl. No.3 & 3A of the Notification No.12/2021 dated 28-06-2017.

**Comment:** Notification 12/2017 deals with exemption on supply of services. Sl. No. 3 of the said notification specifies exemption on pure service other than works contract service provided to Central Government, State Government or Union territory or Local authority or a Governmental authority or a Government Entity in relation to functions entrusted under article 243G and 243W of the Constitution.

**Sl. No. 3A specifies exemption on works contract services where the value of goods involved is less than 25% to Central Government, State Government or Union territory or Local authority or a Governmental authority or a Government Entity in relation to functions entrusted under article 243G and 243W of the Constitution.**



With this amendment, the above-referred services provided to a Governmental authority or a Government Entity shall become taxable at 18%.

**Insertion of Proviso to clause (b) & (c) of Sl. No. 15 of No.12/2021 dated 28-06-2017** "Provided that nothing contained in items (b) and (c) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017)".

**Comment:** Entry 15 clause (b) & (c) provides exemption on the transport of passengers, with or without accompanied belongings, by non-air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or stage carriage other than air-conditioned stage carriage.

With the above amendment, the said services shall become taxable, if it is provided through an electronic commerce operator.

**Insertion of Proviso to clause (e) of Sl. No. 17 of No.12/2021 dated 28-06-2017** "Provided that nothing contained in item (e) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017)".

**Comment:** Entry 17 clause (e) provides exemption on Service of transportation of passengers, with or without accompanied belongings, by metered cabs or auto rickshaws (including e-rickshaws).

With the above amendment, the said service shall become taxable if it is provided through an electronic commerce operator.

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CA. Vinay Thyagaraj

# RERA – NOTE ON REGISTRATION OF REAL ESTATE PROJECT (PART - VII OF RERA SERIES)

Real Estate projects having more than 500 square meters of project land or more than 8 units are required to mandatorily apply for registration with RERA Authorities. It is the primary responsibility of the promoter to apply for RERA registration if the intention is to sell, market, or collect advance. Such application shall be submitted soon after receiving the sanctioned plan from the planning authorities.

In recent days, Karnataka RERA has enhanced the RERA Registration module and requires the submission of detailed information, additional documents while granting registration for the Real Estate Project.

- A. The promoter shall be aware of the provisions of the RERA Act to carry out the business and professionals shall understand the RERA Act to advise their customers. The Act provides for various business aspects for carrying out the real estate business viz.,
  - 1) Approvals, Validity, Extension, Modification – Section 3, 4,5,6 and Section 14
    - a. Promoter shall obtain applicable approvals, NOCs before marketing the project to the customers
    - b. In case of modification of the plan, the requirement of prior consent of allottees
    - c. Existence of validity of the project registration till completion of the project
    - d. Well in advance extension application and approvals thereon
  - 2) Sales and Marketing – Section 3, 11, and Section 12
    - a. when to make sales – Prior registration of the project – Section 3
    - b. how to make sales – mandatory mentioning of the RERA Registration number and the veracity of advertisement – Section 11 and Section 12
    - c. who shall promote the project – only registered real estate agent shall promote the project – Section 9,10 and 11,
  - 3) Financial management – realization of money, the deposit of funds, and utilisation of funds shall be in

accordance with section 4(2)(L)(D)

- a. Maintenance of ProjectWise designated bank account for each project
- b. Mandatory deposit of 70% money realised from the allottees
- c. Obtaining the professional certificates before the withdrawal of 70% from the designated bank account
- d. Such withdrawal of funds shall be proportionate to the project's percentage completion.
- e. Utilisation of withdrawn funds for project purposes.
- 4) Legal title, Encumbrance, Litigation
  - a. Promoter having clear legal title/ownership on the project land
  - b. Disclosure of encumbrance on the project land
  - c. Disclosure of litigation on the project land
  - d. Promoter shall not mortgage the units booked by the allottee
- 5) Start Date and End Date – Section 4, Section 18
  - a. The promoter shall provide the Start Date and End Date of the project. To mean the promoter shall complete the project's development works within the timelines mentioned in the application for grant of registration.
  - b. The promoter shall plan their development works considering all situations, circumstances before committing the end date.
  - c. Delay in completing the development work in the project may result in compensating the allottees in the project, which has a direct impact on the profitability/financial viability of the project
- 6) Quality and Defect Liability – Section 14
  - a. The promoter is obligated to rectify the structural defect, workmanship, quality, or provisions of service for five years from the date of possession. The promoter shall have adequate quality checks,

proper standard operating procedures, handover process to mitigate the risk.

- 7) Obtaining the Insurance
  - a. On the construction and the title of the Land
- 8) Usage of standard documents for customer transactions
  - a. Contents of the documents in compliance with the RERA Act, Rules viz., booking form, allotment letter, Agreement for sale, etc
- 9) Periodical reporting –
  - a. Quarterly updates, Annual Audit, and Completion of project development work. This periodical reporting helps the stakeholders be aware of the progress of development work and allows the new customers to make informed decisions before they book the unit on the project.
- 10) Involvement of Professionals throughout the project life cycle -
  - A. The RERA Act mandates the Engineer, Architect, Chartered Accountant to certify the percentage completion of the project and allows the promoter to withdraw the money from the project designated bank account.
  - B. Promoters or professionals may experience or feel that the RERA is unreasonable in asking the details while filling the application for grant of RERA Registration. I wish to state to the readers that the details as per the Karnataka RERA registration module are entirely in line with the provisions of the RERA Act and Karnataka RERA Rules. This being so, let us understand the information, documents required while applying for the grant of RERA Registration. Following details are required –
    - 1) Scheme of the project – the promoter or professionals shall understand the entire scheme of the project
    - 2) All Legal Documents – to identify and satisfy the legal ownership of the project land
    - 3) Revenue or Municipal Records as applicable
    - 4) Project Plan Approvals – Approved Plan letter, Sanction plan from planning authority
    - 5) NOCs – Applicable NOCs based on the project size, locality. Few NOCs are mandatory irrespective of the size and location of the project.
    - 6) Development details in the project – details of the development works in the project based on the scheme of development
    - 7) Technical / Engineering Documents – Sectional plan, floor-wise plans with proper marking in the documents.

- 8) Estimated Cost of the Real Estate Project – this is critical information that shall be calculated considering the scheme of the project, extent, time to deliver the project.
- 9) Legal Draft Documents – Booking form, Allotment letter, Agreement for Sale, Sale Deed – the contents of the documents shall comply with the provisions of the RERA Act.
- 10) Professional details and certificates – Registration module mandates professionals viz., Architect, Engineer, Chartered Accountants' details and Certificates. The certificate contains various information viz, project address, project development details, the project estimated cost, designated bank account details.
- 11) Form B, Sec 3(1), Landowner Affidavit, No mortgage Affidavits on Rs.20/- stamp paper duly notarised.
- 12) Area Statement – promoter shall provide unit-wise details of carpet area, exclusive common area, common area, and undivided share in the land. This information shall match/tally with the building sanctioned plan provided by the planning authority.
- 13) RERA Designated bank account details and pass sheet – the bank account shall be opened in the name and style as notified by Karnataka RERA viz., Promoter Name, RERA Project Name. Promoter shall upload the pass sheet or passbook copy on the portal.
- 14) KYC of promoters, landowners, authorized signatories, directors, partners, etc shall be entered and submit the same proof.
- 15) Promoters background, last five years' track record, earlier projects, three years financial statements (Balance Sheet, Profit and Loss account, Income Tax Returns, Director's report, Cash flow statement and auditors report shall be uploaded online.
- C. Following are the critical definitions to read, understand before applying for the grant of registration –
  - 1) Carpet Area
  - 2) Promoter
  - 3) Real Estate Project
  - 4) Estimated Cost of the Project
  - 5) Internal Development work
  - 6) External Development work
  - 7) Commencement Certificate
  - 8) Occupancy certificate
  - 9) Completion certificate



D. Following are the Important and Critical aspects that shall be considered while filing the application for Grant of Registration of a Real Estate Project –

- 1) In the case of multiple individual landowners, collectively obtained the plan sanction from the planning authority
- 2) In the case of a promoter (especially housing society) collecting money from its members towards advance for the unit in a real estate project before RERA Registration
- 3) How to apply for registration in case of phased development
- 4) How to apply for registration in case of future modification with or without additional FSI/TDR
- 5) Estimate the cost of the project in case of phase-wise construction. Allocation of common costs,

the interest cost, allocation of the cost of common amenities on various projects.

