



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

WESTERN INDIA CHARTERED ACCOUNTANTS NEWSLETTER

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Together
We Can...



Ideation



The best ideas come from sharing lots of ideas...together

INTERNATIONAL TAX REFRESHER COURSE
13th August 2016

MVAT REFRESHER COURSE
13th August 2016

... Change the
World

DIRECT TAX REFRESHER COURSE 2016 (DTRC)



**VIBRANT SUB REGIONAL CONFERENCE AT SHIRDI
(AHMEDNAGAR BRANCH JOINTLY WITH AMRAVATI, DHULE, NANDED & SOLAPUR BRANCHES OF WIRC)**





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Dear Colleagues,

What is Ideation? At its most fundamental, ideation is a process for bringing ideas to life.

In the Institute there is no shortage of ideas. However, the goal of the ideation process is not producing lots of diverse ideas but to construct the single, biggest idea to provide the best solution.

That one idea which satisfies most parameters, empowers and enables people to get work done faster and more effectively than ever before.

Interactive Meeting with IFAC President: Ms. Olivia Kirtley, President, The International Federation of Accountants (IFAC) and Mr. Russel Guthrie, CFO, IFAC, visited ICAI Tower, BKC, and had an interactive meeting with our students. Students were treated to insights on global trends in the Accounting Profession from the leaders themselves.

Reference Manual: Team WIRC created history once again by releasing the outstanding Reference Manual on 4th June, 2016. The much anticipated and awaited WIRC Reference Manual 2016, was inaugurated at the hands of Chief Guest Mr. Bijoy Kumar Mishra, Chief Commissioner, Income Tax, and our esteemed CA Nilesh Vikamsey, Vice President, ICAI.

I congratulate RCM, CA Sandeep Jain and his team, the contributors and reviewers for their untiring support.

The WIRC Directory 2016 was also inaugurated at the function by Mr. Bijoy Kumar Mishra and CA Nilesh Vikamsey.

Mentoring Session: WIRC got the opportunity to hold an interactive meeting with former SEBI Chairman Mr. M. Damodaran on 'Role and Responsibility of Independent Directors'. The session also saw insightful guidance from ICAI non-executive directors and former Presidents CA YM Kale, CA MM Chitale, CA NP Sarda and CA Uttam Prakash Agarwal.

Partners in Nation Building: Handholding with Government initiatives, WIRC and all its Branches took up diverse projects and truly be partner in nation building. We planted trees under the Van Mahotsav Abhiyaan and conducted numerous awareness sessions on Income Disclosure Schemes. We organised programmes around Yoga Day, Chief Guest was Shri Shripad Naik, Minister of State for Ayush (Independent charge).

WIRC Sub-Regional Conference: The Sub-Regional Conference was a true example of our belief "Together We Can". Five small Branches came together and made the Conference a big success with members in attendance appreciating the content as well as the spiritual location of the Conference. My congratulations to all the Committee Members.

DTRC: DTRC saw a huge response this year leading to become the most successful refresher course till date. For the 1st time in history, over 1300 members took part in this course thus paving the way for us to bigger and more relevant courses for members.

CLRC: The Company Law Refresher Course also saw tremendous interest from members. It was very important for our members to get an opportunity to learn about the changing regulations and their impact as the CLRC gave an overview of the changes and important amendments that have taken place recently.

To grow we need to ideate. But the true success of ideation lies not just in creating the big idea but also its implementation. For us, this is our biggest strength, as this year, we are generating the big idea and ensuring its implementation because everyone is working in that....together.



CA. SHRUTI SHAH

Together
We Can...

Forthcoming Events **Pg 6**

Law Updates **Pg 10**

Recent Judgments **Pg 15**

"TO SUCCEED IN YOUR MISSION, YOU MUST HAVE
SINGLE - MINDED DEVOTION TO YOUR GOAL."
- DR. A. P. J. ABDUL KALAM

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CA ACT & REGULATIONS

ACCOUNTING & AUDITING


INDIRECT TAX

COMPANY LAW

OTHER LAWS

INCOME TAX

MISCELLANEA

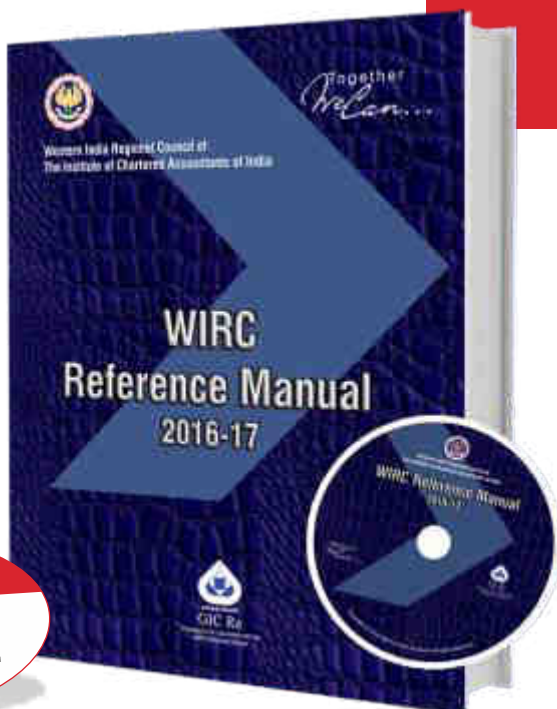
 Western India Regional Council of
The Institute of Chartered Accountants
of India

Together
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WIRC REFERENCE MANUAL 2016-17

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ICAI Bhawan, 27, Cuffe Parade, P. B. No. 6081, Colaba, Mumbai-400 005



Interactive Meeting with Czech Republic Technology Institute & Chamber of Accountants in Prague

ALL REGION JOINT CONFERENCE

HOTEL RESORT RIO, ARPORA, GOA

19th to 21st August, 2016 – Friday to Sunday

12

CPE Hrs

FEES

Residential

₹ 12,000/-

Non-Residential

₹ 3,500/-

Time	Topics	Speakers
3.00 p.m. to 6.00 p.m.	1st Day – Friday, 19th August, 2016 Inaugural Session: Chief Guest Shri Manohar Parrikar, Defence Minister of India Guest of Honour: CA. M. Devaraja Reddy, President, ICAI, CA. Nilesh Vikamsey, Vice-President, ICAI • GST – Critical Component of Indirect Tax Reforms – Session Chairman CA. Ashok Chandak, Past President, ICAI	CA. Madhukar Hiregange
10.00 a.m. to 4.00 p.m.	2nd Day – Saturday, 20th August, 2016 • Concealment of Income and Penal Provisions • Indepth Analysis of CENVAT Credit Rules • AS v/s IND AS	Eminent Faculty CA. Sunil Gabhawalla CA. M. P. Vijaykumar
10.00 a.m. to 1.00 p.m.	3rd Day – Sunday, 21st August, 2016 • Issues in CARO 2016 • Professional Ethics and Code of Conduct	Eminent Faculty CA. Chandrashekar Vaze

Chief Co-ordinators / Mobile Nos.

CA. Shruti Shah, Chairperson, WIRC	9892407988	CA. E. Phalguna Kumar, Chairman, SIRC	9441886303
CA. Abhay Chhajed, Chairman, CIRC	9303104477	CA. Yeshwant Kamat, Chairman, Goa Branch	9766369380
CA. Anirban Datta, Chairman, EIRC	9830853547	CA. Kamlesh Saboo, Secretary, WIRC	9819195333
CA. Deepak Garg, Chairman, NIRC	9811064105		

For Registration and Further Details Contact – 0832 - 2438516 | E-mail: goa@icai.org

INFORMATION TECHNOLOGY UPDATE CORNER

Welcome! WIRC has started a new series on latest updates in field of Information Technology. The 'IT Update Corner' is intended to keep members abreast with news and views on the topic with short-url link to read the update in detail on the source webpage.