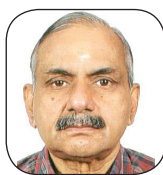
- 6) The schedule of installment or demand shall be in sync with the schedule of development work in the project

To conclude, The applicant shall be careful while filling, providing information for RERA registration. Deficiency of information, documents may result in a delay in getting the registration. False or wrong or deficient documents may lead to rejection of application and forfeiture of registration fees paid. It is recommended to avail the professional services.

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### KSCAA Welcomes New Members November 2021

Sl. No.	Name	Place
1	Swetha S. Kini	Hassan
2	Poonam Jain	Bengaluru
3	Vinay Heeralal Miskin	Bengaluru
4	Gopalkrishna Solanki	Bengaluru
5	N S Sivaswamy	Coimbatore
6	Chitransh Gupta	Uttar Pradesh
7	Nandish Keni	Bellery
8	Harish Kumar Akana	Bengaluru
9	Sowmya	Bengaluru
10	Ashok Chhugamal Kataria	Ahmedabad
11	Pravin Siddharam Panishetti	Bengaluru
12	Shivappa Basappa Nesur	Mahalingapur
13	Hymavathi Karra	Bengaluru
14	Sandeepa	Bengaluru
15	Shareesh Gadde	Bengaluru
16	Shyamasundar Hegde	Bengaluru



CA. S Krishnan

# WHETHER INTEREST AWARDED ON COMPENSATION ON ACQUISITION OF AGRICULTURAL LAND IS TAXABLE?

## 1. Introduction

As per the provisions of section 10(37)(iv) of the Income-tax Act (the Act) compensation received on the acquisition of agricultural lands is exempt.

Let the other relevant provisions of the Income-tax Act be gone through before answering this pivotal question raised in the heading.

### Income from other sources

Section 56(2)(viii) of the Act inserted by the Finance (No.2) Act 2009 with effect from 1st April 2010 reads as under-

"In particular, and without prejudice to the generality of the provisions of sub-section (1) the following incomes, shall be chargeable to income-tax under the head "income from other sources", namely-

- (viii) income by way of interest received on compensation or enhanced compensation referred to in clause (b) of Section 145A."

The purpose for which this section was inserted by the Finance (No.2) Act 2009 was stated in the Memorandum explaining the provisions of Finance (No.2) Bill 2009 thus-

*"Rationalization of provisions for taxation of interest received on delayed compensation or enhanced compensation"*

*The existing provisions of the Income-tax Act provide that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources", shall be computed in accordance with either*

*cash or mercantile system of accounting regularly employed by the assessee. Further, the Hon'ble Supreme Court, in the case of Rama Bai v. CIT [1990] 181 ITR 400 has held that arrears of interest computed on delayed or enhanced compensation shall be taxable on the accrual basis. This has caused undue hardship to taxpayers.*

*With a view to mitigating the hardship, it is proposed to amend section 145A to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be his income for the year in which it is received, irrespective of the method of accounting followed by the assessee.*

*Further, it is proposed to insert clause (viii) in sub-section (2) of section 56 to provide that income by way of interest received on compensation or on enhanced compensation referred to in sub-section (2) of section 145A shall be assessed as "income from other sources" in the year in which it is received.*

*This amendment will take effect from 1st April, 2010 and shall accordingly apply in relation to the assessment year 2010-11 and subsequent assessment years. [Clauses 26, 27, 56]"*

Sections 145 A and 145 B of the Act were substituted for (the then) section 145 A of the Act by the Finance Act 2018, with retrospective effect from 1st April, 2017.

The memorandum explaining the provisions of Finance Bill, 2018 stated the purpose for which the amendments were made to section 145A of the Act which invariably also paved the way for the insertion of section 145B of the Act.

*"Recent judicial pronouncements have raised doubts on the legitimacy of the notified ICDS. However, a large number of taxpayers have already complied with the provisions of ICDS for computing income for the assessment year 2017-18. In order to regularise the compliance with the notified ICDS by a large number of taxpayers to prevent any further inconvenience to them, it is proposed to bring the amendments retrospectively with effect from 1st April, 2017, i.e., the date on which the ICDS was made effective and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years."*

### Section 145 B of the Act, as on date, reads as under

- (1) Notwithstanding anything to the contrary contained in section 145, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received.
- (2) Any claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.
- (3) The income referred to in sub-clause (xviii) of clause (24) of section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.

### 2. Favourable decisions

The Bombay High Court in the case of **Rupesh Rashmikanth Shah v. Union of India** [2019] 417 ITR 169 held that interest awarded in motor accident claim cases from the date of claim petition till the passing of award or judgment in the appeal not being an income, would not be exigible to tax. The Bombay High Court also held that however interest which may be paid for delay in depositing the awarded amount, would not form part of compensation and, therefore, would fall in the bracket of interest income and would be exigible to tax under normal provisions.

The Bombay High Court, in this case, adopted the distinction between interest payable under section 28 and section 34 of the Land Acquisition Act 1894 (the 1894 Act) in the case of **Movaliya Bhikhubhai Balabhai v. ITO (TDS)** [2016] 388 ITR 343 wherein

the Gujarat High Court was pleased to observe that the interest under section 28 which is paid on enhanced compensation has to be treated as an accretion to the value and, therefore, forms part of the enhanced compensation or consideration not partaking character of interest on compensation or enhanced compensation exigible to tax. The Court noticed the Departmental Circular explaining the said amendment in section 145A of the Act and observed as under:

*"Thus, the substitution of section 145A by the Finance (No.2) Act, 2009 was not in connection with the decision of the Supreme Court in CIT v. Ghanshyam (HUF) [2009] 315 ITR 1 but was brought in to mitigate the hardship caused to the assessee on account of the decision of the Supreme Court in Rama Bai (supra) whereby it was held that arrears of interest computed on delayed or enhanced compensation shall be taxable on the accrual basis. Therefore, when one reads the words "interest received on compensation or enhanced compensation" in section 145A of the Income-tax Act, the same has to be construed in the manner interpreted by the Supreme Court in Ghanshyam (HUF) (supra)."*

The Bombay High Court ultimately held that since interest under section 28 of the Act of 1894, partakes the character of compensation, it does not fall within the ambit of the expression "interest" as contemplated in section 145A of the Income-tax Act.

It is to be noted that provisions of section 28 of the 1894 Act deal with interest payable only in respect of the excess amount which is determined by the Court under a reference under section 18 of the 1894 Act. Section 28 of the 1894 Act does not apply to cases of undue delay in making an award of compensation which is being dealt with under section 34 of the 1894 Act.

The Madras High Court speaking through a Hon'ble Single Judge in the case of **Tamil Nadu State Transport Corporation (Salem) Ltd. v. Chinnadurai** [2016] 70 taxmann.com 53 dealing with an accident claim held that interest does not have a different character from compensation itself so that tax deduction was held to be not required. However, the Madras High Court has, on a subsequent occasion, has referred this issue to a Division Bench.

The Delhi High Court in the case of **Surjit Kumar Chetal v. CIT** [2017] 86 taxmann.com 121 (Delhi) held that interest awarded under section 28 of the 1894 Act on the

acquisition of agricultural land partakes the character of compensation satisfying the conditions of section 10 (37) of the Act and thus exempt.

The following Tribunal decisions support this contention of treating the interest as part of compensation and hence exempt.

- (i) Smt. Lakshamma v. ITO [2020] 113 taxmann.com 572 (Bang - Trib.)
- (ii) Narinder Kumar v. ITO in I.T.A. No. 5206/Del/2017 (A.Y 2014-15)-Date of order 12<sup>th</sup> April, 2021
- (iii) Opinder Singh Virk Pravesh Kumar Sharma v. ITO [2019] 104 taxmann.com 270 (Delhi - Trib.)
- (iv) Dnyanoba Shajirao Jadhav v. ITO [2018] 90 taxmann.com 285 (Pune - Trib.)
- (v) ITO v. Chawli Devi [2021] 62 CCH 0130 Chd Trib
- (vi) P. Susheela v. ITO [2016] 48 CCH 0264 Hyd Trib
- (vii) Urvi Chirag Sheth v. ITO [2016] 47 CCH 414 Ahd Trib.

The Ahmedabad Bench of ITAT, in this case, held that "the receipt being in the nature of income is a condition precedent for Section 56 coming into play and not vice versa. To suggest that since an item is listed under section 56(2), even without there being anything to show that it is of income nature, it can be brought to tax is like putting the cart before the horse. The very approach of the authorities below is devoid of legally sustainable merits."

- (viii) Baldev Singh v. ITO [2019] 104 taxmann.com 99 (Delhi - Trib.)
- (ix) ITO v. Vinayak Hari Palled [2018] 99 taxmann.com 90 (Bangalore - Trib.)
- (x) ITO v. Sangappa S. Kudarikannur [2018] 96 taxmann.com 541 (Bangalore - Trib.)
- (xi) ITO v. Basavaraj M Kudarikannur [2018] 95 taxmann.com 106 (Bangalore - Trib.)
- (xii) Jyoti Jayantrao Indurkar v. ITO [2018] 97 taxmann.com 526 (Pune - Trib.) and
- (xiii) Vitthal Gurunath Patil v. ITO in ITA No. 1386/Pune/2017-Assessment Year 2010-11- Date of order- 22<sup>nd</sup> June, 2018

### 3. Punjab and Haryana High Court holds otherwise

However, the Punjab & Haryana High Court in the case of **Mahender Pal Narang v. CBDT [2020] 423 ITR 13**

(P&H), dissenting from the decision of the Gujarat High Court in the case of **Movaliya Bhikhubhai Balabha (supra)**, held that interest received on compensation or enhanced compensation under the 1894 Act is to be treated as 'income from other sources' and not under the head 'capital gains' after observing that "the scheme with regard to chargeability of interest received on compensation and enhanced compensation has undergone change with the insertion of sections 56(2)(viii) and 57(iv) of the Income-tax Act, 1961. A specific provision has been inserted by way of sub-section (2)(viii) of section 56, whereby interest received on compensation or enhanced compensation, as referred to in clause (b) to section 145A has been included under the head "income from other sources". The language of sections 56(2)(viii) and 57(iv) is plain, simple, and unambiguous. There is no scope for taking outside aid for giving an interpretation to the newly inserted sub-sections and clauses."

The SLP filed by the assessee against this decision was dismissed by the Supreme Court- refer **Mahender Pal Narang v. CBDT [2021] 126 taxmann.com 105 (SC)**.

### 4. Answer to the question

The question is answered with a prayer

Though dismissal of SLP without a speaking order or limine is of no consequence on the question of law and does not have binding nature, yet it would be in the fitness of things that an authoritative pronouncement is rendered by the Supreme Court as it may not always be advisable to plan tax affairs based on judicial decisions when one of the judicial authorities has struck a discordant note on the very same issue.

It is said that case laws should be used as a shield and not as a weapon.

However, it should be stated that if the acquisition of the asset is done by resorting to the provisions of RFCTLARR Act, 2013 then no part of the compensation including interest is taxable. This Act does not make a distinction between urban and rural land and the land need not even be agricultural land to claim exemption.

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CA. Vanayak Pai V

# FINANCIAL REPORTING AND ASSURANCE

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

Assurance	<ul style="list-style-type: none"> <li>UK Financial Reporting Council's (FRC) Publication – <i>What Makes a Good Audit?</i></li> </ul>
MCA   SEBI	<ul style="list-style-type: none"> <li><b>Disclosure Obligations of Listed Entities in Relation to Related Party Transactions.</b> [SEBI Circular No. <i>SEBI/HO/CFD/CMD1/CIR/P/2021/662</i> dated 22nd November, 2021.]</li> <li><b>SEBI (LODR)</b> (Sixth Amendment) Regulations, 2021 – Pertaining to Related Party/ Related Party Transactions. [SEBI Notification <i>SEBI/LAD-NRO/GN/2021/55</i> dated 9th November, 2021.]</li> </ul>
RBI	<ul style="list-style-type: none"> <li>Notifications <ul style="list-style-type: none"> <li>Master Circular: Income Recognition, Asset Classification, Provisioning and Other Related Matters – UCBs.</li> <li>Prompt Corrective Action (PCA) Framework for SCBs.</li> <li>Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances – Clarifications.</li> </ul> </li> </ul>
IFRS	<ul style="list-style-type: none"> <li>Exposure Drafts <ul style="list-style-type: none"> <li>Proposed Amendments to IAS 1, Presentation of Financial Statements – Non-current Liabilities with Covenants (ED/2021/9).</li> <li>Proposed Amendments to IAS 7, Statement of Cash Flows and IFRS 7, Financial Instruments: Disclosures – Supplier Finance Arrangements (ED/2021/10).</li> </ul> </li> </ul>
US GAAP	<ul style="list-style-type: none"> <li>FASBs Accounting Standards Updates (ASUs): <ul style="list-style-type: none"> <li>Topic 842, Leases - Discount Rate for Lessees That Are Not Public Business Entities.</li> <li>Topic 832, Government Assistance – Disclosures by Business Entities about Government Assistance.</li> </ul> </li> <li>FASBs Exposure Drafts of proposed Accounting Standards Updates (ASUs): <ul style="list-style-type: none"> <li>Topic 270, Interim Reporting: Disclosure Framework – Changes to Interim Disclosure Requirements.</li> <li>Topic 326, Financial Instruments- Credit Losses: Troubled Debt Restructurings and Vintage Disclosures.</li> </ul> </li> </ul>

<sup>1</sup>Updates for the month of November 2021

## 2 Case Study – Audit of Corporate Transactions with Related Parties

### Background:

During the period covered by the audit, Company X undertook certain corporate transactions that included additional investments and disposal of non-core assets.

The market for such assets is characterized by a relatively small number of investors and as such, transactions with related parties are not uncommon.

### Identified Risk:

In relation to transactions mentioned above, the statutory auditors identified a risk of unidentified or undisclosed related party relationships. Further, where a related party relationship exists, there is a risk that the transaction has not been conducted on an arm's length basis or that the related disclosure of the transaction is incomplete, inaccurate or does not appropriately reflect its substance. Consequently they identified it to be a potential fraud risk. In the present instance, one transaction involved the disposal of assets during the year that were impaired in an earlier year. In another corporate transaction, an interest in another entity was in substance acquired indirectly through a third party (of which a quarter was previously held by a related party of the company being audited).

### Auditors Approach:

The auditors obtained an understanding of the design and implementation of management's relevant controls pertaining to identifying, authorising and reporting related party transactions, including the review by the Audit Committee and the role of the Board on considering the disclosures thereof.

The business rationale for the two transactions were challenged, taking into consideration the auditor's understanding of the Company's business and its strategy, as well as the information contained in the Board minutes and press releases reviewed by them.

Using publicly available information and research tools, the auditors analysed the counterparties to the transactions to determine whether any that were identified as related parties had been appropriately recorded in the Company's related parties register.

The auditors challenged management whether the said transactions had been conducted on an arm's length basis, comparing the consideration in each case to an estimate of the fair value of the underlying assets.

A review and assessment of the completeness and accuracy of the disclosures in respect of these transactions was undertaken.

### Auditors conclusion:

This approach was adopted by the auditors to conclude

that the in-scope corporate transactions were conducted at values commensurate with their understanding of their underlying asset values and that the disclosures in respect of the transactions were appropriate.

## 3 Ind AS – Presentation Currency

### The Standard:

Ind AS 21, The Effects of Changes in Foreign Exchange Rates apart from prescribing how foreign currency transactions should be included in an entity's financial statements, also guides the translation of financial statements into a presentation currency.

In this context, Functional Currency is the currency of the primary economic environment in which an entity operates; Foreign Currency is a currency other than functional currency of the entity; and Presentation Currency is the currency in which financial statements are presented.

Functional currency determination hinges on an entity's primary operating economic environment which is normally the one in which it generates and expends cash. Ind AS 21 provides a list of factors that an entity needs to consider in the determination of its functional currency. The factors include: the currency that mainly influences its selling prices; the currency of the country whose competitive forces and regulations mainly determine its selling prices; the currency that mainly influences its cost structure; currency in which funds from financing activities are generated; and the currency in which receipts from operating activities are usually retained.

The standard also permits an entity to present its financial statements in any currency (even other than its functional currency). Ind AS 21.39 provides the operational procedures to translate financial statements into a presentation currency.

### Illustrative Example:

An unlisted entity whose functional currency is INR, apart from presenting statutory financial statements, prepares its financial statements as per IFRS too (Corresponding IFRS standard for the purposes of this section being IAS 21). The management has chosen to present its consolidated IFRS financial statements in US Dollars as it believes that it is a more convenient presentation currency for its current and prospective investor base.

The translation of the financial statements from functional currency to presentation currency is performed as follows:

- all assets and liabilities are translated at closing exchange rates at each reporting period end date;
- all income and expenses are translated at the average exchange rates for the periods presented, except for

significant transactions that are translated at rates on the date of such transactions;

- c) the resulting exchange differences are recognised in other comprehensive income and presented as movements relating to the effect of translation to the presentation currency within the Translation reserve in equity; and
- d) in the consolidated statement of cash flows, cash balances at the beginning and end of each reporting period presented are translated using exchange rates prevalent at those respective dates. All cash flows in the period are translated at the average exchange rates for the periods presented, except for significant transactions that are translated at rates on the date of transaction.