#BigData Brexit heralds a new era of big data driven forecasting. The old fashioned approaches of walking up to people, calling at their home or office or online form-filled surveys don't seem to work anymore. Whereas deep diving into search history of Google, social media sites like Twitter, *et al* and analysing them throws up a very close picture to the actual outcome. Read more: <http://goo.gl/vvEkOZ>

#BigDataAnalytics #AI #MachineLearning Big data analytics, artificial intelligence and machine learning is being leveraged across financial technology companies. The major areas which are seeing major overhauls are: credit scoring, customer acquisition, customer retention and loyalty, risk management and investment management. Read more: <https://goo.gl/0xkfux>

#CyberCrime #Hacking #Economy Hewlett Packard Enterprise (HPE) released a new report titled "The Business of Hacking," which examined the underground economy surrounding cybercrime and criminal hackers, and explained how businesses can protect themselves. Discover how enterprise security combined with security intelligence solutions can help you prioritise the most effective efforts to disrupt the business of hacking. Download full report: <http://goo.gl/NOcB8G>

#IoT #Hacking The Internet of Things (IoTs) or Internet-connected devices are growing at an exponential rate and so are threats to them. A jewellery shop's website was flooded with https requests at 35,000 per second. The DDoS attack continued for days, causing researchers curious about its origin. It was discovered that the requests were coming from internet-connected CCTV cameras that had been remotely hijacked by cyber criminals to attack other services. The IP addresses of CCTV boxes causing DDoS attack were coming from no fewer than 105 countries around the world. For Chartered Accountants, the assessment of client's business and going concern risk arena has expanded beyond realms of books of account and industry data. Read more: <http://goo.gl/SfF3l5>

#DigiLocker – DigiLocker is a key initiative under Digital India, the Government of India's flagship programme aimed at transforming India into a digitally empowered society and knowledge economy. Benefits of using DigiLocker are: access to documents anytime, anywhere; reduces administrative overheads for both government and business enterprise; validation of authenticity of documents; and self-upload with eSigning is equivalent to self-attestation. DigiLocker is safe and secure to use. It is secured using 256 Bit SSL Encryption, Mobile Authentication based Sign Up, ISO 27001 certified Data Centre, Data Redundancy, Timed Log Out and Security Audit Visit to know more and using it: <https://digilocker.gov.in/>

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CA. Ajay Dave

J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade, Mumbai

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
16/07/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Service Tax in Construction Industry <ul style="list-style-type: none"> Recent Amendments in applicability, valuation, POT & CENVAT related to Builders & Developers Recent Amendments in applicability, valuation, POT, CENVAT & Refunds related to Contractors including Government Contracts Case Studies in Construction Industry – Panellists 	CA. Keval Shah CA. Jinit Shah CA. Rajiv Luthia CA. Naresh Sheth	CA. Sandeep Jain 9819788099 CA. Priyam Shah 9824096112 CA. Sushrut Chitale 9821112904	CA. Hemang Shah 9223273189 CA. Akshay Tambe 9892701496 CA. Kalpesh Kothari 9029371777
23/07/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on e-filing under DT & IDT for newly Qualified CAs <ul style="list-style-type: none"> TDS ITR MVAT Service Tax 	CA. Ravi Soni CA. Atul Mehta CA. Kunal Davda CA. Prerana Shah	CA. Hardik Shah 9825510422 CA. Drushti Desai 9820335923 CA. Pradeep Agrawal 9898560967	CA. Viral Mehta 9819030563 CA. Dawal Acharya 9819411101 CA. Manisha Bhonsle 8097443088
30/07/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Forensic Audit & Data Analytics <ul style="list-style-type: none"> Importance of System Audit – Different types of System Audit Various Methodologies to Conduct Technology Audit–Standard and COBIT Forensic Audit Data Analytics in Forensic Audit 	CA. Nandmohan Shenoy CA. Nandmohan Shenoy Eminent Faculty Eminent Faculty	CA. Aniket Talati 9825551448 CA. Rakesh Alshi 9819427242 CA. Lalit Bajaj 9867692321	CA. Abhijit Totade 9819659151 CA. Ashwin Raje 9769908479 CA. Arpit Kabra 9819007027
06/08/2016 Saturday 3 CPE Hrs	10.00 a.m. to 1.00 p.m. ₹ 600/-	Seminar on HUF and Family Arrangement <ul style="list-style-type: none"> Tax Planning through HUF and Family Arrangement Preparation of Will and documentation in relation to HUF and Family Arrangement 	CA. Vimal Punmiya	CA. Priti Savla 9321426883 CA. Hardik Shah 9825510422 CA. Satyanarayan Mundada 9422080814	CA. Aniket Kulkarni 9821690559 CA. Kalpesh Kothari 9029371777 CA. Sajjan Agrawal 9322281706
13/08, 20/08, 27/08 & 03/09/2016 Saturdays 12 CPE Hrs	10.00 a.m. to 1.00 p.m. ₹ 2,000/-	MVAT Refresher Course 13th August, 2016 Amendments under the MVAT & CST Acts with special reference to amendments impacting MVAT Audit for 2015-16 20th August, 2016 Recent important judgments 27th August, 2016 Intricate issues under the ITC 3rd September, 2016 Intricate issues in in-transit sales, Branch transfers and High Seas Sales	CA. Sujata Rangnekar CA. C. B. Thakar CA. Vikram Mehta CA. Rajat Talati	CA. Manish Gadia 9820537986 CA. Kamlesh Saboo 9819195333 CA. Hardik Shah 9825510422	CA. Gaurav Save 9969001607 CA. Sunil Sharma 9769949829 CA. Aumkar Gadgil 8007976830 CA. Viral Chhedha 9833594045

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Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
16/07/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on ICDS <ul style="list-style-type: none"> Introduction to ICDS – ICDS 1 – Accounting Policies, ICDS 2 – Inventories, ICDS 3 – Construction Contracts, ICDS 4– Revenue Recognition, ICDS 6 – Effects of Changes in Foreign Exchange Rate ICDS 5 – Tangible Fixed Assets, ICDS 7 – Government Grants, ICDS 8 – Securities, ICDS 9 – Borrowing Cost, ICDS 10 – Provisions, Contingent Liabilities and Contingent Assets 	CA. Vyomesh Pathak CA. Divyang Thakker	CA. Kamlesh Saboo 9819195333 CA. Sandeep Jain 9819788099 CA. Balkishan Agarwal 9377110634	CA. Aalok Mehta 9892001645 CA. Devang Doshi 9967923276 CA. Mihir Mehta 9773393007

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Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
30/07/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	<p>Seminar on Internal Audit: Transformation and Effectiveness</p> <ul style="list-style-type: none"> Contemporary Observations made by Internal Audit in the past – Key Outcomes of Internal Audit Overcoming management resistance through Softer Skills and Approach Standards on Internal Audit – Importance of Standards and Compliance Fraud, Risk Management and Big Data including Emerging Compliances 	<p>CA. Gautam Pendse</p> <p>CA. Huzeifa Unwala</p> <p>CA. Murtuza Kachwala</p> <p>CA. Natarajan S.</p>	<p>CA. Pradeep Agrawal 9898560967</p> <p>CA. Sushrut Chitale 9821112904</p> <p>CA. Aniket Talati 9825551448</p>	<p>CA. Sachin Holmukhe 9820561266</p> <p>CA. Neeti Mishra 9324679343</p> <p>CA. Dhvani Karia 9819900489</p>
06/08/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	<p>Seminar on Tax Audit & Documentation</p> <ul style="list-style-type: none"> Issues in clauses of Tax Audit Standards on Auditing <i>vis-a-vis</i> Tax Audit Documentation for Tax Audit & Peer Review Various other legal issues in Tax Audit 	<p>CA. Vijay Kewalramani</p> <p>CA. Abhay Kamat</p> <p>CA. Satish Shanbhag</p> <p>CA. Ketan Vajani</p>	<p>CA. Vishnu Agarwal 9324544607</p> <p>CA. Sarvesh Joshi 9822022292</p> <p>CA. Purushottam Khandelwal 9825020844</p>	<p>CA. Ritesh Hibare 9773418343</p> <p>CA. Swati Bhatkar 9967537989</p> <p>CA. Milind Joshi 993003393</p>
20/08, 27/08, 03/09 & 10/09/2016 Saturdays 12 CPE Hrs	10.00 a.m. to 1.00 p.m. ₹ 2,000/-	<p>International Tax Refresher Course</p> <p>13th August, 2016</p> <ul style="list-style-type: none"> International Taxation – A perspective – Tax treaty interpretation and application and issues International Tax planning – principles and issues Corporate Tax compliances for double tax relief BEPS – A paradigm shift towards era of global tax transparency – Action plans and impact on international taxation from Indian perspective <p>20th August, 2016</p> <ul style="list-style-type: none"> International tax aspects of Permanent Establishments – Principles, Controversies, latest developments including global mobility issues from corporate and personal tax perspectives. BEPS impact on PE Royalties and Fees for technical services – Principles, Controversies, latest developments including global mobility – India perspective Article 7 and Article 13 interplay with case studies <p>27th August, 2016</p> <ul style="list-style-type: none"> Cross Border Transactions – M&A – Taxation principles, evolving judicial landscape and key debates Intangibles – Planning perspectives with Tax consequences POEM, GAAR – pressure points and way forward M&A outlook - Post BEPS implementation – Corporate tax outlook Transfer Pricing outlook <p>3rd September, 2016</p> <ul style="list-style-type: none"> Transfer Pricing in India – Key principles and latest developments including BEPS insights Trend of litigations and remedies with comparative analysis Dispute Resolution Mechanisms in India – Forums, technical principles & recent trends 	<p>Eminent Faculties will be announced soon on WIRC Website</p>	<p>CA. Rakesh Alshi 9819427242</p> <p>CA. Kamlesh Saboo Secretary, WIRC 9819195333</p> <p>CA. Vikrant Kulkarni 9881880073</p>	<p>CA. Shrenik Doshi 7710077038</p> <p>CA. Akshay Tambe 9892701496</p> <p>CA. Nitin Jaisinghani 9967539598</p> <p>CA. Meera Joiser 9819354164</p>

ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai (Classroom)

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
15/07/2016 Friday 3 CPE Hrs	5.00 p.m. to 8.00 p.m. ₹ 300/-	Seminar on Labour Laws • The Payment of Bonus Act, 1965 • The Payment of Gratuity Act, 1972 • The Payment of Wages Act, 1936 • The Maharashtra Labour Welfare Fund Act, 1953 • The Maharashtra State Profession Tax Act, 1975	Adv. Ramesh Soni	CA. Kamlesh Saboo 9819195333 CA. Vishnu Agarwal 9324544607 CA. Lalit Bajaj 9867692321	CA. Hrishikesh Wandrekar 9892919239 CA. Vikram Joshi 9821733286 CA. Arun Prithwani 9820917280
16/07/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Indirect Tax in Real Estate and Construction (Jugalbandi) • Service Tax provisions relating to Construction and Real Estate • VAT and Entry Tax provisions relating to Construction and Real Estate Brain's Trust Session • Brain's Trustees • Moderator	CA. Naresh Sheth CA. Janak Vaghani CA. Sushil Solanki Adv. P. C. Joshi CA. Ashit Shah	CA. Manish Gadia 9820537986 CA. Umesh Sharma 9822079900 CA. Drushti Desai 9820335923	CA. Jinit Shah 9870070607 CA. Parita Shah 9820717644 CA. Shantesh Warty 9819947969
16/07/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Practical Workshop on Online Compliance of Co-op. Society (Mah.) • Post Audit Compliances and 89A Inspection • Fraud Prevention and Detection WRT Co-op. Audit	CA. Amit Mohare CA. Santosh Giri CA. Gopal Singh	CA. Shilpa Shinagare 9820053395 CA. Abhijit Kelkar 9422126890 CA. Lalit Bajaj 9867692321	CA. Bipeen Mundade 9223290561 CA. Mehul Sheth 9820297310 CA. Prajakta Patil 9819041003
16/07/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,500/-	Professional Opportunities in Health Care Industry • Current threat landscape for the healthcare industry, Weighing the risks associated with cyber security including legal obligations, such as the cost of breaches, compliance standards, emerging laws; Panel Discussion on Cyber liabilities and how organisations can evaluate their cyber insurance options	CA. Dinesh Jain	CA. Aniket Talati 9825551448 CA. Lalit Bajaj 9867692321 CA. Kamlesh Saboo 9819195333	CA. Murtuza Ghadiali 9967128452 CA. Ajay Dave 9869252060
05/08/2016 Friday 3 CPE Hrs	5.00 p.m. to 8.00 p.m. ₹ 300/-	Interactive Meet with TDS officers Shri Satish Sharma, CIT (TDS)-1 and Shri Satpal Gulati, CIT CPE (TDS) Ghaziabad	Commissioner from TDS Department	CA. Vishnu Agarwal 9324544607 CA. Kamlesh Saboo 9819195333 CA. Priyam Shah 9824096112	CA. Atul Suraiya 9820514929 CA. Avinash Ravani 9820656366 CA. Mahendra Sanghvi 9821419787

ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai (Student Programme)

Date & Day	Time & Fees	Topic(s)	Chief Co-ordinators / Mobile Nos.	Students Co-ordinators / Mobile Nos.
23/07/2016 Saturday	10.00 a.m. onwards	Branch Level Quiz and Elocution Competition • Financial Reporting in the context of Financial Stability • Forensic Audit • E-initiatives by CBDT to facilitate tax compliance • Essentials of Cost & Management Accounting for healthcare organisations • Gross National Happiness is more important than Gross National Product • Yoga – A Tool for Physical and Emotional Strength	CA. Pradeep Agrawal 9898560967 CA. Satyanarayan Mundada 9422080814 CA. Hardik Shah 9825510422	Mr. Mohit Agarwal 7877498939 Mr. Saurabh Chokhani 8452995950 Mr. Mohit Kumar Yadav 9673750515

DIRECT TAX

(Contributed by CA. Haresh P. Kenia & CA. Deepak Lala)

SECTION 139 OF THE INCOME-TAX ACT, 1961 – RETURN OF INCOME – VERIFICATION OF TAX RETURNS FOR ASSESSMENT YEARS 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 AND 2014-15 THROUGH EVC WHICH ARE PENDING DUE TO NON-FILING OF ITR-V FORM AND PROCESSING OF SUCH RETURNS

CIRCULAR NO. 13/2016 [F. NO. 225/46/2016-ITA.II], DATED 9/5/2016

The Central Board of Direct Taxes ('CBDT'), in exercise of powers under section 119(2)(a) of the Act, in case of returns for Assessment Years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 which were uploaded electronically by the taxpayer within the time allowed under section 139 of the Act and which have remained incomplete due to non-submission of ITR-V Form verification, hereby permits verification of such returns also through EVC. Such verification process must be completed by 31/8/2016. As an alternative to EVC, the taxpayer is allowed to send a duly signed copy of ITR-V to the CPC, Bengaluru by this date by speed post. In such cases, CBDT also relaxes the time-frame for issuing the intimation as provided in second proviso to sub-section (1) of section 143 of the Act and directs that such returns shall be processed by 30/11/2016 and intimation of processing of such returns shall be sent to the taxpayer concerned as per the laid down procedure. In refund cases, while determining the interest, provisions of section 244A(2) of the Act would apply.

INCOME DECLARATION SCHEME RULES, 2016 - DECLARATION OF DOMESTIC BLACK MONEY FROM 1/6/2016 TO 30/9/2016

NOTIFICATION NO. SO 1831(E) [NO. 33/2016 (F. NO. 142/8/2016-TPL), DATED 19/5/2016 [AS CORRECTED BY NOTIFICATION NO. SO 1950(E) [(No. 44/2016 (F. No. 142/8/2016-TPL)], DATED 2/6/2016]

The Income Declaration Scheme, 2016 incorporated as Chapter IX of the Finance Act 2016 provides an opportunity to all persons who have not declared income correctly in earlier years to come forward and declare such undisclosed income(s).

Under the Scheme, such income as declared by the eligible persons, would be taxed at the rate of 30% plus a 'Krishi Kalyan Cess' of 25% on the taxes payable and a penalty at the rate of 25% of the taxes payable, thereby totalling to 45% of the income declared under the scheme.

The Scheme shall remain in force for a period of 4 months from 1st June, 2016 to 30th September, 2016 for filing of declarations and payments towards taxes, surcharge & penalty must be made latest by 30th November, 2016.

The Scheme shall apply to undisclosed income whether in the form of investment in assets or otherwise, pertaining to Financial Year 2015-16 or earlier. Where the declaration is in the form of investment in assets, the Fair Market Value of such asset as on 1st June 2016 shall be deemed to be the undisclosed income under the Scheme. However, foreign assets or income to which the Black Money Act 2015, applies are not eligible for declaration under this scheme. Assets specified in the declaration shall be exempt from Wealth-tax. No scrutiny and enquiry under the Income-tax Act or the Wealth-tax Act shall be undertaken in respect of such declarations. Immunity from prosecution under the Income-tax Act and Wealth Tax Act is also provided along with immunity from the Benami Transactions (Prohibition) Act, 1988 subject to transfer of asset to actual owner within the period specified in the Rules. Non-payment of total taxes, surcharge & penalty in time or declaration by misrepresentation

or suppression of facts shall render the declaration void. The circumstances in which the Scheme shall not apply or where a person is held to be ineligible are specified in section 196 (Chapter IX) of the Finance Act, 2016. Non-declaration of undisclosed income under the Scheme, will render such undisclosed income liable to tax in the previous year in which it is detected by the Income tax Department. Other penal consequences will also follow accordingly.

SECTION 48 OF THE INCOME-TAX ACT, 1961 – CAPITAL GAINS – COMPUTATION OF – NOTIFIED COST INFLATION INDEX UNDER SECTION 48, EXPLANATION (V)

NOTIFICATION NO. SO 1948(E)[NO. 42/2016 (F. NO. 142/5/2016-TPL)], DATED 2/6/2016

The Cost Inflation Index notified for Financial Year 2016-17 is 1125.