#### 4 Financial Statement Extracts – Ratios Disclosure as per Schedule III

Extracts from published financial statements (Ind AS) as per Red Herring Prospectus filed by a company with SEBI is provided herein below.

##### a. Ratio – ROE

INR Million	As at 31 August, 2021	As at 31 March, 2021	As at 31 March, 2020
Return on equity ratio			
Profit / (loss) for the period/year (Numerator)	(83.37)	(285.75)	(201.04)
Shareholder's equity (Denominator)	2,442.01	2,449.21	1,377.24
Return on equity	(3.41%)	(11.67%)	(14.60%)
% Change as compared to the preceding year	70.74%	20.07%	(289.48%)

Explanation for change in the ratio by more than 25% as compared to the preceding year:

- For the period ended 31 August 2021, improvement in ratio is mainly attributable to synergies and cost saving of post business acquisition and transition. Further revenue of the Group also improved on account of recovery from COVID 19.
- For the year ended 31 March 2020, return on equity ratio declined as during the year ended 31 March 2020 and 31 March 2019, the Group acquired two entities. Decline in the ratio is mainly attributed to operating cost of acquired entities and transition & integration expenses incurred during the year.

##### b. Ratio – ROCE

INR Million	As at 31 August, 2021	As at 31 March, 2021	As at 31 March, 2020
Return on capital employed			
Earning before interest and taxes (Numerator)	(72.38)	(165.09)	(88.54)
Capital employed (Denominator)*	3,557.94	3,620.45	2,815.28
* Capital Employed = Total equity + Total debt			
Return on capital employed	(2.03%)	(4.56%)	(3.14%)
% Change as compared to the preceding year	55.39%	(44.99%)	(149.55%)

Explanation for change in the ratio by more than 25% as compared to the preceding year:

- For the period ended 31 August 2021, improvement in ratio is mainly attributable to synergies and cost saving of post business acquisition and transition. Further revenue of the Group also improved on account of recovery from COVID 19 pandemic.
- For the year ended 31 March 2021, net profit ratio declined mainly on account of decrease in revenue of the Company due to impact of COVID 19 pandemic.
- During the year ended 31 March 2020 and 31 March 2019, the Group acquired two entities. Decline in the ratio is mainly attributed to operating cost of acquired entities and transition & integration expenses incurred during the year.

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# IoT AND ITS SECURITY

## Introduction:

The Internet of Things, or IoT, is a system of interrelated or interconnected devices having computing capabilities and with limited capacity. It could transfer the collected data over the network without requiring manual efforts. By looking at its key features, one question props up in one's mind that can this IoT be used only by end-customer or its capabilities can also be utilized by organizations, industries, other businesses houses with medium sized staff? Before, we get it answered, let us also try to understand further what A 'thing' in the internet of things can be. It can be a device with electronics, sensors, software, aided with a network connectivity enabling these objects to collect and exchange data. Taking a real-life example, 'thing' in a person with a heart monitor implant, people wearing smart watches, usage of smart phones, a farm animal with a biochip transponder, an automobile that has built-in sensors to alert the driver when tyre pressure is low or any other natural or any other man-made object of similar sort that can be assigned an Internet Protocol (IP) address, and the list continues.

From the above, it can be adjudged that the IoT can be adopted to make 'smart' homes, 'smart' offices, 'smart' industries, or 'smart' other information processing facilities in general. But will it be a cake walk to adopt one or many such IoT devices, or in any combination with softwares and sensors, looking at the organization's rigid IT architecture, to operate more efficiently, better understand customers to deliver enhanced customer service, improve in decision-making and eventually augment the business value. Let us explore further.

## Ecosystem of IoT:

An IoT ecosystem consists of internet enabled devices that are 'smart' which uses embedded systems, such as processors, sensors, and communication hardware, to collect, transmit and analyze on the data they acquire from different environments. IoT devices collect the data and share by connecting it to an IoT gateway or other edge devices for further analysis. At times, based on its intended purpose, the different stand-alone devices can in-turn be networked with each other to enable effective communication to act and respond on the information they get from one another. These connected devices do most of the intended work

without manual intervention, although people can interact with the devices - for instance, for initial setup, give them instructions or access the data.

## What value add can an IoT bring on table:

Some of the industry leading use cases where deploying IoT has reaped multi-fold benefits including internal and external stakeholder confidence, those inter-alia comprises of the following -

- o on-demand asset or inventory tracking
- o optimized capacity management
- o ability to access the intended information from anywhere in almost real-time on any device
- o improved communication between connected devices
- o improved business insights and customer experience
- o transferring data packets over a connected network saving time and money
- o IoT can enable newer business models as it revolves around efficiency, productivity, and process monitoring and companies would enable to reap the benefits and to provide with information on how best to use their products
- o automating tasks helping to improve the quality of a business's services and reducing the need for human intervention thus reducing error rate
- o Smart walking-talking Robots in large warehouses for movement of heavy objects
- o Mining Equipments with pre-configured depth, width
- o Bottle and Packaging Tracking and its Fulfillment
- o Rotators, mixers, balancers in chemical or pharma industries
- o EHS Devices to track each employee during emergencies
- o Security Cameras, parking sensors
- o Cleaning robots, lighting, and ventilation
- o Usage of Drone in Farming



- o Temperature Tracking of Frozen dessert during transportation
- o Deploy of sensors in extreme weather conditions

### Areas where an IoT needs improvisation:

There has been a lot of research in this space in recent times. As of today, there are about 127 devices gets connected to the internet with the passage of every single second. With this pace, it is projected that by 2030 anywhere between 50 and 60 billion of these IoT devices will be in use around the world, creating a massive web of interconnected devices. Are all devices, including those bought over the counter are secured? We need to acknowledge with a pinch of salt that not all devices enables complete security. Enterprises may eventually have to deal with massive numbers of IoT devices and collecting and managing this large data set from all those devices can pose a real practical challenge – at source, in motion and at rest. Hence, it is the need of the hour and our joint responsibility to ensure that we divert our resources to focus on the following areas.

- o Privacy. With the increase in connected devices and information sharing between devices, the potential of a hacker stealing the user's or company's sensitive information also increases multi-fold
- o Distortion. If case of any bug/s reported in any device, likelihood that every connected device will become corrupted or unable to capture the required data
- o Interoperability. Since there's no international standard of compatibility for IoT, it's difficult for devices from different manufacturers to communicate with each other and enable interoperability

### Common Vulnerabilities of IoT:

Due to numerous other reasons, other than quoted below, IoT devices can be more vulnerable to compromises than the regular systems. Any of the IoT devices may end up having the following vulnerabilities associated with it –

- o Poorly configured firewalls or lack of system/software updates
- o Man-in-the-Middle attacks if traffic moving in an unsecured environment
- o Easily susceptible to Phishing attacks by Infecting legitimate programs with malicious updates
- o No VPN's
- o Limited or no logging

### Couple of challenges of an IoT:

In the environment where IoT devices are connected, generate data with high velocity, variety, and veracity. In a real life IoT environment whereby these relate to diverse

devices, generates both structured and unstructured data and then sent it to either hub/gateway or is sent to Cloud for further processing. The team of admins must ensure -

- Keeping the device, softwares, sensors updated to plug all types of known vulnerabilities
- Most of the hardware devices will have definite lifespan, consider upgrade or replacement
- Some of the devices can lead to Security and Privacy concerns. Have a strong security culture
- Depending on the device location, few may end up having insufficient physical security or can lead to its exploitation
- Based on type of the device it can invite radio or wireless-based exploitation
- Soft targets for Robotic networks to send mass pings to make it unserviceable
- Lack of Legal enforcement

### Is there a bearing on one's personal life?

From connected home hubs, smart thermostats to remote door locks, from smart Watch to Smart electronic equipment, and various app-controlled appliances, IoT has already entered our everyday lives. The "Sensors" are constantly collecting information and transmitting about the user's behaviour. These devices have intervened all aspects of our personal lives. The below list are a few such instances where it touches one's personal life -

- Smart home hubs controlling lighting, home HVAC
- Alexa, Siri, Cortana are becoming more 'Smarter' assistants
- Fitness trackers, sleep trackers, and smart scales
- Modify the inner ambience of a house to suit one's tastes or occasion
- Better security by constant surveillance and taking proactive action (such as alerting the fire stations or police) in case of untoward incident
- Reminders of mundane tasks such as payment of utility bills
- Smart automobiles that can summon assistance if required, assist in controlling vehicle speed based on traffic and environmental conditions
- The autonomous vehicles, powered by general AI, may be the ultimate IoT device reshaping how we use and own cars. Even today the human driven vehicles are using IoT for navigation, safety, and infotainment etc

### Can IoT be integrated with other Emerging technologies?

It is a proven fact that IoT is capable of more value addition to diverse business models in collecting and assimilation of

data. It is undebatable that the IoT's value addition can bring in multi-fold effect if it is integrated with other emerging technologies (of course depending on specific business use case), for instance,

- o Configure to identify false-alarms or a situation in which the device triggers an alarm but there is no malicious activity or an actual attack taking place
- o IoT can also make use of AI or its branches like ML to aid in making data collecting processes convenient, more dynamic, almost real-time
- o Explore translating IoT devices into Bots by building proactive services and remedial services
- o Consider embedding with AI/ML that can simulate a human-like intelligent behaviour

#### Adoption opportunities in an enterprise?

Additionally, it can be a well thought out adoption in the following areas where an IoT and in combination with other emerging technologies can be discovered -

- Predictive Medical device maintenance
- Enabling energy consumption optimization
- Improved Security in Medical device downtimes. The unplanned downtime can be reduced through remote monitoring and support with AR/VR. IoT technology is already helping hospitals optimize the supply chain while reducing risk
- Managing Inventory
- Asset Tracking

#### Security and privacy issues associated with IoT:

There are billions of IoT devices connected to the internet and that involves the use of billions of data points, all of which need to be secured to avoid any breaches. Due to its broad attack surface, IoT security and IoT privacy are cited as major areas of concern.

In 2016, one of the most notorious recent IoT attacks was Mirai, a botnet that infiltrated domain name server provider Dyn and took down many websites for an extended period of time in one of the biggest distributed denial-of-service (DDoS) attacks ever seen. Malicious players gained access to the network by exploiting poorly secured IoT devices.

Because IoT devices are closely connected, all that a perpetrator must do is exploit one vulnerability to manipulate all the data, rendering it unusable. It has been observed that Companies that don't update their devices and software with latest patches regularly leave them vulnerable to cybercriminals.

Additionally, connected devices often ask users to input their personal information, including name, age, address, phone number and even social media account, information that is invaluable to hackers. Alternatively, Hackers can also

gather the confidential information about users in bits and pieces from different sources to make it a cohesive whole and to make it more meaningful.

So, the moot question will be - are Hackers the only threat to IoT devices or data that they capture or is there any other important element which any organization or user need to keep in mind. Yes, the organization need to have privacy as another major concern associated with IoT devices. For instance, companies that are into manufacture of consumer IoT devices could capture users' personal data without their explicit consent.

#### Countermeasures:

Properly 'managed' IoT devices can bring in lot of value addition to the existing business processes. It cannot be ruled out that either poorly configured or an unsecured IoT can threaten the vulnerabilities existing in the devices or interfaces. Having said that, security of an IoT is not just a matter of physical or logical security, but to properly secure IoT by creating a robust security culture.

- a. implement basic security best practices – for instance, blocking unnecessary remote access, and no hard-coding of default credentials
- b. let the onus of basic security be shifted to the source – let the Device manufacturers take a broader approach and invest in encryption, security analytics
- c. let there be a strong field sensitive log management enabled. Let there be instructions activated at System level and let admins place a strong monitoring tools to monitor exceptional activities
- d. companies can contemplate on deploying something like IoT Honeypots, have proper network segmentation or zoning to enable redundancies
- e. taking a step forward, Companies can adopt AI/ML based advanced analytical systems to strengthen IoT data security. These technologies can monitor and raise alarm in case of any inconsistencies in the behavior of the IoT devices and identify misuse and security threats effectively and efficiently

#### Sample (high-level) flow of events for a IoT device in a case of a preventive maintenance:

- i (Manual – One time activity) Install IoT devices on Critical components in High value machines already installed at customer site
- ii (Manual – One time activity) Connect the IoT devices to Internet with storage capacity
- iii (Automatic – at regular intervals) Transmit the data collected at regular intervals to a central repository using data encryption tools

- iv (Automatic – at regular intervals) Perform data analytics to identify the exceptions
- v (Automatic – at regular intervals) The information in the exception list to be triggered an individual or a delivery list or it can be embedded with a tool to create a Service request/Incident
- vi (Manual – Take necessary action) To analyze, perform Root Cause Analysis and provide resolution

Assumption: The chosen Central repository should permit data analytics Introduction:

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In 2016, one of the most notorious recent IoT attacks was Mirai, a botnet that infiltrated domain name server provider Dyn and took down many websites for an extended period of time in one of the biggest distributed denial-of-service (DDoS) attacks ever seen. Malicious players gained access to the network by exploiting poorly secured IoT devices.

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*Assistant Director (Retd.)*

# INTELLECTUAL PROPERTY RIGHTS AND PROTECTION IN INDIA PROTECTION OF TRADITIONAL KNOWLEDGE AND GIs – THE WAY FORWARD

(PART - XVI OF IPR SERIES)

## Evaluation of the implementation of IPR policy

In the earlier parts, the ways and means of protection of the Traditional Knowledge and the use of IP like Geographical Indications for the development of communities have been narrated. By taking up such proactive steps, the economic conditions of the communities who practiced and preserved such knowledge for generations are going to be improved. The purpose and the objective of this effort are to create an eco-system where the Communities or individuals exhibiting traditional knowledge can reap the benefits from the IPR regime. In this part, the existing scenario to realize the current situation and move forward in a focused manner are deliberated to prepare ourselves to face the challenges ahead.

To strengthen the IPR regime in India, as already stated, a comprehensive National IPR policy was adopted in May 2016. Following the declaration and adoption of the IPR policy, to evaluate the progress achieved at the end of five years, a Parliamentary Standing Committee on Commerce was formed. The Committee after reassessing the Policy to identify the gaps in its implementation and strategize the way forward submitted a review report on the IPR Regime in India in July 2021. The observations of the committee in respect of the preservation of Traditional and GI in India are deliberate in the following part. This authentic study by the learned committee is the surest way to find out the present condition of the IPR ecosystem existing in India.

## Parliamentary Standing Committee report on IPR

The Parliamentary Standing Committee on Commerce in its 161<sup>st</sup> Review of the IPR Regime in India, presented to the parliament on 23rd July 2021, ([https://rajyasabha.nic.in/rsnew/Committee\\_site/Committee\\_File/ReportFile/13/141/161\\_2021\\_7\\_15.pdf](https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/13/141/161_2021_7_15.pdf)) has made observations, among others, about the need to strengthen the TKDL (Traditional Knowledge digital library); on improving the implementation mechanism of GIs as an IPR in India; to involve state governments to frame strong IP policy for their respective states; Establish IPR Facilitation Centers in Tier-I, Tier-II and remote regions of the country; Steps to be taken up to encourage IP financing; to create IP Fund and Fostering IP Culture. Some of the observations about TK and Geographical Indications are extracted for exploring the challenges ahead and the way forward for improving the economic condition of the owners of the Indian traditional knowledge.

About TK and IPRs, the Report highlights the challenges faced by indigenous innovators at the grassroots level due to the lack of statutory protection for inventions based on TK. As observed by the committee, the stringent criteria for patentability in India, prohibiting the patenting of an invention that is effectively TK or aggregation of traditionally known components, also contributes to the non-patenting of useful inventions that improve upon existing TK. More on the patentability of the TK will be discussed in the coming issues wherein the patent as a valuable IP will be introduced. The report also emphasizes that the registration of traditionally known products or processes linked to specific locations as Geographical

Indications (“GI”), would help in the consolidation and protection of TK.

### Spread the utility of TKDL

Concerning India’s Traditional Knowledge Digital Library (“TKDL”), the report mentions how the structural issues and inefficiency in execution had left the TKDL inaccessible to Indians, leading to countries like the US and China misappropriating traditional ayurvedic compositions from India. The committee felt that the absence of any proper mechanism for the documentation of traditional knowledge and inefficiency in executing TKDL has resulted in the neglect of traditional knowledge and therefore it recommends the Government to address the structural issues in implementing a systematic mechanism of documentation and preservation of TK in the country along with taking measures to strengthen TKDL as an effective database.