INCOME-TAX (FOURTEENTH AMENDMENT) RULES, 2016 – AMENDMENT IN RULE 8D

NOTIFICATION NO. SO 1949(E) [F. NO. 370142/7/2016-TPL], DATED 2/6/2016

In exercise of the powers conferred by section 295 read with sub-section (2) of section 14A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following rules further to amend the Income-tax Rules, 1962, namely: In the Income-tax Rules 1962, in Rule 8D,—

I. For sub-rule (2), the following sub-rule shall be substituted, namely:

“(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:

- (i) The amount of expenditure directly relating to income which does not form part of total income; and
- (ii) An amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:

Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.”

II. Sub-rule (3) shall be omitted.

MAHARASHTRA VAT (Contributed by CA. C. B. Thakar)

The Maharashtra Settlement of Arrears in Disputes Act, 2016

As per powers granted u/s. 12(2) of the above Act, the learned Commissioner of Sales Tax has issued various forms for the purpose of above Act. They include Forms I to VIII which are for different purposes.

Circulars

- a) The Commissioner of Sales Tax has issued Circular bearing No. 13T of 2016 dated 6/5/2016 by which the change in geographical jurisdiction of the concerned Joint Commissioners is informed.
- b) The Commissioner of Sales Tax has issued Circular bearing No. 14T of 2016 dated 7/5/2016 by which the effect of various amendments in different Acts *vide* Maharashtra Act No. XV of 2016 and other notifications etc., is clarified.
- c) The Commissioner of Sales Tax has issued Circular bearing No. 15T of 2016 dated 9/5/2016 by which the position

about documents required as proof of permanent place of residence for the purpose of registration is clarified.

- d) The Commissioner of Sales Tax has issued Circular bearing No. 16T of 2016 dated 9/5/2016 by which the applicability of TIN to allied Acts like Luxury tax Act, etc., is clarified.
- e) The Commissioner of Sales Tax has issued Circular bearing No. 17T of 2016 dated 9/5/2016 by which it is informed that Wednesday will be observed as Taxpayers' day.
- f) The Commissioner of Sales Tax has issued Circular bearing No. 18T of 2016 dated 24/5/2016 by which SAP based new registration is clarified.

GUJARAT VAT

(Contributed by CA. Kishor R. Gheewala)

REGISTRATION – AMENDMENTS

Vide Notification No. (GHN-36) VAR-2016(39) dated 31st May, 2016, Rules Regarding Registration have been amended to *inter alia* provide for the following:

- Scanned copy of duly signed Form 101 along with the forms appended with Form 101 shall have to be uploaded while uploading application for registration.
- Voluntary Deposit and Security Deposit shall have to be paid by way of e-Payment only.
- Time limit for granting Final Registration Certificate has been reduced from 30 days to 11 days.

E-PAYMENT MANDATORY

Vide Circular No. GUJKA/VAT-86/16-17/o.t.w. 182/157 dated 21/5/2016, it is reiterated to make all the payments in excess of ₹ 50,000/-, including tax, interest and penalty, for a tax period, shall have to be made by way of e-Payment only. In following cases only, manual challan will be accepted by the Department.

- Cash Payment at the Check-post,
- Payment by Cash, Cheque, Draft during Investigation Proceedings by way of spot visit,
- Payments by Government Department,
- Realisation through Bank Account attachment,
- Payments by Liquidator or Authorised Auctioneer/ Financial Institutions,
- Payment of One Time Settlement,
- Payment of TDS.

C-FORM – DUPLICATE COUNTERFOIL – VALID

Hon'ble GVAT Tribunal has, in case of Falcon Pumps Pvt. Ltd. R.A. No. 10/2014 held, *vide* its decision dated 7/4/2016, that, claim of sales against C Form is admissible even on the basis of Duplicate Counterfoil of C Form.

SEIZURE AT CHECK-POST ONLY

Hon'ble Gujarat High Court has, in case of *State of Gujarat vs. Sundha Traders Tax appeal No. 821-824/2015 decision dated 1/4/2016, inter alia* held as under:

- Powers of seizure of goods and vehicle can be exercised by Department at check-post only and NOT at other places.
- Department does not have power of seizure of goods and vehicle in case of movement of goods without Transit Pass in Form 405.
- Penalty for non-availability of Transit Pass can be imposed on truck driver or owner only and not on owner of goods.

CENTRAL EXCISE

(Contributed by CA. Jayesh Gogri)

Notifications

Tariff

Exemption to goods manufactured by Job worker for its removal to special economic zone units

Specified goods manufactured by job worker which is used in the manufacture of final products or cleared as such from the factory or supplier of raw materials or semi-finished goods are exempted *vide* Notification No. 214/86 - C.E. dated 25th March, 1986. Now, clearances made by job worker to a unit in special economic zone have also been exempted.

(Notification No. 24/2016- CE dated 14th June, 2016)

Exemption to capital goods and inputs captively consumed within the factory of production extended to special economic zone units

All capital goods and specified inputs when captively consumed within the factory of production are exempted *vide* Notification No. 67/95 – CE, dated 16th March, 1995. Now, the said exemption is being extended to goods cleared to a unit in Special Economic Zone.

(Notification No. 25/2016- CE dated 14th June, 2016)

Circulars

TRU clarification on levy of excise duty on readymade garments and made up articles of textiles as brought into force *vide* Union Budget 2016-17

Representation from Trade has been received regarding the scope of the levy of excise duty on readymade garments and textile made articles bearing a brand name or sold under a brand name wherein the issue arose for taxability of goods sold by a retail store which merely affixes the retail sale price on the readymade garments and made up articles of textiles being purchased by it from the open market.

It has been clarified by the Circular that, present levy is not on all readymade garments and made-ups, and is restricted only to readymade garments and made-up articles of textiles bearing a brand name or sold under a brand name and having retail sale price (RSP) of ₹ 1,000 or above. Furthermore, it has also been provided that affixing a brand name on the product, labelling or relabelling of its containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture.

“Brand name” means a brand name, whether registered or not, that is to say, a name or mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.

The retailer shall not be liable to pay excise duty if, (i) the RSP of such readymade garments or made-up articles of textiles is less than ₹ 1,000, or (ii) the aggregate value of clearances for home consumption by such person is less than ₹ 1.5 crore in a year (provided aggregate value of clearances during the previous financial year was less than ₹ 4 crore).

Further, merely because the outlets (shop) of a retailer, from where readymade garments or made ups articles are sold, has a name, say M/s. XYZ and Sons, the readymade garments or made ups sold from such outlet (shop) cannot be held as branded readymade garments or made-ups and become liable

to excise duty. Thus, deemed manufacture provision under Central Excise shall be applicable only if such retailer affixes a brand name on the product and affixes a label bearing a brand name on the package having RSP of ₹ 1,000 or above.

It is also been directed that field formations shall not visit individual retail outlets or retail chains, except with the prior approval of the jurisdictional Commissioner or Additional Director General or above, in cases involving duty evasion.

(Circular No. 1031/19/2016-CX dated 14th June, 2016)

SERVICE TAX (Contributed by CA. Rajiv Luthia)

SYNOPSIS OF NOTIFICATIONS, CIRCULARS & LETTERS

Central Government, vide Notification No. 26/2016-ST dated 20th May, 2016, has amended Entry No. 48 of Notification No. 25/2012-ST dated 20th June, 2012 by inserting Explanation whereby the exemption to services provided by Government or a local authority to a business entity with a turnover up to ₹ 10 Lakh in the preceding financial year is not applicable to following services:

- Services by Department of posts by way of speed post, express parcel post, life insurance & agency service provided to a person other than Government [section 66D (a)(i)];
- Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport [section 66D (a)(ii)];
- Transport of goods or passengers [section 66D (a)(iii)];
- Renting of immovable property.

Central Government, vide Notification No. 27/2016-ST dated 26th May, 2016, has provided that the provisions of Reverse Charge Mechanism contained in Notification No. 30/2012-ST dated 20th June, 2012 shall *mutatis mutandis* apply to levy of Krishi Kalyan Cess (hereinafter referred to as "KKC") leviable w.e.f. 1st June, 2016.

Central Government, vide Notification No. 28/2016-ST dated 26th May, 2016, has exempted those taxable services from levy of KKC which are exempt from service tax by a notification/order issued u/s. 93 (1) / (2) of the Finance Act, 1994 or otherwise not leviable to Service Tax u/s. 66B of the Finance Act, 1994.

It is further provided that in respect of services for which abatement is granted under Notification No. 26/2012-ST dated 20th June, 2012, KKC shall be leviable on that portion of value of taxable services on which service tax is payable. Similarly, the value of taxable services for the purposes of KKC shall be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006.

Central Government, vide Notification No. 29/2016-ST dated 26th May, 2016, has amended Notification No. 39/2012-ST dated 20th June, 2012 whereby the exporter of service is eligible to claim rebate of KKC paid on input services used in providing services which are exported in terms of Rule 6A of the Service Tax Rules, 1994.