This is brought to the notice of all stakeholders especially the academies and educational institutions imparting IP studies to explore the contents available in the TKDL as a part of research and furthering study on the topic. This will enable in finding out the suitable product and services that could be instituted so that they can be commercialized for the benefit of the Public. Our entrepreneurs should use the TKDL data as a source of information for the creation of new products and services so that the same could be utilized to serve the intended objectives. If we do not take up this on a war footing, it is sure that this property will become a source of wealth for the fraudsters and outsiders. Our confidence in local traditional knowledge should be the starting point in this exploration. Also, the necessary initiative should be taken to add more ancient knowledge sources into this effort so that it could be used by all concerned. As of now, the author finds that there are no concentrated efforts made by our stakeholders. Further, it is also considered imperative for the government to strengthen the TKDL as a database and implement a systematic mechanism of documentation and preservation of traditional knowledge in the country. The government agencies engaged in spreading IP knowledge should highlight the utility of TKDL so that the concerned are drawn to this task on priority. Surprisingly, the concern by the creators of TKDL to popularize the usage by conducting suitable workshops all over India in a proactive manner is missing.

The Report further states that there is insufficient understanding about converting IPR into monetary

benefits in India. Therefore, the government must play a more active role in spreading awareness among tribal communities, forest dwellers, artisans, and craftsmen in this regard. The government and the communities practicing traditional knowledge should claim joint ownership of the IPRs arising out of such traditional knowledge, to limit their misappropriation and exploitation by strong commercial lobbyists.

### Present status of GI products in India

The Committee observes that the registration of TK as GI if it exhibits linkages to a geographical location, would be highly beneficial to consolidate traditional knowledge into IPRs. The Committee reports that the number of registered GI in India has been dismal, manifesting a declining trend from the year 2016-17. The reasons for the pendency, dismal performance, and the delay in granting GI, as explained by the Department, are primarily due to the non-compliance of the necessary legal requirements by the applicants. This could be set right by the educational institutions providing the necessary helping hand to applicant organizations in line with the ‘Jharkhand experiment’ narrated in the earlier part of the writings. This should be the real yardstick for considerations for awarding PhDs and doctorates to the seekers by the Universities.

The Committee took cognizance of the downtrend in the registration of GIs in recent years made recommendations to GI Registry to issue periodic advisories consisting of the necessary information on compliance requirements for the assistance of GI applicants to check undue delay and pendency in approving GI registrations. The Committee also recommended that concerted efforts should be taken by the Department of Promotion of Industry and Internal Trade (DPIIT) and the GI Registry to generate awareness in the country about the importance of GI in imparting uniqueness to a product related to its place of origin

The committee further recommends forming a stringent enforcement mechanism through a centralized agency to ensure compliance of GI tagged products to the stipulated standards under GI Act while they are being marketed and commercialized. The Committee records that indigenous knowledge of drugs and pharmaceuticals, artistic handicrafts, traditional cultural expressions in products and creations as well as traditional practices and inventions in agriculture and forestry are abundant in India. However, it is disappointing to note that

the knowledge and awareness to claim IPR rights for earning monetary benefits from it is highly inadequate in the country. It, therefore, urged that the creators and holders of traditional knowledge, especially tribal communities, forest dwellers, artisans, and craftsmen, should be made aware of the novelty or inventive steps involved in traditional expressions or work to facilitate a fair IPR regime in the country. The creators or communities practicing traditional knowledge should be mobilized in claiming IPRs wherein the Government should play the role of joint owner thereby restricting their misappropriation and exploitation. The Committee recommends that India should engage at the international level for the protection of Traditional Knowledge, Traditional Cultural Expressions, and Genetic Resources to prevent the other countries to exploit them

in goodwill in the marketplace. This in turn results in better growth in the marketability and salability of such products.

It is a fact that each GI product will have a different logo and there is no common mark to indicate that they originate from India, leading to confusion in the minds of the consumers about various GI products and their genuineness. One of the issues that acted as an obstacle in popularizing the GI registration in India has been the lack of a common logo to identify such registered products. The DPIIT noticed the existence of multiple logos identifying GIs, leading to confusion among the consumers, and therefore, the idea of a common GI Logo and Tagline was envisaged. DPIIT conducted a public contest for the same. The chosen logo and tagline for Indian products registered as GI were launched on 1<sup>st</sup> August 2018 by the Union Government.



To regulate the usage of the GI logo and tagline ('GI brand' for brevity) and thereby protect the interests of genuine GI producers, the Department circulated the Draft Guidelines for Usage of GI brand for comments from stakeholders. The guidelines, after due consultation with all, have been finalized and mandated through the public notice dated 24<sup>th</sup> June 2019. The Guidelines are a welcome step in bringing uniformity and easy identification for GI registered products. A gist of the procedure to seek permission to use the GI brand is narrated to help the producers of GI goods to obtain the same and use the same as a brand. This acts as a valuable and attractive trademark in identifying the GI goods which enables the entities to obtain a stronger presence in national and international markets. Without such a common logo, a consumer may fail to identify the genuineness, which may lead to poor sales in the market. The newly proposed logo will go a long way in helping easy identification of registered products by the consumers adding more business to GI holders.

### Common logo for branding GI

The Department for Promotion of Industry and Internal Trade (DPIIT) to enhance the income of the GI producers, like farmers, weavers, artisans, craftsmen, etc., have undertaken, among others, a comprehensive and holistic campaign under a common brand name representing all Indian GI products for the promotion of GI. A common GI tag is expected to help in the creation of awareness amongst both the GI producers and users/consumers, within (domestic Trade area) and outside India (exports). It will act as a brand ambassador and add to an increase

### Easy Identification of GI Registered Goods

The prescribed GI Logo contains the letters 'G' and 'I' being the acronym for Geographical Indication. It also resembles the general location symbol, indicating that each GI has specific characteristics which are attributable to its place of origin. It also bears the Indian tri-colour, which instils a sense of pride and reflects the essence of India (Make in India).. The GI Logo will also act as a certifying mark that can be used to identify all Indian products registered as GIs, irrespective of the categories,



which makes it convenient for the consumers to recognize authentic GI products, and thereby protect the interests of producers,. Further the Tagline अतुल्य भारत की अमूल्य निधि (Invaluable Treasures of Incredible India) represents the spirit of GI of India which assists in effective branding and promotion of goods and services. This will also help in engaging more people about GIs and to create awareness about the benefits of a GI.

The ownership rights to the GI Logo and Tagline vests in the DPIIT. The usages of the same will be allowed as per the terms and conditions enumerated, only for Indian GI products registered in India or abroad. The Foreign GI products, whether registered in India or not, are not allowed to use the GI brand. The DPIIT holds no financial obligation for the usage of the GI brand and shall not be held liable for any claims arising out of any unauthorized use and/or violations of the GI Brand.

### Terms and Conditions for use of GI brand

Some of the conditions prescribed for use of GI logo and tagline are- (a) It shall not be used for illegal purposes or against public interest and not to be used in a derogatory fashion; (b) It is to be appropriately placed along with the logos and/or taglines of other organizations; (c) to maintain a uniform image across all communications material, it is imperative to follow the guidelines in terms of type and colour; (d) The use of the logo should be consistent and should not be distorted or changed in relative proportion, colour, etc. (e) Any entity seeking permission shall ensure that brand shall be used in association with registered genuine Indian GI products sold by authorized users registered under GI Act; (f) Brand shall not be used for any other product which is not registered as a GI. (g) There is no fee/ charges levied for granting the permission for the use of GI brand; (h) In the event of any unauthorized use of the GI Logo and Tagline, DPIIT is entitled to take necessary action, as it may deem fit.

### Procedure for grant of permission for use of GI brand

The procedure laid down for obtaining permission to use the logo and tagline is quite simple. Certain categories of persons can use the GI brand without any permission which includes all the Registered Proprietors and Authorized Users of Indian products registered under the GI Act. Such persons shall be allowed to use the GI brand as a certifying trademark for the GI with which they are registered. However, for the sake of information, the department desires that such persons submit certain required information in the format prescribed. The GI

registrants aspiring to use the GI brand must send their applications in the format provided at the end of this article. There is no need to wait for permission from the authorities if the applicant is eligible as per the norms stated above. All requests for use of the GI brand would be considered based on the guidelines in a public notice dated 24<sup>th</sup> June 2019. Only a form seeking relevant details is required to be submitted. Also, there is no requirement of payment of any fees for use of this common brand name.

Many readers have requested for including the export procedure to understand the modalities to be followed for the export of goods, which includes GI products and many agricultural products. The Indian MSME sector has a huge contribution to the Indian economy as they are the largest group engaged in the export of goods. Therefore, in the coming part, the laws and procedures relating to the export of goods for sales in the foreign markets are deliberated. This will help expand the market abroad for Indian products so that the country could be benefitted by earning valuable foreign exchange. Also, some of the export promotion schemes will be made known to help the MSME sector.

### Format for applying for permission to use the GI Logo and Tagline (COMMON GI BRAND)

1.	Name of the applicant
2.	Address
3.	Telephone No.
4.	Mobile No.
5.	Email
6.	Organization Details
7.	Purpose of Usage
8.	Duration of Usage
9.	Name of GI Product(s) (for which Logo and Tagline are to be applied) (please specify the GI products or category of products)
10.	Signature and Date

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CA. Shanthan Malashetter

## ENTREPRENEURS DON'T RETIRE, THEY DIE?

The coffee tycoon and founder of international retail chain, stated long ago in an interview, "Entrepreneurs don't retire, they die". Indian Chamber of Commerce and entrepreneur's forum was shell-shocked by his statement, especially when his statement turned out to be true in his own case.

The Coffee King being so powerful, confident and successful if such thoughts started brimming on his mind, it isn't surprising if it stems up for newbies and other struggling entrepreneurs. Needless to mention, entrepreneurs are strong, committed, risk takers, strongly focused and profit oriented, then "why such thoughts ever popped up into the head of the coffee king?". In short, his statement had left aspiring entrepreneurs in pensive mood.

His untimely death had left people spellbound with question tags, "Is there a pattern? Was he trying to throw light on reality behind entrepreneurship? Are entrepreneurs vulnerable to modern challenges?". This started infusing my perspective every once in a while. This had triggered me to think deeply about science behind business, an entrepreneurial journey and the plight of existing businesses. This was vouched by an exhaustive statistic; it gave me a disturbing picture of the market scenario. In the year 2020-21 the total number of MSMEs in India crossed 70-72 million (Approximately 7 crores), research made by IBM Institute of study concludes that around 75-78% of 70 million MSMEs are either underfunded and unprofitable or straining with stream of losses year on year. In the case of start up's, the study concludes more than 90% of Indian start-ups fail within the first 5 years.

But, what makes them fail so sharp? Why are they torn apart into pieces? Out of series of reasons expelled in the market, study by my team highlights on few grey areas that's backed by our experience.

One of the top notch reasons are faulty business models

aided by weak market analysis before launching a product or service. A study by Business today mentions, out of 2500+ global R&D spender's Indian companies holds less than or equal to 1% (Approx. 26 companies) involvement.

Two, Imitation vs Innovation right from ola, oyo to flipkart, we imitate business models than by disrupting and innovate new one. Not to deny, Imitation itself is a strategy but imitation itself cannot be renamed as innovation or that shouldn't stop the importance of innovation.

Three, Leadership & Technology is the key for positioning strategically for the futuristic business drive. India being so called tech hub; we are way behind the progress expected for certain obvious reasons. Tech space being used are already outdated in many developed countries. It is need of the hour to upgrade and drive it

It takes us towards the edge of the facts that signifies either the foundation of the entrepreneurship is weak or the basics are just cluttered for the entrepreneurs. We have realised that playing a blame game will not come to any benefit, and this has prompted us to design and build a base to support and work along with government of Karnataka, which can also come to the benefit of the INDIAN entrepreneurs Segment.

I leave few statements for the readers and urge to give an intense thought to it,

"When a lady is carrying, the parents CONSULT a doctor. Because he is an expert!

When a child enrolls to school, the parents CONSULT an education Counsellor. Because he is an expert.

BUT, when we plan to venture out or fund it or launch an innovative idea in business "WHOM DO WE CONSULT?" "WHOM DO WE DISCUSS WITH?" or "WHOM DO WE ENQUIRE FROM?"

There are plenty of businesses that still do not have a CA

who can advise on numbers or a mentor who can hand hold before or after kick starting a venture, unless it falls apart and burns its bottom line. It is one of the few key reasons of the failed start-ups and the existing ventures. Your business is the most prized possession, so don't accept anything that would come at the cost of your hard work and sleepless nights. It isn't easy to build a business; then why would you allow it to go in vain? Entrepreneurs may take support of consultants on,

- Designing business model
- Financing & Capital Structure
- R&D on the products or service
- Revenue Model & ROI Analytics
- Market dynamics & tech space etc.,

As stated, build your team of advisors and mentors, NOT alone when you are drowning but when you are performing well too.

Did you know that,

Bill Gates has a finance & Wealth consultant too?

Prime Minister of a nation has a team of advisors too,

Alas, even Tony Robbins & Brain Tracy (Consultant for entrepreneurs) has a team of consultant too,

Then, why not you and me?

MNC's and top most companies make it a mandate to have consultant for every role to drive and hand hold the ventures. But most of the entrepreneurs are left in soup. Either they aren't open to consultants or they cannot afford. Consultants act as an external eye and add value by infusing outside perspective. But entrepreneurs end up being accountable for every action of theirs and endanger them.

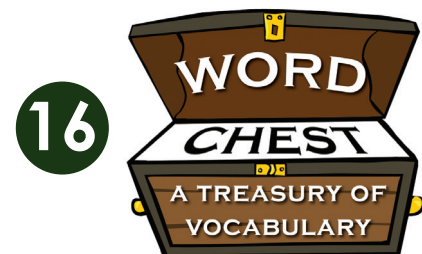
We need passionate and enthusiastic entrepreneurs who can revamp vision and growth. They are India's backbone and economic engines, not any fat cats as someone cynically quipped. They deserve a support system that can empathetically guide them and stand along them at the time of emergency.

As, we do not want entrepreneurs to set forth for a long walk on the bridge and fail to return as coffee king did once. Let's re-write the statement, **Entrepreneurs don't retire, they REVIVE by joining hands with experts and advisors in the respective field than to take entire burden n deprive themselves.**

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## Solution to Sudoku -15 November 2021

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



Finance Tech Term of the Month:

**Stablecoin**

What is this?

A *stablecoin* is a class of cryptocurrencies that attempt to offer price stability and are backed by a reserve asset. Stablecoins have gained traction as they attempt to offer the best of both worlds—the instant processing and security or privacy of payments of cryptocurrencies, and the volatility-free stable valuations of fiat currencies.

*Stablecoins* may be pegged to a currency like the U.S. dollar or to a commodity's price such as gold.



Dr. Sushruth Shetty

## HEALTH AND HAPPINESS! IS IT SO COMPLICATED?

Health is nothing but to live free of disease. What does it take to live a healthy and happy life! This is a question answered by many but understood only by a few. As we see patients in our OPDs and also among our friends and relatives, it often makes us wonder what or who decides if someone gets a disease. It often makes us think if we can attribute everything to bad luck or a chance! Health and happiness are closely interlinked. How to define happiness? As a doctor, I can simply put it as an increase in levels of certain hormones like Dopamine, Serotonin, and Endorphins in the brain, but it may not be that simple. Many things may not be in our control but in this article, I make a sincere effort to share my knowledge about certain preventive measures that one may take.

of different kinds of diet people follow. At times people are left confused because of the immense information available both online and offline. It also may not be easy to replicate someone else's results as each individual's body may react differently to dietary changes.



To understand how to plan our diet let us first try to know a few facts about the body's energy metabolism. Energy by definition is the capacity to do work. Energy may exist as potential, kinetic, thermal and chemical, or any other form. By consuming a diet we transfer energy present in the food into our body to perform certain activities and to maintain body temperature. The amount of energy required by an individual is fairly constant during normal circumstances. This is why quantified nutrition comes into play wherein we calculate the amount of energy each of the food items provide and consume exactly the amount of calories our body needs. Along with the calorie value, the composition of food also needs consideration. Overall it is a good idea to keep the carbohydrate portion as low as possible as very few cells in our body thrive on carbohydrates. All the excess carbohydrate gets converted to bad cholesterol and gets deposited in blood vessels, liver, heart, etc. On the contrary proteins are the building blocks of life and fats help form many vital structures. Thus consuming a protein-rich diet with a moderate

### How we fuel our body matters!!

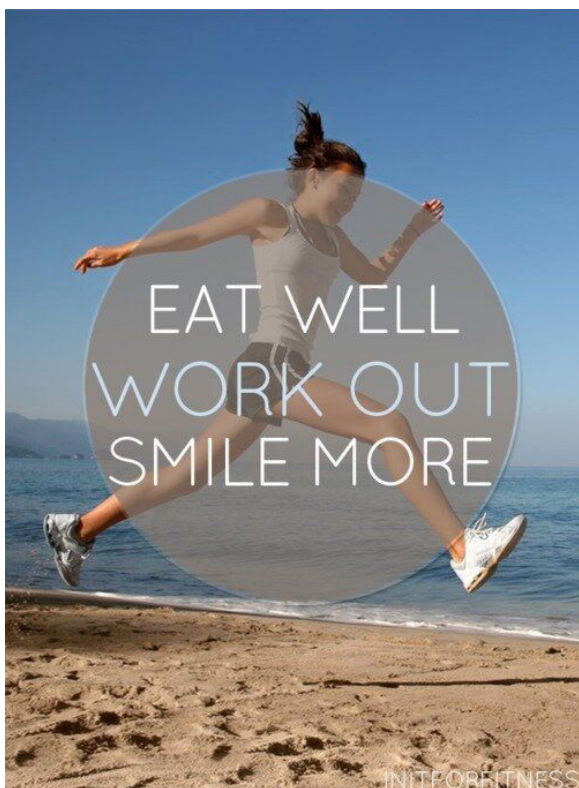
We have always known that there exists a sound mind in a sound body. Now to keep the body sound, it becomes important to understand how we need to provide it with the required fuel i.e. nutrition. Research has shown that what we eat, how much we eat, and when we eat decide our health and thus the quality of life we will lead. In recent times there has been increased awareness about weight management and diet. Intermittent fasting, Keto diet, Vegan diet, Atkins diet, etc are a few of the examples



amount of fat may be a good diet. Research done also shows that the only proven way to prolong lifespan is by restricting calorie intake by 15-20% thus reducing free radical damage.