Central Government, vide Notification No. 30/2016-ST dated 26th May, 2016, has amended Notification No. 12/2013-ST dated 1st July, 2013 whereby the developer or unit under SEZ is entitled to claim refund of KKC paid on specified services.

Central Government, vide Notification No. 31/2016-ST dated 26th May, 2016, has inserted Rule 6(7E) in Service Tax Rules, 1994 whereby Air Travel Agents [Rule 6(7)], Insurer carrying on Life Insurance Business [Rule 6(7A)], Foreign Exchange Brokers & Money Changers [Rule 6(7B)] & Lottery Distributor or Selling Agents [Rule 6(7C)] shall have the option to pay such amount as

determined by multiplying total service tax liability calculated under respective rule by effective rate of KKC (presently 0.5%) and dividing the product by rate of service tax (presently 14%), during any calendar month or quarter, as the case may be, towards the discharge of his liability for KKC instead of paying KKC at the rate of 0.5% of value of taxable services. The option once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.

Central Government, vide Notification No. 28/2016-CE (NT) dated 26th May, 2016, has made following amendments to CENVAT Credit Rules, 2004 related to KKC:

- Service provider is eligible to take CENVAT Credit of KKC paid on input services.
- CENVAT credit of any duty/tax (other than KKC) shall not be utilised for payment of KKC.
- CENVAT credit of KKC shall be utilised only for payment of KKC on output services.

Central Government, vide Notification No. 29/2016-CE (NT) dated 31st May, 2016, has notified the Indirect Tax Dispute Resolution Scheme Rules, 2016 w.e.f. 1st June, 2016. The entire modalities & procedure about this scheme is given in the said Notification.

Central Government, vide Notification No. 32/2016-ST dated 6th June, 2016, has amended Entry No. 6(c) of Notification No. 25/2012-ST dated 20th June, 2012 whereby erstwhile exemption granted to legal services provided by a senior advocate to any person other than a business entity is now extended to a business entity with a turnover up to ₹ 10 lakh in the preceding financial year.

Central Government, vide Notification No. 33/2016-ST & Notification No. 34/2016-ST both dated 6th June, 2016, has brought representational service provided or agreed to be provided by a senior advocate, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, and the senior advocate is providing such services, under Reverse Charge Mechanism. In such cases, the recipient of such services, which is the business entity, shall be liable to pay service tax.

CBEC, vide Circular No. 194/04/2016-ST dated 26th May, 2016, has notified the accounting codes for payment of KKC.

KKC (Minor Head)	Tax Collection	Other Receipts (Interest)	Penalties	Deduct Refunds
0044-00-507	00441509	00441510	00441512	00441511

CBEC, vide Circular No. 195/05/2016-ST dated 15th June, 2016, in continuation to Circular No. 187/6/ 2015-ST dated 10th November, 2015, has issued following clarification for speedy disbursal of pending refund claims of exporters of services under Rule 5 of the CENVAT Credit Rules, 2004.

- The additional document in the form of CA Certificate is not a substitute for verification by the refund sanctioning authority. It will ensure diligence on the part of the claimant and the statutory auditor, which will make him eligible for a provisional payment of 80% of the claimed amount.
- The certificate cannot be furnished by a Cost and Management Accountant or a Company Secretary. In the case of companies, it cannot be furnished by a Chartered Accountant who is not the statutory auditor.
- Auditors while discharging their duties are bound by the provisions of the statute governing them as well as

Guidance Notes, Accounting Standards etc., relating to their profession. The ICAI has issued Guidance Notes on reports and certificates issued by auditors. These Guidance Notes relate to situations where the auditor has freedom with respect to the wording of a certificate as well as to situations where he has to adhere to a prescribed format. In both situations, the auditor has to indicate the manner in which the audit was done, assumptions, limitations in scope and reference to information and explanations obtained in the certificate. Adherence of the auditors to these requirements should not be considered to be violations of the circular. If at all, by mentioning that they have adhered to the various legal and accounting requirements, they are adding value to their certificate. As long as the four points which are contained in Annexure-1 to the circular dated 10/11/2015 are present, the certificate should not be rejected on the ground of any disclaimers which the auditor has to give, owing to the Guidance Notes.

FEMA

(Contributed by CA. Manoj Shah, CA. Sudha G. Bhushan & CA. Mitesh Majithia)

Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules)

A.P. (DIR Series) Circular No. 73 dated May 26, 2016

The Reserve Bank of India has, to ensure more transparency and greater disclosure decided to make disclosure of following information relating to compounding proceedings in public domain:

- Public disclosure of Compounding Orders: It has been decided to host the compounding orders passed on or after June 1, 2016 on the Bank's website (www.rbi.org.in) for disseminating the information pertaining to compounding orders.
- Public disclosure of guidelines on the amount imposed during compounding: It has been decided to put the guidance note, for the basis on which the amount to be imposed in compounding proceeding is derived by the compounding authorities in RBI, on Bank's website for information of general public.

For detail of format for disclosure of Compounding Orders and Guidance note, please refer to the aforesaid circular available at <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10424&Mode=0>.

Additional modules for caution listing of exporters, reporting of advance remittance for exports and migration of old XOS data

A.P. (DIR Series) Circular No. 74 dated May 26, 2016

To simplify the procedure for filing returns on a single platform and for better monitoring, RBI has decided to integrate the returns related to (a) handling of shipping bills for caution listed exporters; (b) delayed utilisation of advances received for exports; and (c) exports outstanding with Export Data Processing and Monitoring System (EDPMS) which has been in operation since March 1, 2014. These enhancements in the EDPMS will be effective from June 15, 2016.

For detail please refer to circular available at RBI website at the link provided below – <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10423&Mode=0>.

Investment in Credit Information Companies (CIC)

DBR.CID.BC.No. 98/20.16.042/2015-16 dated 19th May, 2016

RBI has directed that investments directly or indirectly by any person, whether resident or otherwise, in a CIC, shall not exceed 10% of the equity capital of the investee company.

Notwithstanding the above, the RBI may consider allowing higher FDI limits as under to entities which have an established track record of running a Credit Information Bureau in a well regulated environment:

- Up to 49% if their ownership is not well diversified (i.e., one or more shareholders each holds more than 10% of voting rights in the company)
- Up to 100% if their ownership is well diversified or
- If their ownership is not well diversified, at least 50% of the directors of the investee CIC in India are Indian nationals/ Non-Resident Indians/Persons of Indian Origin subject to the condition that one third of the directors are Indian nationals resident in India.
- The investor company should preferably be a listed company on a recognised stock exchange.

FII/FPI investment would be permitted subject to the conditions that:

- A single entity should directly or indirectly hold below 10% equity
- Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement

FIIs/FPIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.

In case the investor in a CIC in India is a wholly owned subsidiary (directly or indirectly) of an investment holding company, the conditions as at (1) and (2) above will be applied to the operating group company that is engaged in credit information business and has undertaken to provide technical know-how to the CIC in India.

Consolidated Foreign Direct Investment (FDI) Policy effective from June 7, 2016

The Department of Industrial Policy and Promotion (DIPP) has, on June 7, 2016 issued Consolidated FDI Policy Circular of 2016 which is effective from the said date. This circular subsumes and supersedes all Press Notes / Press Releases / Clarifications / Circulars issued by DIPP, which were in force as on June 06, 2016, and reflects the FDI Policy as on June 7, 2016.

The Consolidated FDI Policy Circular is available at DIPP website at the link provided below. http://dipp.nic.in/English/policies/FDI_Circular_2016.pdf.

Radical changes in FDI Policy regime by the Government of India

Press Release dated 20th June, 2016

The Union Government has decided at a high-level meeting chaired by Prime Minister Narendra Modi to radically liberalise and simplify the FDI regime, with the objective of providing major impetus to employment and job creation in India. With these changes most of the sectors would be under automatic approval route, except a small negative list. Changes introduced in the policy include increase in sectoral caps, bringing more activities under automatic route and easing of conditionalities for foreign investment. These amendments seek to further simplify the regulations governing FDI in the country and make India an attractive destination for foreign investors. FDI policy in following sectors has been amended:

- Food Products manufactured/produced in India
- Defence
- Review of entry routes in Broadcasting Carriage Services
- Pharmaceutical

- Civil Aviation Sector
- Private Security Agencies
- Animal Husbandry
- Single Brand Retail Trading

Further for establishment of branch office, liaison office or project office or any other place of business in India if the principal business of the applicant is Defence, Telecom, Private Security or Information and Broadcasting, it has been decided that approval of RBI or separate security clearance would not be required in cases where FIPB approval or licence/permission by the concerned Ministry/Regulator has already been granted.

For detail amendments please refer to the Press Release available at <http://pib.nic.in/newsite/erelease.aspx?relid=0>.

Deferred compensation – transfer of shares between a resident buyer and a non-resident seller or vice-versa

Notification No. FEMA.368/2016-RB dated May 20, 2016

RBI has amended the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 to provide that in case of transfer of shares between a resident buyer and a non-resident seller or vice-versa, not more than 25% of the total consideration can be paid by the buyer on a deferred basis within a period not exceeding 18 months from the date of the transfer agreement. For this purpose, if so agreed between the buyer and the seller, an escrow arrangement may be made between the buyer and the seller for an amount not more than 25% of the total consideration for a period not exceeding 18 months from the date of the transfer agreement or if the total consideration is paid by the buyer to the seller, the seller may furnish an indemnity for an amount not more than 25% of the total consideration for a period not exceeding 18 months from the date of the payment of the full consideration. However, the total consideration finally paid for the shares shall be subject to the applicable pricing guidelines.

Foreign Currency Accounts by a person resident in India

A.P. (DIR Series) Circular No. 77 [(2)/10(R)] dated June 23, 2016

Notification No. FEMA 10(R)/(1)/2016-RB dated June 1, 2016

In line with the Government of India's startup initiative, RBI has allowed an Indian startup, having an overseas subsidiary, to open a foreign currency account with a bank outside India for the purpose of crediting to the account the foreign exchange earnings out of exports/sales made by the said startup or its overseas subsidiary. The balances held in such accounts, to the extent they represent exports from India, shall be repatriated to India within the period prescribed for realisation of exports.

In addition, payments received in foreign exchange by an Indian startup arising out of sales/ export made by the startup or its overseas subsidiaries will be a permissible credit to the Exchange Earners Foreign Currency (EEFC) account maintained in India by the startup.

RBI has issued the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Amendment) Regulations, 2016 vide Notification No. FEMA 10(R)/(1)/2016-RB dated June 1, 2016 to amend the original regulations to give effect to the above amendments.

For detail amendments, please refer to the circular and notification available on RBI website at:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10457&Mode=0>, and

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10441&Mode=0>

Writing of options against contracted exposures by Indian Residents permitted

A.P. (DIR Series) Circular No. 78 dated June 23, 2016

As announced in the Bi-Monthly Monetary Policy Statement on April 7, 2015, in order to encourage participation in the Over the Counter (OTC) currency options market and improve its liquidity, RBI has permitted resident exporters and importers of goods and services to write (sell) standalone plain vanilla European call and put option contracts against their contracted exposure, i.e., covered call and covered put respectively, to any AD Cat-I bank in India subject to stipulated operational guidelines and terms and conditions mentioned in the circular.

RBI has issued the Foreign Exchange Management (Foreign Exchange Derivative Contracts) (Amendment) Regulations, 2016 vide Notification No. FEMA No. 365/2016-RB dated June 1, 2016 to amend the original regulations to give effect to the above amendment.

For detail amendments, please refer to the circular available on RBI website at:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10458&Mode=0>.

**CO-OPERATIVE SECTION
(Contributed by CA. Ramesh Prabhu)**

Case law on deduction granted under section 80P(2)(a)(i) of the Income-tax Act, 1961 applicable to Co-operative Credit Society

Decision of the ITAT Mumbai : ITA NO. 3496/MUM/2013 in the case of *Parijat Co-operative Credit Society vs. Commissioner of Income Tax-22, Mumbai* decided on 21/3/2016.

The brief facts of the case are that the assessee co-operative society filed its return of income for the year under consideration on 7/8/2009. The return was processed u/s. 143(3) of the Act and the AO assessed the total income as returned by the assessee without making any addition. The ld. CIT, however, exercising his powers u/s. 263 of the Act observed that the assessee had claimed deduction u/s. 80P of the Act. He observed that as per the amendments introduced vide Finance Act, 2006 w.e.f. 1/4/2007, as per sub-section 4 to Section 80P, deduction u/s. 80P is not available to the assessee society not being an agricultural co-operative society. Aggrieved by CIT order, the credit society approached the ITAT. The ITAT held that mere fact that the assessee has been providing credit facilities to its members and thereby earns interest and dividend cannot make the 'society' into a 'bank' for the purposes of section 80P(4) of the Act. Even the letter of the CBDT bearing No. F. No. 133/06/2007-TPL dated 9/5/2008 addressed to the Delhi Urban T&C Society Ltd., stating that for the purposes of sub-section 4 of section 80P, 'co-operative bank' shall have the same meaning as assigned to it in part V of the Banking Regulation Act 1949 and credit societies are not issued any licence by the RBI to carry out the banking business. This proposition is supported by various decisions including the decision of the Gujarat High Court in the case of *CIT vs. Jafari Momin Vikas Co-operative Credit Society Ltd.* and the decision of the Tribunal in the case of *DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd.* [2012] 137 ITD 163. Thus claim of the claiming deduction of interest earned by lending activities to its members under section 80P(2)(a)(i) of the assessee was allotted by ITAT in the above case. The full judgment is uploaded on the co-operative section of WIRC of ICAI.

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DIRECT TAX

(Contributed by CA. Paras K. Savla & CA. Hemant Shah)

HIGH COURT'S DECISIONS

CIT vs. Air Cargo Agents Association of India (Bombay High Court)

Concept of mutuality is explained in the light of decision in the case of Bangalore Club 350 ITR 509 (SC)

The contributions made by the members to the assessee cannot be a subject matter of tax merely because the part of its excess of income over expenditure is invested in mutual funds. It is also not the case of the Revenue that the dividend received from mutual funds have not been offered to tax by the assessee. The concept of mutual concerns not being subject to tax is based on the principle of no man can profit out of itself. Therefore the test to be satisfied before an association can be classified as a mutual concern are complete identity between the members i.e. contributors and the participants, the action of the mutual concern must be in furtherance of its objectives and there must be no scope of profiteering by the contributors from a fund. These tests have in fact been reiterated in *Bangalore Club vs. CIT 350 ITR 509 (SC)*.

Amaya Infrastructure Pvt. Ltd vs. ITO (Bombay High Court)

Section 147 : If the assessee responds to Notices u/ss. 142(1)/143(2), it means that he has submitted to the AO's jurisdiction and is estopped for filing a Writ Petition to challenge the same. The fact that the jurisdiction is challenged while participating in the proceedings is irrelevant.

The petitioners have filed detailed information called for by the Assessing Officer (AO) u/s. 142(1) & u/s. 143(2) of the Act and thus participated in the assessment proceedings. This having been done, it is not open for the petitioners to now contend that this Court should exercise its extraordinary jurisdiction and prohibit the authorities from proceeding further with the impugned notice. This is particularly so as the question of jurisdiction has been raised by the petitioners before the AO during the assessment proceedings under the Act. In the present facts, the petitioners have participated in the proceedings before the AO. The objections to the reasons recorded by the AO in support of the impugned notice during the assessment proceedings is to point out to him the reassessment proceedings are bad as the requirement of Sections 147 & 148 of the Act are not satisfied. It would be completely different scenario where the petitioners have not participated in the proceedings before the AO & object to exercise of jurisdiction by the AO at the very threshold and not while participating in the reassessment proceedings. In such cases, it is not a case of a party seeking identical relief by two parallel modes. The orders passed by the AO are subject to effective, efficacious alternative remedy under the Act.

CIT vs. S. Ganesh (Bombay High Court)

Inability of the assessee, an Advocate, to reconcile the professional receipts with the TDS certificates and to give a detailed party-wise breakup of fees receipts does not mean that the difference can be assessed as undisclosed income.

The assessee was engaged as an Advocate to argue the matters by what is popularly known as Advocates on record or instructing Advocates method, meaning thereby the client does not engage the assessee directly but a professional or the Advocate engaged by the client requests the assessee to argue the case. The brief

is then taken as the counsel brief. That being the practice, the assessee gave an explanation that the breakup as desired cannot be given and with regard to all payments. It is pointed out that at times, assessee receives fees directly from the clients or from the instructing Advocates or Chartered Accountants if such professionals have collected the amounts from the clients. Under these circumstances, the breakup as desired cannot be placed on record.

INTERNATIONAL TAXATION

(Contributed by CA. Hinesh Doshi & CA. Ronak Soni)

Galatea Ltd. vs. Deputy Commissioner of Income-tax [2016] 67 taxmann.com 190 (Mumbai - Trib.) dated 24th February, 2016

Facts of the case

- The assessee was a company incorporated under the laws of Israel and was tax resident of Israel. It had no business connection in India, nor did it have any P.E. in India.
- The assessee sold to its customers machines and operating software in India. The invoice involved consideration separately for the machine and operating software hence some customers deducted TDS from the payment, treating the same as 'Royalty' under Article 12(3) of the Israel tax treaty.
- However, the assessee was of the view that the aforesaid payments made by the customers did not constitute 'Royalty', under the Israel tax treaty and the tax was wrongly withheld by the customers, accordingly, it filed its return of income for the impugned assessment year at nil and claimed refund of the tax withheld/deducted by its customers.
- The Assessing Officer treated the same as taxable in the hands of the assessee in India considering the provision of Section 9(1) (vi) of the Act.
- The DRP upheld the action of the Assessing Officer without giving any relief to assessee. So the assessee appealed to the Mumbai Tribunal.