### How does exercise help!

Exercise does not just refer to pumping iron in the gym. It refers to every small step we take to burn calories. It may be as small a task as taking a short walk in between office work or taking a staircase instead of a lift. Any amount of physical activity we do primes our body and helps us to be healthy. Brisk walk for 20-30 minutes is the minimum target each of us should have. Stimulating every muscle of the body by isometric exercises or yoga increases the energy consumption of these muscle groups and also provides greater strength.



or may be acquired. Avoiding excessive consumption of salted food, red meat, tobacco, alcohol and increased consumption of antioxidant-rich foods like fresh fruits and vegetables may help prevent certain cancers. Regular exercise and maintaining an ideal weight are also crucial.

Early detection of cancer is as important as cancer prevention. Detecting cancer at an early stage helps achieve better treatment success. This can be done by clinical examination, certain blood tests, endoscopies, mammogram, pap smear examination, etc. There is a very significant difference in survival following treatment of early-stage cancer compared to later stages.

Last but not least emphasis on mental health is of utmost importance. It is important we identify any mental issues one may be suffering from and also seek help when required. Overall it may not be all that difficult to live a healthy and happy life, just takes a conscious effort.



### Can Cancer be prevented?

For unknown reasons the incidence of cancers has been increasing and it is being detected in the younger age group. Overall there are a few probable measures we can take to prevent cancer and many definitive measures to detect them early and possibly try for a cure.

Cancer is a result of repeated damage or change in the cell DNA resulting in an unregulated proliferation of cells. This DNA change may be carried over genetically

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# KEYWORD 4

## Instructions

- From the given clues, find the words in connection with it.
- In each word so derived, the letter highlighted in color box should be noted.
- Such letters derived from each word helps in forming the final Key-Word

- A market structure with a small number of firms, none of which can keep the others from having significant influence. The concentration ratio measures the market share of the largest firms (9)

G

- The process through which an individual or institution takes on financial risk for a fee. This risk most typically involves loans, insurance, or investments (12)

E

- A general decline in prices for goods and services, typically associated with a contraction in the supply of money and credit in the economy. During this phase, the purchasing power of currency rises over time (9)

F

- When a company creates a new independent company by selling or distributing new shares of its existing business, this is called a ..... (7)

F

- These were devised as a market-oriented mechanism to reduce greenhouse gas emissions (12)

T

- A combination of two or more goods or services made together for a single price (related to GST) (11)

D

## sudoku-16

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

## GUESS THE KEY WORD

A financial instrument that is based on the value of underlying securities such as stocks

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

## Answers to "Key Word 3" (November 2021)

- Due Dilligence, 2. Metrics, 3. Impairment, 4. Pari Passu, 5. Waiver, 6. Reconciliation

**Key Word : ESCROW**

Credits: CA. Archana Sridhar

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## SNAPSHOTS OF 75<sup>TH</sup> ELOQUENT PROFESSIONALS' MEET HELD ON 27<sup>TH</sup> NOVEMBER 2021



Special talk on 'Lessons from Experience' by CA. Jatin Christopher



CA. Jatin Christopher being felicitated by KSCAA President CA. Chandan Kumar Hegde



A Group Picture of all the participants at the meet

## WORKSHOP ON DEEP DIVE GST SERIES - 'READING OF FINANCIAL STATEMENTS FROM GST PERSPECTIVE | APPROACH TO GST AUDIT' HELD ON 16<sup>TH</sup> NOVEMBER 2021

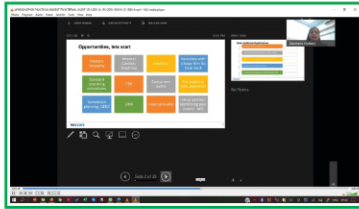


CA. Vijay Singh A R



CA. Madhukar Hiregange

## WORKSHOP ON 'PRACTICAL INSIGHT TO INTERNAL AUDIT' CONDUCTED BY KSCAA JOINTLY WITH THE INSTITUTE OF INTERNAL AUDITORS INDIA (BANGALORE) HELD ON 12<sup>TH</sup> AND 13<sup>TH</sup> NOVEMBER 2021



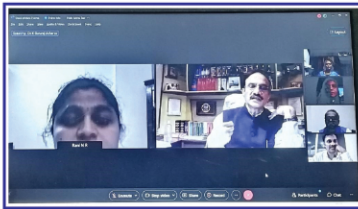
CA. Rachana Daftary



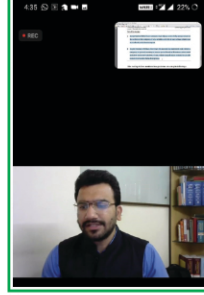
CA. Sandhya Sriram



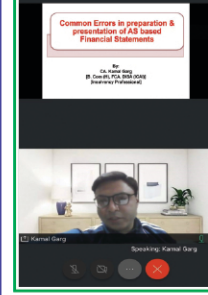
CA. Keyur Doshi



Panel discussion on 'Latest Amendments in Income Tax Audit under section 44AB & Tax Audit Report' held on 10<sup>th</sup> November 2021 by Speakers CA. Gururaj Acharya and CA. Rani N.R

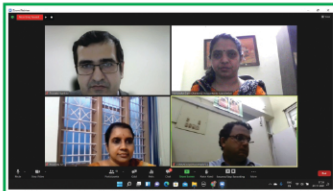


Webinar on "Criticalities in Compliance of Annual filings for the FY 2020-21 including all upcoming Due Dates for Companies" by speaker CS. Divesh Goyal held on 25<sup>th</sup> November 2021

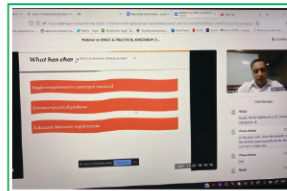


Webinar On "Common Errors in Preparation And Presentation Of As-based Financial Statements" by Speaker CA. Kamal Garg held On 11<sup>th</sup> November 2021

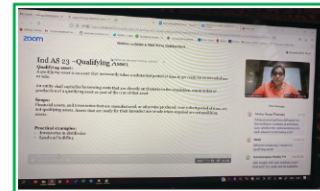
## SNAPSHOTS OF EMINENT SPEAKERS IN THE WORKSHOP SERIES ON 'BASICS & PRACTICAL OVERVIEW OF IND-AS' HELD FROM 12<sup>TH</sup> NOVEMBER 2021



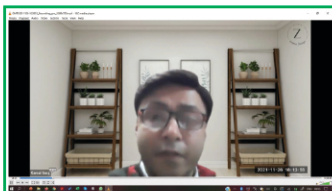
CA. MP Vijay Kumar, CA. G N Ramaswami and CA. Mahesh Krishnan



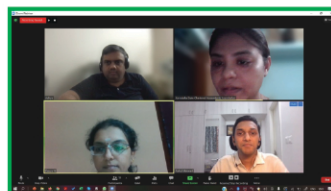
CA. Praveen CG



CA. Sowparnika Sundaram



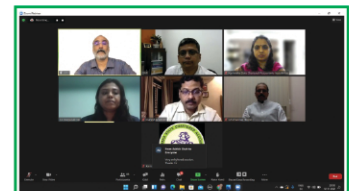
CA. Kamal Garg



CA. Aditya Kumar and CA. Rahul Matmari



CA. Shankar Raman



CA. Prateek Mankad