Issue

Whether the sale of operating software is considered as Royalty under Article 12(3) of the Israel tax treaty and the tax deducted was justified?

Held

- ITAT considered that the undisputed facts are that none of the customers have purchased only machine or only software. The machine sold by the assessee could not be made operational or functional in the absence of operating software along with the application software. The software supplied by the assessee to end user was for integration with the machine supplied by the assessee and that this software had no other independent use as such, except to enable such machine to function. The software supplied by the assessee was meant only and exclusively for the purpose of making the said machine functional.
- Thus, it has to be treated as transaction of sale of machine in the hands of the assessee and the amount bifurcated for software cannot be treated differently as consideration in the nature of 'Royalty' as envisaged under Section 9(1) (vi) and since the assessee has no P.E. in India, as per admitted

facts on record, the amount of profit arising on receipt of sale consideration of machine would not be liable to be taxed in its hands in India.

- In the result the appeal of the assessee is allowed.

Exide Industries Ltd. Kolkata vs. DCIT Circle-1 [2016-TII-48-ITAT-KOL-INTL] dated 2nd March, 2016

Facts of the case

- The assessee is engaged in the business of manufacturing and trading of storage batteries and accessories thereof. During the concerned year, the assessee had paid royalty and consultancy fees to a Japanese entity in respect of which tax was not deducted and deposited as per the provisions of section 195. Such fact was disclosed in Clause 17(i) of the tax audit report as well. The said sum was debited in the P/L A/c and claimed as deduction while computing income from business.
- According to the assessee in respect of the payment in question, there was no liability to deduct TDS and therefore no disallowance u/s. 40(a)(i) could be made. By applying the principle of non-discrimination as per Article 24 of the India-Japan DTAA, there could be no disallowance u/s. 40(a)(i).
- The AO rejected the claim of the assessee by simply stating that Indo-Japan DTAA was in force since 7/3/1989 and the assessee all across offered similar amount of royalty and technical service to tax. Since this treaty was effective since March 1989, there was no occasion to claim allowability of royalty/technical service by make a new interpretation of the said treaty. Further, nowhere it was specifically mentioned in the tax treaty that such fees was allowable irrespective of tax being deducted or not.
- On appeal, the CIT(A) held that as per the Section 40(a)(i), if the tax was not deducted on the amount of technical services or royalty payable to a non-resident, the same had to be disallowed. Hence the CIT(A) confirmed the view taken by the AO.
- Aggrieved by the decision of the orders passed by the CIT(A), the assessee filed an appeal with the Tribunal.

Issue

Whether royalty payments to non-residents can be disallowed in the hands of assessee u/s. 40(a)(i) in view of Article 24 of the Indo-Japan DTAA, when the similar payments made to residents is not disallowed in the hands of the assessee for non-deduction of TDS?

Held

- At the time of hearing it was brought to the notice of the Tribunal that the same issue has already been decided in assessee's own case, wherein it was held that the stand of the assessee was that since disallowance on account of non-deduction of tax at source from payments of similar nature made to a resident was liable to be made under Income-tax Act, the disallowance u/s. 40(a)(ia) on account of non-deduction of tax from similar payments made to a non-resident could not be made as it would result in discrimination.
- The Tribunal has observed therein that since royalty payments to residents could not be disallowed for non-deduction of taxes, similar payments made to non-residents could not be disallowed in the hands of the assessee u/s.

40(a)(i) as per provision of Article 24 of Indo-Japan DTAA, it deleted the disallowance made by the AO. Therefore, it directed that disallowance u/s. 40(a)(ia) be deleted.

- In the result the appeal of the assessee is allowed.

M/s. J. Ray McDermott Eastern Hemisphere Ltd. vs. ADIT [TS-250-ITAT-2016 (Mum.)] dated 6th May, 2016

Facts of the case

- J. Ray McDermott Eastern Hemisphere Ltd., incorporated in Mauritius, is engaged in the business of transportation, installation and construction of offshore platforms for the purpose of mineral oil exploration in India.
- During the assessment proceeding, AO analysed various contracts executed by the assessee with Enron Oil and Gas India Ltd. and following the assessment order, work executed by the assessee at different locations was considered as one, and accordingly the number of days for execution of all the projects were aggregated to determine the period of 9 months. AO also included the number of days estimated to have been spent for supervisory activities before the actual commencement of construction work.
- Accordingly, by treating all of the contracts executed in India as one, AO held that assessee had a PE in India.
- The AO also upheld that the Indian liaison office of M/s. McDermott ETPM East Inc., Dubai, a separate legal entity, constituted a permanent establishment of the assessee in India.
- On appeal, CIT(A) reversed AO's order. Aggrieved Revenue filed an appeal before Mumbai ITAT.

Issue

Whether for the purpose of PE determination, computation of stay-period of different projects is to be combined or examined separately to arrive at the time limit of 9 months as stipulated in Article 5 - Para 2(i) of Indo-Mauritius DTAA?

Whether Indian LO of McDermott ETPM East Inc., Dubai, a separate legal entity, constituted assessee PE in India?

Held

- ITAT had held that for the purpose of computation of number of days for examining threshold limit of 9 months, each of the building site or construction, or assembly project or supervisory activities in connection therewith was to be viewed independently on standalone basis and thus, no aggregation was required to be done for computing number of days. ITAT thus held that "each project of the assessee has to be considered separately for computing number of days of the work duration."
- It held that the 9 months threshold for constitution of PE under Article 5(2)(i) of India-Mauritius treaty was not met, Thus assessee had no PE in India in terms of Article 5(2)(i) of the Indo-Mauritius DTAA.
- Further holds that assessee Liaison Office ('LO') in India does not constitute its Fixed place PE under Article 5(2)(c) of DTAA as activities carried by LO were in the nature of back up and auxiliary services which were specifically excluded in terms of clause 5(3)(e).
- Hence the ruling was in favour of the assessee.

KPMG vs. ACIT 11(2) [MUM.-ITAT-2016] dated 18th March 2016

Facts

- The assessee was engaged in the business of rendering taxation, business advisory, audit related services and other consultancy services. The assessee had paid fee for professional services outside India without deduction of tax at source to the following parties: (i) KPMG LLP, UK (ii) KPMG LLP, USA (iii) KPMG, France and (iv) KPMG LLP, Huazhen, China.
- The AO disallowed the above payments u/s. 40(a)(i) of the Act and held that these entities had provided services which given enduring benefit, thus the services fall under the ambit of Articles 12 /13 of respective treaty.
- The assessee considered an appeal with CIT and the case was decided in the assessee's favour except for one of the remittances made to KPMG, China relying upon the assessee's similar case in earlier year.
- Being aggrieved against CIT(A), the Revenue filed an appeal whereas the assessee filed an appeal before ITAT w.r.t. the fourth party i.e. KPMG China wherein relief was not granted.

Issue

Whether payment made as fees for professional services outside India would attract TDS under Section 195 or the relevant clause of DTAA?

Whether the professional services provided fit into the terminology 'make available'?

Whether the payment is 'Independent Personal Services' or 'Fees for Technical Services'?

Whether the disallowance u/s. 40(a) (i) would attract when law is amended with retrospective effect?

Held

- ITAT held that Professional Services do not 'make available' technical knowledge, skill, experience, know-how or process. It is noted that services have been provided outside India and none of the services had the attributes of making available of any technical knowledge, experience, skill, know-how or process.
- The relevant provisions of treaties with these countries stipulate that in case of FTS, it is mandatory that technical knowledge etc. should be 'made available' to the recipient of services and the said recipient should be free to use it in its own right. If the services rendered do not result in making available of any such thing, then it would not fall within the ambit of FTS. Thus, it held that these payments cannot be considered as fee for technical services as per its definition given in respective treaty.
- It was further noted that these payments fall within the definition of independent person service as provided in respective DTAA's, mostly in Article 15, under which, the payment in the hands of a payee can be taxed in India only if provider of the services stays in India for a period aggregating to 90 days or more during the relevant financial year or if the said person has a PE or fixed basis regularly available to him in India for performing such activities. Admittedly there is no PE in India of the payee and services have been rendered outside India. Thus, in absence of any

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PE etc., and payment being in the nature of independent person services, the same would be clearly outside the scope of taxation in India.

- The law as it stood in the year concerned, provided a mandatory condition that services should be rendered in India before it could be made taxable u/s. 9(1)(vii). This requirement of rendering services in India was done away with insertion of an explanation by the Finance Act, 2010, with retrospective effect cannot be pressed into service to create an obligation upon the assessee for deduction of tax at source, which otherwise, was not upon the assessee, as per law existing at the time of making of impugned remittances.
- Consequently, the impugned order passed by the CIT (A) is in accordance with law and facts and ground raised by the revenue dismissed.

SERVICE TAX

(Contributed by CA. A. R. Krishnan & CA. Girish Raman)

Business Auxiliary Services

Octroi agents who read invoices and challans and fill up forms and obtain clearance at check posts do not deal with documents for title since they do not have the authority to transfer them and accordingly they are not liable for service tax under Business Auxiliary Services. [Trimurti Octroi Company vs. CCE (2015) 40 STR 152 (Tri.-Mum.)]

Credit Card Services

On a question whether the merchant discount earned by the acquiring bank from the merchant establishment can be said to

be a service 'in relation to' 'credit card services' [Section 65(12) read with S. 65(105)(zm)] and accordingly be liable for service tax under the category of banking and other financial services prior to 1/5/2006, the Larger Bench of the Tribunal held as follows:

- In the context of credit card services, the acquiring bank and the merchant establishment could be considered as customer of the issuing bank and an acquiring bank, respectively.
- Para 2.2 of the Board Circular dated 9/7/2001 accurately captures the scope of credit card services under Banking and Financial Services during the periods 16/7/2001 to 30/4/2006 i.e. as meaning a service where the customer is provided credit facility for purchase of goods and services; whereby cash advances are also permitted up to specified limits; where for rendition of service the service provider collects joining fee, additional card fee, annual fee, etc. and all these charges including interest charges for service rendered form part of the value of the taxable service.
- Section 65(33a) w.e.f. 1/5/2006 which comprehensively defines "credit card, debit card, charge card or other payment card services" is a substantive section which enumerates several transactions as within the fold of service tax which are not impliedly or inherently subsumed in the earlier definition u/s. 65(12).
- The services provided by the issuing bank to the acquiring bank and the acquiring bank to the merchant establishment in relation to settlement of an amount transacted through a card as provided in s. 65(33a)(iii) w.e.f. 1/5/2006 is not covered in the scope of credit card services defined in section 65(12).
- The merchant discount earned by the acquiring bank from the merchant establishment for settlement of payments does not amount to consideration received in relation to credit card services prior to 1/5/2006.

[Standard Chartered Bank vs. CST (2015) 40 STR 104 (Tri.-LB)]

Renting of immovable property

Renting of vacant land for construction of a building for use at a later stage for business or commerce is liable for service tax only w.e.f. 1/7/2010 and not prior to that date. [CST vs. Greater Noida Development Authority (2015) 40 STR 46 (All.).]

On a question whether service tax is payable on rent received for allotment of plots to lessees to construct factories during the term of lease under the category of "Renting of Immovable Property Services" the Court held:

- Rent collected for lease of various plots allotted by the assessee for business or commercial purposes is liable for service tax [para 20].



Obituary

CA. Hasmukhlal Occhavlal Mody

M. No. 002715 left for Heavenly Abode on 30/5/2016. May the departed soul rest in peace.

- The term/period of the lease whether it is for short duration or for 90 years or perpetuity makes absolutely no difference [para 21].
- The letting of vacant land (plots) for construction of buildings used in the furtherance of business or commerce at a later stage is taxable only w.e.f. 1/7/2010 [para 23].
- The plea of GNIDA based on Circular No. 96/7/2007 dated 23/8/2007 (clause 999.01) that it is performing a statutory duty in allotment of plots for business or commerce under the UP Industrial Development Act, 1976 and therefore not liable for service tax was rejected by observing that:
 - "34. Letting of immovable property for consideration, which is determined on the basis of offers received from public at large by the assessee Greater Noida Industrial Development Authority is a service provided for consideration and not on payment of statutory fees, neither it is a statutory service performed by the assessee. It may be that the statute permits such activities of letting out of immovable property for augmenting its finances but the same cannot be termed as the service in public interest nor it is a mandatory or statutory functions of the Development Authority. Accordingly, such activity of leasing, do constitute a taxable service, in our opinion."
- The High Court did not disturb the Tribunal's conclusion that premium paid for allotment of plots is not liable for service tax since no appeal was filed by the Revenue against the Tribunal's order [Para 36].

[Greater Noida Industrial Development Authority vs. CCE, 2015 (40) STR 95 (All.)]

Restaurant services and short-term accommodation services

The constitutionality of imposition of service tax on supply of food during rendering restaurant services [s. 65(105)(zzzzv)] and short-term accommodation services [s. 65(105)(zzzzw)] were upheld since they imposed a service tax only on service aspect of the transaction. [Ballal Auto Agency vs. UoI (2015) 40 STR 51 (Kar.)]

Stay – Mandatory pre-deposit of 7.5%

By Finance (No. 2) Act, 2014, w.e.f. 6/8/2014, a mandatory pre-deposit of 7.5% of the tax demand was required to be made for filing an appeal before the Tribunal. The Court has held that the deposit is not required to be made where the show cause notice initiating the proceedings was issued before 6/8/2014 although the appeal has been filed after 6/8/2014 since the law of appeal as applicable at the time of initiation of the proceeding is relevant. In such cases, the assessee could file an appeal along with a stay application without the mandatory pre-deposit. [Fifth Avenue Sourcing P. Ltd. vs. CST (2015) 40 STR 71 (Mad.) following Govt. of Kerala vs. UoI (2015) TIOL 895 (Ker.); K. Rama Mohan Rao vs. UoI (2015) 321 ELT 198 (AP); Muthoot Finance Ltd. vs. UoI (2015) 38 STR 1133 (Ker.); Dy. CTO vs. Cameo Exports (2006) 147 STC 218 (Mad.)].

CENVAT Credit

CENVAT Credit of service tax paid on lease rent of land and construction services for putting up the factory was allowed for the period 2007–10 on the following grounds:

- The lease of land being for the purpose of putting up the factory is in relation to the manufacture of final product;

- The construction services used for setting up the factory would fall in the 'means' part of the definition of input service being a service used directly or indirectly for manufacture of final product and would also fall within the inclusive part of the definition as being a service used for setting up the factory. It was also observed that a service used for setting up a factory was specifically deleted w.e.f. 1/4/2011 which amendment is not retrospective.

[CCE vs. Bellsonica Auto Components India P. Ltd. (2015) 40 STR 41 (P&H)]

CENVAT credit of service tax paid on life insurance of staff and rent-a-cab services availed for providing conveyance to staff was held to be allowable during the relevant period especially considering that these costs were included for the purpose of billing to the clients [Mount Kellett Management (I) Pvt. Ltd. vs. CST (2015) 40 STR 165 (Tri.-Mum.)].

Where the assessee was 100% exporter of services to a single client and all the payments are received from the single client no one-to-one correlation with the bills raised for each receipt during the claim period is required [Mount Kellett Management (I) Pvt. Ltd. vs. CST (2015) 40 STR 165 (Tri.-Mum.)].

Technical testing and analysis

Services of clinical testing of drugs and medicines is not liable for service tax prior to 1/5/2006 [Wellquest vs. CST (2015) 40 STR 185 (Tri.-Mum.)] following B. A. Research India Ltd. vs. CST (2010) 18 STR 604 (Tri.-Ahmd.) and Synchron Research Services P. Ltd. vs. CST (2011) 24 STR 654 (Tri.-Mum.)].

Export of Services

- Investment advisory services provided to assessee's clients located abroad in the form of reports and memoranda who use their reports to advise their clients regarding investment opportunities in India qualifies as 'exports' immaterial of how the assessee's client utilises the reports prepared by the assessee.

- Where the assessee's bank in India received Indian Rupees from an account of a bank situated in a foreign country (other than country of Asian Clearing Union or Nepal or Bhutan) issued an Foreign Inward Remittance Certificate stating that they received foreign currency equivalent to INR, the remittance was held to be in foreign exchange especially considering the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000.

[Mount Kellett Management (I) Pvt. Ltd. vs. CST (2015) 40 STR 165 (Tri.-Mum.)].

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WIRC presenting memento to Ms. Alice G. Vaidyan, Chairperson Cum Managing Director, General Insurance Corporation of India (GIC Re) along with CA. Shruti Shah, Chairperson, WIRC & CA. Sandeep Jain, RCM, CA. Ritika Sharma



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In this regard, WIRC would be publishing this Newsletter till September 2016. However, e-Newsletter would continue to be circulated to all members via email. We request members to update their email Id so that the same can be included in the database for e-Newsletters.

Members are requested to get habituated to the e-Newsletter henceforth so that they do not miss the Newsletter from October, 2016. Members should also visit the WIRC website regularly for new updates and CPE programme details.

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